

CANADA / JUDGMENT

Mexico v. Trauwitz

2023 BCSC 900

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DECIDED

29 May 2023

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2023 BCSC 900 Mexico v. Trauwitz

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mexico v. Trauwitz,

2023 BCSC 900

Date: 20230529

Docket: 32065

Registry: Vancouver

In The Matter of the Extradition Act, S.C. 1999, c. 18, as amended

Between:

The Attorney General of Canada on behalf of

The United Mexican States

Requesting State

And

Eduardo Leon Trauwitz

Person Sought

Before: The Honourable Associate Chief Justice H. Holmes

Ruling re Application to Adduce Evidence

in the Extradition Hearing

Counsel for the Requesting State:

R. Dawodharry

A. Sanghera

Counsel for the Person Sought:

T. Arbogast, K.C.

K. Kirkpatrick

Place and Date of Hearing:

Vancouver, B.C.

March 30-31, 2023

Place and Date of Judgment:

Vancouver, B.C.

May 29, 2023

INTRODUCTION

- [1] Eduardo Leon Trauwitz applies under s. 32(1)(c) of the Extradition Act to adduce evidence at his extradition hearing.
- [2] Mexico seeks Mr. Trauwitz's extradition for prosecution for conduct corresponding to the Canadian offence of breach of trust by a public officer (s. 122 of the Criminal Code). Mexico alleges that in his role as the head of a division of PEMEX (Petroleos Mexicanos) Mr. Trauwitz instituted a policy intended to facilitate the theft of hydrocarbons from PEMEX pipelines, and took steps to conceal the existence of the new policy. The policy related to the procedure for dealing with clandestine taps.
- [3] Mr. Trauwitz seeks to adduce:
- (a) a statement of Moises Angel Merlin Sibaja (whose evidence is summarized in the requesting state's record of the case) saying that the evidence he gave to the Mexican authorities has been misrepresented in suggesting that he reported that the new procedure allowed for reuse of the clandestine taps, and that he received orders about the procedure from Mr. Trauwitz; and
 - (b) expert opinion evidence of Ernesto Perez Rodriguez, explaining that the new procedure disabled the clandestine taps in a way that made them incapable of reuse.
- [4] Mr. Trauwitz also sought to adduce a legal opinion letter from Garcia Gonzalez y Barradas, legal counsel in Mexico, about the disparity in sentences in Mexico for the offence equivalent to breach of trust by a public officer, and the offences for which Mexico sought Mr. Trauwitz's extradition, namely organized crime and theft of hydrocarbons. During submissions, counsel appeared to agree that any misalignment of this nature is not

appropriately raised at the extradition hearing stage, and I will therefore not address it. If I misunderstood, counsel should kindly so advise forthwith.

THE LEGAL PRINCIPLES THAT APPLY

- [5] A judge in an extradition hearing (also called a committal hearing) has the limited role of determining whether the requesting state's evidence establishes a prima facie case that would justify committal for trial if the conduct of the person sought had taken place in Canada: *United States v. Dynar*, [1997] 2 S.C.R. 462 at 513. This role is described in s. 29 of the Act:
- 29 (1) A judge shall order the committal of the person into custody to await surrender if
- (a) in the case of a person sought for prosecution, there is evidence admissible under this Act of conduct that, had it occurred in Canada, would justify committal for trial in Canada on the offence set out in the authority to proceed and the judge is satisfied that the person is the person sought by the extradition partner
- [6] The judge carrying out this role in effect considers whether there is "some evidence" available for trial that justifies committal on each essential element of the offence set out in the authority to proceed: *United States of America v. Ferras*, 2006 SCC 33 at para. 38.
- [7] The requesting state's evidence is submitted mainly in the form of a written record of the case, which summarizes the evidence available to the extradition partner for use in the prosecution: Act, s. 33(1)(a). The record of the case will not be admitted into evidence in the extradition hearing unless the requesting state certifies that the evidence summarized or contained in it is available for trial, and also that the evidence is sufficient under the law of the extradition partner to justify prosecution, or was gathered according to the law of the extradition partner: Act, s. 33(3)(a).
- [8] In this case, the requesting state has also submitted three supplemental records of the case, and I will refer to those and the original record of the case together as the ROCs.
- [9] After a record of the case has been certified, there is a rebuttable presumption that it has the threshold reliability required for admission into the extradition proceeding: *Ferras* at para. 52; *M.M. v. United States of America*, 2015 SCC 62 at para. 62.
- [10] However, an extradition judge does not accept the record of the case at face value. To ensure a fair and meaningful hearing, an extradition judge conducts a limited weighing of the evidence to ensure that it meets the standard of threshold reliability for admission into the extradition hearing, before assessing whether there is sufficient evidence to commit the person sought: *United States v. Wilson*, 2011 BCCA 514 at paras. 35-37, citing *Ferras* at paras. 32, 41, 46.

