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GETTING AWAY WITH MURDER, IS MEXICO A SAFE HAVEN FOR KILLERS?: THE DEL TORO CASE

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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GETTING AWAY WITH MURDER, IS MEXICO A SAFE HAVEN FOR KILLERS?: THE DEL TORO CASE

WEDNESDAY, JUNE 23, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY,
AND HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Gilman, Ros-Lehtinen, Souder, Hutchinson, Ose, Mink, Cummings, Kucinich, and Blagojevich.

Also present: Representative Brady from Texas.

Staff present: Sharon Pinkerton, deputy staff director; Steve Dillingham, special counsel; Gil Macklin and Sean Littlefield, professional staff members; Andy Greeley, clerk; Cherri Branson, minority counsel; and Ellen Rayner, minority chief clerk.

Mr. MICA. Good morning. I would like to call this meeting of the Subcommittee on Criminal Justice, Drug Policy, and Human Resources to order. We will begin the hearing with my opening statement then I'll defer to other Members, and we'll proceed with our two panels today.

Today, this subcommittee will address an issue that lies at the very root of many difficulties we, in the United States, have encountered with Mexico. And that is, the question of getting U.S. citizens who have committed capital crimes extradited back to the United States to face justice.

The issue is a question of extradition. And it is at the heart of cooperating with law abiding nations in our world community. I believe it is the key to international law enforcement and respect for law and order.

Unfortunately, international extradition, especially with our neighbor to the south, Mexico, is seldom publicly examined. That is why this issue is a subject of our oversight hearing today. A critical part of returning a United States citizen to face prosecution is the adherence to the current United States-Mexican extradition treaty, which dates from 1980.

The treaty is still in effect. It has never lapsed. It binds both governments to an agreed upon standard. It is about the very rule of law in our civilized societies, one that serves as the basis of both of our democracies. There is no doubt that the United States-Mexi-

can extradition treaty of 1980 has been taken for granted on numerous occasions. It is taken for granted in trade and commercial matters, and unfortunately, it is also taken for granted on matters of immigration.

Today, this subcommittee will examine extradition problems the United States has had with the Government of Mexico. In particular, we are going to address the case of the *State of Florida* v. *Jose Luis Del Toro.* We will not take anything for granted in this hearing. I want to provide background on the depth of this particular case which I believe may be useful for the subcommittee.

The U.S. Government has requested the extradition of Jose Luis Del Toro to Florida where he is wanted for the brutal murder of Sheila Bellush, a resident of Sarasota, FL. The U.S. Government has waited more than 18 months for action on this matter.

The Government of Mexico has refused to turn over Jose Luis Del Toro, despite our complete cooperation and agreement to every demand.

The U.S. Government has moved to extradite Jose Luis Del Toro under treaty agreements that are plain and clear. There is no argument concerning issues of law in this case. The United States Government is seeking the return of a United States citizen, not a Mexican national.

Jose Luis Del Toro was born in the United States to American parents. His entry into Mexico was, in fact, illegal. When he was apprehended by Mexican authorities, he should have been sent back immediately to the United States. This did not happen, and we would have to ask ourselves why not.

This hearing will examine the answers given to the United States Government about why the Government of Mexico has failed to cooperate on this and numerous other cases of extradition.

The witnesses we will call include a bereaved husband and father of five and a decorated U.S. Marine, a State prosecutor from Florida, and a Member of Congress. We will hear, in our second panel from the U.S. Department of Justice and U.S. State Department officials.

These witnesses will tell a story, and it isn't a pretty one. It is a story that we all must take into account because it tells a larger story of who our friends and allies are.

In addition to the Del Toro case, Mexico has repeatedly failed to respect over 275 extradition requests in the last 10 years. These cases include murder and illegal narcotics trafficking. In fact, Mexico has failed to extradite a single major Mexican drug kingpin.

I'm certain that Mexico has become, unfortunately, a haven for murderers and drug lords. And personally, I hold great contempt for their inaction with respect to international law.

Our hearing today will focus on one of the most serious cases, the Del Toro case. We'll highlight through this process, the Government of Mexico's lack of respect for international justice. That concludes my opening statement.

Mrs. Mink, if I may——

Mrs. MINK. I will yield to my colleague.

Mr. GILMAN. I thank the gentlelady.

Mr. MICA. The gentleman from New York, Mr. Gilman, for an opening statement.

Mr. GILMAN. Thank you, Mr. Chairman. I want to thank you, Chairman Mica for holding this important hearing. I want to welcome Congressman Miller, who has been doing an outstanding job of keeping this issue before the Congress, and Mr. Bellush for his untiring efforts in coming before our panel this morning.

Our hearing is about a simple search for justice that is why we are here today. We want extradition from Mexico of an American citizen who has been charged with the heinous crime of premeditated murder. We and the family of the victim, Sheila Bellush, want and deserve straight answers as to why Mexico and our government are not doing all that we can in the infamous Del Toro case.

There can be no safe havens for anyone charged with murder and fleeing accountability within our system of justice. Whether those criminals flee to Thailand, Europe, Mexico or elsewhere around the globe, they must be held accountable to our institutions and the laws that they violate. Our nations must work together in helping us obtain that accountability. We also have a mutual obligation to do the same on our end as well.

Today's hearing is not about extradition of high-level drug kingpins from Mexico and the numerous problems in the Mexican legal system when our government asks for extradition of Mexican nationalists involved in the illicit drug trade.

We have had hearings on that vital question of Mexican drug kingpins and extradition to the United States. We are all too familiar with those problems and the endless delays and procedural maneuvering that continues south of the border.

The United States-Mexico extradition treaty establishes that the Mexican Government may refuse to extradite persons for crimes punishable by the death penalty. The words extradition may be refused in article 8 of the treaty. Those mandatory words suggest that Mexican Government could have returned Mr. Del Toro without delay.

Although the State of Florida clearly, for good reason, wished to seek the death penalty, the prosecutors in that case agreed to waive the death penalty at the Mexican Government's insistence. Now, Mr. Del Toro still sits in Mexico, appealing the extradition ruling while Sheila Bellush's family is grieving, deprived of the justice they truly deserve.

I'll be raising these extradition concerns and problems at an interparliamentary meeting with the Mexican Congress later this week which I believe the chairman will attend as well. The case before us today involves a treaty between our Nation and Mexico in effect since 1980. It is a treaty that we both have an obligation to honor and to implement. If it is inadequate or can be changed, then let's move forward on that front. If it is being misused or misinterpreted, then let's raise our voices in concern.

Our hearing today will highlight the need for more accountability in our legal system in a tragic case of injustice that's before us today, and we look forward to reviewing today's testimony.

Thank you, Mr. Chairman, and I thank the gentlelady for yielding.

Mr. MICA. I thank the Chair of our International Relations Committee and a member of our subcommittee for his opening state-

ment. I now yield to our ranking member, the gentlelady from Hawaii, Mrs. Mink.

Mrs. MINK. I thank the chairman of our subcommittee for yielding and for convening this very, very important meeting. I especially want to commend the gentleman from Florida, Mr. Miller, for his tenacious commitment to the search for justice in this case and to express my personal compassion and sympathy to Mr. Bellush and his entire family for the ordeal they have had to endure.

While we may have some differences with respect to the performance of Mexico on other matters, it seems clear to me, in this case where our families have been especially aggrieved and the accused perpetrator of this crime is an American citizen, that any evasion of the responsibilities of the Government of Mexico ought to be put to task.

I appreciate the opportunity to have the hearing point this out again, as you have so consistently, Mr. Miller, on previous occasions. I look forward to your testimony. I only regret that the Subcommittee on Education and Workforce has scheduled a conflicting markup on several bills which convenes in about 10 minutes. I will have to absent myself until those markup votes are taken, hopefully I'll have a chance to return but I will certainly read the record. Again, welcome to both of you. Thank you very much.

Mr. MICA. Thank the gentlelady. I would like to yield now, if I may. We have another member of this subcommittee who's joined us, Mr. Cummings from Maryland, who failed to debate me this morning on Fox because he was tied up in traffic, but I'm delighted to see that he's made it this morning for our hearing.

Mr. CUMMINGS. Mr. Chairman, I'm so happy that you made it clear I was tied up in traffic. I was ready for the battle but traffic stopped me. Mr. Chairman, extradition agreements enable countries to enforce their laws and pursue criminals after they have fled the country where they have committed a crime. Without strong extradition treaties in place, we face the possibility of creating a home base for criminals in the way of neighboring countries where they may be immune from punishment for the crimes they committed.

Extradition treaties are important for us to examine, considering that with Canada to the north and Mexico to the south, the United States is bordered by two countries that criminals can travel to with virtual ease in hopes of escaping United States law.

In keeping with this, we need to maintain an agreement and understanding with neighboring nations and those abroad so that fugitives of other countries do not feel as though the United States is a safe haven to avoid penalties or break the laws in their homeland.

The case of Jose Luis Del Toro illustrates the need for examination of our country's extradition treaties with other nations. It seems that, as extradition appeals are subject to the review and judgment of the respective nation, there is a potentially dangerous level of subjectivity from case to case that could create loopholes for criminals in the future.

The implication of the Del Toro case should prompt a thorough examination of both the extradition process and our extradition treaties with other nations to ensure that the laws of our Nation

and others remain upheld even when fugitives attempt to escape to freedom.

Thank you, Mr. Chairman. I want to thank our witnesses for being here today. As I have said many times to our witnesses, you make it possible for us to be informed so that we can appropriately uplift the lives of all Americans and people around the world. Thank you.

Mr. MICA. Thank the gentleman. I would like to recognize another member of our panel who has joined us, Ms. Ros-Lehtinen from Florida.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman. I want to congratulate our other Florida colleague, Congressman Dan Miller, for the leadership he has shown on this outrageous case. It has not only galvanized the community he so proudly represents in Sarasota, but has touched the hearts and the conscience of all Floridians; and it should for all the citizens in the United States who hear about this outrageous act and the efforts the United States has undertaken to bring this devil to justice.

It is incredible that, in spite of all our best efforts, no progress has really been made on the case. I also want to point out the great work that our colleague Kevin Brady has done on the issue of extradition in general.

Through Congressman Brady's efforts, he was able to pass in the State Department authorization a bill, an amendment, to our committee that says the State Department must give us a full report of the status of all extradition cases. What are the obstacles? What are the countries' cooperation levels? He will be filing a separate bill on this that has the support of both chairman Gilman of the International Relations Committee and Chairman Hyde of the Judiciary Committee. So we will either pass it as a stand-alone bill or through the State Department authorization bill.

I know in our community not only are we outraged about the Jose Luis Del Toro case but also about the growing number of fugitives who have sought refuge in Cuba, 80 fugitives and counting. There is no extradition that will be forthcoming through Fidel Castro. But it seems that in countries where we do have friendly relations—and Mexico is one of those countries—that in spite all of the trade agreements we have signed with Mexico, we have not been successful in mandating that cooperation and extradition cases be part of those deals.

So I congratulate all of the Members who have been working so hard on this and many other cases of extradition. Congressman Franks of New Jersey has also been very instrumental in trying to call attention to a New Jersey case that has not been resolved in the correct way either. So I congratulate Congressman Miller and Congressman Brady for their leadership. Thank you, Mr. Chairman.

Mr. MICA. I thank the gentlelady. We've already had an introduction of a gentleman who's not a member of our panel, but we're pleased to have him join us today and make an opening statement at our hearing. Mr. Brady, the gentleman from Texas, you're recognized sir.

Mr. BRADY. Thank you, Mr. Chairman. First, thank you very much for shining a light, a very bright light on a very terrible situ-

ation, one that many citizens are not aware of but one that goes to the heart of justice here in America. Thank you for being a leader on this issue. Representative Ileana Ros-Lehtinen, who is also on the International Relations Committee, has been a strong supporter of our efforts to make changes and update our extradition laws, for which I am grateful.

And Mr. Bellush, I am sorry that you must be here today. I truly appreciate you helping us try to resolve this, not just for your own sake, but for a lot of people whose names we don't know and whose faces we'll never see. People who will find themselves in a similar situation and will need that justice; you are going to help us create that for those families. While I have not met you personally, I had the opportunity earlier this year in Mexico to plead your case, at the request of Mr. Miller, directly to the attorney general's office in Mexico. To talk about how strongly we want the extradition to occur and how much we want justice in Florida.

You have a very good person fighting hard for you sitting next to you, and I appreciate Mr. Miller's leadership. You know, I wish I could say you were the exception rather than the rule, but you're not.

If we look at "Spooky" Davis Alvarez, the serial killer who fled California for Mexico; Charles Ng who raped and tortured young people in a cabin in California who fled justice for 11 years in Canada; Samuel Sheinbein who fled to Israel; Ira Einhorn who brutally killed a young Texas girl, stuffed her in a trunk and then left the country and today is still, despite heroic attempts by the State of Pennsylvania, free in the south of France. It goes on and on, these cases.

A hundred years ago, criminals would flee to the county line or the State line to escape justice. Now, they flee the country and the continent. It's up to us to update our laws to make sure we close these safe havens for criminals because they are trying to escape American justice by seeking safe harbor. I think it's time, just as countries have updated their human rights laws, their trade laws, the environmental laws, it's time for the international community to update their extradition laws.

Here in America, with half of our extradition treaties predating World War II, you can tell why criminals that are smart enough, and their attorneys, find those loopholes. It's our responsibility to close them. I think America has a responsibility to lead the international community in closing these safe havens. Congress, through this hearing and through legislation, is going to send a strong signal to the world that we are serious about closing these safe havens. Working with the State Department and the Justice Department together, we have responsibility to close these safe havens. I appreciate you being here and your leadership.

Mr. Chairman, thank you.

Mr. MICA. I thank you for your statement and your participation and leadership on this issue.

Now, I would like to turn to our first panel. Our first panel, by way of introduction, the Honorable Dan Miller, a Member of Congress representing Florida's 13th District; and Mr. James Bellush, husband of Sheila Bellush. Gentlemen, Mr. Miller, our panel is an investigations and oversight subcommittee of Congress. We do not

swear in Members of Congress, but you are a witness, sir. And we are going to swear you in. If you would stand, sir, and raise your right hand.

