EXTRADITION

Treaty signed at Rio de Janeiro May 14, 1897, as amended by protocols of May 28, 1898, and May 29, 1901 ¹
Senate advice and consent to ratification, with amendments, February 28, 1899 ¹
Ratified by the President of the United States, with amendments, February 13, 1903 ¹
Ratified by Brazil April 14, 1903
Ratifications exchanged at Rio de Janeiro April 18, 1903
Proclaimed by the President of the United States April 30, 1903
Entered into force May 30, 1903
Terminated July 23, 1913 ²

33 Stat. 2091; Treaty Series 423

TREATY OF EXTRADITION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED STATES OF BRAZIL

The United States of America and the United States of Brazil, desiring to strengthen their friendly relations and to facilitate the administration of jus-

¹ The text printed here incorporates the amendments set forth in the protocols of May 28, 1898, and May 29, 1901. By the 1898 protocol the two Governments agreed to the following modifications:

ARTICLE II, No. 13: To add in the English text after "broker" the word "manager", corresponding in the Portuguese text to the term "administrador".

ARTICLE III, § 2: To substitute in the English text for the word "definite" the word "final".

ARTICLE IV: To change the wording of the first paragraph of the Portuguese text to read as follows: O indívido entregue não poderá ser processado nem punido no país que tiver obtido a extradição nem entregue a terceiro país por crime ou infração não prevista no presente tratado nem por crime ou infração anterior à extradição, etc., etc.

To substitute in the second paragraph of the English text the expression "may demand" for "shall be able to demand".

ARTICLE IX: Substitute for the wording of the English text the following: "All articles found in the possession of the person accused, whether obtained through the commission of the act with which such person is charged, or whether they may be used etc., etc."

By the 1901 protocol, Brazil accepted the amendments contained in the Senate's resolution of advice and consent and maintained in the President's ratification, which read as follows:

"In Article IV, first paragraph, after 'extradition,' in the phrase 'previous to extradition,' insert other than the crime or offence for which he was extradited.

"In the same article and same paragraph, after 'country,' where it occurs in the phrase 'leave the country,' insert which has obtained the requisition.

"In the same article and at the end of the same paragraph, after 'trial,' insert therein.

"In the same article, second paragraph, after 'extradition,' in the phrase 'previous to extradition' insert other than the offence or crime for which he was extradited."

² Pursuant to notice of termination given by Brazil Jan. 23, 1913.
tice by the repression of crimes and offences committed in their respective ter-
ritories and jurisdictions, have agreed to celebrate a treaty of extradition and
have nominated for that purpose the following plenipotentiaries:

The President of the United States of America, Mr. Thomas L. Thomp-
son, Envoy Extraordinary and Minister Plenipotentiary near the Government
of the United States of Brazil;

and the President of the United States of Brazil, General Dionisio
Evangelista de Castro Cerqueira, Minister of State for Foreign Relations;

who having made known their respective full powers, which have been
found in good form, agree upon the following articles:

**Article I**

The Government of the United States of America and the Government
of the United States of Brazil mutually agree to deliver up the persons who,
having been charged or convicted, as the authors of or accomplices in any of
the crimes enumerated in the following article, committed in the jurisdiction
of one of the contracting parties, seeks an asylum or be found within the
territories of the other; provided, this shall only take place after such evidence
of criminality as, according to the laws of the place where the person or fugi-
tive so charged shall be found, would justify his or her apprehension and
commitment for trial, if the crime had there been committed.

**Article II**

Extradition shall be granted for the following crimes and offences:

1. Voluntary homicide, when such act is punishable in the United States
   of America, comprehending the crimes of poisoning and infanticide; murder;
   manslaughter.
2. Abortion.
3. Rape and other offences against chastity committed with violence.
5. Abduction, willfully and wrongfully depriving any person of natural
   liberty.
6. Kidnapping or child stealing.
7. Arson.
8. Piracy, by statute or by the law of nations when the state in which the
   offender is found has no jurisdiction; revolt, or conspiracy to revolt, by two
   or more persons on board a ship on the high seas, against the authority of the
   master; to willfully and wrongfully cause shipwreck; to wrongfully and will-
   fully collide with a vessel; to wrongfully and willfully scuttle a vessel for the
   purpose of sinking it; to wrongfully and willfully destroy a vessel on the high
   seas.
9. Wrongful and willful destruction or obstruction of railroads which
   endangers human life.
10. Counterfeiting, falsifying or altering money of any kind, or of legally authorized bank notes which circulate as money; to utter or to give circulation to any such counterfeited, falsified or altered money; the falsification of instruments of debt created by national, state or municipal governments, or of the coupons thereof; counterfeiting, falsifying or altering seals of the federal or state governments; to knowingly use any such instruments or papers.

11. Forgery, the utterance of forged papers; forgery or falsification of official acts of government, of public authorities, or of courts of justice, of public or private instruments; the use or the utterance of the thing forged or falsified.

12. Perjury, or to bear false witness; to suborn or bribe a witness.

13. Fraud committed by a depositor, banker, agent, broker, manager, treasurer, director, member or employe of any company or corporation.

14. Embezzlement, consisting in the misappropriation or theft of public moneys, committed in the jurisdiction of one of the contracting parties, by a public officer or depositary.

15. Embezzlement, or theft of moneys, committed by persons salaried or employed, to the detriment of those who employ them.

16. Burglary, defined to be the act of entering during the night, by breaking or climbing, the dwelling-house of another, with intent to commit a felony; robbery, defined to be the act of feloniously and forcibly taking from another money or goods of any value, by violence, or putting in fear, and known in the Brazilian Penal Code as roubo.

17. Complicity in or attempts at the commission of any of the crimes specified in the preceding sections, provided that such complicity or attempt be punishable by the laws of the country from whence the extradition is demanded.

**ARTICLE III**

Extradition shall not be granted if the offence on which the surrender is demanded be of a political character, or if the fugitive prove that there is an intention to try or punish him for a political crime; nor if the circumstances on which extradition is demanded are connected with political crimes.

The Government from which extradition is demanded will examine the circumstances, to ascertain whether the crime be of a political character, and its decision shall be final.

The following shall not be considered political crimes when they are unconnected with political movements, and are such as constitute murder, or willful and illegal homicide, as provided for in section 1 of the preceding article:

1. An attempt against the life of the President of the United States of America, or against the life of the Governor of any of the States; an attempt
against the life of the President of the United States of Brazil, or against the 
life of the President or Governor of any of the States thereof;
2. An attempt against the life of the Vice-President of the United States 
of America, or against the life of the Lieutenant-Governor of any of the 
States; an attempt against the life of the Vice-President of the United States 
of Brazil, or against the life of the Vice President or Vice Governor of any 
of the States thereof.

**Article IV**

The person surrendered cannot be tried nor punished in the country which 
has obtained the extradition, nor be surrendered to a third country, for 
trial or punishment therein, for any crime or offence not mentioned in this 
treaty, nor for one committed previous to extradition, other than the crime 
or offence for which he was extradited, unless such person has been in either 
case at liberty to leave the country which has obtained the extradition for 
a month subsequent to trial therein.

Furthermore, such person shall not be tried nor punished for an offence 
or crime mentioned in this treaty committed previous to the extradition, 
other than the offence or crime for which he was extradited, without the 
consent of the Government which has surrendered such person, and the said 
Government may demand an exhibition of any of the documents men-
tioned in Article X of the present treaty.

In like manner the consent of the said Government shall be solicited if 
the extradition of the offender is requested by a third Government; although 
this shall not be necessary when the offender voluntarily requests trial or 
consents to punishment; or if he fails to leave the territory of the country 
to which he has been surrendered within the period above fixed.

**Article V**

The contracting parties shall in no case be obliged to surrender their own 
citizens in virtue of the stipulations of the present treaty.

**Article VI**

If the person shall be in course of trial, or shall have been convicted of 
an offence other than that for which the surrender is demanded, extradita-
tion shall only take place after the trial shall have been concluded and the 
sentence fulfilled.