[11] While an extradition judge thus considers the threshold reliability of the evidence in the record of the case, the judge does not engage in a broader weighing of evidence or consider the general strength of the case. Those tasks are left for the trial: *U.S.A. v. Lucero-Echegoyen*, 2013 BCCA 149 at paras. 14-15.

[12] In a reflection of the judge's limited role in assessing only the threshold reliability of the evidence in the record of the case, the judge will not refuse committal on the basis that the evidence may be unreliable unless it is "manifestly unreliable" or "so defective or appears so unreliable" that it would be "dangerous or unsafe" to act on it: *M.M.* at para. 63.

[13] As Mr. Trauwitz does here, the person sought for extradition may apply to adduce their own evidence to challenge the reliability of the requesting state's evidence. To be admitted, the proposed evidence must be relevant to the tests in s. 29(1)(a) that the extradition judge must apply, and it must be reliable:

32 (1) Subject to subsection (2), evidence that would otherwise be admissible under Canadian law shall be admitted as evidence at an extradition hearing. The following shall also be admitted as evidence, even if it would not otherwise be admissible under Canadian law:

(c) evidence adduced by the person sought for extradition that is relevant to the tests set out in subsection 29(1) if the judge considers it reliable.

[14] The reliability requirement, for evidence sought to be adduced under s. 29(1)(a), is a modest one. Justice Cromwell helpfully explained it as follows (in *M.M.* at para. 75):

The reliability requirement means that the evidence must possess "sufficient indicia of reliability to make it worth consideration by the judge at the hearing": *Ferras*, at para. 53. This "threshold reliability" requirement is not an onerous standard. It imposes "no greater evidentiary hurdle to the person sought" than the evidentiary requirements governing the requesting state: *ibid.*

[15] The requirement that the proposed evidence be relevant relates not to the guilt or innocence of the person sought, but rather to whether a *prima facie* case is established that the person sought committed the offence set out in the authority to proceed.

[16] For this reason, evidence will almost never be admitted under s. 29(1)(a) if it is adduced for purposes relating to, for example, the credibility of witnesses, or the weight of evidence, or to offer defences or inferences or explanations alternative to those suggested by the requesting state's evidence. Justice Fitch (then of this Court) outlined various types of evidence that will not be admitted because they are irrelevant to the task of the judge in the extradition hearing (see *India v. Badesha*, 2013 BCSC 2260 at para. 28):

Since *Ferras*, *Mach* and *Anderson* courts in British Columbia have consistently refused to admit under s. 32(1)(c): proposed evidence inviting the extradition judge to consider "alternative explanations for the certified evidence, to make findings of credibility, or weigh defence evidence comparatively against that of the requesting state" (see *United States of America v. Multani et al.*, unreported (30 August 2007) Vancouver Registry #23818 (S.C.) at para. 13, *United States of*