[Witness sworn]

Mr. MICA. Thank you. The witness answered in the affirmative. Welcome, Mr. Miller and Mr. Bellush. Mr. Miller, you're recognized.

STATEMENT OF HON. DAN MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. MILLER. Thank you, Mr. Chairman. Let me first thank you very much for holding this hearing and the members of the committee and the staff that made it possible.

This Del Toro case shocked our community 19 months ago. The community continues to grieve for the Bellush family and for the fact that we can't bring this case to a close. It is one of the most frustrating things I have ever had to deal with. And for someone who has never had to deal with the criminal justice system before, I have learned a great deal. It's so frustrating, you don't know where to turn.

There was great police work on this case. Mr. Del Toro drove from San Antonio to Sarasota and committed the murder as accused and then drove back to San Antonio. The local, State, Federal, and international law enforcement officials acted very quickly. This was a murder-for-hire case, a conspiracy with several other people involved. They quickly identified those people and arrested them. Mr. Del Toro was arrested in Mexico in November 1997. We are pleased he was apprehended but the frustration is our inability to bring this gentleman to trial.

I first became involved in this case when Earl Moreland, who is our State Attorney, contacted me to help bring Del Toto back to the United States. We didn't think there was going to be a big deal because it should have been a clear-cut case. We quickly discovered the complexity and really the helplessness of this situation. The anger and frustration that we all share has just outraged our entire community of Sarasota, especially since they followed it so closely.

The extradition treaty that has been referred to in this case was the United States-Mexico Treaty of 1978. It gives Mexico the right to refuse extradition in cases where the death penalty may potentially be applied. If there was ever a case where the death penalty would be considered, it would be when a person drives from San Antonio to Sarasota with the intent to brutally murder a young mother of six children.

But this case is not just a case for Florida. Mexico shares a very large border with the United States. As we began to research the case, we came across other cases. Two months before the Bellush murder, there was David "Spooky" Alvarez who murdered his girlfriend and three other members of her family in California.

The district attorney there is Gil Garcetti. Mr. Garcetti decided he was not going to waive the death penalty. He said, "To allow a vicious killer to avoid the most severe punishment for these murders by merely crossing the border into Mexico would encourage other murderers to seek refuge there."

That's the frustration law enforcement has in making those decisions. I know Mr. Moreland, and I know it was not an easy decision for him to make either. But we want to bring Mr. Del Toro to serve justice—justice delayed, they say, is justice denied. To allow this escape from our justice system by crossing the border into Mexico, is an escape that we need to find a way to block, to stop.

Last year, as Mr. Gilman pointed out, his committee approved—and Mr. Brady was helpful as were other Members and it was supported on the floor of the House—a resolution that we renegotiate that treaty with Mexico.

Much to my dismay, the administration is in opposition to that, and I hope we'll hear this morning from the State Department why they're opposed to the renegotiation of that part of the extradition treaty.

As I said, we share a large border with Mexico, and there are millions of people living along that border. It is so easy to cross over. But we also have these problems with other countries. We also share a large border with Canada, but Canada is much more agreeable in their handling of some of these cases. For example, the case you mentioned, Mr. Charles Ng, a convicted serial killer, was brought back without assurances of the death penalty. Canada is moving in a more cooperative attitude on this issue than Mexico appears to be.

Mexico said they had no choice but to extradite. Well, he should have been deported. We were expecting his deportation days after he was arrested, and then at the last minute they decided to go through the extradition process. But Mexico has the ability to deport.

In December of this past year, James Edward Tillis was accused of killing two people in Arkansas, crossed over to Mexico; and was arrested and deported within the next day or so.

This is one case and there are many more. Our concern is to get Mr. Del Toro back and the second part of our concern is to prevent future Del Toro cases. We need to close this loophole and make justice a priority. I mean, what would have happened if Timothy McVeigh had crossed into Mexico? Would we still be waiting for Timothy McVeigh to stand trial?

I hope this is an important step in getting justice served in this country, and I thank you once again for having this hearing, Mr. Chairman.

Mr. MICA. Thank you, Mr. Miller.

[The prepared statement of Hon. Dan Miller follows:]

Statement of
Congressman Dan Miller
Subcommittee on Criminal Justice, Drug Policy and Human Resources
Government Reform and Oversight Committee
June 23, 1999

Mr. Chairman, I'd like to begin by thanking you for holding this hearing. Your interest in this issue is greatly appreciated, and greatly needed.

I want to begin by commending the outstanding police work on this case at the local, state, and federal level. Perhaps one of the most frustrating things about this situation is witnessing the subversion of our justice system despite the fact that our law enforcement executed this investigation in such a professional and efficient manner.

I first became involved with the issue of extradition when my good friend, State Attorney Earl Moreland, called me one day in November 1997 to ask for assistance with the Del Toro case. Jose Luis Del Toro is a U.S. citizen, born and raised on U.S. soil, who drove from San Antonio to Sarasota specifically to murder Sheila Bellush. It was a shocking and gruesome crime. Del Toro had fled to Mexico, and help was needed in obtaining his return. My first impression was that I would simply serve as a conduit between our State Attorney and U.S. Attorney General Janet Reno. I quickly discovered the complexity of this issue, and the helplessness that state and local law enforcement experiences when something like the Jose Luis Del Toro case occurs. I shared their anger and frustration when Earl was forced to wave the death penalty under Mexican demands, and I continue to share their frustration at Del Toro's conspicuous absence from our jail in Sarasota County. Our entire community is outraged over this case, and justifiably so. As their representative, it is my responsibility to expose this problem and to fight for change.

Article 8 of the U.S. - Mexico Extradition Treaty of 1978 allows Mexico the right to refuse extradition in the event that the individual in question may be subject to the death penalty. Mexico frequently exercises this right, as they did in the Del Toro case. In fact, as soon as my staff began researching this issue, we discovered that this situation had occurred only two months

before when another U.S. citizen, David "Spooky" Alvarez, murdered his girlfriend and three of her family members in California and then fled to Mexico. In the Alvarez case, District Attorney Gil Garcetti could not bring himself to waive the death penalty for such a heinous crime. "To allow a vicious killer to avoid the most severe punishment for these murders by merely crossing the border into Mexico would encourage other murderers to seek refuge there," Garcetti said. He refused to waive the death penalty, and his extradition request for Alvarez was ultimately rejected by the Mexican government. Two months later, this scenario repeated itself when Del Toro crossed the border.

This is clearly an escape route from justice that Congress and the Administration must work to close. I have sent numerous letters and generated pages of hearing questions about this issue to Attorney General Janet Reno and Secretary of State Madeline Albright. During the 105th Congress, I introduced House Resolution 381, which stated that it is the sense of Congress that the President should renegotiate the extradition treaty with Mexico so that the possibility of capital punishment will not interfere with the timely extradition of criminal suspects from Mexico to the United States. Much to my dismay, although this resolution passed the House without dissent, the Administration stated their opposition to it on the record.

When I have questioned the Administration on this issue, they are quick to point out that this death penalty provision exists in most of our extradition treaties with other nations. Mexico, however, is a nation with which we share a large border, where wanted fugitives can escape quickly and easily, without any assistance or resources. Canada, our northern neighbor, has been much more cooperative with the United States on this issue, as evidenced by the extradition without assurances of now-convicted serial killer Charles Ng, and deserves commendation for giving their federal justice minister the authority to return fugitives without concessions in order to prevent Canada from turning into a haven for murderers.

I have also been told that Mexico has no choice under Mexican law but to demand these assurances. This leads me to another major controversy that has arisen from the Del Toro case: The decision by the Mexican Government to extradite Del Toro, instead of deporting him as

originally planned. I reiterate that Del Toro is a U.S. citizen, as are both of his parents, and he has no claim to Mexican citizenship. He was in Mexico illegally at the time of his apprehension. Had Del Toro been deported, he would have been returned within days of his capture and justice would have already been served in Sarasota, where Del Toro would have been subject to the law of Florida, which, given the brutality of his crime, probably would have been the death penalty if he was found guilty.

To this day, we have not been given an explanation for the sudden change from deportation procedures to extradition procedures, but I am aware that deportation of U.S. fugitives does occur. In fact, in December 1998, James Edward Tillis killed two people in Arkansas and fled to Mexico, where he was apprehended and quickly deported. An article in the *San Antonio Express-News* on December 25, 1998 read as follows: "U.S. authorities were spared what could have been a lengthy battle to have Tillis extradited when the Mexican government deported him early Thursday for entering that country illegally." I only wish our prosecutors in Sarasota, Florida could have been spared this lengthy battle.

We should not wait until disaster strikes to take action on this issue. What if Timothy McVeigh had fled to Mexico? What sort of high-profile murder will it take before the Administration realizes that closing this escape route from justice should be a priority? As the Administration ignores my persistence on this issue, the chances increase daily that another American community is at risk of experiencing the outrage and indignity of having their justice system thwarted by a faulty extradition treaty. I believe that we need to close these loopholes all over the world, but let's start with the border in our backyard. I thank the Subcommittee again for its attention to this issue.

Mr. MICA. Did you want to introduce Mr. Bellush?

Mr. MILLER. With me today is a very brave individual who has suffered the most in this case because it was his wife, Sheila Bellush, who was murdered on that morning of November 1997. He was actually a short-term resident of Sarasota. He moved from San Antonio and now has gone back home with his parents so they can help to raise his six children. As you know, he's a father of children that were 2-year-old quadruplets at that time and he feels so strongly about bringing this to conclusion that he is willing to testify today.

I personally would have a very difficult time doing what Jamie is doing today. So I'm glad that he's able to be with us today to personalize the concern, the suffering that he has experienced, and why we need to make these changes.

Mr. MICA. Mr. Bellush you're recognized.

STATEMENT OF JAMES BELLUSH, HUSBAND OF SHEILA BELLUSH

Mr. BELLUSH. Thank you, Mr. Miller. Mr. Chairman, members of the committee, I want to thank you today from the bottom of my heart for giving me the opportunity to come before you today and express the frustration and pain my family and I continue to experience from the Mexican Government's delay in the extradition of the suspected murderer of my wife, Jose Luis Del Toro, Jr.

My name is Jamie Bellush, and 19 months ago I moved back to northwest New Jersey into the home where I grew up. I'm a widowed father of five including 3½-year-old quadruplets. Yes, you heard me. That's three boys and one girl; you can see their picture over there on the monitor. That's a current picture. And a 15-year-old daughter. For the past 10 years, I have been a pharmaceutical representative with Pfizer Inc., working in Florida, Texas, and New Jersey.

I'm a decorated former Marine Corps officer who served with the 2nd Marine Division in Saudi Arabia and Kuwait as a reservist during Operation Desert Storm.

On November 7, 1997, my wife was at our home in Sarasota, FL, with our then 23-month-old quadruplets, Timmy, Joey, Frankie, and Courtney. I left for my job at about 7:30 a.m. Sheila had dropped off my daughter Stevie at school and I'm sure stopped at McDonald's to get breakfast for the quadruplets.

At approximately 10 a.m., Jose Luis Del Toro, Jr., entered our home through the garage. He confronted Sheila in the laundry room of our home. He aimed a .45 caliber pistol at her face and fired a single bullet. The bullet entered her cheek and exited out the back of her neck. I don't know how familiar you are with handguns, but the .45 caliber handgun is probably the most powerful handgun in the world.

The concussion and shock of the bullet dropped her to her knees. The pathologist found bruises on her knees. She was still alive, though, and despite unimaginable pain, struggled to make it to the phone, I'm sure to call 911.

Not wanting this to happen, Jose Del Toro opened one drawer in the kitchen and then another. He found a sharp knife with approximately an 8-inch blade. He used the knife to slice Sheila's throat

first on one side and then the other. At one point while she struggled to ward off Del Toro; he stabbed her right through her hand. Losing blood, she fell to the floor in the kitchen. She was only 5 foot 3 in stature and a mere 107 pounds, no match for her attacker, a muscular, agile former high school football player.

You can only imagine the sight as she lay on the floor of the kitchen taking in her last gasps of air through the pools of her own blood. Imagine the confusion and horror of Courtney, Timmy, Joey, and Frankie wondering why Mommy can't get up. At about 4 p.m. that afternoon, my stepdaughter Stevie got off the bus. Her mother was her hero and best friend. She would share all of her school girl crushes with her mom. And on that day, she was especially excited because a cute new guy had asked her out.

She bounded into the front door of the house never suspecting what she was about to find. She saw her quadruplet baby brothers and sister huddled together crying without diapers on and I'm sure starving for not having been fed since the morning. She then looked into the red-stained kitchen to see her mother's bloody body, a horrific scene that will be branded on her memory for eternity.

At this time, Mr. Del Toro was well on his way back to San Antonio, TX. Del Toro, as you may know, was a trigger man in an elaborate murder-for-hire conspiracy. Mr. Del Toro thought he had gotten away. But in his mission to destroy the life of my beloved wife, he left in his wake a cesspool of evidence. This evidence includes, but is not certainly limited to, an eye witness seeing a man matching his description walking through the neighborhood; a lawn maintenance man who copied down the license plate number of the car in which Del Toro was the only driver; a perfect fingerprint on the dryer of our home that matched De Toro's; a copy of the Texas driver's license of Del Toro, who had checked into the Hampton Inn in Sarasota, FL.

After driving back to Austin, TX, Del Toro changed out of his clothes at his friend's house. The police later collected the clothing he was wearing at the time of the murder, spattered with Sheila's blood. He left his car in Austin, which was later recovered by police. In the car they found the gun used to murder Sheila, a hotel room key, and towel from the Hampton Inn in Sarasota as well as the address to our home in Sarasota.

But the best evidence of all, Del Toro's own cousin, Sammy Gonzalez who himself was involved in the conspiracy, has pled guilty to solicitation of capital murder and agreed to testify against his own cousin and his involvement in the crime.

