

- (D) five counts of fraud contrary to section 408C of the Queensland Criminal Code, carrying a maximum penalty of 5 years imprisonment;
- (E) two counts of fraud valued at over \$5,000 contrary to section 408C of the Queensland Criminal Code, carrying a maximum penalty of 10 years imprisonment; and
- (F) one count of attempted fraud contrary to sections 4, 535, and 408C of the Queensland Criminal Code, carrying a maximum penalty of 2 ½ years imprisonment.

6. Article II (1) of the Treaty defines extraditable offenses as those punishable under the laws of both countries by deprivation of liberty of more than one year or by a more severe penalty. Article II (5) of the Treaty provides that if extradition is granted for an extraditable offense, then extradition may also be granted for offenses punishable by deprivation of liberty of one year or less.

7. Article VII (1)(b) of the Treaty provides that extradition shall not be granted when the prosecution for the offense has become barred by lapse of time according to the laws of the Requesting State. In Australia, there is no statute of limitations pertaining to the offenses in question.

8. Foreign arrest warrants. On November 22, 2006, six separate arrest warrants were issued in Brisbane, Australia, for the arrest of PATEL, alleging the following crimes:

(A) manslaughter, for the unlawful killing of James Edward Phillips between May 18, 2003 and May 22, 2003 (in violation of sections 300 and 303 of the Queensland Criminal Code);

(B) manslaughter, for the unlawful killing of Mervyn John Morris between April 1, 2003 and June 15, 2003, (in violation of sections 300 and 303 of the Queensland Criminal Code);

(C) manslaughter, for the unlawful killing of Gerardus Wilhelmus Gosewinus Kemps between December 18, 2004 and December 22, 2004, (in violation of sections 300 and 303 of the Queensland Criminal Code);

(D) causing grievous bodily harm and negligent acts or omissions causing harm to Darcy Russel Blight on or about January 17, 2005 (in violation of Sections 328 and 320 of the Queensland Criminal Code); and causing grievous bodily harm and negligent acts or omissions causing harm to Darcy Russel Blight on or about between January 16, 2005 and April 1, 2005 (in violation of Sections 328 and 320 of the Queensland Criminal Code);

(E) causing grievous bodily harm to Ian Rodney Vowles between October 3, 2004 and April 1, 2005 (in violation of section 320 of the Queensland Criminal Code).

(F) seven charges of fraud and one charge of attempted fraud relating to PATEL's efforts to obtain and retain employment at the Bundaberg Base Hospital in Bundaberg, Australia (in violation of sections 408C, 4, and 535 of the Queensland Criminal Code).

FACTS UNDERLYING FOREIGN CHARGES

9. According to an investigation by authorities of the Requesting State, supported by statements of hospital officials, medical experts and others, PATEL defrauded officials at a hospital in Bundaberg, Australia into hiring him as a surgeon at the hospital. Once on staff at the hospital, PATEL engaged in reckless conduct which resulted in the death of three patients and grievous bodily harm to two others. The specific allegations are summarized below:

A. PATEL's Fraudulent Scheme To Obtain Employment As A Surgeon

10. In short, the fraud charges allege that PATEL, a doctor who had been repeatedly sanctioned by licensing officials in the United States, schemed to hide his history of professional misconduct from officials at an Australian hospital and licensing officials in the Australian state of Queensland so that he could get and keep a job as a surgeon at the hospital.

11. PATEL's history of professional misconduct began in New York, where he was first licensed to practice medicine in May 1980. Within a few years, however, PATEL had been fired from his job for inappropriate conduct. Then, in May 1984, New York regulators found PATEL guilty of gross negligence and incompetence. PATEL was fined and placed on probation for a period of three years.

12. In 1989, PATEL was licensed to practice in Oregon by the Oregon Board of Medical Examiners ("BME"), and began work at Northwest Permanente. In May 1998, Northwest Permanente placed limits on PATEL's scope of practice, barring him from conducting certain procedures and requiring him to obtain second opinions for other procedures. Northwest Permanente also referred its findings to the Oregon BME.

13. In February 2000, the BME brought a formal complaint against PATEL. In August 2000, PATEL signed a stipulated order with the BME that placed limitations on PATEL's license. Specifically, the BME limited PATEL's scope of practice to excluding certain surgeries and requiring him to obtain a second opinion, documented in a patient's chart, in any "complicated surgical case." (The order included a definition of "complicated surgical case.")

14. New York state regulators followed suit and in May 2001, PATEL's New York State license was formally surrendered.

15. In the meantime, Oregon hospitals had begun to place limits on PATEL's practice. For example, Providence Portland Hospital revoked his surgical privileges on May 16, 2001, and other hospitals required that he have a second surgeon present for any surgery.

16. Also in May 2001, Northwest Permanente began the process of terminating PATEL. On June 20, 2001, PATEL resigned from Northwest Permanente.

17. PATEL was subsequently unable to find employment at an Oregon hospital. PATEL even told an investigator for the Oregon BME that he was having difficulty finding employment in Oregon or neighboring states and sought help finding employment from the investigator.

18. After failing to find a job in the United States, PATEL sought employment in Australia. In December 2002, he applied for a job at the Bundaberg Base Hospital in Bundaberg, Queensland ("Bundaberg" or the "hospital"). PATEL was offered a job with the hospital in December 2002, and over the next few months, completed various forms required for employment at the hospital and licensing as a physician in Queensland (where licensing is referred to as "registration"). PATEL began work at the hospital on April 1, 2003, and worked there through March 31, 2005. To maintain his employment, he was required to seek annual renewal of his registration with regulators in Queensland.

19. PATEL actively hid his history of professional misconduct and lied repeatedly on forms required for registration in Australia. PATEL held himself as something he was not – a qualified physician licensed for full practice in the United States – in order to obtain employment and retain employment at the Bundaberg Base Hospital. PATEL was paid over \$400,000 while employed by the hospital. PATEL thus successfully engaged in a scheme to defraud officials at the Bundaberg Hospital in order to obtain money.

20. PATEL never told officials at the Bundaberg Base Hospital or medical licensing authorities in Queensland about his history of professional misconduct. PATEL never disclosed that his medical license in Oregon had been limited – and that he was not authorized to conduct certain specific surgeries and that he was required to obtain second opinions for all "complicated surgical cases." PATEL never disclosed that he had twice been disciplined by New York state regulators, resulting in the surrender of his license in 2000.

21. The fraud charges against PATEL allege eight specific offenses related to acts PATEL undertook in furtherance of his scheme to defraud officials at the Bundaberg Base Hospital:

(A) Fraud Offense 1 alleges that between December 19, 2002 and December 30, 2002, PATEL gained an offer of employment at the Bundaberg Base Hospital by fraud, in violation of section 408C(1)(d) of the Queensland Criminal Code. Among other things, PATEL actively hid the fact that he had been subject to disciplinary action and retained a license that was limited, and falsely claimed that he had "excellent" surgical experience, when in fact he had had surgical privileges severely limited as a result of misconduct.

(B) Fraud Offense 2 alleges that in April 2003, PATEL obtained his registration as a physician in Queensland by fraud, including submitting a falsified resume and a form in which he falsely claimed that his medical license had never been subject to conditions or suspension, in violation of section 408C(1)(d) of the Queensland Criminal Code.

(C) Fraud Offense 3 alleges that between April 1, 2003 and March 31, 2004, PATEL retained employment at the Bundaberg Hospital by fraud, namely by continuing to actively hide his history of professional misconduct from Bundaberg Base Hospital and Australian authorities, in violation of section 408C(1)(d) of the Queensland Criminal Code. Among other things, PATEL lied to an Oregon BME official who contacted him in September 2003: PATEL claimed that he had retired and was no longer practicing medicine -- when in fact he was working at Bundaberg -- in an effort to prevent the Oregon BME from contacting Australian officials to disclose the fact that PATEL had limitations on his medical license and a history of professional misconduct.