America v. Graham, 2007 BCCA 345, 222 C.C.C. (3d) 1, per Hall J.A., concurring in the result, at para. 41, and United States of America v. U.A.S., 2013 BCCA 483 at para. 44); evidence that would only "supplement the evidence of the requesting state with an innocent exculpatory explanation" which, if it is accepted or gives rise to reasonable doubt, could lead to an acquittal at trial (see United States of America v. Graziani, 2007 BCSC 178 at para. 10 and Edwards, at paras. 4 and 35); and evidence of an innocent explanation or evidence that might found an inference inconsistent with guilt in a circumstantial case where that evidence does not render the requesting state's evidence manifestly unreliable or otherwise lay a foundation to dispute that the prosecution will be in a position to lead the evidence constituting its case against him (United Kingdom v. Aziz, 2013 BCCA 414 at paras. 36-37).

[17] Given the limited task of the judge in the extradition hearing, evidence sought to be adduced by the person sought will generally not be relevant unless, taken at its highest, it is realistically capable of meeting the exacting standard of justifying a denial of committal on the basis that the requesting state's evidence is unreliable. In M.M. at para. 78, Cromwell J. described the standard as follows:

I conclude that in order to admit evidence from the person sought, directed against the reliability of the evidence of the requesting state, the judge must be persuaded that the proposed evidence, considered in light of the entire record, could support the conclusion that the evidence essential to committal is so unreliable or defective that it should be disregarded.

[18] In discussing examples of evidence that may or may not meet the standard for admission under s. 29(1)(a), Cromwell J. in M.M. at para. 85 allowed for rare and unusual situations where evidence of a type normally considered irrelevant to the extradition judge's task may nonetheless be admitted if it is of virtually unimpeachable authenticity and reliability, and if it could meet the high threshold for demonstrating that the requesting state's evidence is unreliable, justifying a refusal to commit:

This is not to say that courts must always reject evidence which (1) invites the judge to assess credibility, (2) establishes a basis for competing inferences, or (3) provides for an exculpatory account of events. It is possible that such evidence may in certain, and likely fairly unusual, cases meet the high threshold for showing that the evidence of the requesting state should not be relied on. Ferras leaves open the possibility that, for example, evidence of virtually unimpeachable authenticity and reliability which contradicts the ROC could rebut the presumption of its reliability and could justify refusal to commit. Such situations I would expect to be very rare.

[19] In summary, "[e]vidence that strikes directly at the reliability of the requesting state's materials" is relevant to the s. 29 inquiry and will be admissible: Lucero-Echegoyen at para. 15. Evidence that is not realistically capable of challenging the threshold reliability of the requesting state's case will not be received.

SHOULD MR. SIBAJA'S STATEMENT BE ADMITTED?

Introduction

- [20] Mr. Sibaja is one of several former PEMEX workers from the division led by Mr. Trauwitz whose evidence is summarized in the ROCs. In the statement now proposed for admission, he says that the evidence he gave to the Mexican authorities has been misrepresented as indicating that he reported that the new procedure allowed for reuse of the clandestine taps, and that he received orders about the new procedure from Mr. Trauwitz.
- [21] As to Mr. Sibaja's evidence about the procedure for dealing with clandestine taps, the ROCs state that he told the Mexican prosecuting authorities in February 2017 and January 2019 that workers in the division were instructed in December 2015 to follow a new procedure. By the new procedure, workers who found clandestine taps were to neutralize them, and not to report them. This conflicted with the right procedure, according to the ROCs' summary of Mr. Sibaja's evidence, which was to safeguard the clandestine taps, and to immediately report them to be dealt with by the specialized personnel of a different division. The summary of Mr. Sibaja's evidence indicates that workers were threatened with being fired should they not comply with the new procedure.
- [22] As to the ROCs' summary of Mr. Sibaja's evidence about whether Mr. Trauwitz gave orders about the new procedure for dealing with clandestine taps, they say that Mr. Trauwitz conducted a supervision or training session in February 2016, attended by Mr. Sibaja, at which how to destroy clandestine taps was demonstrated. Also, in a passage I will discuss in more detail later, the summary indicates that the orders to follow the new procedure came from Mr. Trauwitz and four other public officials.
- [23] The statement Mr. Trauwitz now seeks to adduce states on its face that it was made by Mr. Sibaja in a deposition on March 3, 2020, in Mexico City, before Mr. David Samuel Mejia Cruz, defense attorney to Mr. Trauwitz, in the presence of a notary public. I will later address whether the authenticity and reliability of the statement are sufficiently proven for it to be admitted. The Attorney General submits that they are not. However, in now discussing whether the statement is relevant, I will assume that the statement was in fact made by Mr. Sibaja, and that it was given in the indicated circumstances.
- [24] In the three-page typewritten statement, Mr. Sibaja explains that in recent weeks he learned through various national and international media sources that Mr. Trauwitz and others were accused of crimes of illicit extraction of hydrocarbons and organized crime, and he expresses concern that "my version of events has been distorted, putting words in my mouth that I have not said, all this with apparent political motives". (Counsel for Mr. Trauwitz agrees that the latter statement about apparent motives, along with one or two other statements expressing non-expert opinion or speculation, should be redacted from Mr. Sibaja's statement, if it is admitted.)