So why are we here today? And why isn't Del Toro sitting on death row in a Florida prison? And why has my family been subjected to continued anguish and been denied justice? Because Mr. Del Toro, who is an American citizen, and who murdered another American citizen on American soil, crossed the border into Mexico.

The Mexican Government has decided to interfere with the American justice system and allowed Del Toro to appeal his extradition all the way to the Mexican supreme court and harbor this criminal in a Mexican jail. This is not an isolated incident, as you're well aware. Mexico has time and time again delayed the extradition of wanted violent criminals.

It would have been simple, legal, and reasonable for the Mexican Government to simply deport Del Toro and turn him over to Texas Rangers. And when was Del Toro arrested? On November 20, 1997, the day we buried Sheila on a cold, windy hillside in New Jersey.

So here we are 19 months later, and the Mexican Government still cannot even give us a broad estimate of when he will be returned to the United States to stand trial. As another infringement to our national sovereignty, the Mexican Government has forced the State of Florida to agree not to impose the death penalty when Del Toro is convicted. So Mr. Del Toro will spend the rest of his life in prison for slaughtering, no, butchering my wife in cold blood in front of our children.

Let me briefly touch on who Sheila was. Sheila's father, Francis Anthony Walsh, Jr.'s name is listed on a black granite wall near the Lincoln Memorial. Yes, when she was 10, his plane was shot down over Laos. She was a wonderful, warm woman who had Jesus Christ in her heart. Everyone who ever met her loved her. She was a devoted mother. She was bright and funny. She was one of the most beautiful women I have ever met. And it was an honor and a privilege to have been her husband.

She was my biggest fan and I hers. She was my support. She was the only mother my children will ever have. I loved her very much, and to this day there is a hole in my heart. Not 10 minutes go by without me thinking of her. I grieved at first because I lost my beloved wife who had so much life left to live. Now I grief because I will not have Sheila—I'm sorry. I then grieved because our children—for my children because they no longer had a mother. Now I grieve because I will not have Sheila to share those special memories and prideful moments as our children grow up, the graduations, the recitals, the little league games, and the rest.

Mr. Chairman and members of the committee, please do not allow Sheila to die in vain.

Please change the extradition treaty with Mexico and prevent the delay of justice and the pain for other victims of crime whose perpetrators run to Mexico. Please decertify and withhold financial aid from Mexico and other countries that do not cooperate and interfere with our criminal justice system. It is time we stop playing patsy politics with Mexico.

I just want to thank a couple of people. I want to thank Mr. Moreland, Mr. Roberts, and the rest of the State prosecutor's office in Sarasota, the county district attorneys, the Sarasota County sheriff's, and the Texas rangers who have done a phenomenal job in this case.

I want to thank Mr. Dan Miller from Florida and you, Mr. Chairman, for the courage to stand and voice outrage at the delay of the Mexican Government in extraditing Jose Luis Del Toro. Additionally, I want to thank Mr. Gilman for moving House Resolution 381 through the International Relations Committee to a full House vote on the floor.

And last, I want to thank Senator Bob Torricelli who has done more for me than just writing letters and making phone calls, but became a fervent advocate for one of his constituents and getting personally involved in helping me and my family.

And finally, I want to leave you with an image. And that's why we don't keep helium balloons in our house for long. I tell Timmy, Joey, Frankie, and Courtney that Mommy is in Heaven with Jesus. They ask me if she's still bleeding. Yes, they remember what they saw. They walk outside and they let their helium balloons go. We asked them why they do this. And they tell me they're sending them up to Mommy in heaven. Thank you.

[The prepared statement of Mr. Bellush follows:]

TESTIMONY OF JAMES J. BELLUSH
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY,
AND HUMAN RESOURCES
GOVERNMENT REFORM AND OVERSIGHT COMMITTEE
JUNE 23, 1999

Mr. Chairman, members of the committee, I would like to thank you from the bottom of my heart for giving me the opportunity to come before you today and express the frustration and pain my family and I continue to experience from the Mexican Government's delay in the extradition of the suspected murderer of my wife, Jose Luis Del Toro, Jr.

My name is Jamie Bellush and 19 months ago I moved back to Northwest New Jersey into the home where I grew up.

I am a widowed father of 5 including 3 and ½ year old quadruplets (yes, you heard me, that is 4 - three boys and one girl) and a 15-year-old daughter. I have for the past 10 years been a pharmaceutical representative with Pfizer Inc. working in Florida, Texas and New Jersey. I am a former Decorated Marine Corps officer who served with the 2nd Marine Division in Saudi Arabia and Kuwait as a reservist during Operation Desert Storm.

On November 7th, 1997 my wife was at our home in Sarasota, Florida with our then 23-month-old quadruplets: Timmy, Joey, Frankie and Courtney. I had left for my job at about 7:30 AM. Sheila had dropped my stepdaughter Stevie off at school and I am sure stopped at McDonald's to get breakfast for the quads.

At approximately 10AM, Jose Del Toro, Jr. entered our home through the garage. He confronted Sheila in the laundry room of our home. He aimed a 45-caliber pistol at her face and fired a single bullet. The bullet entered her cheek and exited out the back of her neck. I do not know how familiar you are with handguns, but a .45 is one of the most powerful handguns in the world. The concussion and shock of the bullet dropped her to her knees. (The pathologist found bruises on her knees.) She was still alive though, and despite unimaginable pain struggled to make it to the phone (I am sure to call 911). Not wanting this to happen, Del Toro opened one drawer in the kitchen and then another. He found a sharp knife with approximately an 8-inch blade. He then used this knife to slice Sheila's throat first on one side, and then the other. At one point as she struggled to ward off Del Toro, he stabbed her right through the hand. Losing blood, she fell to the floor in the kitchen. Sheila was only 5'3" in stature and a mere 107 lbs, therefore no match for her attacker....a muscular, agile, former high school football star.

You can only imagine the sight as she lay on the floor of the kitchen taking her last gasps of air through pools of her own blood. Imagine the confusion and horror of Courtney, Timmy, Joey and Frankie wondering why Mommy wouldn't get up. At about 4PM that afternoon, my stepdaughter Stevie got off the bus. Her mother was her hero and her best friend. She would share all of her schoolgirl crushes with her Mom. And on this day, she was especially excited because a new cute guy had asked her out. She bounded into the front door of the house, never suspecting what she'd find.

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At this time, Mr. Del Toro was well on his way back to San Antonio, Texas. Del Toro was the triggerman in an elaborate murder-for-hire conspiracy.

Mr. Del Toro thought he had gotten away. In his mission to destroy the life of my beloved wife he left in his wake a cesspool of evidence. The evidence includes but is certainly not limited to:

- An eyewitness seeing a man matching his description walking through the neighborhood;
- A lawn maintenance man who copied down the license plate number of the car that Del Toro was the only driver of;
- A perfect fingerprint on the dryer of our home that matched Del Toro's;
- A copy of the Texas drivers license of Del Toro who had checked into the Hampton Inn in Sarasota;
- After driving back to Austin, Texas, Del Toro changed out of his clothing at his friend's house, where the police later collected the clothing he was wearing at the time of the murder and found it splattered with Sheila's blood;
- He left his car in Austin, which was later recovered by police. In the car, they found the gun used to murder Sheila, a hotel room key and towel from the Hampton Inn in Sarasota, as well as the address to our house in Sarasota.
- But the best evidence of all, Del Toro's own cousin, Sammy Gonzalez, who himself was involved in the murder conspiracy, has pled guilty to solicitation of capitol murder and agreed to testify against his cousin and others involved in the crime.

So why are we here today, why isn't Del Toro sitting on Death Row in Florida? Why has my family been subject to continued anguish and been denied justice? Because Mr. Del Toro, who is an AMERICAN CITIZEN, WHO MURDERED ANOTHER AMERICAN ON AMERICAN SOIL, crossed the border into Mexico.

Mexico has decided to interfere with the American justice system and allowed Del Toro to appeal his extradition all the way to the Mexican Supreme Court and harbor this criminal in a Mexican jail. This is not an isolated incident. Mexico has time and time again delayed the extradition of wanted, violent criminals.

It would have been simple, legal, and reasonable for the Mexican government to simply deport Del Toro and turn him over to the Texas Rangers.

And when was Del Toro arrested? November 20th, 1997....the day we buried Sheila on a cold, windy day on a hillside in New Jersey.

So here we are, 19 months later, and the Mexican government still cannot give even a broad estimate as to when he will be returned to the United States to stand trial. As for another infringement on our national sovereignty, the Mexican government has forced the state of Florida

to agree not to impose the death penalty when Del Toro is convicted. So Mr. Del Toro will spend the rest of his life in prison for slaughtering, no, butchering my wife in cold blood, in front of our children.

Let me briefly touch on who Sheila was:
Sheila's father, Francis Anthony Walsh, Jr.'s name is listed on black granite wall near the Lincoln Memorial. Yes, when she was ten, his plane was shot down over Laos.
Sheila was a wonderful, warm woman who had Jesus Christ in her heart.
Everyone who ever met Sheila loved her.
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She was one of the most beautiful women I have ever met.
It was an honor and privilege to be her husband.
She was my biggest fan, and I hers.
She was my support.
She was the only mother my children will ever have.
I loved her very much and to this day, there is a hole in my heart....
Not ten minutes go by without thinking of her....
We all needed her and need her even today.

I grieved at first because I lost my beloved wife, who had so much life left to live. I then grieved for our children because they no longer have a mother. Now I grieve because I will not have Sheila to share those special memories and prideful moments when her children grow up (The graduations, recitals, little league games and the rest).

Mr. Chairman and members of the committee, please do not allow Sheila to have died in vain:

1. Change the extradition treaty with Mexico to prevent delay of justice and pain for other victims of crime whose perpetrators run to Mexico.
2. Decertify and withhold financial aid from Mexico and countries that do not cooperate and interfere in our criminal justice system. It is time to stop playing patsy politics with Mexico.

I want to thank Mr. Dan Miller from Florida and you, Mr. Chairman, for the courage to stand and voice outrage at the delay of the Mexican government in extraditing Jose Luis Del Toro. Additionally, I want to thank Mr. Gilman for moving H. Res. 381 through the International Relations Committee and to a full vote on the House Floor. Lastly, I want to thank Senator Bob Torricelli for doing more than just writing letters and making phone calls but being a fervent advocate for his constituents and getting personally involved in helping me and my family.

Finally, I want to leave you with an image - why we don't keep helium balloons long in our house.

I tell Timmy, Joey, Frankie and Courtney that Mommy is in heaven with Jesus. They ask me if she is still bleeding (yes, the remember what they saw)....So they walk outside and let their helium balloons go.
We asked them why they did this.... They told me they are sending them up to Mommy in heaven....

Mr. MICA. Mr. Bellush, you have to be one of the most compelling witnesses I think I've ever heard in my short tenure, 7 years in Congress. I'm sure the other members of the panel join me in commending you for your courage in coming forward. I know it has to be difficult. If there is any sense to be made out of the whole horror of all of this, hopefully your testimony and your statement today will get people's attention.

Sometimes it takes incredible tragedy in our country to get the people's attention to what needs to be done and what's right. So again, I just—you're one of the most courageous men I have ever met. I thank you.

I thank Mr. Miller, too, for bringing this to our attention. He's represented you very well, been an untiring advocate, brought this before the House and Mr. Brady and others. I'm just a small bit-player in the congressional process in taking over the responsibility of drug policy. I really am appalled that Mexico, as a neighbor and ally, could allow this injustice, not just in your case, but dozens and dozens of cases.

I said in my opening statement we have 275 requests for extradition, some 40 major drug kingpins who have inflicted death and destruction on our young people and similar unbelievable stories. The hardest thing I have to do is talk to people like you and then to parents who have lost a young person to the horrors of Mexican heroin or cocaine that has come through our now open commercial borders.

Sir, I heard in your testimony, you said we should use whatever tools we have at our disposal including decertification. We do provide Mexico with very substantial trade benefits; NAFTA has given them great advantages and an open commercial border. We bailed out Mexico when they were at their financial wits' end.

You feel that, again, we should use whatever means possible to get some attention to this extradition item. Is that correct?

Mr. BELLUSH. Yes, sir, it is.

Mr. MICA. In your struggle——

Mr. BELLUSH. If I could just say one other thing.

Mr. MICA. Yes, go ahead.

Mr. BELLUSH. I'm continually appalled at how our government continues to sit back and hand out money to foreign governments when they have absolute disregard and contempt for our criminal procedure and our laws.

You look at the case—I mean, I'm fervently pro-Israeli, but I'm appalled that the Israeli Government has failed to extradite—I can't recall the gentleman's name right now—but Sheinbein, this man, he mutilated somebody. And Mr. Mica, I don't understand. I mean, I know I'm just a private citizen, but it just blows me away that we just stand there and let people trample all over our judicial system and still hand out the money.

Mr. MICA. Not only stand there, but at great benefit—trade and finance benefits. We get very little respect in return. In fact, I consider this an affront to the American people.

In your quest for justice, can you tell me about your cooperation from our State Department in this matter?

Mr. BELLUSH. Sir, I've had absolutely no contact with the State Department at all. All my contact with—I have spoken to someone

in the Justice Department a couple of times, but most of my contact has come through Mr. Miller's office or Senator Torricelli's office. Quite frankly, that's sort of sad when you think about it that—I mean, Charlie Roberts' office down in Sarasota, the State prosecutor's office, has continual communications with the victims.

I've got no communications from the State Department or the Justice Department on a regular basis. And quite frankly, that should—those should happen. I shouldn't have to go to Mr. Torricelli and Mr. Miller or Ms. Roukema, who is my local representative in New Jersey, to find out what the status of the extradition is.

Mr. MICA. You don't feel that in your particular case in trying to pursue this extradition that either State nor Justice has been responsive?

Mr. BELLUSH. Yes, sir. And I don't know exactly what goes on. I'm sure there are wonderful people that work in those departments but there has been very little communication. There have been a couple of times I spoke to somebody at the Justice Department and no communications with the State Department at all.