(D) Fraud Offense 4 alleges that between April 1, 2003 and March 31, 2004, PATEL earned his employment at Bundaberg Base Hospital and income totaling \$212,615.09 -- by fraud, including the fraudulent conduct underlying Offenses 1 - 3, in violation of sections 408C(1)(d) and 408C(2)(d) of the Queensland Criminal Code.

(E) Fraud Offense 5 alleges that on April 1, 2004, PATEL renewed his registration as a medical practitioner in Queensland by fraud, including submitting a new form in which he falsely claimed that his medical license had never been subject to conditions or suspension, in violation of section 408C(1)(d) of the Queensland Criminal Code.

(F) Fraud Offense 6 alleges that between April 1, 2004 and March 31, 2005, PATEL gained renewed employment at Bundaberg Base Hospital by fraud, including material misrepresentations regarding his history of professional misconduct, in violation of section 408C(1)(d) of the Queensland Criminal Code.

(G) Fraud Offense 7 alleges that between April 1, 2004 and March 31, 2005, PATEL earned his renewed employment at Bundaberg Base Hospital and registration as a medical practitioner in Queensland -- and income totaling \$189,529.59 -- by fraud, including the fraudulent conduct underlying Offenses 5 and 6, in violation of sections 408C(1)(d) and 408C(2)(d) of the Queensland Criminal Code.

(H) Fraud Offense 8 alleges that on February 5, 2005, PATEL attempted to gain renewed registration as a medical practitioner in Queensland by fraud, including submitting a new form in which he falsely claimed that his medical license had never been subject to conditions or suspension, in violation of sections 4, 408C(1)(d) and 535 of the Queensland Criminal Code.



22. The conduct underlying the offenses described in Paragraph 21 would be chargeable as a scheme to defraud in violation of 18 U.S.C. §§ 1341 and 1343, which makes it a felony to devise a scheme or artifice to defraud or for obtaining money and property by means of materially false and fraudulent pretenses, representations and promises, and thus constitute extraditable offenses. Sections 1341 and 1343 carry a maximum sentence of 20 years imprisonment (when, as here, the value of the loss is less than \$1 million). While §§ 1341 and 1343 require proof of use of mail or interstate wire, respectively, Article II(3)(b) of the Treaty provides that where United States statutes require proof of use of the mail or interstate wire, such proof is not required to render an offense extraditable. Accordingly no proof of mail or wire use is necessary here.

23. The conduct underlying the offenses described in Paragraph 21 would also be chargeable as health care fraud in violation of 18 U.S.C. § 1347, which makes it a felony to

obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program.

A “health care benefit program” includes any

public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract.

Since the offenses allege that PATEL obtained money from Bundaberg Base Hospital by means of false and fraudulent pretenses and representations – namely that he held himself out to be a qualified doctor with no limitations on his license, when in fact he was neither – his conduct would be chargeable as health care fraud. Section 1347 carries a maximum sentence of 20 years, unless the fraud results in death, in which case the maximum is life imprisonment.

B. PATEL’s Unlawful Killing of 3 Patients And Assault On Others

24. The manslaughter charges allege that PATEL recklessly and negligently caused the death of three patients during his employment at Bundaberg Base Hospital from April 1, 2003 to March 31, 2005. The assault charges allege that PATEL recklessly and negligently caused injuries to two patients during his employment at Bundaberg. We will refer to these charges collectively as the “Violent Offenses”.

25. Prior to beginning his employment at Bundaberg, PATEL’s ability to perform certain types of surgery had been restricted by his previous employers and the Board of Medical Examiners (BME) in Oregon. PATEL disregarded these earlier warnings while treating each of the five victims identified in the complaint.

26. PATEL treated patient James Edward Phillips from April 1, 2003 to May 22, 2003. At the time of his admission to Bundaberg, Phillips was in poor health. On May 19, 2003, PATEL performed an oesophagectomy on Phillips in an effort to remove a “small mass” in Phillips’s oesophagus. This was a surgery that PATEL was barred from performing under his license in Oregon without a second opinion, based on the limitations of his license imposed in August 2000. During the surgery, Phillips’ oesophagus was “inadvertently” torn by PATEL. Phillips’ condition declined rapidly until he died on May 21, 2003.
27. PATEL operated on Philips without consulting either Phillips’ treating physician or another surgeon prior to the May 19, 2003 surgery. Moreover, the procedure that PATEL performed on May 19, 2007 was one that should not have been performed at Bundaberg because the hospital had only limited intensive care unit facilities – rather than more sophisticated facilities available at other hospitals. As a result, Bundaberg was not equipped to properly handle the complications that arose from the surgery. The surgery was also unnecessary. There were a number of safer, non-invasive treatments available to treat Phillips. Because of mistakes made by PATEL, the surgery took too long to complete. This caused additional complications that contributed to Phillips’ death.
28. PATEL treated patient Mervyn John Morris from about April 1, 2003 to June 14, 2003. When Morris arrived at Bundaberg, he complained of rectal bleeding. Morris had a history of prostate problems. PATEL performed a colonoscopy on April 9, 2003. The procedure revealed what PATEL incorrectly diagnosed as diverticular disease in a small segment of the bowel. On May 23, 2003, PATEL performed surgery on Morris. The operation he performed is generally known as “Hartmann’s Procedure”. Hartmann’s Procedure is usually conducted only in an emergency situation. This was a surgery that PATEL was barred from performing under his license in Oregon without a second opinion, based on the limitations of his license imposed in August 2000.
29. The May 23, 2003 surgery did not stop the rectal bleeding. It caused additional problems in the stoma. Morris’ condition continued to worsen until he died on June 14, 2003. PATEL performed the surgery despite the fact there was nothing in Morris’ preoperative test results that required such a step. Moreover, the surgery that PATEL elected to perform - Hartmann’s Procedure - was unnecessarily risky under the circumstances and was conducted in a manner that contributed to Morris’ death.
30. PATEL treated patient Gerardus Wilhelmus Goswinus Kemps from December 18, 2004 to December 22, 2004. At the time of Kemps admission to Bundaberg, he was in very poor health. PATEL performed two surgeries on Kemps. The first was an oesophagectomy. This was a surgery that PATEL was barred from performing under his license in Oregon without a second opinion, based on the limitations of his license imposed in August 2000. This surgery caused a significant amount of internal bleeding. The second surgery was conducted roughly five hours after the first surgery. Its purpose was to control the bleeding caused by the first surgery. This surgery failed to stop the

bleeding and Kemps died the next day.

31. PATEL should not have operated on Kemps because of Kemps' health. Moreover, the procedure that PATEL performed was one that should not have been performed at Bundaberg because Bundaberg only had a "Level 1" intensive care unit. As a result, Bundaberg was not equipped to properly handle the complications that arose from the surgery. PATEL also performed the surgeries in a manner that unnecessarily endangered Kemps. PATEL waited almost five hours before performing the second surgery. This delay contributed to Kemps' death.
32. PATEL treated patient Darcy Russell Blight from April 1, 2003 to April 1, 2005. Blight was admitted to Bundaberg with a sore throat and swelling on side of the throat. On May 16, 2003, PATEL operated on Blight. Despite the surgery, Blight's symptoms persisted. On January, 17, 2005, PATEL performed a second surgery on Blight. During this surgery, PATEL removed a healthy gland, not the cancerous mass previously identified for removal. A scalpel was used during the surgeries. Because of PATEL's mistakes, a third surgery was conducted on June 1, 2005 to remove the cancerous mass.
33. PATEL failed to properly treat Blight after the May 16, 2003 surgery. PATEL did not refer Blight to radioiodine treatment after the surgery. This would have been the proper course of treatment under the circumstances. PATEL failed to properly conduct the January 17, 2005 surgery when he removed the wrong gland. This mistake caused Blight to undergo yet another surgery. The cumulative effect of the two surgeries was both the loss of the healthy gland as well as injuries that may have permanently affected Blight's health.
34. PATEL treated patient Ian Rodney Vowles from December 7, 2003 to October 5, 2004. On September 14, 2004 PATEL performed a routine colonoscopy on Vowles. After the operation, PATEL told Vowles that he had a benign cyst on the wall of the bowel and that it could be symptomatic of cancer. PATEL then recommended that Vowles receive a total bowel removal. On October 4, 2004, PATEL removed the large bowel and constructed a stoma collection bag. This was a surgery that PATEL was barred from performing under his license in Oregon without obtaining a second opinion, based on the limitations of his license imposed in August 2000. Following the October 4, 2004 surgery, two additional surgeries had to be performed on Vowles to address complications that arose from the October 4 surgery.
35. The October 4, 2004 surgery was performed unnecessarily. PATEL failed to conduct additional tests to determine whether Vowles had cancer. Results from the October 4 surgery indicated that Vowles did not have cancer. The cumulative effect of the three surgeries resulted in permanent injury to Vowles' health.