**Article VII**

When the person demanded by one of the contracting parties is also 
demanded by one or more powers on account of crimes and offences com-
mitted within their respective jurisdictions, extradition shall be conceded to 
the one whose request is first received, unless the Government to which the 
request is made has before agreed by treaty in case of the concurrence of
requests to give preference to the country of the person's origin, to the
gravity of the crime, or to the request which is of oldest date; in whichever
of these cases the usual rule shall be followed.

ARTICLE VIII

Extradition shall be refused when the action or sentence for which the
offender is demanded shall have been extinguished by prescription, according
to the law of the country to which the request is made, or when such person
shall have been already tried and sentenced for the same crime.

ARTICLE IX

All articles found in the possession of the person accused, whether obtained
through the commission of the act with which such person is charged, or
whether they may be used as evidence of the crime for which such person is
demanded, shall be seized and surrendered with the person. Nevertheless,
the rights of third persons to the articles so found shall be respected.

ARTICLE X

Requisitions for the surrender of fugitives from justice accused or con-
victed of any of the crimes or offences hereinbefore mentioned shall be made
by the diplomatic agent of the demanding Government. In case of the absence
of such agent either from the country or from the seat of Government such
requisition shall be made by a superior consular officer.

When the person whose surrender is requested shall have already been
convicted of the crime or offence for which his extradition is demanded,
the demand therefor shall be accompanied by a copy of the judgment of
the court or tribunal which has pronounced it, duly signed by the judge of
the court or president of the tribunal: and the signature of the judge of
the court or president of the tribunal shall be authenticated by the proper
executive officer, whose official character shall in turn be attested by the
diplomatic agent or a superior consular officer of the Government on which
the demand is made.

When the person whose surrender is asked is merely charged with the
commission of any of the crimes mentioned in the present treaty, the applica-
tion for extradition shall be accompanied by an authenticated copy of the
warrant of arrest issued against such person by the officer duly authorized
to do so; and likewise by an authenticated copy of the depositions or declara-
tions made before such officer and setting forth the acts with which the fugi-
tive is charged.

The extradition of fugitives under the provisions of the present treaty shall
be carried out in conformity with the laws and practice for the time being
in force in the state on which the demand is made, without, however, deny-
ing recourse to the writ of habeas-corpus.
Article XI

When the arrest and detention of a person are desired on telegraphic or other information in advance of the presentation of the formal proofs provided for in the preceding article of the present treaty, the following practice shall be observed: In the United States of America application shall be made by the diplomatic agent of Brazil, or in his absence by a superior consular officer, to the Secretary of State, for a certificate stating that request has been made by the Government of the United States of Brazil for the provisional arrest of a person convicted or accused of the commission within the jurisdiction thereof, of a crime or offence extraditable under the terms of the present treaty, which, upon presentation to any competent judicial officer and upon complaint duly made that such a crime or offence has been so committed, it shall be lawful for such judicial officer to issue a warrant for the apprehension of such person; And in the United States of Brazil upon request of the Government of the United States of America, duly made through its diplomatic agent, or in his absence by a superior consular officer to the Minister for Foreign Relations; the provisional arrest shall be made of any person convicted or accused of the commission of a crime or offence extraditable under this treaty.

But if the formal requisition for surrender with the formal proofs hereinbefore mentioned, be not made as aforesaid by the diplomatic agent of the demanding government, or in his absence by a superior consular officer, within sixty days from the date of the arrest of the fugitive, the prisoner shall be discharged from custody.

Article XII

The expenses incurred in the arrest, detention, examination and delivery of fugitives under this treaty shall be borne by the State in whose name the extradition is sought.

Article XIII

The present treaty shall take effect six weeks after the exchange of ratifications, and shall continue in force six months after one of the contracting parties shall have notified the other of an intention to terminate it.

It shall be ratified and the ratifications exchanged at Rio de Janeiro as soon as possible.

In witness whereof, the respective plenipotentiaries sign the above articles written in the English and Portuguese languages and hereunto affix their seals.

Done and signed in duplicate in the city of Rio de Janeiro, this 14th day of May 1897.

Thomas L. Thompson
Dionisio E. de Castro Cerqueira