Mr. MICA. Thank you. I will yield at this time to the gentleman from Maryland, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I want to thank you, Mr. Miller, for your efforts. I think this is very, very important. And I appreciate it. And to you, Mr. Bellush, I want to thank you. I can only echo the words of our chairman, you have a lot more courage than I do. I think it would be very difficult for me to do what you just did. And I do appreciate it.

One of the things, I'm glad you raised the issue of the Sheinbein case because that comes out of my State. And I agree with you. I think this country needs to take another look at what we do with regard to these types of issues. The chairman said he's just a small player—and I guess to a degree we all are small players here—but we also represent, this Congress does, some 270 million people. And certainly, we represent you.

I think whenever we have a policy that allows anyone to escape the laws of this country when they commit crimes in this country, no matter what they are, I think we have a major, major problem. So I just want you to know that we will do everything in our power, working with your Congressman and others, to try to make sure we do not let your wife die in vain.

The role that you played here this morning, is more important than you may ever know, because so often I think what happens in the Congress is that we fail to put a face on the policies and put feelings on the policies and see behind them. You have given us that opportunity to peer in a window of your house, on a very painful day.

So I really don't have any questions of you. I'm just curious as to the next panel, what they will have to say. I am so interested to hear this. I just thank you very much.

Mr. BELLUSH. Thank you, Mr. Cummings.

Mr. MICA. Mr. Miller, a quick question. You were responsible for introducing House Resolution 381, in which you recommended the President of the United States should renegotiate the current extradition treaty with Mexico. Were you given any explanation from

the administration about its opposition to this resolution? Maybe you would like to comment about your efforts in trying to pass this resolution.

Mr. MILLER. Thank you, Mr. Chairman. First of all, I would like to submit a prepared statement for the record.

Mr. MICA. Without objection the entire statement will be made part of the record.

Mr. MILLER. Yes. It was last fall, in October, that House Resolution 381 was passed by voice vote on the floor of the House to ask for renegotiation of the extradition treaty. The administration, and specifically the State Department, said they were basically opposed, and we'll hear in the next panel more details of that. They say it is because the death penalty is the objection.

However, Mexico apparently may not recognize the life sentence either. There is a case of a drug dealer that Mexico refused to extradite because they don't support life sentences. So I don't know where we can draw the line. Especially when you have U.S. citizens accused of a crime in the United States. Mexico should have nothing to do with the case. That's true whether it's in Israel or Canada. That's certainly true in the United States. If we have a Mexican citizen in the United States, that person should be sent back as fast as possible.

It's one of the many frustrations in this case, and that's the reason, 19 months later, we're still waiting for a person to stand trial in Sarasota.

Mr. MICA. Thank you. I would like to yield now, if I may, to the gentleman from Texas for questions, Mr. Brady.

Mr. BRADY. Thank you, Chairman Mica.

You've served your country in peacetime and war as a U.S. Marine. The Marines are known for taking on the toughest assignments, doing the hardest jobs. You were called upon by the United States Government to do everything possible to liberate Kuwait, and you served with the 2nd Marine Division.

It's one thing to demand that Mexico deport this United States citizen—and I'm from Texas. And this Jose Del Toro is a Texan, an American citizen. He doesn't deserve any protection from Mexico on this issue. But there's also the question, are we doing all that we can to help you see justice in this case? And from your perspective do you feel that everything humanly possible has been done by the U.S. Government to return Jose Del Toro to America for justice?

Mr. BELLUSH. Mr. Brady, no, sir. I don't think it has been. I hate to think that, but I think my wife's murder deserves the attention of Mr. Clinton. I know he has taken trips down to Mexico and I just—I can't believe that this isn't a priority, to address this issue of extradition.

The other area where I think there's significant room for improvement, not—aside from renegotiating the extradition treaty, are the communications channels from the State and Justice Departments.

Mr. BRADY. Tell me about that.

Mr. BELLUSH. As I stated earlier, I think there must be some way that the State and or Justice Departments could communicate on a more regular basis with victims to tell them what the status of extradition is. Even if somebody drops a letter in the mail to me

every month and said, "Mr. Bellush, we're sorry to tell you there's no further progress in the case." That would be appreciated.

As I stated earlier, anytime there's any development in a criminal matter in the State of Florida, I get a letter from the Florida State attorney's office trial dates, hearing dates, those kind of things. As a victim, I think you deserve to know these things. And I certainly think that with an international issue like extradition you should certainly know about these things.

Mr. BRADY. How often do you talk to the State Department? How often do they contact you?

Mr. BELLUSH. I have never spoken to anybody in the State Department. I believe I spoke to somebody in the Justice Department once or twice. But all those phone calls were originated from me. They weren't phone calls made to you or communication made to me. They were all phone calls that were originated by me. Again, I'm not here to bash the State or Justice Departments, but certainly this is an area where we need improvement.

Mr. BRADY. I appreciate that. Thank you, Mr. Chairman.

Mr. MICA. I want to thank you, Mr. Bellush. As I said, you have been an incredible witness. We salute you for serving your country. Today, you serve very well the memory of your wife, and you've also served this country, I think, and your children with your testimony today. Because it is so important that we bring this killer to justice and that we, as representatives of you and the American people, see that extradition is carried through and that there is justice and particularly in this case, international justice.

I have no further questions at this point for you or Mr. Miller. There is a vote in progress, so we're going to excuse you. Again, from the bottom of my heart, I thank you for your courage in coming forward and for what you've done today to shed light on this important issue. I know that your being here is going to make a big difference. So I thank you, sir. And thank you, Mr. Miller.

I'll excuse both of our witnesses. We will recess for 15 minutes. And reconvene at 11:15, after this vote. At that time, we'll hear from our second panel. This meeting stands in recess.

[Recess.]

Mr. MICA. I would like to call this meeting of the subcommittee back to order. Our order of business is to hear from the second panel on the topic "Is Mexico a Safe Haven for Murderers?" and in particular today, we're looking at the Del Toro case.

The second panel consists of Mr. Earl Moreland, district attorney from Sarasota, FL. I believe he's also accompanied by Mr. Charlie Roberts, assistant State attorney, who will be available for questions. Our second panelist is Ms. Mary Lee Warren, Deputy Assistant Attorney General with the Department of Justice. Our fourth witness is Ms. Jamison S. Borek, Deputy Legal Advisor to the Department of State.

As I explained to our earlier panelists, this is an investigations and oversight subcommittee of Congress. So if you would stand, please, and be sworn.

[Witnesses sworn.]

Mr. MICA. Witnesses answered in the affirmative. We ask that you limit your opening statement to 5 minutes, your oral presentation before the subcommittee. If you have lengthy statements or

additional information you would like submitted for the record, we will do that by unanimous consent request.

With those comments, I would like to recognize first Ms. Jamison S. Borek, Deputy Legal Advisor to the Department of State. You're recognized.

STATEMENTS OF JAMISON S. BOREK, DEPUTY LEGAL ADVISOR, DEPARTMENT OF STATE; MARY LEE WARREN, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE; AND EARL MORELAND, DISTRICT ATTORNEY, SARASOTA, FL, ACCOMPANIED BY CHARLIE ROBERTS, ASSISTANT STATE ATTORNEY

Ms. BOREK. Thank you, Mr. Chairman, and members of the committee for this opportunity to testify before you today. I will give a little overview of the extradition relationship with Mexico, and I understand that the other witnesses will speak more specifically about the Del Toro case.

As you have noted, the extradition relationship with Mexico is based on our fairly modern 1980 treaty, which replaced a badly outdated bilateral treaty that had been in force since 1899.

There are a number of issues in the extradition relationship which have been noted so far in this hearing. One of them is certainly the question of the extradition of nationals. The treaty provides, as do a number of treaties, that the extradition of nationals is discretionary. Many countries are prohibited by their constitution or other domestic law or as a matter of policy do not extradite their own nationals. This includes a number of countries in Europe such as France, Germany, Austria, and Belgium, as well as many in this hemisphere, such as Brazil, Ecuador, Panama, and Venezuela.

The U.S. Government does not consider it appropriate, for the reasons that have been noted in this hearing, to create a situation in which nationals can never be extradited for prosecution in the United States or in any other country. And it has been a very high priority to try to convince all countries to agree to extradite their nationals.

This is a particular problem, I might note, with civil law countries. Common law countries, which share a comparable legal tradition with the United States, do tend to extradite nationals. It is the civil law countries, the countries with European based or Spanish based legal systems, which tend not to do so.

They also tend to have laws that permit them to prosecute their own nationals for crimes committed anywhere in the world. And so, historically, the view has been "we will prosecute them here rather than in other countries." There are a number of problems with this and as I say, it's been a strong policy of the Justice and State Departments and the U.S. Government as a whole to try to negotiate treaties that provide for extradition of nationals on a mandatory basis in all cases.

We have made some notable advances in the hemisphere, for example, in recent treaties with Bolivia and Argentina; but it is still obviously an issue that we're grappling with.

Turning specifically to Mexico, as I noted, it is discretionary in the treaty whether or not to extradite nationals; and for many

years the Government of Mexico did not extradite nationals at all, citing limitations under domestic law. In 1996, there was a breakthrough of sorts in that the Government of Mexico determined that they could apply language in domestic extradition law to extradite nationals in exceptional cases.

Since then, they have been extraditing a number of nationals, not by any means at all. There are still, in many cases, a decision to prosecute domestically. And there have been difficulties with challenges in courts in Mexico concerning the extradition of nationals.

There have been problems, in particular over the last—basically, since late last year, with the interpretation of article 4 of the Mexican Penal Code. A number of court decisions in which the courts ruled that because it was possible to prosecute the nationals in Mexico, it was necessary to prosecute them and they could not be extradited.

The Government of Mexico has been working with us very closely in an effort to litigate this issue successfully in courts, to take the question to the Supreme Court of Mexico where hopefully there would be a reversal of this decision. So far, however, this is still in process. There has to be a split of decisions in order for the supreme court to take the case, and they are looking for the split of decisions to be able to do so.

Another issue which is particularly relevant to the Del Toro case is the question of the amparo process. The amparo process is essentially a constitutional bill of rights-type equivalent in the Mexican legal system, whereby individual citizens can challenge the constitutionality of an action of the government as applied to them.

I have to note that in general, the U.S. Government wants American citizens to benefit from legal guarantees in foreign countries. As a general principle, we believe Americans should enjoy equal rights and equal treatment in foreign courts and in foreign criminal justice systems. So there is no objection in principle to American citizens being able to take advantage of this remedy; however, there are problems with the remedy itself.

The difficulty is that, unlike the United States system where you must raise problems at certain times, you can only raise them so often, and if you fail to raise them you are precluded from raising them, in Mexico you can bring an amparo challenge at many different points in time in different courts and over and over again. And therefore there is a much more undisciplined and lengthy delaying process than the comparable process in the United States.

Nonetheless, the amparo is widely regarded in Mexico as one of the sort of constitutional bulwarks of their rights and guarantees. Although they recognize there are certainly abuses, there's also a strong feeling, a sort of popular feeling, as I understand it, in favor of the process.

Another area of concern which has been mentioned is life imprisonment. This is not something which is provided for in the treaty, and it is not something which the Government of Mexico itself has created problems with. But there have been a number of court decisions holding that for constitutional reasons, life imprisonment is cruel and unusual punishment. I think the terminology is a little

different—it's "cruel and extreme." And that someone could not be extradited to face life imprisonment.

The Government of Mexico is again litigating these cases. It's too soon, I think, to say how the litigation is going. These are fairly recent developments, and they are still being litigated.

Finally, there is also the problem of the death penalty. I have to say, this is a different sort of problem in a way than the nationality problem and in some ways a larger problem.

As I noted, there are a number of countries which have a practice of not extraditing without assurances that the death penalty will not be imposed. This includes a number of countries in Europe and other parts of the world. This reflects, from their point of view, a human rights concern. I think you must be aware there are a number of countries which do not believe in the death penalty. There are a lot of extradition treaties in which the other party has insisted that in death penalty cases extradition be discretionary and they have asked for assurances in practice.

We are very much against this and certainly we have spent a lot of time defending the death penalty, not only in the extradition context but also in the human rights context. For example, in the Human Rights Commission where there are regularly resolutions against the death penalty, it is a different kind of problem and one that we were struggling with without, perhaps, some of the prospects of progress that we have seen in the nationality area.

Thus, as I say, these are problems which, to a certain extent, are not unique; however, with Mexico there is a special relationship geographically. Because of the possibility of people going back and forth across the border, obviously the impact of these problems is very severe, and the concern that we have about them is equally very severe. The extradition relationship has been, for a very long time, at the top of our United States-Mexico bilateral agenda, as has law enforcement generally.

I think it's fair to say that with the development of these additional problems, particularly in recent years, there is an even more intensified awareness and commitment to grappling with these issues in the U.S. Government at the State Department and I think I can say also the Department of Justice. I thank you, Mr. Chairman. I ask that the full statement be accepted for the record.

Mr. MICA. Without objection the full statement will be made part of the record. We'll withhold questions until we've heard from the other witnesses in this panel.

[The prepared statement of Ms. Borek follows:]

TESTIMONY OF

JAMISON S. BOREK
DEPUTY LEGAL ADVISER
U.S. DEPARTMENT OF STATE

BEFORE THE SUBCOMMITTEE ON

CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES

OF THE COMMITTEE ON GOVERNMENT REPORM

UNITED STATES HOUSE OF REPRESENTATIVES

June 23, 1999

Mr. Chairman and members of the Committee:

I am pleased to appear before you today to testify on the issue of international extradition as it relates to the Government of Mexico.

The growth of transborder crime, including narcotics trafficking and violent crime, as well as the laundering of proceeds of organized crime, has become one of the most pressing aspects of international law enforcement cooperation. This is nowhere more pressing for the United States than in our relationship with Mexico, where our two thousand mile common border makes effective law enforcement cooperation absolutely essential. A fundamental component of such cooperation should be a properly functioning extradition relationship that denies safe haven and impunity to fugitives.