- [25] Mr. Sibaja also explains more specifically that he heard an interview with Mr. Trauwitz's defense attorney, Guillermo Barradas Cendon, who correctly, according to Mr. Sibaja, stated that Mr. Sibaja had not represented or insinuated that Mr. Trauwitz was involved in any way in hydrocarbons theft. Mr. Sibaja therefore sought out and arranged to meet Mr. Trauwitz's attorneys, to clarify his evidence.
- [26] It is worth noting that nothing in Mr. Sibaja's new statement or elsewhere in the evidence indicates that Mr. Sibaja was or is actually aware of the content of the ROCs. As I mentioned, his new statement explains that media reports and the media interview with Mr. Trauwitz's lawyer led him to contact the lawyer to clarify what he understood had been attributed to his original report to the Mexican authorities. Mr. Sibaja's denials or clarifications in the new statement must be read in that light.
- [27] In the statement, Mr. Sibaja clarifies in particular that while the new procedure was not in accordance with PEMEX's internal regulations, as he reported to the authorities before, the procedure was entirely for the purpose of combatting hydrocarbons theft, not facilitating it. The new procedure benefitted PEMEX by protecting its hydrocarbons in circumstances where the division, different from Mr. Sibaja's, that should properly have closed the illegal valves sometimes took weeks or months to do so, he says. Moreover, the technique used in the new procedure was an effective one that left the clandestine taps impossible to reuse.
- [28] Mr. Sibaja explains also, in the new statement, that he had reported the irregular procedure to the Mexican authorities only because of "labor discontent". Dismantling clandestine taps was not the work for which he was hired, and he had never agreed to perform it. He carried it out only because of threats that he would lose his job if he did not.
- [29] Mr. Trauwitz submits that Mr. Sibaja's new statement relates not to the credibility of his evidence as summarized in the ROCs, but rather to the reliability of the summary itself as a representation of what Mr. Sibaja actually said in his statements to the Mexican authorities. In this way, the new statement would show the ROCs to be manifestly unreliable both in representing the content of Mr. Sibaja's evidence, and in representing that his evidence, as summarized, is available for trial. Put another way, the new statement shows that Mr. Sibaja's actual evidence is not as the ROCs describe it, and that the evidence as described in the ROCs is not available at the trial, because it is not, and never has been, Mr. Sibaja's actual evidence.

Relevance of Evidence that Disabled Taps Could Not be Reused

- [30] Mr. Trauwitz submits that the new statement will assist by making clear that the ROCs' summary of Mr. Sibaja's evidence is manifestly unreliable to the extent that it supports an inference that the disabling he reported of the clandestine taps allowed them to be reused.

[31] The ROCs do not refer expressly to clandestine taps being reused or capable of being reused, in the summary of Mr. Sibaja's evidence. Rather, they say that Mr. Sibaja reported that under the new policy workers were to "neutralize" the clandestine taps by fracturing them, breaking the valve rod, removing the tap knob, and cutting the whole tap.