36. The charges against PATEL alleges six specific offenses related to PATEL's treatment and care of five patients while employed at Bundaberg Base Hospital for which extradition is currently sought:
- (A) Violent Offense 1 alleges that on May 22, 2003 PATEL unlawfully caused the death of James Edward Phillips in violation of sections 300 and 303 of the Queensland Criminal Code.
 - (B) Violent Offense 2 alleges that on June 14, 2003 PATEL unlawfully caused the death of Mervyn John Morris in violation of sections 300 and 303 of the Queensland Criminal Code.
 - (C) Violent Offense 3 alleges that on December 21, 2004 PATEL unlawfully caused the death of Gerardus Wilhelmus Goswinus Kemps in violation of sections 300 and 303 of the Queensland Criminal Code.
 - (D) Violent Offense 4 alleges that between April 1, 2003 and April 1, 2005, PATEL unlawfully caused grievous bodily harm to Darcy Russell Blight in violation of section 320 of the Queensland Criminal Code.
 - (E) Violent Offense 5 alleges that between April 1, 2003 and April 1, 2005, PATEL committed a negligent act that caused harm to Darcy Russell Blight in violation of section 328 of the Queensland Criminal Code.
 - (H) Violent Offense 8 alleges that between December 7, 2003 and October 5, 2004, PATEL unlawfully caused grievous bodily harm to Ian Rodney Vowles in violation of section 320 of the Queensland Criminal Code.¹

37. The conduct underlying the offenses described in Paragraph 36(A) through (C) would be chargeable as Manslaughter in the Second Degree and Criminally Negligent Homicide in violation of O.R.S. 163.005, 163.125 and 163.145. The maximum penalty for Manslaughter in the Second Degree is and Criminally Negligent Homicide is 10 years in prison and a \$250,000 fine. The conduct underlying the offenses described in Paragraph 36(D) through (H) would be chargeable as Assault in the Third Degree and Assault in the Fourth Degree in violation of O.R.S. 163.165 and O.R.S. 163.160. The maximum penalty for Assault in the Third Degree is five years in prison and a \$125,000 fine. The maximum penalty for Assault in the Fourth Degree is one year in jail and a \$6,250 fine.

¹ Patel is also charged with an additional count of grievous bodily harm and additional count of negligent harm to Darcy Russel Blight. These offenses are identified as Offenses 6 and 7 in the Australian extradition papers relating to the violent crime allegations. We do not seek extradition on these offenses at this time.

38. Fugitive's presence in the United States. PATEL is believed to be living with his wife at 3739 NW Bluegrass Place in Portland, Oregon.

39. Fugitive's description. The fugitive, a citizen of the United States, was born on April 10, 1950. PATEL is described as a male, standing 5' 10" in height, and appears slightly obese for this height. Several photographs and a document containing his thumb print are included in the papers submitted in support of extradition; copies of one of the photographs is attached hereto as Government's Exhibit #1.

40. Extradition request. David O. Buchholz, an attorney in the Office of the Legal Adviser of the United States Department of State, has provided the Department of Justice with a copy of Diplomatic Note No. 281/2007 by which the request for extradition was made. The documents in support of extradition are properly certified by the principal American diplomatic or consular officer in Australia, in accordance with Article XVII of the Treaty and Title 18, United States Code, Section 3190, so as to enable them to be received in evidence.

41. A copy of the declaration from the Department of State, including a copy of the diplomatic note from the requesting state, and a copy of the relevant extradition treaty – marked collectively as Government's Exhibit #2 – are filed with this complaint and incorporated by reference herein.

42. Extradition Materials: In addition to the copies attached to this Affidavit, we also will concurrently file the originals of the extradition materials offered in support of the extradition of **JAYANT MUKUNDRAY PATEL**, which include the following:

- The Bucholz Declaration, which includes Diplomatic Note 281/2007 and a copy of the extradition treaty and amendments currently in force.
- The Prosecutors' Affidavits; specifically, a package containing affidavits from Consultant Crown Prosecutors David Llewellyn Meredith and Ross Gregory Martin, of Brisbane Queensland. The Meredith Affidavit explains necessary legal background regarding the violent offenses, and includes the violent offense arrest warrants. The Martin Affidavit explains necessary legal background regarding the fraud offenses, and includes the fraud offenses arrest warrant.
- The Graham Walker Affidavit, Part I. Walker investigated the violent offenses. Part I of his Affidavit includes the body of his statement, and exhibits lettered A through L.
- The Graham Walker Affidavit, Part II, which includes exhibits to Walker's Affidavit lettered through AO.
- The Brett Kenneth Heath Affidavit, Part I. Heath investigated the fraud offenses. Part I of his Affidavit includes the body of his statement, and exhibits numbered BKH 1 - 56.

•The Brett Kenneth Heath Affidavit, Part II, which includes exhibits to Heath's Affidavit numbered BKH 57 - 97.

WHEREFORE, the undersigned complainant requests that a warrant be issued in accordance with the Treaty on Extradition between the United States of America and Australia, and Title 18, United States Code, Section 3184, so that the fugitive may be arrested and brought before this court "to the end that the evidence of criminality may be heard and considered."

In order to limit the risk of flight and further to limit any effort to intimidate, threaten or influence witnesses, the government respectfully requests that this Affidavit, as well as the requested arrest warrant and all related materials, including the documents filed in support of the extradition, be filed under seal until further order of this court.



DWIGHT C. HOLTON
ASSISTANT UNITED STATES ATTORNEY



ETHAN D. KNIGHT
ASSISTANT UNITED STATES ATTORNEY

Sworn to before me and subscribed in my presence this 7th day of March 2008, AND A
WARRANT SHALL ISSUE.



The Honorable Dennis J. Hubel
United States Magistrate Judge



Adrian
30.11.6.

DISTRICT OF COLUMBIA, ss:

DECLARATION OF DAVID O. BUCHHOLZ

I, David O. Buchholz, declare and say as follows:

1. I am an Attorney-Adviser in the Office of the Legal Adviser for the Department of State, Washington, D.C. This office has responsibility for extradition requests within the Department of State, and I am familiar with the extradition case of Jayant Mukundray Patel. I make the following statements based upon my personal knowledge and upon information made available to me in the performance of my official duties.

2. In accordance with the provisions of the extradition treaty and protocol in full force and effect between the United States and Australia, the Embassy of Australia has submitted Diplomatic Note No. 281/2007 formally requesting the extradition of Jayant Mukundray Patel. A copy of the diplomatic note is attached to this declaration.

3. The relevant and applicable treaty provisions in full force and effect between the United States and Australia are found in the Treaty on Extradition between the United States of America and Australia of May 14, 1974, which entered into force on May 8, 1976 (TIAS 8234), and the Protocol Amending the Treaty on Extradition between the United States of America and Australia of May 14, 1974, signed on September 4, 1990, which entered into force on December 21, 1992. A copy of the Treaty and Protocol are attached to this declaration.