While the Governments of the United States and Mexico have made some significant advances in recent years in our extradition relationship, we have also encountered significant problems. I will begin with an overview of the legal basis for extradition between the two governments, and then discuss important challenges we are currently confronting.

The U.S.-Mexico extradition relationship is founded on a comprehensive and modern bilateral extradition treaty that entered into force on January 25, 1980. The 1980 treaty replaced a badly outdated bilateral treaty that had been in force since 1899. Our current treaty includes a regime whereby, in addition to a list of specified extraditable offenses, extradition is required for willful conduct that is punishable by both federal countries' federal laws by a deprivation of liberty of one year or more. This is the so-called "dual criminality" approach to

extradition. Treaties negotiated prior to the 1970s typically provided for extradition only for offenses appearing on a list contained in the instrument. The U.S.-Mexico treaty's dual criminality approach is thus very important in enabling extradition for the broadest possible array of criminal conduct.

The U.S.-Mexico Extradition Treaty also includes a modern provision on the provisional arrest of fugitives for extradition, which enables either government's law enforcement authorities to arrest a fugitive at the request of the other government so that the fugitive may be held for extradition. The provisional arrest or "PA" request is made in cases of urgency, such as where the fugitive is likely to flee. Once a fugitive is apprehended pursuant to a provisional arrest request, the Requesting State will have a set number of days to file a formal request for extradition. The U.S.-Mexico extradition treaty provides that a formal request must be made within 60 days following the provisional arrest of a fugitive.

The U.S.-Mexico treaty, like many of our more modern treaties, also provides that attempts and conspiracies to commit extraditable offenses, and participation in the execution of such an offense, are themselves extraditable offenses. Such provisions help ensure that certain drug-related offenses and offenses under our continuing criminal enterprise and racketeer influenced and corrupt organization statutes are covered.

Finally, the treaty includes detailed procedures on the documentation needed for extradition, as well as provisions relating to political and military offenses, rule of specialty, and waiver of extradition. The treaty with Mexico is in these respects fairly typical of the comprehensive bilateral extradition treaties we have brought into force in the last twenty-five years.

One very important issue with Mexico, as with a number of countries in Latin America and Europe, is the matter of extradition of nationals. Many countries are prohibited by their constitutions or other domestic laws from extraditing their own nationals. States that currently do not extradite their nationals include many countries in Europe such as France, Germany, Austria, and Belgium, as well as many in this hemisphere such as Brazil, Ecuador, Panama, and Venezuela. The U.S. Government has made it a high priority to try to convince such states to agree to extradite their nationals, notwithstanding laws or traditions to the contrary. In this respect, we have made some notable advances in this Hemisphere regarding this issue. For example, our recent treaties with Bolivia and Argentina include provisions mandating the extradition of nationals.

Any treaty relationship pursuant to which nationals are extradited is a positive step for the United States in its efforts to bring to justice narcotics traffickers and other criminals, regardless of nationality, who reside or may be found in foreign countries. At the same time, the United States is well aware, based on our experiences with countries around the world, that the issue of extradition of nationals is inherently sensitive, and we have not succeeded in obtaining unqualified approval in every instance.

Turning specifically to Mexico, the U.S.-Mexico extradition treaty has language that is similar to that found in many of our treaties, to the effect that each party may, in its discretion, extradite its nationals if not prevented from doing so by its domestic laws. Under the treaty, where the Requested State chooses not to extradite, it is required to submit the case for domestic prosecution, provided there is a jurisdictional basis for doing so. While certainly a prosecution in the Requested State is preferable to the fugitive facing no consequences, we believe that – as a general rule -- it is usually better to have the fugitive prosecuted where the crime is committed and the evidence and witnesses are located. Aside from important

evidentiary and cost considerations, there is a general sense that justice is best served by prosecutions in the communities in which the effects of crime are felt.

For many years, the Government of Mexico did not extradite its nationals at all, citing limitations on the extradition of nationals in its domestic law. In 1996, we were therefore encouraged that Mexico took an important step forward by applying language in Article 14 of its domestic extradition law under which the extradition of Mexican nationals may be justified in "exceptional cases".

In the last three years, the United States has benefited from this more flexible policy in several important cases where the Government of Mexico has surrendered Mexican nationals to the United States under the treaty. Examples include the case of Bernardo Velardes Lopez, a drug trafficker charged with the murder of a U.S. Border Patrol agent, and, most recently, Tirso Angel Robles, a drug trafficker who had escaped from U.S. custody in 1995 and fled to Mexico. We are urging the Government of Mexico to continue and expand upon this recent trend of extraditing its nationals. In this regard, we have stressed that in an era where criminals can travel easily and swiftly across national borders, there should be no safe havens from criminal prosecution based on nationality.

Mexico's 1996 decision to begin extraditing nationals was a positive development. However, as this subcommittee is aware, the U.S. Government's extradition relationship with Mexico has had some recent setbacks that we are working to address.

One disturbing development involves two decisions by intermediate Mexican courts interpreting Article 4 of the Mexican Penal Code. Briefly, Article 4 provides that crimes committed abroad by or against Mexican nationals will be punished in Mexico under Mexico's federal law. The decisions in question, however, interpreted this article as mandating domestic

prosecution in such cases and, thus, as precluding extradition. We understand that the Article 4 issue is currently before another intermediate court. A favorable ruling from this or another intermediate court would create a split among Mexico's circuit courts. The issue would then be ripe for review by Mexico's Supreme Court, which hopefully would decide that extradition is not barred under such circumstances.

In addition, we are concerned about lengthy and protracted Mexican judicial proceedings that have resulted in frustrating delays in connection with a number of U.S. extradition requests. Under Mexican law, a district court judge will issue what amounts to an advisory opinion following the Secretariat of Foreign Relations (SRE's) presentation of an extradition request. Thereafter, the SRE can order the fugitive's extradition, which it does in many cases. At this point, however, the fugitive can – and in most cases does -- appeal the SRE's order to the courts through the amparo process. Defense attorneys have been able to manipulate the amparo process repeatedly to frustrate and delay extraditions.

I note that the amparo process is grounded in the Mexican Constitution and considered a bulwark of Mexican civil liberties. Although sometimes likened to our own writ of habeas corpus, it does not really have a direct counterpart in United States law or, more generally, in the common law tradition. It is an exceptionally broad form of relief (and is best understood by those trained in Mexican law). Among other things, the amparo process enables an individual to challenge a governmental act, such as an SRE extradition order, or a judicial decision on the ground that it infringes on constitutional rights. Much like the protections afforded foreign nationals in the U.S. under our own constitution, the amparo procedure is available to both nationals and non-nationals alike, including American citizens who may find themselves involved in legal proceedings, including extradition proceedings, in Mexico.

From the perspective of international extradition, one of the problems with the amparo process – as we understand it – is that fugitives do not seem to be required to consolidate their claims. Instead, it often is the case that amparos are raised seriatim or sometimes in more than one court – extending the length of extradition proceedings. The Del Toro case, which I know is of particular concern to this committee, presents an example of the kinds of delays that can occur. Even though the SRE and the courts have decided in favor of extradition at every step in the process, Del Toro's attorney has been able to delay his ultimate return to the U.S. through the filing of amparos, which then need to be considered by Mexican courts. The U.S. Government has raised the problem of delays caused by lengthy court proceedings on numerous occasions with the SRE, both generally and with respect to the specific case of Del Toro.

Another area of concern has to do with the issue of life imprisonment, which is provided for under many U.S. criminal laws. Under the U.S.-Mexico treaty, the Requested Party may seek assurances that capital punishment will not be imposed if its laws do not permit such punishment, and Mexico, like many countries, has made it clear that it will not extradite fugitives unless such assurances are given. There is, however, no basis for requiring assurances that life imprisonment will not be imposed. Nonetheless, intermediate courts in Mexico have recently found that fugitives could not be extradited if they faced the possibility of life imprisonment. Evidently, these courts determined that life imprisonment was violative of the Mexican constitution's prohibition against "unusual or extreme" punishment. It remains to be seen whether this troubling development will become a new and pervasive problem in our extradition relationship. Notably, the SRE has indicated that it will litigate against a life imprisonment bar being applied to extradition requests.

The Mexico extradition relationship thus presents a number of important and immediate challenges for the State and Justice Departments and for the U.S. law enforcement community as a whole.

In this connection, I would note that many of the problems I have mentioned, some of which Ms. Warren will discuss further in the context of the Del Toro case, are not unique to Mexico. As I indicated earlier, many of the very countries in the Americas and Europe from which the U.S. most needs the extradition of fugitives have laws that preclude or limit the extradition of nationals. In addition, fugitives opposing extradition in many legal systems, including in the United States, often take every opportunity to challenge, appeal and otherwise attempt to block extradition. The provision in the crime bill recently proposed by the Administration which would deny fugitives credit for time served abroad while fighting extradition could help in this regard.

Although the problems I have discussed are paralleled to some extent generally in international extradition practice and specifically in various U.S. extradition relationships, they are magnified in the U.S.-Mexico relationship because of the close proximity of the two countries, the large number of cases, and the fact that many of the cases are high profile, involving notorious fugitives. For these reasons, the U.S.-Mexico extradition relationship has been and continues to be at the top of our bilateral agenda. We have fully engaged the Government of Mexico in a discussion of our extradition concerns and, in doing so, have communicated to the Mexican Government the intense interest in the United States in improving our extradition relationship.

I will be pleased to answer any questions you may have.

Mr. MICA. I recognize next Mary Lee Warren, Deputy Assistant Attorney General, the Department of Justice. Welcome.

Ms. WARREN. Thank you, Mr. Chairman. I appreciate the opportunity to appear before this subcommittee today to discuss with you the history and status of the Jose Luis Del Toro case and to provide you with continuing information about our overall extradition relationship with the Government of Mexico.

In the second regard, I will offer an update on events that have transpired over the last month since my prior testimony before this subcommittee. I request that my full written statement be included in the record.

Mr. MICA. Without objection so ordered.

Ms. WARREN. Clearly the case of Jose Luis Del Toro is a matter of extraordinary significance to all. Mr. Bellush has provided a moving personal account of the crime, its devastating impact, and the frustration that is felt with the process of bringing Del Toro back to Florida to face justice.

We too at the Department of Justice have voiced our concern about the crime and the delay, and we offer our sympathies once more to the family who has suffered this horror. Today I will limit my testimony to a description of the actions taken by the two governments to effect his return to this country.

In the 10-day period from November 11, 1997, 4 days after the murder, to November 21, 1997, first, the Florida authorities notified the Department of Justice that they believed Del Toro was in Mexico. Mexican officials and our Embassy were officially notified; the United States requested his deportation or, in the alternative, provisional arrest for extradition. The authorities located Del Toro in Monterrey, Mexico; and he was arrested for extradition pursuant to the treaty by the Mexican authorities.

It has been asked why Del Toro, a United States citizen, was not simply and summarily deported from Mexico rather than being brought within the more lengthy and complicated extradition process. Clearly, the U.S. Government would have preferred the use of deportation mechanisms in this case. Indeed, our INS agents at our Embassy in Mexico City worked hard pursuing this course when they were first informed that Del Toro might very well be in Mexico.

It appears, however, due to the extreme brutality of the crime charged, the threat posed by Del Toro to others, the real risk that he might succeed in his flight from justice, and the perceived difficulties in obtaining nearly immediate assurances that the fugitive would not receive the death penalty if surrendered to the United States, the office of the Mexican attorney general believed that the wiser, safer course of action was to obtain a provisional arrest warrant for extradition under the treaty so that they could guarantee their legal authority to arrest and detain Del Toro as soon as he could be found.

In retrospect, all of us including the Mexican Government, wish that Del Toro had simply been deported; but during the fast-breaking events in late November 1997, the immediate and primary goal was to ensure that he did not get away. Both governments have now learned from this experience that when necessary and mutually acceptable, death penalty assurances can be provided promptly

in deportation cases as they must be provided in extradition cases under the treaty.

But in those last minutes in the hunt for Del Toro, arresting and holding him seemed far more important than the particular avenue for his return.

Continuing with the chronology, by early January 1998, well within the limitations period, Florida authorities compiled an impressive package of proof which was then formally submitted to the Government of Mexico. By the end of March 1998, both the court that initially provides an opinion on extraditability and the foreign ministry had decided in favor of our request. This is a very speedy handling of the request.

Immediately following the entry of the court, an Executive order authorizing extradition, Del Toro, using the Mexican amparo process, began his legal challenges to his surrender back to the United States. In the extradition context, the amparo process is something akin to habeas corpus, as Ms. Borek has mentioned.

Our best understanding of the nature and status of Del Toro's amparo is that first he sought relief from two district courts challenging the constitutionality of our extradition treaty. His challenge was rejected by both district courts and thereafter found by the Mexican supreme court to be ineligible for immediate review.

He then sought relief in the same two district courts challenging the legality of the Mexican Government's actions in complying with the treaty and holding him for extradition. Again, his challenge was rejected by those two district courts and found procedurally deficient by the supreme court. Del Toro's case as it relates to the legality of the extradition order issued by the foreign ministry in Mexico is now before an appellate or circuit court in Mexico.

The ability of a fugitive like Del Toro to file claims on various issues in different district courts, neither of which was the original extradition court, is unlike anything we have in our common law tradition. It is painfully slow and from our perspective prone to corruptive influences.

We need to appreciate, however, that the amparo process in Mexico, like the writ of habeas corpus in the United States is one that embodies a fundamental right, as Ms. Borek mentioned. There came a time in our recent history that the dilatory and practiced abuses of the habeas corpus writ by some defendants so delayed the progress of their cases and so clogged our courts that these abuses began to threaten the full and fair administration of justice to all—other defendants, the prosecution, and the public.

Congress then enacted landmark habeas corpus reforms. In my humble opinion, Mexico's amparo process would be well served by taking analogous reforms.