[32] However, the opening "Case Summary" in the first ROC relies on the concept of "reuse" as allowing for hydrocarbons theft, and relates reuse to the new procedure described by "the witnesses". The Case Summary includes this:

From the statements rendered by the witnesses, there must be noted that when Eduardo Leon Trauwitz became the Assistant Director of Strategic Safeguard of Petroleos Mexicanos, a procedure was implemented in order to disable the clandestine taps, known as "Manejo Tecnico", "Plan Casa Mata" and "Protocolo de Seguridad" which allowed to reuse the clandestine taps in order to illicitly subtract hydrocarbon, because those taps were not permanently disabled. This procedure was unusual since it was not provided in PEMEX normativity for disablement of clandestine taps. . . . [Emphasis added.]

[33] The first phrase in the above extract from the Case Summary does not attribute specifically to Mr. Sibaja the proposition that the new procedure allowed the taps to be reused, but he is the first of the several main witnesses whose evidence is then summarized. Furthermore, the only witness mentioned in the ROCs whose evidence does arguably include express reference to reuse is Ivan Rivas Ramirez, who is said to have reported the following, in relation to the new procedure:

. . . concealment of clandestine taps only gave rise to have criminals connect from the same spots and thus hydrocarbon theft continued.

(I say that this evidence "arguably" speaks to reuse in the way alleged by the requesting state because the focus of Mr. Ramirez's account of the new procedure appears to be on concealing the clandestine taps, and not necessarily on disabling them as the requesting state alleges took place with the new procedure.)

[34] It is clear from the Case Summary and the submissions relating to this application that the requesting state will take the position in the extradition hearing that the new procedure was for the purpose of enabling clandestine taps to be illicitly reused for hydrocarbon thefts. It is possible that the requesting state will take the position, as regards Mr. Sibaja's evidence specifically, that it does not, by itself, support an inference that the new procedure allowed for reuse. However, the requesting state has not so indicated, and, rather, in oral submissions opposing this application, noted that Mr. Sibaja's new statement, if admitted, would affect the inferences available to be drawn from the evidence as a whole.

[35] I note also that, as discussed earlier, broad statements in the Case Summary appear to assume that the summaries of witnesses' evidence support inferences of reuse, despite the scant, if any, express reference to potential reuse in those summaries.

- [36] In these circumstances, limited portions of Mr. Sibaja's proposed statement denying the possibility of reuse should be admitted, subject to comments I will make below about the reliability of the statement. These portions could support the conclusion that the evidence provided by the ROCs is manifestly unreliable in suggesting that Mr. Sibaja has given or would give evidence describing the new procedure in a such a way as to support the inference that the procedure by which the taps were "neutralized" allowed for their reuse.
- [37] The evidence will not be admitted to offer an alternative explanation or inference to those suggested by the ROCs, or for the purpose of supporting credibility findings. Rather, this evidence will be admitted to ensure that the extradition judge is in a position to engage in a meaningful assessment of the threshold reliability of the ROCs by correcting an inaccuracy in, or potentially misleading aspect of, the summary of the requesting state's evidence.
- [38] The portions of Mr. Sibaja's statement that address the specific topic of reuse may be admitted. However, Mr. Sibaja's related statements that, for example, the new procedure benefitted PEMEX, or that its purpose was to combat hydrocarbons theft, do not satisfy the s. 32(1)(c) test.

Relevance of Evidence that Mr. Sibaja Did Not Receive Orders about the New Procedure from Mr. Trauwitz

- [39] Mr. Trauwitz submits that other portions of Mr. Sibaja's statement show the ROCs to be manifestly unreliable concerning whether Mr. Trauwitz himself gave orders about the new procedure.