4. In accordance with Article XVIII of the 1974 Extradition Treaty, as replaced by Article 14 of the 1990 Protocol, the Government of the United States represents the interests of Australia in any proceedings arising out of a request for extradition made by Australia, and Australia provides the same representation on behalf of the United States in proceedings in Australia arising out of extradition requests made by the United States.

United States of America

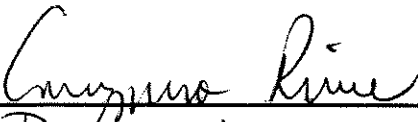
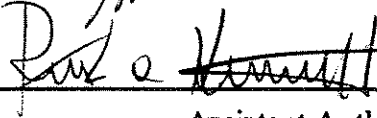


DEPARTMENT OF STATE

To all to whom these presents shall come, Greetings:

I hereby certify That David O. Buchholz, whose name is subscribed to the document hereunto annexed, at the time of subscribing the same Attorney Adviser, Office of the Legal Adviser, Department of State, United States of America, and that full faith and credit are due to his acts as such.

In testimony whereof, I, Condoleezza Rice, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Assistant Authentication Officer, of the said Department, at the city of Washington, in the District of Columbia, this tenth day of October, 2007.


 _____ Secretary of State
 By 
 _____ Assistant Authentication Officer,
 Department of State

In pursuance to Chapter 1789, 1 Stat. 59; 22 USC 57; 22 USC 26; 22 USC 1733 et. seq.; 22 USC 1733; RULE 44 Federal Rules of Procedure.

This certificate is not valid if it is removed or altered in any way whatsoever

5. The offenses for which extradition is sought are covered under Article II of the 1974 Extradition Treaty, as replaced by Article 1 of the 1990 Protocol.

6. The documents submitted by the Embassy of Australia in support of the extradition request were certified on September 26, 2007, by Daniel A. Clune, Charge' d'Affaires, a.i., of the Embassy of the United States of America in Canberra, in accordance with Title 18 United States Code, Section 3190. At the time of his certification, Mr. Clune was the principal diplomatic officer of the United States in Australia.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on October 9, 2007.



DAVID O. BUCHHOLZ

Attachments:

1. Copy of Note
2. Copy of Treaty
3. Copy of Protocol



Australian Government

**Embassy of Australia
Washington**

2007-07-09 10:01

Note No. 281/2007

The Embassy of Australia presents its compliments to the United States Department of State, and has the honour to present a request for the extradition of Jayant Mukundray Patel.

Dr Jayant Mukundray Patel is wanted for prosecution in the State of Queensland in Australia for the following offences:

- manslaughter, contrary to sections 300 and 303 of the Criminal Code (Queensland) (three counts)
- grievous bodily harm, contrary to section 320 of the Criminal Code (Queensland) (three counts)
- negligent acts or omissions causing harm, contrary to section 328 of the Criminal Code (Queensland) (two counts)
- fraud, contrary to section 408C of the Criminal Code (Queensland) (seven counts) and
- attempted fraud, contrary to sections 4, 408C and 535 of the Criminal Code (Queensland) (one count)

This request is made in accordance with the Treaty on Extradition between Australia and the United States, as amended by Protocol. The documents required by Article XI of the Treaty to be provided in support of an extradition request are enclosed, together with three copies.

The documents have been certified by Mr Daniel A. Clune, Charge d'Affaires a.i. of the Embassy of the United States at Canberra, as required by Article XI(5) of the Treaty.

The United States authorities may contact the following Australian office in connection with this request for extradition:

Mr Andrew Kristjanson
Extradition Unit
Mutual Assistance and Extradition Branch
Commonwealth Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON, ACT 2600
AUSTRALIA
Email: Andrew.Kristjanson@ag.gov.au
Telephone: + 61 2 6250 6685
Facsimile: + 61 2 6250 5457

The Embassy avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.



WASHINGTON DC

02 October 2007

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 8234

EXTRADITION

Treaty Between the
UNITED STATES OF AMERICA
and AUSTRALIA

Signed at Washington May 14, 1974



AUSTRALIA

Extradition

*Treaty signed at Washington May 14, 1974;
Ratification advised by the Senate of the United States
of America December 1, 1975;
Ratified by the President of the United States of
America December 16, 1975;
Ratified by Australia December 22, 1975;
Ratifications exchanged at Canberra April 8, 1976;
Proclaimed by the President of the United States of
America May 5, 1976;
Entered into force May 8, 1976.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Treaty on Extradition between the United States of America and Australia was signed at Washington on May 14, 1974, the original of which Treaty is hereto annexed;

The Senate of the United States of America by its resolution of December 1, 1975, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Treaty;

The Treaty was ratified by the President of the United States of America on December 16, 1975, in pursuance of the advice and consent of the Senate, and has been duly ratified on the part of Australia;

The respective instruments of ratification were exchanged at Canberra on April 8, 1976;

It is provided in Article XXI of the Treaty that the Treaty shall enter into force thirty days after the exchange of instruments of ratification;

Now, THEREFORE, I, Gerald R. Ford, President of the United States of America, proclaim and make public the Treaty, to the end that it shall be observed and fulfilled with good faith on and after May 8, 1976, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this fifth day of May in the year of our Lord one thousand nine hundred seventy-six [SEAL] and of the Independence of the United States of America the two hundredth.

GERALD R. FORD

By the President:

JOSEPH JOHN SISCO

Acting Secretary of State

TREATY ON EXTRADITION BETWEEN
THE UNITED STATES OF AMERICA AND AUSTRALIA

The United States of America and Australia, desiring to make more effective the cooperation of the two countries for the reciprocal extradition of offenders, agree as follows:

ARTICLE I

Each Contracting Party agrees, under the conditions and circumstances established by this Treaty, reciprocally to deliver up persons found in its territory who have been charged with or convicted of any of the offenses mentioned in Article II of this Treaty committed within the territory of the other Contracting Party, or outside that territory under the conditions specified in Article IV of this Treaty.

ARTICLE II

(1) Persons shall be delivered up according to the provisions of this Treaty for any of the following offenses provided these offenses are punishable by the laws of both Contracting Parties by a term of imprisonment exceeding one year or by death:

1. Murder or willful murder; assault with intent to commit murder.
2. Manslaughter.
3. Aggravated or willful wounding or injuring; assault occasioning actual bodily harm.
4. Unlawful throwing or application of any corrosive or injurious substances upon the person of another.
5. Rape; indecent assault, including unlawful sexual acts with or upon children.
6. Illegal abortion.
7. Procuring, or trafficking in, women or young persons for immoral purposes; living on the earnings of prostitution.
8. Abandoning or exposing a child when the life of that child is or is likely to be injured or endangered.

9. Bigamy.
10. Kidnapping; child stealing; abduction; false imprisonment.
11. Robbery.
12. Burglary; housebreaking or any similar offense.
13. Larceny.
14. Embezzlement.
15. Obtaining any property, money or valuable securities by false pretenses or other form of deception.
16. An offense against the law relating to bribery.
17. Extortion.
18. Receiving any property, money or valuable securities knowing the same to have been unlawfully obtained.
19. Fraud by an agent, bailee, banker, factor or trustee, by a director or officer of a company or by a promoter of a company, whether existing or not.
20. An offense relating to counterfeiting or forgery.
21. Perjury; subornation of perjury; conspiring to defeat the course of justice.
22. Arson.
23. An act done with the intention of endangering the safety of any person traveling upon a railway or in any aircraft or vessel or other means of transportation.
24. Any seizure or exercise of control, by force or violence or threat of force or violence, or by any other form of intimidation, of an aircraft.
25. Piracy, by statute or by law of nations; revolt on board a vessel against the authority of the master of the vessel.

26. Malicious injury to property.
27. An offense against the bankruptcy laws.
28. An offense against the laws relating to narcotics, dangerous drugs or psychotropic substances.
29. Dealing in slaves.