A final thought on the Del Toro case: it should be emphasized that we have prevailed in Mexico before the courts and in the foreign ministry at every turn. Lengthy as the process has been, Del Toro has lost at every effort.

Let me give you a brief update on where we are in our fugitive and consultative relationship with Mexico. There have been no dramatic changes in our fugitive relationship since last month's hearing before the subcommittee.

Nevertheless, we note that after 3½ years of fighting his extradition, William Brian Martin, a U.S. citizen accused of major narcotics offenses in the district of Arizona, was returned to the U.S. authorities. A second United States citizen was recently returned through the United States-Mexican prisoner transfer treaty process to the eastern district of Virginia on narcotics charges.

In my May 13 testimony before this subcommittee, I detailed the recent trends of adverse decisions on extradition in the Mexican courts; and, as Ms. Borek mentioned, the Mexicans have been looking for a conflicting decision on the article 4 issue. They may very well have found one now that will create a split of decisions within the circuits that then will be resolved finally by the Mexican supreme court. We remain cautious but optimistic.

As I testified last month, deportations had been the especially bright light last year for returning criminal fugitives, those criminal fugitives who were United States citizens and had violated Mexico's immigration laws. However, we must now advise in the area of deportation, just as with extraditions, we have been experiencing a noticeable decrease in the numbers of surrenders from Mexico, a situation we had not anticipated after last year's successes.

On a more positive note, however, as has been made clear, it is important to advise this subcommittee of the actions that have been and will be pursued at the highest levels of both the United States and Mexican Governments to improve the bilateral fugitive relationship.

Early this month, Attorney General Reno led the United States delegation of several Cabinet members, agency heads, and departmental representatives at the binational commission meetings in Mexico City and had an opportunity to meet with all the Mexican officials responsible for extradition, for article 4 prosecutions, and for deportations.

The fugitive and extradition issue was the primary topic for discussion at the meeting of the Legal Affairs and Antinarcotics Cooperation Working Group chaired by the Attorney General and ONDCP Director McCaffrey and was also the first agenda item for the meeting of the high-level contact group.

Attorney General Reno addressed fugitive matters at length in her personal meetings with Mexican Attorney General Madrazo and Foreign Secretary Rosario Green. She stressed the need to continue progress on deportations with their interior secretary, Mr. Carrasco. And she voiced her concerns over the status of the fugitive relationship directly with President Zedillo in their brief meeting during the binational commission.

As a result, there is some renewed attitude of cooperation at the highest levels of both governments to pursue immediate and intensive consultations to address these issues as efficiently and effectively as possible.

We recognize that the members of this subcommittee have set as a priority and commitment that this administration press the Government of Mexico to take affirmative steps to eliminate the notion and reality of safe haven and impunity for many fugitives in Mexico.

I can state once again that the improvement of the fugitive relationship with Mexico has been and remains one of the Attorney General's and the Justice Department's highest priorities and that we will use all resources and measures at our disposal to make progress and achieve the type of positive results that this subcommittee desires and that are deserved by the public we serve. I thank you.

Mr. MICA. Thank you for your testimony.

[The prepared statement of Ms. Warren follows:]

Department of Justice

STATEMENT

OF

MARY LEE WARREN

DEPUTY ASSISTANT ATTORNEY GENERAL

CRIMINAL DIVISION

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES

COMMITTEE ON GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

EXTRADITION PROCEDURES BETWEEN THE UNITED STATES AND MEXICO

PRESENTED ON

JUNE 23, 1999

I am pleased to appear before this Subcommittee today, as a representative of the Department of Justice, to discuss with you the history and status of the U.S. request to Mexico for the extradition of Jose Luis Del Toro and to provide you with information about our overall extradition relationship with the Government of Mexico.

A general description of the extradition process in Mexico and a status report on fugitive matters was included in my May 13, 1999 testimony before this Subcommittee and remains basically the same, and I therefore will not address those areas in today's statement, other than to update you on events that have transpired over the last month that may be of interest. In that regard, I am appending to this testimony a current statistical chart on extraditions to and from Mexico that reflects the surrender by Mexico of two more fugitives since the last hearing, both of them U.S. citizens accused of narcotics trafficking violations in the United States.

U.S. Extradition Request for Jose Luis Del Toro

I would like to turn first to the case of Jose Luis Del Toro, a matter of extraordinary significance to all of us who are aware of the brutality and horror of the crimes with which the defendant is charged in Florida. The prosecutors, the police officials, and the victim's family are far better able than I to describe for you the facts of the crime, its devastating impact, and the frustration they feel with the process of getting Del Toro back to Florida to face justice. Suffice it to say, we share their outrage over this horrible crime and once more express our concern and condolences for the victim's family. I will therefore limit my testimony to a

Mexico to effect his return to this country.

The Justice Department's Office of International Affairs was informed by Florida authorities on the night of November 11, 1997, four days after the murder of Sheila Bellush, that the accused perpetrator, U.S. citizen Jose Luis Del Toro, was believed to have fled to Mexico. On November 12, Mexican officials and our Embassy in Mexico City were notified of the situation, and the following day the Department of Justice asked the State Department (through the Embassy) to request Del Toro's immediate arrest by Mexican authorities for purposes of deportation or, in the alternative, extradition. Through the combined efforts of U.S. and Mexican officials, the fugitive was soon located in Monterrey and apprehended on November 20. On November 21, he was officially arrested pursuant to the bilateral extradition treaty.

Questions have been raised as to why Del Toro, a U.S. citizen, was not simply and summarily deported or expelled from Mexico rather than being brought within the more lengthy and complicated extradition process. Clearly, the U.S. government would have preferred the use of deportation mechanisms in this case, and the INS agents at our Embassy in Mexico City vigorously pursued this course when initially informed of Del Toro's citizenship and likely presence in Mexico. It appears, however, that due to the extreme brutality of the crime charged, the threat posed by Del Toro to others, the real risk that his flight from justice might continue and ultimately succeed, and the perceived difficulties in obtaining an expeditious assurance that the fugitive would not receive the death penalty if surrendered to

authorities in this country, the Mexican Attorney General's office believed that the wiser course of action was to obtain a provisional arrest warrant under the terms of the extradition treaty so that they could guarantee their legal authority to pursue, apprehend, and detain Del Toro as soon as his whereabouts were confirmed.

In retrospect, all of us, including the Mexican government, may wish that an expeditious deportation could have been accomplished; but during the flurry of events in late November 1997, the only immediate goal was to ensure that Del Toro did not evade arrest. Both governments have learned from this experience that, when necessary and mutually acceptable, death penalty assurances can be expeditiously provided in deportation cases, as they must be in extradition cases, but at the time of the events in question here, Del Toro's arrest seemed far more important than the legal avenue for his return.

Under the U.S. - Mexico extradition treaty, the country requesting extradition has up to 60 days after provisional arrest to submit documents supporting its case. Well within this time limitation, Florida authorities compiled an impressive package of proof, which was formally submitted to the Government of Mexico in early January 1998. By the end of March of that year, both the court that initially provides an opinion on extraditability and the Mexican Foreign Secretariat had ruled in favor of our request, which is a very expeditious handling of any matter by independent branches of government -- due in large part, we believe, to the heinousness of the crime and the high quality of the evidentiary materials prepared by Florida authorities.

Immediately following the entry of these judicial and executive orders authorizing extradition, Del Toro began his challenges to the legal propriety of his surrender through Mexico's amparo process, which, in the extradition context, is something like our habeas corpus process, but far more diffusive in its ambit for seeking relief from governmental action. Our understanding of the nature and status of Del Toro's plea for relief is that 1) he sought relief from two district courts challenging the constitutionality of the bilateral extradition treaty, his challenge was rejected by both district courts and found by the Supreme Court to be inappropriate for immediate review; and 2) he sought relief in the same district courts challenging the legality of the Mexican government's actions in complying with the treaty, and holding him for extradition, and his challenges were again rejected by the district courts upon the law and procedurally deficient in the Supreme Court. Del Toro's case as it relates to the legality of the order of extradition entered by the Foreign Ministry is currently pending before the Fourth Collegiate Tribunal of the First Circuit (an appellate level court).

The ability of a fugitive like Del Toro to file claims on various issues in different district courts, none of which was the original extradition court, seems unusual to those of us schooled in the common law tradition, painfully slow and duplicative, and prone to corruptive influences. We need to be aware, however, that the amparo process in Mexico, like the writ of habeas corpus in the United States, is a fundamental right of the individual intended to ensure that all are accorded due process and fairness. There came a time in our recent history that the dilatory and practiced abuses of the extraordinary writ of habeas corpus by some defendants so delayed the progress of their cases and so clogged our courts that these stalling

tactics began to undermine the full and fair administration of justice to all -- other defendants, the prosecution, and the public at large. The U.S. Congress then enacted landmark reforms to protect against the unfair abuse of habeas corpus. In my humble opinion, Mexico's amparo process would be well-served by undertaking some analogous reforms within that judicial system.

In ending my comments on the Del Toro case, I think that it should be emphasized that we have not lost any decision in Mexico on this matter either in the executive or in the judicial sphere. Lengthy as the process may have been, there has not been one on which he has prevailed. The Government of Mexico is, from all accounts, as committed as we are to sending Del Toro to the United States; and although the delays have been frustrating, there is every reason to believe that the proceedings in Mexico will soon run their course and that justice will prevail.

Update on Fugitive Issues and Consultations

As I noted earlier, there have not yet been any dramatic tangible changes in our fugitive relationship with Mexico since last month's hearing before this Subcommittee. Nevertheless, we were pleased that after 4 ½ years of fighting his extradition, William Brian Martin, a U.S. citizen accused of major narcotics trafficking in the District of Arizona, was finally turned over to U.S. authorities. We, like you, are disturbed that the process consumed such a prolonged period of time. In my May 13th testimony before this Subcommittee I detailed the recent trend of adverse decisions on extradition in the Mexican courts. We have been heartened to hear from our Mexican colleagues that they believe a case will be decided soon

recognizing the Mexican government's authority to extradite Mexican citizens and joining the issue with conflicting circuit court decisions so that it can be definitively resolved by the Supreme Court. We remain cautious and are alert to the possibility that Mexico's independent judiciary could further hinder the process by deciding against us. Finally, while we are hopeful that the successful use of deportation mechanisms to return U.S. fugitives to this country will continue to afford relief in appropriate cases, we must inform you that in this area, just as with extraditions, we have seen a noticeable decrease in surrenders from Mexico, a situation we had not anticipated given the steady progress made last year.

On a more positive note, however, I believe it is also important that this Subcommittee be made aware of the actions that have been and will be pursued at the highest levels of both the U.S. and Mexican governments to steady and enhance the bilateral fugitive relationship. Early this month, Attorney General Reno led the U.S. delegation of several Cabinet members, agency heads, and departmental representatives at the Binational Commission in Mexico City and had the opportunity to meet with all the Mexican officials responsible for making policy and supervising its execution in the areas of extradition, domestic prosecution, and deportation. The fugitive and extradition issue was the primary topic for discussion at the meeting of the Legal Affairs and Anti-Narcotics Cooperation Working Group, chaired by Attorney General Reno and ONDCP Director McCaffrey, and was also the first agenda item for the meeting of the High Level Contact Group. Attorney General Reno addressed fugitive matters at length in her personal meetings with Mexican Attorney General Madrazo and Foreign Secretary Green; she stressed the need to continue progress on deportations with Interior Secretary Carrasco; and she

voiced her concerns over the status of the fugitive relationship directly with President Zedillo in their brief meeting during the Binational Commission. As a result, there is a renewed attitude of cooperation at the highest levels of both governments to pursue immediate and intense consultations on how to address common problems and move ahead aggressively in bringing fugitives to justice as efficiently and effectively as possible.

The members of this Subcommittee have stated their priority for and commitment to ensure that this Administration presses the Government of Mexico to take affirmative steps to eliminate the notion and the reality of safe haven and impunity for many fugitives in Mexico. I can only state once again that the improvement of the fugitive relationship with Mexico has been and remains one of the Attorney General's and the Justice Department's highest priorities and that we will use every resource and measure at our disposal to make progress and achieve the type of positive results desired by this Subcommittee and deserved by the public we serve.

Thank you for giving me the opportunity to appear here this morning. I will be pleased to attempt to answer any questions that you might have.

EXTRADITIONS FROM MEXICO TO THE UNITED STATES

Year	Jan 1 - June 17, 1999	1998	1997	1996	1995
Number of Extraditions from Mexico to the United States	4	12	13	13	4
Number of Extraditions on Drug Charges	3[a]	4	7	6	0
Number of Mexican Nationals Extradited	1	3	0	2[b]	0
Number of Mexican Nationals Extradited on Drug Charges	1	1[c]	0	0	0

EXTRADITIONS FROM THE UNITED STATES TO MEXICO

Year	Jan 1 - June 17, 1999	1998	1997	1996	1995
Number of Extraditions from the United States to Mexico	7	15	21	16	14

This number does not include a US citizen extradited for drug-related money laundering

[b]This number includes one Mexican national and one dual US-Mexican national

[c]Although also charged with and extradited for marijuana trafficking, this Mexican national was extradited principally for the murder of a United States Border Patrol Agent

Number of Extraditions on Drug Charges	0	2	3	1	0
Number of United States Citizens Extradited	0	5	2	3	1
Number of United States Citizens Extradited on Drug Charges	0	1	0	0	0

Mr. MICA. I would now like to recognize Mr. Earl Moreland, district attorney for Sarasota County, FL.

Mr. MORELAND. Mr. Chairman and members of the committee, thank you for the invitation to appear today. The murder of Sheila Bellush in Sarasota, FL, was one of the most heinous crimes ever committed in my jurisdiction. Tragically, the shock of this brutal crime has really been compounded over the last 18 months by Mexico's refusal to turn over to us the man charged with the murder, despite our complete cooperation and agreement with every demand.

Mr. Bellush told you many of the facts earlier. There are some pictures on the monitor to help you realize the impact this crime has had, not only on the Bellush family but on our community.