- [40] In his new statement, Mr. Sibaja specifically denies that Mr. Trauwitz gave any such orders:

Particularly, I listened to the interview conducted by Mr. Ciro Gomez Leyva to Mr. Guillermo Barradas Cendon, defense attorney of General Eduardo Leon Trauwitz and it seemed to me that what Mr. Barradas said is correct, i.e., I neither represented nor did I try to insinuate that General Trauwitz was involved in or directed any organization dedicated to hydrocarbons theft, and it seems to me that my words have been distorted for political purposes to the detriment of that person, without knowing these reasons.

...

Second, the true reason of my inconformity and from which my desire to denounce several facts before the ministerial authority arose, was merely due to labor discontent. This derived from several voice orders that I received for many years from various hierarchical superiors. I never received orders from General Trauwitz....

...

Similarly, in the subsequent months after my deposition before the Public Prosecutor's Office, I was invited to Carmen Aristegui's program, where I was interviewed about these events, but I felt that the interview was focused on making me say that the orders were given to me by General Trauwitz, when I never received any order from him.

[41] In the ROCs, Mr. Sibaja's evidence about who gave the orders to use the new procedure is summarized as follows:

The witness [Mr. Sibaja], in a further complaint filed in writing on February 1, 2017 before Celso Castro Vazquez, Head of the Accusation, Complaint and Investigation Division of the Responsibility Division of Petroleos Mexicanos, stated that indistinctively, Eduardo Leon Trauwitz, Assistant Director of Strategic Safeguard; Socrates Alfredo Herrera Pegueros, Physical Security Manager; Emilio Cosgaya Rodriguez Technical Processing Manager for Strategic Safeguard; Francisco Casas Sanchez, Assistant Manager for the Central Division of Strategic Safeguard and Marcelino Mesinas Garcia, Assistant Manager for the Central Division of Strategic Safeguard were the public officials who ordered the physical security agents to neutralize the clandestine taps.

[42] The Attorney General submits that the evidence on this point in Mr. Sibaja's new statement is not relevant to the test for committal, because it could only set up a conflicting narrative with the evidence summarized in the ROCs, and invite credibility assessments.

[43] I do not agree. As I will explain, the evidence may be relevant because the summary allows for two different inferences, without making clear which of them flows properly from Mr. Sibaja's evidence.

[44] The summary in the ROCs gives no basis for Mr. Sibaja's evidence that it was Mr. Trauwitz and four other public officials who gave the orders in question. The portion of the summary quoted above does not make clear whether Mr. Sibaja knew this because he personally received orders from them, or, rather, because he understood from others that the orders originated with those officials. Other portions of the summary of Mr. Sibaja's evidence in the ROCs allow for inferences that Mr. Trauwitz may or must have known about the new procedure, but do not clearly state that he gave orders to Mr. Sibaja to implement it.

[45] Mr. Sibaja's new statement therefore would not set up a conflicting narrative on the point (of whether Mr. Trauwitz gave orders to Mr. Sibaja) but rather would clarify the ambiguously-expressed narrative in the ROCs. It could support the conclusion that the evidence provided by the ROCs is manifestly unreliable in allowing for the inference that Mr. Trauwitz personally gave orders to Mr. Sibaja. If the new statement is admitted on this basis, its content will not conflict with the summary in the ROCs, but rather will supplement the summary to ensure that the correct or intended inference arises.

[46] The portions of Mr. Sibaja's statement that relate to whether Mr. Trauwitz gave orders about the new procedure may be admitted, subject to what I will say below about establishing that the statement is reliable.

Is Mr. Sibaja's New Statement Reliable?

[47] As I mentioned, the Attorney General submits that Mr. Sibaja's new statement has not been shown to be authentic or sufficiently reliable to meet the standard for admission. I largely agree, on the bases the Attorney General summarizes as follows:

The statement of Mr. Sibaja lacks sufficient indicia of reliability. The statement is simply appended to counsel's affidavit with no information on how it was acquired or how its authenticity was verified. There is no information about the purported Notary Public who took the statement. Further, there is no information on how the identity of the person providing the statement was verified. The affidavit merely states that Mr. Trauwitz's immigration lawyer informed counsel that the document was filed with the Immigration and Refugee Board. That context, alone, is not sufficient to meet the threshold reliability to make it worth consideration by the extradition judge at the committal hearing.