(2) Extradition shall also be granted for any other offenses that are made extraditable under the extradition laws of Australia and which are felonies under the laws of the United States of America.

(3) Extradition shall also be granted for any offense against a federal law of the United States of America of which one of the above-mentioned offenses is a substantial element, even if transporting or transportation or the use of the mails or of interstate facilities is also an element of the specific offense.

(4) Extradition shall also be granted for aiding, abetting, counseling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit, any of the offenses mentioned in the preceding paragraphs of this Article.

(5) If extradition is requested for any offense mentioned in a preceding paragraph of this Article and that offense is punishable under the laws of both Contracting Parties by a term of imprisonment exceeding one year or by death, that offense shall be extraditable under the provisions of this Treaty whether or not the laws of both Contracting Parties would place that offense within the same category of offenses made extraditable by that preceding paragraph of this Article and whether or not the laws of the requested State denominate the offense by the same terminology.

ARTICLE III

(1) For the purposes of this Treaty, the territory of a Contracting Party means all the territory under the jurisdiction of that Contracting Party, including airspace and territorial waters, and also includes -

- (a) any vessel registered in any territory under the jurisdiction of that Contracting Party; and
- (b) any aircraft registered in any such territory provided that the aircraft is in flight when the relevant offense is committed.

(2) For the purposes of this Treaty -

- (a) the territory under the jurisdiction of a Contracting Party includes the Territories for the international relations of which that Contracting Party is responsible;
- (b) an aircraft shall be considered in flight from the moment when the power is applied for the purpose of take-off until the moment when the landing run ends.

ARTICLE IV

When the offense for which extradition has been requested has been committed outside the territory of the requesting State -

- (a) if the United States of America is the requested State - the executive authority of the United States of America; or
- (b) if Australia is the requested State - the Attorney-General of Australia,

shall have the power to grant the extradition if the laws of the requested State provide for jurisdiction over such an offense committed in similar circumstances.

ARTICLE V

(1) Neither of the Contracting Parties shall be bound to deliver up its own nationals under this Treaty but the executive authority of each Contracting Party shall have the power to deliver them up if, in its discretion, it considers that it is proper to do so.

(2) For the purposes of this Article -

(a) a reference to the executive authority of a Contracting Party shall, in the case of Australia, be construed as a reference to the Attorney-General of Australia;

(b) Australian protected persons shall be deemed to be nationals of Australia; and

(c) the nationality of a person shall be determined to be that which he held at the time when he was charged with the offense for which his extradition is requested.

ARTICLE VI

Extradition shall be granted only if the evidence is found sufficient, according to the laws in the territory where the person whose extradition is requested is found, either to justify his trial or committal for trial if the offense with which he is charged or its equivalent had been committed in that territory or to prove that he is the identical person convicted by the courts of the requesting State.

ARTICLE VII

(1) Extradition shall not be granted in any of the following circumstances:

(a) when the person whose extradition is requested is being proceeded against, has been tried and discharged or punished, or has been pardoned, in the territory of the requested State for the offense for which his extradition is requested;

(b) when the prosecution for the offense has become barred by lapse of time according to the laws of the requesting State; or

(c) when the offense in respect of which extradition is requested is of a political character, or the person whose extradition is requested proves that the extradition request has been made for the purpose of trying or punishing him for an offense of a political character.

(2) If any question arises whether a case comes within the provisions of subparagraph (c) of paragraph (1) of this Article, the requested State shall decide that question.

ARTICLE VIII

If, under the law of the requesting State, an offense for which the extradition of a person is requested, or any other offense for which he may be detained or tried under paragraph (1) of Article XIV, is subject to a penalty of death but the law of the requested State does not provide for such a penalty in a similar case, the requested State may recommend to the requesting State that any punishment imposed for any of those offenses be a less severe punishment.

ARTICLE IX

When the person whose extradition is requested is being proceeded against or is serving a sentence in the territory of the requested State for an offense other than that for which extradition has been requested, his surrender may be deferred until the conclusion of the proceedings and the full execution of any punishment that may be or may have been imposed on him.

ARTICLE X

The determination that extradition based upon the request therefor should or should not be granted shall be made in accordance with the law of the requested State and the person whose extradition is sought shall have the right to use such remedies and recourses as are provided by that law.

ARTICLE XI

(1) The request for extradition shall be made through the diplomatic channel.

(2) The request shall be accompanied by a description of the person sought, a statement of the facts of the case, the text of the applicable laws of the requesting State including the law defining the offense, the law prescribing the punishment for the offense and the law relating to the limitation of the legal proceedings.

(3) When the request relates to a person who has not yet been convicted, it must also be accompanied by a warrant of arrest issued by a judge or other judicial officer of the requesting State and by such evidence as, according to the laws of the requested State,

would justify his trial or committal for trial if the offense had been committed there, including evidence proving the person requested is the person to whom the warrant of arrest refers.

(4) When the request relates to a person already convicted, it must be accompanied by the judgment of conviction and sentence, if any, passed upon him in the territory of the requesting State, by a statement, if applicable, showing how much of the sentence has not been served and by evidence proving that the person requested is the person to whom the judgment refers.

(5) The warrant of arrest and deposition or other evidence, given under oath or affirmed, and the judicial documents establishing the existence of the conviction, or certified copies of those documents, shall be admitted in evidence in the examination of the request for extradition when -

(a) in the case of a request by Australia - those documents or certified copies bear the signature, or are accompanied by the attestation, of a judge, magistrate or officer of Australia or are authenticated by the official seal of the Attorney-General and, in any case, are certified by the principal diplomatic or consular officer of the United States of America in Australia; or

(b) in the case of a request by the United States of America - the warrant, if any, bears an original signature, or the other documents are certified, by a judge, magistrate or officer of the United States of America and, in any case, are authenticated by the oath of a witness or sealed with the official

seal of the Department of State on behalf of the Secretary of State or of the Department of Justice on behalf of the Attorney General.

ARTICLE XII

- (1) In case of urgency a Contracting Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel.
- (2) The application shall contain a description of the person sought, an indication of intention to request the extradition of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offense been committed, or the person sought been convicted, in the territory of the requested State.
- (3) On receipt of such an application the requested State shall take the necessary steps to secure the arrest of the person claimed.
- (4) A person arrested upon such an application shall be set at liberty upon the expiration of forty-five days from the date of his arrest if a request for his extradition accompanied by the documents specified in Article XI has not been received.
- (5) Paragraph (4) of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

ARTICLE XIII

(1) If the requested State requires additional evidence or information to enable it to decide on the request for extradition, that State may request that such evidence or information be furnished within such period as it specifies.

(2) If the person sought is under arrest and the additional evidence or information submitted as aforesaid is not sufficient or if such evidence or information is not received within the period specified by the requested State, he shall be discharged from custody.

(3) The discharge of a person from custody under paragraph (2) of this Article shall not bar the requesting State from submitting another request in respect of the same offense.

ARTICLE XIV

(1) A person extradited under this Treaty may be detained, tried or punished in the territory of the requesting State for any offense mentioned in Article II for which the person could be convicted upon proof of the facts upon which the request for extradition was based.

(2) Except as provided in paragraph (1) of this Article, a person extradited under this Treaty shall not be detained, tried or punished in the territory of the requesting State for an offense other than that for which extradition has been granted, or be extradited by that State to a third State, unless -

(a) he has left the territory of the requesting State after his extradition and has voluntarily returned to it;

(b) he has not left the territory of the requesting State within thirty days after being free to do so; or

(c) the offense concerned is one for which the requested State has consented to his detention, trial or punishment or to his extradition to a third State and is an offense mentioned in Article II.

(3) A request for the consent of the requested State under subparagraph (c) of paragraph (2) of this Article shall be accompanied by such information and documents as are requested by that State.