Mr. MICA. Mr. Moreland, are you requesting that we put those up? They are pretty gruesome. Did you want those on the monitors?

Mr. MORELAND. I will leave that up to the subcommittee staff, who I gave those to.

Mr. MICA. Well, we have them, but I want it to be your request.

Mr. MORELAND. Yes, we would request that.

Mr. MICA. OK. We'll go ahead and put those up then.

Do you have some concerns? Wait a second. It is OK?

Mr. BELLUSH. I want them shown, sir.

Mr. MICA. The husband wants them shown. So I didn't want to put those up unless I had——

Mr. MORELAND. I understand, sir.

Mr. MICA [continuing]. A request from you and the consent of the victim's husband. All right. Thank you. You may proceed.

[Slides.]

Mr. MORELAND. As Mr. Bellush has previously told the committee, Sheila was home with her 23-month-old quadruplets when she was shot in the face by an intruder. After he shot her and while Sheila was still alive, the intruder slit her throat on both sides of her neck. She bled to death. Her four children remained alone in her house for 6 hours until their 13-year-old sister arrived home from school and discovered her mother's body. The four babies were alone with their dead mother during this time, crawling in her blood.

The Sarasota sheriff's deputy launched a superb and massive investigation that within days, as Congressman Miller has told you, identified Jose Luis Del Toro, Jr., as the killer. Also, as Mr. Bellush told you—and I think one of the things that makes this case even more frustrating—is the evidence was really overwhelming in this case. Witnesses had identified Del Toro and Del Toro's car in the area. A copy of his identification was recovered from a local motel. Other evidence included Del Toro's fingerprint at the scene and a fingerprint on the murder weapon, the gun which was found in Del Toro's car, and Del Toro's clothing spotted with Sheila's blood.

It should also be noted the two accomplices were also identified and they were taken into custody. The Texas rangers missed Del Toro by about an hour when Del Toro fled to Mexico after he learned the police were looking for him. As you have also been told, Del Toro was an American citizen. He was born in the United States of America to American parents. He murdered an American

citizen on U.S. soil. We believe that Del Toro's entry into Mexico was illegal under Mexican law and upon apprehension that he could have and should have been deported back to the United States.

In fact, that's what we were told would originally happen. As a result of some more excellent police work with the Texas rangers and the Sarasota sheriff's department, Del Toro was apprehended in Monterrey Mexico within weeks of the murder.

Promptly, Mexican officials announced the decision to deport Del Toro to the United States. I received a call in my office that afternoon that Del Toro, in fact, was en route to the Mexican-Texas border and would be delivered to United States officials that evening.

I waited for the call informing us that Del Toro was in custody. Finally around midnight I was notified that for no officially stated reason, Mexican officials had rescinded the deportation order, Del Toro had been transported to Mexico City, and Mexico was demanding that the United States seek formal extradition of Jose Del Toro. Shortly thereafter, the United States Department of Justice informed us that the Mexican Government would not extradite Del Toro unless I would give assurance that Del Toro would not receive the death penalty if extradited. Jose Luis Del Toro was a hard killer. He murdered Sheila Bellush in a cold, calculated manner traveling from Texas, hiding in Sheila's home. The death occurred in a heinous, atrocious, and cruel manner including a gun shot wound to the face and a slit throat.

With the six surviving children, including the quadruplets who were present during the murder, it is hard to imagine a case with more victim impact than the Bellush family suffered. This was undoubtedly a case where the death penalty was appropriate. But unfortunately, the people of Florida will never have the chance to hold Del Toro fully accountable for this heinous crime.

We were told unless the death penalty was waived, Del Toro would be released. And after talking to the Bellush family, we felt we had no choice. We agreed to waive the death penalty. We filed the necessary extradition papers with the Justice Department.

Despite making that concession a year and a half ago, Del Toro has still not been returned. A Mexican judge and the Mexican foreign ministry have approved the extradition. The case is now stalled in the Mexican supreme court of justice. The Mexican Government refuses to provide satisfactory answers to our questions about the status of the extradition. No one can tell us when to expect a resolution or even if that resolution necessarily ends Del Toro's appeal possibilities.

My office is in almost weekly contact with the Justice Department, the American Embassy in Mexico City, and the Mexican Embassy here in Washington. I have spoken with Attorney General Reno, whom I worked with as a prosecutor in Florida, about this case.

Even now, the Justice Department and U.S. officials have tried to be helpful. I know their hands have been tied by Mexico's complete lack of information and misinformation. We were originally told by Mexican officials that this whole process would take 3 to 4 months. That was 18 months ago.

Mr. Chairman, we thank your committee for seriously considering this matter and urge you to take some action in this case. We have not been able to accomplish anything through other channels. The citizens in our community do not believe that justice is being done and feel outraged at being held hostage by Mexico. We hope that you will hold Mexico accountable for their actions in this case and that Jose Luis Del Toro will be returned to Florida to face justice.

I'll be happy to answer any of your questions. Mr. Charlie Roberts is the lead prosecutor in this case. He prosecuted the codefendants. He's also here to answer your questions and we thank you.

[The prepared statement of Mr. Moreland follows:]

OPENING STATEMENT OF STATE ATTORNEY EARL MORELAND
CRIMINAL JUSTICE SUBCOMMITTEE

Mr. Chairman and members of the Committee, thank you for the invitation to appear today.

The murder of Sheila Bellush in Sarasota, Florida was one of the most heinous crimes ever committed in my jurisdiction. Tragically, the shock of this brutal crime has been compounded over the last 18 months by Mexico's refusal to turn over to us the man charged with the murder, despite our complete cooperation and agreeing to every demand.

Sheila Bellush was home with her 23 month old quadruplets when she was shot in the face by an intruder. After being shot and while Sheila was still alive, the intruder slit her throat on both sides of her neck. She bled to death. Her four children remained alone with her in the house for six hours, until their 13 year old sister arrived home from school and discovered her mother's body. The 4 babies were alone with their dead mother during this time crawling in her blood.

The Sarasota Sheriff's Department launched a superb and massive investigation that within days identified Jose Luis Del Toro, Jr. as the killer. Witnesses had identified Del Toro and Del Toro's car in the area. A copy of his identification was recovered from a local motel. Other evidence included Del Toro's fingerprint at the scene and a fingerprint on the murder weapon (gun) which was found in Del Toro's car, and Del Toro's clothing spotted with Sheila's blood . Two accomplices were also identified and taken into custody. The Texas Rangers missed Del Toro by one hour and Del Toro fled to Mexico after he learned police were looking for him..

Let me emphasize that Jose Luis Del Toro is an American citizen, born in the United States of American parents who murdered an American Citizen, on U.S. soil. Del Toro's entry into Mexico was illegal under Mexican Law. Upon apprehension, Del Toro could have and should have been deported back to the United States.

In fact, that's what I was told would happen. As a result of more excellent police work, by the Sarasota Sheriff's Department and the Texas Rangers, Del Toro was apprehended in Monterey, Mexico within weeks of the murder. Promptly, Mexican officials announced the decision to deport Del Toro to the United States. I received a call in my office during the afternoon that Del Toro was en route to the Mexican - Texas border and would be delivered to U. S. officials that evening. I waited for the call informing us that Del Toro was in custody. Finally around midnight I was notified that for no officially stated reason, Mexican officials had rescinded the deportation order, Del Toro had been transported to Mexico City and Mexico was demanding that the United States seek formal extradition of Jose Luis Del Toro.

The U. S. Department of Justice informed us that the Mexican government would not extradite Del Toro unless I would give assurance that Del Toro would not receive the death penalty if extradited. Jose Luis Del Toro was a hired killer. He murdered Sheila Bellush in a cold and calculated manner - traveling from Texas and hiding in Sheila's home, the death occurred in a heinous, atrocious and cruel manner including a gun shot wound to the head and a slit throat while the victim was still alive. With the six surviving children, including the quadruplets who were present during the murder, it is hard to imagine a case with more victim impact than the Bellush family suffered. This was undoubtedly a case where the death penalty was appropriate.

But the people of Florida never will have the chance to hold Del Toro fully accountable for this heinous crime. We were told unless the death penalty was waived Del Toro would be released. We agreed to waive the death penalty after talking with Mr. Bullush and filed the necessary extradition papers with the Justice Department.

Despite making that concession a year and half ago, Del Toro still has not been returned. A Mexican Judge and the Mexican Foreign Ministry approved the extradition over a year ago. The case is now stalled in the Mexican Supreme Court of Justice. The Mexican government refuses to provide satisfactory answers to our questions about the status of the extradition. No one can tell us when to expect a resolution, or even if a resolution necessarily ends Del Toro's appeal possibilities.

My office is in almost weekly contact with the Justice Department, American Embassy in Mexico City, and the Mexican Embassy here in Washington. I have spoken with Attorney General Reno, whom I worked with as a prosecutor in Florida, about this case. Even though Justice Department and U S officials have tried to be helpful, their hands have been tied by Mexico's complete lack of information and misinformation. We were originally told by Mexican officials that the whole process could take three to four months. That was 18 months ago.

Mr. Chairman, we thank your Committee for seriously considering this matter and urge you to take some action in this case. We have not been able to accomplish anything through other channels. The citizens in our community do not believe that justice is being done and feel outraged at being held hostage by the Mexican government. We hope that you will hold Mexico accountable for their actions in this case and that Jose Luis Del Toro will be returned to Florida to face justice.

I will be happy to answer any questions that you have. Mr. Charlie Roberts who is the lead prosecutor in this case and who also prosecuted the two co-defendants in this case is also available for your questions. Thank you.

Mr. MICA. Thank you for your testimony, Mr. Moreland. I have some questions. First of all, Ms. Warren with the Department of Justice, I'm a little bit concerned, in your statement you said there's a renewed attitude of cooperation at the highest levels of both governments to pursue immediate and intense consultations on how to address common problems in this area and bring these fugitives to justice. But you also testified that we have actually lost ground on the deportation matter. Can you tell us where we really are? These seem to be contradictory. You're saying one thing and doing something else.

Ms. WARREN. The deportation issue and that we were losing ground was just brought to the Mexican authority's attention and really just came to our attention in the past month.

It was brought to the Mexican authority's attention by Attorney General Reno when she was down there earlier this month. She spoke directly to their interior minister who oversees their immigration department.

Mr. MICA. Is that Green?

Ms. WARREN. No, Rosario Green is their secretary of state, their foreign minister. The interior minister new to that position, his name is Carrasco. She met with him personally and brought this to his attention. He said he would look into it. We have also sent a list of target deportations to them, individuals that we believe are U.S. citizens that can be located and are sought on charges here. He promised at that time that he would look into it and try to act.

Mr. MICA. So we're actually losing ground, you testified, on the deportation question.

Ms. WARREN. So far this year and I wanted to bring that to this subcommittee's attention.

Mr. MICA. That's very frustrating. I have been down there personally, met with Green and met with the attorney general and others. You also testified you thought this would be the subject of immediate and intensive consultations. Can you elaborate on that? What is planned? Where are we taking this from here?

Ms. WARREN. Just that the highest levels have agreed that we will need to treat this at the highest levels.

Mr. MICA. Are there planned meetings? Are there——

Ms. WARREN. There will be meetings within the next month.

Mr. MICA. And you said at the highest levels. Is that——

Ms. WARREN. Any problems that cannot be immediately resolved, any misunderstandings or disagreements as to what the process is, what the level of proof that's necessary in an extradition request is, those kinds of issues. If they cannot be resolved, they will be referred to cabinet level officers for review.

Mr. MICA. Do you know if the Department of Justice or the Attorney General has any recommendations to Congress, any legislative changes or changes in policy that we determine—we certainly give them tremendous trade and financial benefits. Is there anything that you're recommending that we can do to give you better leverage or positioning to deal with the situation in Mexico in particular?

Ms. WARREN. Well, there are several recommendations in the anticrime bill for the 21st century that would be helpful here. For

example, one of the recommendations is that defendants not be given credit for the time abroad fighting extradition. He should not get credit on his later sentence, once tried in the United States, for that time served in delaying the process.

We've offered that as a suggestion. Another: to create a fund for district attorney offices and local prosecutors to compile these enormously expensive extradition documents and translation. Sometimes it is back-breaking to a local prosecutor's budget.

We would also like to strengthen our immigration laws so that we can refuse entry to someone fleeing from justice from another country; have that as a grounds for denying them entry.

Mr. MICA. Well, if you have any additional recommendations we would certainly like to hear about them, either in this as part of this record or submitted to the subcommittee. You also testified that the Mexican judicial system, I think you said, is prone to corrupt practices. Obviously, to pursue this in Mexico, Mr. Del Toro has to have some finances. Do we know where he—how he's financing these appeals and how this process is moving forward? He's gaming the system. Do you have any direct knowledge or do we have any knowledge that corruption has played a part in his delaying this process and us getting justice served?

Ms. WARREN. We have no knowledge or information about corruption in this particular case. Just within Mexico, they recently suspended a magistrate for what they believed was corruption in a decision in the Adon Amezcua case. However, we are concerned about who is financing Del Toro's challenges. This is a costly affair to go on and on. And we have formally requested an investigation by the Mexican authorities into the source of funds for these innumerable appeals.

Mr. MICA. You mentioned the Amezcua case—that's the one who had the charges dropped and he was released or was that—there are two brothers who were the methamphetamine kings who I believe had charges also dropped that are still kept. One was——

Ms. WARREN. This is Adon, not the two brothers. We had no charges on Adon, only Mexican charges. And that's the one.

Mr. MICA. I have an incredible array of mug shots. These are Mexican nationals, not United States nationals, who we have requested extradition and, in fact, part of the work of this subcommittee is to seek their extradition.

I think they're putting up a couple of the particular suspects here.

We're having the same problem with our drug kingpins in addition to murderers. I asked the question about how Del Toro is financing these appeals. Is the Department of Justice looking into that or anyone? State? Anyone?

Ms. WARREN. We have not had any information in the United States about that, but we believe there might be some information in Mexico. Therefore, we have filed a formal request for an investigation of who is paying his attorney's fees.