[48] However, I am reluctant to treat these deficiencies as incapable of remedy at this stage, particularly since at least two lawyers, with professional responsibilities and ethical duties, appear to have handled the statement and taken a part in placing it before an adjudicative body.

[49] Mr. Trauwitz therefore has leave to provide further evidence to correct the deficiencies the requesting state identifies in the written submissions quoted above.

SHOULD MR. RODRIGUEZ'S STATEMENT BE ADMITTED?

[50] Mr. Trauwitz also seeks to adduce a short report of Ernest Perez Rodriguez, together with Mr. Rodriguez's CV. These were submitted on June 16, 2022 to the Immigration and Refugee Board by Mr. Trauwitz's Toronto counsel in proceedings before that board. Counsel for Mr. Trauwitz made his submissions on the basis that the report is proposed as expert opinion evidence.

[51] The proposed report reads in full as follows:

I am an architect graduate of the University of Mexico with 27 years of experience in the operation and maintenance of pipelines for PEMEX. I will discuss from the technical point of view the methods of dismantling secret intakes used in clandestine hydrocarbon thefts by functionaries of PEMEX known as the Casa Mata Plan. I will explain the efficiency of dismantling secret intakes of clandestine hydrocarbon thefts in this manner. In the same way, I will compare the mechanisms used in the Casa Mata Plan with the previous manual methods used by PEMEX so as to explain how the Casa Mata Plan was more efficient because it permanently disabled the clandestine intakes.

In this way, I will establish that the allegations made by the Federal Prosecutors of the Republic against General Eduardo Leon Trauwitz [a]re without substance.

[Emphasis added.]

- [52] The CV indicates that Mr. Rodriguez was educated as an architect in Mexico between 1987 and 1991, and has undertaken various diploma programs since. It also describes his experience in various positions with PEMEX over many years. On its face, the CV suggests that Mr. Rodriguez is well-positioned to comment on the new procedure for disabling clandestine taps, and on whether it did or did not allow for reuse.
- [53] Nonetheless, there are two main barriers to the admission of this report.
- [54] First, the report is not shown to offer reliable evidence. Little is given about how the report was produced and in what circumstances, or, indeed, to authenticate the identity of the person purported to have issued it. Also, the report reads more as a will-say than as an expression of expert or other opinion or fact, such that the reliability of its content cannot be assessed.
- [55] Second, the evidence offered by the report is not relevant. As direct evidence of a witness (whether first-hand or expert or both) that the clandestine taps disabled under the new policy could not be reused, the evidence will not assist in the determination of whether the requesting state's evidence establishes a *prima facie* case that would justify committal for trial. That is because of the following.
- [56] If, on one hand, the evidence summarized in the ROCs indicates or supports an inference that the disabled taps were reused, then Mr. Rodriguez's evidence would offer conflicting evidence or create a basis for a different inference from the evidence as a whole. Neither of those purposes is a proper basis for admission because of the limited role of the extradition judge, which does not include the weighing of inconsistent evidence or the assessment of competing inferences.
- [57] If, on the other hand, the evidence in the ROCs does not indicate or support an inference that the disabled clandestine taps were reused, Mr. Rodriguez's evidence would have no logical bearing on the issues in the hearing.
- [58] Mr. Rodriguez's evidence will not be admitted.

CONCLUSION

- [59] If evidence satisfactory to the Court is tendered relating to the reliability of Mr. Sibaja's statement, as discussed above, portions of the statement may be admitted to make clear that Mr. Sibaja did not, and will not, state or imply that clandestine taps disabled in accordance with the new procedure could be reused, or say that he personally received orders from Mr. Trauwitz about the new procedure.
- [60] The application to adduce the evidence of Mr. Rodriguez is denied.

"The Honourable Associate Chief Justice H. Holmes"

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Prepared on 29 October 2026 · Esheria