(4) This Article does not apply to offenses committed after the extradition.

ARTICLE XV

A requested State, upon receiving two or more requests for the extradition of the same person either for the same offense, or for different offenses, shall determine to which of the requesting States it will extradite the person sought, taking into consideration the circumstances and particularly the possibility of a later extradition between the requesting States, the seriousness of each offense, the place where the offense was committed, the nationality and residence of the person sought, the dates upon which the requests were received and the provisions of any extradition agreements between the requested State and the other requesting State or States.

ARTICLE XVI

(1) The requested State shall promptly communicate to the requesting State through the diplomatic channel the decision on the request for extradition.

(2) Where extradition of a person for an offense is granted, the person shall be conveyed by the appropriate authorities of the requested State to a port or airport in the territory of that State agreed between that State and the requesting State.

(3) If a warrant or order for the extradition of a person sought has been issued by the competent authority and he is not removed from the territory of the requested State within such time as is prescribed by the laws of that State, he may be set at liberty, and the requested State may subsequently refuse to extradite that person for the same offense.

(4) Australia is not required to extradite a person before the expiration of fifteen days after the date on which he has been held judicially to be liable to extradition, or, if proceedings for a writ of habeas corpus have been brought, before the expiration of fifteen days after the final decision of the competent court has been given.

ARTICLE XVII

(1) To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all articles found in the requested State that have been acquired as a result of the offense or may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.

(2) Subject to the qualifications of paragraph (1) of this Article, the above-mentioned articles shall, if the requested State so requests, be surrendered to the requesting State even if the extradition, having been agreed to, cannot be carried out owing to the death or escape of the person sought.

(3) Where the law of the requested State or the rights of third parties so require, any articles so surrendered shall be returned to the requested State free of charge if that State so requests.

ARTICLE XVIII

(1) Expenses related to the transportation of the person sought to the requesting State shall be paid by the requesting State.

(2) The requested State shall make all necessary arrangements for, and meet the cost of, the representation of the requesting State in any proceedings arising out of a request for extradition.

(3) No pecuniary claim, arising out of the arrest, detention, examination and surrender of persons sought under the terms of this Treaty, shall be made by the requested State against the requesting State.

ARTICLE XIX

(1) The right to transport through the territory of one of the Contracting Parties a person surrendered to the other Contracting Party by a third State shall be granted on request made through the diplomatic channel.

(2) In the case of a national of the requested State, the request shall establish that conditions are present which would warrant extradition of the person by the State of transit.

(3) The request may be refused if reasons of public order are opposed to the transit.

(4) Permission for the transit of a person surrendered shall include authorization for accompanying officials to hold that person in custody or request and obtain assistance from authorities in the State of transit in maintaining custody.

(5) The Party to which the person has been extradited shall reimburse the Party through whose territory such person is transported for any expenses incurred by the latter in connection with such transportation.

ARTICLE XX

This Treaty applies to offenses mentioned in Article II committed before, on or after the date on which this Treaty enters into force, provided that no extradition shall be granted for an offense committed before that date which was not an offense under the laws of both Contracting Parties at the time of its commission.

ARTICLE XXI

(1) This Treaty is subject to ratification and the instruments of ratification shall be exchanged in Canberra as soon as possible.

(2) This Treaty shall enter into force thirty days after the exchange of instruments of ratification. ^[1]

(3) This Treaty may be terminated by either Contracting Party giving notice of termination to the other Contracting Party at any time and the termination shall be effective six months after the date of receipt of such notice.

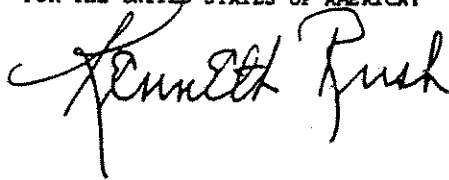
(4) This Treaty shall terminate and replace, as between the Contracting Parties to the present Treaty, the Treaty on Extradition between the United States and Great Britain of December 22, 1931, ^[2] as made applicable to Australia.

¹ May 8, 1976.

² TS 49: 47 Stat. 2122.

IN WITNESS WHEREOF the undersigned, being duly authorized
thereto by their respective Governments, have signed this Treaty.
DONE at Washington this fourteenth day of May, 1974.

FOR THE UNITED STATES OF AMERICA:

A handwritten signature in cursive script, reading "Kenneth Rush".

FOR AUSTRALIA:

A handwritten signature in cursive script, reading "Patrick Shanahan".

PROTOCOL AMENDING THE 1974 EXTRADITION
TREATY WITH AUSTRALIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE PROTOCOL AMENDING THE TREATY ON EXTRADITION BE-
TWEEN THE UNITED STATES OF AMERICA AND AUSTRALIA,
SIGNED AT SEOUL ON SEPTEMBER 4, 1990

Entered into Force December 21, 1992



FEBRUARY 19, 1992.—Protocol was read the first time, and together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, February 19, 1992.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Protocol Amending the Treaty on Extradition between the United States of America and Australia, signed at Seoul on September 4, 1990. I also transmit for the information of the Senate the report of the Department of State with respect to the Protocol.

The Protocol supplements and amends the Treaty on Extradition between the United States of America and Australia, signed at Washington on May 14, 1974. It is designed to update and standardize the conditions and procedures for extradition between the United States and Australia. Most significant, it removes an outdated list of extraditable offenses from the 1974 Treaty and expands upon the dual criminality approach contained in that Treaty. The Protocol also provides a legal basis for temporarily surrendering prisoners to stand trial for crimes against the laws of the requesting State. The provisions in this Protocol follow generally the form and content of extradition treaties recently concluded by the United States.

This Protocol will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the Protocol and give its advice and consent to ratification.

GEORGE BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, February 13, 1992.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Protocol Amending the Treaty on Extradition between the United States of America and Australia, signed at Seoul on September 4, 1990. I recommend that this Protocol be transmitted to the Senate for its advice and consent to ratification.

The provisions of this Protocol follow generally the form and content of extradition treaties recently concluded by the United States. It represents a concerted effort by the Department of State and the Department of Justice to modernize the legal tools available for the extradition of serious offenders such as narcotics traffickers and terrorists.

Upon entry into force, this Protocol will supplement and amend the 1974 Treaty on Extradition between the United States of America and Australia, signed at Washington on May 14, 1974.

Article 1 of the Protocol replaces Article II of the 1974 Treaty in its entirety. It rearticulates the dual criminality approach contained in the 1974 Treaty which is used to determine whether a particular offense is extraditable and eliminates the outdated list of extraditable offenses contained in the 1974 Treaty. This modern extradition practice emphasizes extradition based on underlying criminal conduct rather than the particular designation of the offense contained in our respective criminal codes. A dual criminality clause permits extradition for any conduct that is punishable in both States by imprisonment or other detention for at least one year. Inclusion of a dual criminality clause obviates the need to renegotiate or supplement the Treaty as offenses, such as computer-related crimes or money laundering, become punishable under the laws of both States.

Article 1 of the Protocol also requires extradition for conspiring, attempting or participating in the commission of an offense under the Treaty, as amended.

An offense is extraditable under Article 1 of the Protocol, notwithstanding any interstate transportation or mail-use elements required to establish U.S. Federal jurisdiction. This provision will allow the United States to obtain extradition for such offenses even though Australian law does not include analogous jurisdictional elements for similar underlying criminal behavior.

Article 1 further requires extradition for extraterritorial offenses so long as the law of the requested State would provide for extra-

territorial jurisdiction under similar circumstances. The requested State is also given the discretion to grant extradition for extraterritorial offenses in all other cases.

Article 2 of the Protocol deletes Articles III and IV of the 1974 Treaty concerning territorial jurisdiction which is now covered in more general terms under Article I of the Protocol.

Article 3 of the Protocol replaces Article V(2) of the 1974 Treaty. The Article, as amended, would continue to permit the requested State to grant or deny extradition of its nationals but, in cases where extradition is denied, would provide a mechanism for the requesting State to require submission to prosecution by the requested State, to the extent permitted by its laws, of all offenses for which extradition has been sought.

Article 4 of the Protocol deletes Article VI of the 1974 Treaty concerning the standard of proof required to support extradition. This concept is now covered by Article 7 of the Protocol.

Article 5 of the Protocol replaces Article VIII of the 1974 Treaty and permits the requested State to deny extradition for a capital offense, if the requesting State fails to provide sufficient assurance that the death penalty will not be imposed or carried out.

Article 6 of the Protocol replaces Article IX of the 1974 Treaty. It allows the requested State to postpone extradition proceedings or surrender if the fugitive who is the subject of an extradition request is being prosecuted or is serving a sentence in the requested State. Under this provision the requested State has the discretion to grant extradition and surrender the fugitive temporarily to the requesting State for the purpose of early prosecution in that State. This provision will allow a person serving a long sentence in the requested State to be tried promptly in the requesting State and returned to the requested State to complete his sentence. This alternative of temporary surrender is routinely included in our modern extradition treaties.

Article 7 replaces Article XI of the 1974 Treaty and specifies the procedures by which extradition is to be accomplished. The procedures provided therein are similar to those found in other modern extradition treaties.

Article 8 replaces Article XII of the 1974 Treaty. It provides for the provisional arrest and detention of a fugitive for no more than 60 days pending receipt of a fully documented extradition request in conformance with Article XI of the Treaty, as amended. The discharge of a fugitive from custody does not prejudice subsequent rearrest and extradition upon later receipt of the extradition request and supporting documents.

Article 9 of the Protocol supplements and amends Article XIII of the 1974 Treaty. It continues the mechanism for the submission of additional information whenever the requested State considers the information provided with the request to be insufficient. Article XIII, as amended, would also permit expedited surrender without formal proceedings where the person sought consents to surrender after having been advised by the competent authority of his or her right to formal extradition proceedings.

Article 10 replaces Article XIV of the 1974 Treaty concerning the rule of speciality. This article provides, subject to specific exceptions, that a person extradited under the Treaty, as amended, may

not be detained, tried, or punished for an offense other than that for which extradition has been granted without the consent of the requested State; nor may he be extradited without the consent of the requested State to a third State for any offense committed before his surrender. This limitation only applies until such time as the person leaves the territory of the requesting State and voluntarily returns or fails to leave within 15 days of being free to do so.

Article 11 of the Protocol replaces Article XV of the 1974 Treaty and sets forth a non-exclusive list of factors to be considered by the requested State in determining to which State to surrender a person sought by more than one State.

Article 12 of the Protocol replaces Article XVI of the 1974 Treaty. It requires the requested State to notify the requesting State promptly of its decision on extradition and, if it denies extradition, in whole or in part, to provide an explanation as well as copies of judicial decisions upon request. If extradition is granted, the fugitive must be removed from the territory of the requested State within the time prescribed by the law of the requested State, or the person may be released from custody and a subsequent request for his extradition may be refused.

Article 13 of the Protocol replaces Article XVII of the 1974 Treaty and provides for the seizure and ultimate surrender to the requesting State of all items connected with the offense for which extradition is sought. This obligation is subject to the rights of third parties. Before surrender, the requested State may require assurances that the objects be returned.

Article 14 of the Protocol replaces the text of Article XVIII of the 1974 Treaty and provides that the requested State shall represent the requesting State in any proceedings in the requested State arising from a request for extradition and bear all costs other than those arising from the translation of documents and transportation of the fugitive.

Article 15 replaces Article XIX of the 1974 Treaty and governs the transit through the territory of one of the contracting States of a person being surrendered to the other contracting State by a third State.

Article 16 of the Protocol stipulates that the Protocol applies to offenses committed before as well as after its entry into force.

Article 17 provides that the Protocol will enter into force immediately upon the exchange of written notification that both Parties have complied with their respective requirements for entry into force.

A Technical Analysis explaining in detail the provisions of the Protocol is being prepared by the United States negotiating delegation, consisting of representatives from the Departments of Justice and State, and will be transmitted separately to the Senate Committee on Foreign Relations.

The Department of Justice joins the Department of State in favoring approval of this Protocol by the Senate at an early date.

Respectfully submitted,

LAWRENCE S. EAGLEBURGER.

PROTOCOL AMENDING THE TREATY ON EXTRADITION BETWEEN
THE UNITED STATES OF AMERICA
AND
AUSTRALIA
OF MAY 14, 1974

The United States of America and Australia;

Desiring to make more effective the Extradition Treaty between
the Contracting Parties signed at Washington May 14, 1974
(hereinafter referred to as "the Treaty");

Have agreed as follows:

ARTICLE 1

The text of Article II of the Treaty is replaced by the following:

"(1) An offence shall be an extraditable offence if it is punishable under the laws in both Contracting Parties by deprivation of liberty of more than one year, or by a more severe penalty. However, if the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, the executive authority of the requested State shall have authority to refuse extradition if a period of less than six months of imprisonment remains to be served.

(2) The following offences shall be extraditable if they meet the requirements of paragraph (1): conspiring to commit, attempting to commit, aiding or abetting, counselling or procuring the commission of, or being an accessory after the fact to, any offence described in that paragraph.

(3) For the purpose of this Article, an offence shall be an extraditable offence:

(a) whether or not the laws in the Contracting Parties place the offence within the same category of offences or describe the offence by the same terminology; and

(b) whether or not the offence is one for which United States federal law requires proof of interstate transportation, or use of the mails, or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.

(4) If the offence has been committed outside the territory of the requesting State, extradition shall be granted if the laws in the requested State provide for the punishment of an offence committed outside of its territory in similar circumstances. If the laws in the requested State do not so provide, the executive authority of the requested State may, in its discretion, grant extradition.

(5) Subject to the laws in the requested State, if extradition has been granted for an extraditable offence, it shall also be granted for any other offence specified in the request even if the latter offence is punishable by deprivation of liberty of one year or less, provided that all other requirements of extradition are met."

ARTICLE 2

Article III and Article IV of the Treaty are deleted.

ARTICLE 3

The text of paragraph 2 of Article V of the Treaty is replaced by the following:

"If the requested State refuses to extradite a national of that State on the basis of nationality it shall, if the requesting State so requests and the laws of the requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person may be undertaken in respect of all offences for which the extradition has been requested."

ARTICLE 4

Article VI of the Treaty is deleted.

ARTICLE 5

The text of Article VIII of the Treaty is replaced by the following:

"If, under the law of the requesting State, an offence for which the extradition of a person is requested is subject to a

penalty of death, the requested State may refuse the extradition unless the requesting State gives an undertaking that the death penalty will not be imposed or, if imposed, will not be carried out."

ARTICLE 6

The text of Article IX of the Treaty is replaced by the following:

- (1) If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the territory of the requested State, the requested State may temporarily surrender the person sought to the requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the requesting State and shall be returned to the requested State after the conclusion of the proceedings against that person, in accordance with conditions to be mutually determined in writing between the Contracting Parties.
- (2) The requested State may postpone the extradition proceedings against, or the surrender of, any person who is being prosecuted or who is serving a sentence in that

State. The postponement may continue until the prosecution of the person sought has been concluded and any sentence has been served."

ARTICLE 7

The text of Article XI of the Treaty is replaced by the following:

- (1) All requests for extradition shall be made through the diplomatic channel.
- (2) The request for extradition shall be supported by:
 - (a) documents, statements, or other types of information which describe the identity and probable location of the person sought;
 - (b) a description of the conduct constituting the offence;
 - (c) a statement of the law describing the essential elements of the offence for which extradition is requested; and
 - (d) a statement of the law describing the punishment for the offence and the law relating to the limitation of legal proceedings.
- (3) A request for the extradition of a person who is sought for prosecution or who has been found guilty in his absence shall also be supported by:

(a) a copy of the warrant or order of arrest issued in the requesting State for the arrest of the person for the offence;

(b) a copy of the charging document, if any; and

(c) a description of the facts, by way of affidavit, statement, or declaration, setting forth reasonable grounds for believing that an offence has been committed and that the person sought committed it.

(4) A request for extradition of a person who has been found guilty of the offence for which extradition is sought, other than a person who has been found guilty in his absence, shall also be supported by:

(a) a copy of the judgment of conviction, if available, or a statement by a judicial authority that the person has been found guilty;

(b) information establishing that the person sought is the person to whom the finding of guilt refers;

(c) a copy of the sentence imposed, if the person has been sentenced, and a statement establishing to what extent the sentence has been carried out; and

(d) if the person has been found guilty but no sentence has been imposed, a statement affirming that it is intended to impose a sentence.

(5) The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:

(a) in the case of a request from the United States, they

(i) purport to be signed or certified by a judge, magistrate, or officer in or of the United States; and

(ii) purport to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal of the requesting State or of a Minister of State, or of a Department or officer of the Government of the requesting State;

(b) in the case of a request from Australia, they are certified by the principal diplomatic or consular officer of the United States resident in Australia, as provided by the extradition laws of the United States; or

(c) they are certified or authenticated in any other manner accepted by the law of the requested State."

ARTICLE 8

The text of Article XII of the Treaty is replaced by the following:

"(1) In case of urgency, either Contracting Party may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the Department of Justice in the United States and the Attorney-General's Department in Australia. The facilities of the International Criminal Police Organisation (Interpol) may be used to transmit such a request.

- (2) The application for provisional arrest shall contain:
- (a) a description of the person sought;
 - (b) the location of the person sought, if known;
 - (c) a brief statement of the facts of the case, including, if possible, the time and location of the offence;
 - (d) a description of the laws violated or alleged to have been violated and, where applicable, the penalty which may be imposed;
 - (e) a statement of the existence of a warrant of arrest or finding of guilt or judgment of conviction against the person sought; and
 - (f) a statement that a request for the extradition of the person sought will follow.
- (3) On receipt of the application, the requested State shall take appropriate steps to secure the arrest of the person sought. The requesting State shall be notified

without delay of the disposition of its application and the reasons for any denial.

(4) A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of arrest pursuant to the application of the requesting State if the executive authority of the requested State has not received the formal request for extradition and the supporting documents required in Article XI.

(5) The fact that the person sought has been discharged from custody pursuant to paragraph (4) of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are received at a later date."

ARTICLE 9

Article XIII of the Treaty is amended by deleting the words "evidence or" wherever they occur in Article XIII(1) and Article XIII(2), and by adding the following:

"(4) If the person sought, after being personally advised by the competent authority of the requested State of his right to formal extradition proceedings, consents to

surrender to the requesting State, the requested State may surrender the person as expeditiously as possible and without further proceedings."

ARTICLE 10

The text of Article XIV of the Treaty is replaced by the following:

"(1) A person extradited under this Treaty may not be detained, tried, or punished in the requesting State except for:

(a) the offence for which extradition is granted or any other offence of which the person could be convicted on proof of the conduct constituting the extradition offence provided that the offence carries the same or a lesser punishment;

(b) any offence committed after the extradition; or

(c) any offence for which the executive authority of the requested State consents to the person's detention, trial or punishment. For the purposes of this subparagraph, the requested State may require the submission of the documents specified in Article XI.

(2) A person extradited under this Treaty by a Contracting Party may not be extradited to a third State for an offence

committed prior to his surrender unless that Contracting Party consents.

(3) Paragraphs (1) and (2) of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:

- (a) that person leaves the territory of the requesting State after extradition and voluntarily returns to it; or
- (b) that person does not leave the territory of the requesting State within fifteen days of the day on which the person is free to do so."

ARTICLE 11

The text of Article XV of the Treaty is replaced by the following:

"If the requested State receives requests from the other Contracting Party and from any other State or States for the extradition of the same person, either for the same offence or for a different offence, the executive authority of the requested State shall determine to which State it will surrender the person. In making its decision, the requested State shall consider all relevant factors, including but not limited to:

- (a) whether the requests were made pursuant to treaty;
- (b) the place where each offence was committed;

- (c) the respective interests of the requesting States;
- (d) the gravity of the offences;
- (e) the nationality of the victim;
- (f) the possibility of further extradition between the requesting States; and
- (g) the chronological order in which the requests were received from the requesting States."

ARTICLE 12

The text of Article XVI of the Treaty is replaced by the following:

- "(1) The requested State shall promptly notify the requesting State of its decision on the request for extradition.
- (2) If the request is denied in whole or in part, the requested State shall provide information as to the reasons for the denial of the request. The requested State shall provide copies of pertinent judicial decisions on request.
- (3) If the request for extradition is granted, the competent authorities of the Contracting Parties shall arrange for the time and place of the surrender of the person sought.
- (4) If the person sought is not removed from the territory of the requested State within the time prescribed by the law of that State, that person may be discharged from

custody, and the requested State may subsequently refuse extradition for the same offences."

ARTICLE 13

The text of Article XVII of the Treaty is replaced by the following:

- "(1) To the extent permitted under its laws, the requested State may seize all articles, documents, and evidence connected with the offence in respect to which extradition is or is to be sought and surrender those items to the requesting State if extradition is subsequently granted. The items mentioned in this Article may be surrendered even when extradition cannot be effected due to the death, disappearance, or escape of the person sought.
- (2) The requested State may require that the surrender of any property be subject to satisfactory assurances from the requesting State that the property will be returned to the requested State as soon as practicable. The requested State may also defer surrender of any property if it is needed as evidence in the requested State.
- (3) The rights of third parties in any property shall be duly respected."

ARTICLE 14

The text of Article XVIII of the Treaty is replaced by the following:

- "(1) The requested State shall advise, assist, and otherwise represent the interests of the requesting State in any proceedings arising out of a request for extradition.
- (2) The requesting State shall bear the expenses related to any translation of documents and the transportation of the person surrendered. The requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.
- (3) Neither State shall make any pecuniary claim against the other arising out of the arrest, detention, examination, or surrender of the person sought under this Treaty."

ARTICLE 15

The text of Article XIX of the Treaty is replaced by the following:

- "(1) Either Contracting Party may authorize transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall contain a description of the person being transported and a brief

statement of the facts of the case. A person in transit shall be held in custody during the period of transit.

(2) No authorisation is required where air transportation is used and no landing is scheduled on the territory of the other Contracting Party. If an unscheduled landing occurs on the territory of the other Contracting Party, the other Contracting Party may require the request for transit as provided in paragraph 1. That Contracting Party shall detain the person being transported until the request for transit is received and the transit is effected, so long as the request is received within 50 hours of the unscheduled landing."

ARTICLE 16

Notwithstanding Article XX of the Treaty, this Protocol shall apply in all cases in which the request for extradition is made after its entry into force regardless of whether the offence was committed before or after that date.

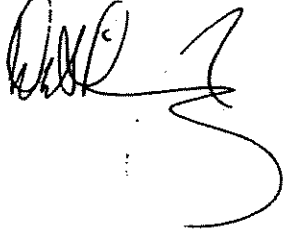
ARTICLE 17

This Protocol shall enter into force on the date on which the Contracting Parties have exchanged written notification that they have complied with their respective requirements for the entry into force of this Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE at Seoul, this 4th day of September, 1990

FOR THE UNITED STATES
OF AMERICA:



FOR AUSTRALIA:



IN WITNESS WHEREOF the undersigned, being duly authorized
thereto by their respective Governments, have signed this Treaty.
DONE at Washington this fourteenth day of May, 1974.

FOR THE UNITED STATES OF AMERICA:

Kenneth Rush

FOR AUSTRALIA:

Patrick Shanahan