Mr. MICA. The other thing that came to mind today in hearing this very compelling testimony is that we have systems in place that notify folks of progress in the investigation where there's an airline crash. We have all kinds of other things that Congress has required that have been instituted.

It seems to me that the Department of Justice or State ought to have some mechanism to at least keep the victim's family informed in these cases, particularly these heinous murders and crimes where these folks are using extradition as a cover. Is the department planning to put in place any procedures or some system of notification?

Ms. WARREN. That I don't know. I can tell you in this particular case, on a biweekly basis we have contacted Mr. Moreland's office to keep them up to date. We have also provided some advice to Mr. Miller's office from time to time. We have tried to keep in contact, in regular contact with the prosecutor whom we feel in many ways we represent in these extradition proceedings.

Mr. MICA. Finally, you said you felt a little bit boxed in, that a mistake was made at the beginning about whether to request deportation. But then, I'm even more dismayed when I hear that now deportation is falling apart.

Ms. WARREN. I also need to be clear on that. The same amparo process is available in deportation cases from Mexico. So it's only speculation that he would have been returned more swiftly through deportation than extradition. It's our understanding the reason why the Mexican authorities chose extradition over our first alternative, which was deportation, was that they believed they had better standing and clearer authority to arrest and detain such a violent person that they did not want out on the streets or to escape justice.

Mr. MICA. Thank you. Mr. Cummings.

Mr. CUMMINGS. Mr. Moreland, first of all I hope that you will extend our compliments to the police department for doing what appears to be an outstanding job. I mean, having practiced criminal law for 20 years, I know these cases—I mean, you can have some real difficulty. But, as I look at the time line and what you all were able to accomplish, it is phenomenal.

Mr. MORELAND. Yes, sir. I will thank you. They did do an outstanding job.

Mr. CUMMINGS. I'm kind of confused about a number of things. I just want to try to figure out where we are here.

Ms. Warren, does Mexico have something comparable to our life imprisonment sentence? Do they sentence people to life?

Ms. WARREN. They sentence them to a term of years. For example, in the Alvarez case that has been mentioned here several times, the defendant up for murder sought out of Los Angeles, was sentenced to 90 years.

Mr. CUMMINGS. Do they have a comparable thing to what we have here, time off for good behavior and that kind of thing?

Ms. WARREN. As I understand it, they do have a good time, some credit there that's given; but with the term of years like that, I believe it is expected to be actual life in the end. But they don't have a penalty "life" as we do.

Mr. CUMMINGS. So a basis for this, for these appeals, I mean, for—like a defense I guess here would be—and I can't remember exactly what you said that life, the life, possible life sentence might be, something that might be raised? Or has been.

Ms. WARREN. That has been a problem in some other cases; it has not been raised here. And it is not recognizable under our treaty and should not prevail. Those cases remain on appeal.

Mr. CUMMINGS. Mr. Moreland, I don't know whether you can answer this or not, but we're talking about the financing of this—of what's going on in Mexico. Do you all have any theories on whether there's still money flowing any kind of way? I mean with regard to the—and it might be information you can't disclose but I was just curious.

Mr. MORELAND. It is difficult to speak to that, but that's certainly one of the frustrating things, the unanswered questions. We were really unable to find out despite inquiries that were made. We're very glad to hear that recently the Justice Department has made official inquiries with the Mexican Government to try to find those answers.

Mr. CUMMINGS. Two defendants have been convicted. Is that right?

Mr. MORELAND. Yes, sir, two have been convicted.

Mr. CUMMINGS. You don't think anything is happening there money-wise?

Mr. MORELAND. No. Those two have been convicted. They're both in jail at this time.

Mr. CUMMINGS. This amparo, is that how you pronounce it?

Ms. WARREN. Amparo.

Mr. CUMMINGS [continuing]. Process. A person can just go to any court anywhere?

Ms. WARREN. It appears to be, the amparos were not filed in the extradition court but in two other district courts. Yes.

Mr. CUMMINGS. So that can be raised at any time.

Ms. WARREN. I would like to think there are some limitations on how many times they can raise them. They certainly have not been able to raise the same issue twice, but they're not required, as our defendants are, to accumulate in one application all their claims.

Mr. CUMMINGS. Now, one of you ladies mentioned that we have had cases where, out of Mexico—and I think it was based upon these—where drugs were involved, where folks were extradited. Is that right?

Ms. WARREN. We have had many extraditions from Mexico. There were 12 last year. Many on narcotics charges. We have not had a Mexican national drug kingpin ever extradited, but we have had other narcotics traffickers extradited including a Mexican national return to serve his drug sentence here in the United States from which he had escaped, for example.

Mr. CUMMINGS. Do you get the impression—and I'm just trying to put this puzzle together—do you get the impression that when you look at this crime, this is a horrendous crime.

Ms. WARREN. Yes.

Mr. CUMMINGS. And I'm just wondering do you get the impression that the Mexican authorities say when you compare this to a drug case—what we do is we have been able to get people extradited. Here we have a horrendous crime, a murder, which is far more serious. And I'm just wondering do you get the impression that the Mexican Government looks at this from the stand point, well, this is something where we know that this person may get

a life sentence, is far more serious, so we want to do more to be protective of them? I'm just curious.

Ms. WARREN. I can tell you that within the past few years there have been seven extraditions from Mexico on murder-homicide charges to the United States. That includes a Mexican national for killing a border patrol agent, for example. So they do extradite on homicide and where they're facing certainly up to life in prison.

Mr. CUMMINGS. Is there something that was done in that case that is much different than this case, the one you just mentioned? In other words, do we have all of these filings?

Ms. WARREN. In those other cases, not as many amparos were filed. Sometimes—they sometimes took up to 2 years to resolve. But we didn't have the same array of filings, as far as I recall.

There have been some terrible offenders. They're charged with terrible crimes anyway in the United States, sexual abuse and murder of minors, and we have sought their extradition and they have been extradited.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. MICA. Thank you, Mr. Cummings. I recognize now the gentleman from Texas, Mr. Brady.

Mr. BRADY. Thank you, Mr. Chairman, very much. Mr. Moreland, first, for whatever it's worth, on the waiver of the death penalty, I think you did absolutely the right thing. I know that wasn't an easy decision to make at all. Our families had an experience with violent crimes ourselves. I'm a strong advocate of the death penalty. As tough as that decision was, I just want you to know I think you did the right thing.

Second—and I'll direct this to Ms. Borek and Ms. Warren—isn't this problem growing, the problem of people seeking safe havens in other countries? Seems to me, as they flee the country, as their crimes become more sophisticated as drug traffickers, money launderers, exploit loopholes—it seems to me this problem is not going away.

In fact, it's only going to get worse, which leads to the next question. Half of our extradition treaties are pre-World War II. The last round of updated treaties that was brought to the Senate, the majority of those treaties were a quarter of a century old.

We seem to have a patchwork of mutual legal agreements in country prosecutions, provisional arrests, and just a whole patchwork of issues that we're trying to—the patchwork of solutions. But we have serious issues on the death penalty, now on life in prison, which scares me because the question is, where do we draw the line on whether the countries tell us our justice system can bring about?

Haven't you made a very strong argument for renegotiating our treaties with Mexico as well as with other countries? And finally, why hasn't the State Department and Justice Department communicated with Mr. Bellush? I mean, at the local level prosecutors like Mr. Moreland and others understand that it is not only, in some cases, the rights of victims to know the status of those cases but just basic human decency tells you that is something you must do.

When the responsibility shifts from the local prosecutor to the Federal level to bring justice about, it seems to me it's our responsibility at the Federal level, State and Justice, to communicate on

a regular basis. To set up a system whether it's a toll-free line or liaison or victims' rights advocates. We're doing it at the local level all the time because we know that is the right thing to do.

I don't understand why we don't have that in place. Maybe we do and I'm wrong. But if we don't, it's way past time to do that.

And with that, Mr. Chairman, I'll let them answer all those questions.

Ms. BOREK. All right. Well, I'll start. And I think then Ms. Warren will have to fill in. Although Justice is in a better position to give a professional opinion, I think it's true there are more problems. There is more crime; it is more sophisticated. Therefore, you have—in a certain sense you have more quantity of difficulty.

I think also in the area of the death penalty, that is potentially a growing problem because of the attitudes about the death penalty. For example, as you know, Amnesty International, I believe, has a big campaign against the death penalty. This is a particular kind of problem.

On the extradition of nationals, on the other hand, we like to believe that this is a problem which we are managing to begin to resolve, because countries must see that this is not a viable approach given the modern realities of transnational crime.

We have a very aggressive program of renegotiating treaties. We had a hearing last fall where I think we had some 30 mutual legal assistance treaties and extradition treaties. The mutual legal assistance treaty program is completely new. And there we don't even have old treaties to go by. We have to start from scratch. The problem in the area of death penalty and nationality is not the renegotiation of treaties. It's that the other countries have to agree to it. And sometimes they don't.

And so we have even recent treaties, for example with France, that do not provide for the extradition of nationals and that do not have clear provisions on death penalty cases.

I do hope that we can draw the line at death penalties; we have been very, I think, staunch in our reaction to life imprisonment issues, which are not provided for generally in treaties, and we don't want to start providing for them.

As far as contact, I think I have to defer really to the Justice Department. We play a very secondary role in connection with the actual management of individual U.S. requests. They grow out of prosecutorial activity. We become involved in the areas of the State Department expertise.

I have to say, we have eight lawyers and three paralegals who handle not only 3,000 extradition requests outgoing and incoming, but all of our multilateral treaty negotiations on crime and terrorism, all of the work on terrorism, all of the bilateral agreements, a growing number of multilateral initiatives in the G–8 and EU, for example, in addition to providing all the domestic legal support for the international crime and drug activities of the State Department, plus certainly a lot of the intelligence activity.

Mr. BRADY. If I may interrupt. That case load isn't an excuse. We have counties with more than 3,000 cases, active, that they are dealing with, and they know that it is critical that they communicate with the victims in those crimes, especially the violent crimes. And they have set up the systems to do that, not flawlessly

certainly, but it is now recognized as a basic right and service of prosecution. And for whatever it is worth, if you need the resources, ask for the resources. There are a number of us who I think would go to bat for you on that.

Ms. BOREK. As I say, I don't think we're the best people to do that because the real detailed understanding and expertise on the case-management side is at the Justice Department. But I do think that it is a question that's been raised about how much contact there really is at the Federal level as opposed to the State and local levels. I note there's been a tremendous amount of contact with the State and local prosecutors in the course of these activities. Thank you.

Ms. WARREN. Maybe just quickly, to agree that I think crime is growing, certainly transnational crime, so that we have—now we're seeking the extradition of so many defendants who have, in fact, never physically come into our country but caused crimes here, through narcotics trafficking and other ways.

But I think that I agree with Ms. Borek that there is a growing realization in the international community that international crime threatens everyone and that this is a matter of trust between nations. There is a change, a real trend toward extraditing nationals that before it was unspeakable. For instance, in the western hemisphere in Latin America, now Bolivia, Argentina, and Mexico have extradited nationals and we have four requests before Colombia at the moment.

So crime is getting worse, but I think there's a better understanding about the transnationality of that crime.

In terms of communicating with victims, as I said before, we tried to meet what clearly are our obligations by keeping the local prosecutor informed. Perhaps we need to work a lot harder on that in speaking with the local prosecutor about ensuring that, who takes the responsibility in notifying and keeping up to date the victim's family, something clearly we can work on and discuss how best to handle it. It is helpful to have it brought to our attention in such a powerful way.

Mr. BRADY. Thank you, Mr. Chairman.

Mr. MICA. Mr. Souder, did you have any questions?

Mr. SOUDER. No, other than as Mr. Miller has brought this case to my attention as we've brought forth, it's hard to understand how we got in this situation. Other than continuing to express our outrage, which we ought to do regularly whenever we have a chance, to the Mexican Government. And if we weren't such a decent country, why, we ought to snap somebody up and force an exchange.

Because it's outrageous. There is no reason that there should be an extradition process. We have enough trouble getting drug traffickers who are responsible for deaths in this country who are citizens of Mexico back. Why in the world an American of—I mean, I don't understand the process. I have read your testimony. I'm sure like others I'm outraged.

This is a matter of keeping the pressure on and working with Mr. Miller to do everything we can and the chairman of this subcommittee and the other committees. So I thank you for holding the hearing, for continuing to go forth. Because while this looks like a case that directly relates to a tragic murder in Florida, this

could affect any of us in any of our States, and we need to look at the international policy between the United States and Mexico and elsewhere. And you may at least be helping save other people from similar pressures because of your persistence. Thank you very much.

Mr. MICA. I thank the gentleman. I have just a couple of closing questions. First of all, Ms. Borek, are there written communications between the Secretary of State and her counterpart relating to the Del Toro case?

[The information referred to follows:]

United States Department of State

Washington, D.C. 20520

JUL 29 1999

Dear Mr. Chairman:

This is in response to your letter of June 24, co-signed by Representatives Patsy Mink, Dan Miller and Kevin Brady, regarding the extradition case of Jose Luis Del Toro, Jr.

As you know, Mr. Del Toro was surrendered by the Government of Mexico to U.S. law enforcement officials on July 12, shortly after a Mexican court ruled against his effort to block extradition. We understand that he will now stand trial in Sarasota County, Florida for the horrible murder of Sheila Bellush.

Like you, we are heartened that Mr. Del Toro has been returned to face justice in the United States. While not as protracted as some extradition proceedings, both in the United States and elsewhere, the Del Toro case experienced delays that were exceedingly frustrating and painful for the Bellush family and for the many law enforcement officials who have worked so hard to bring Mr. Del Toro to justice.

We believe a number of factors contributed to Mr. Del Toro's return. In addition to the diligent efforts of the Florida State Attorney's Office and U.S. law enforcement officials, the Government of Mexico ruled in favor of Mr. Del Toro's surrender soon after the U.S. requested his extradition and then successfully defended its decision in Mexican courts against a series of challenges by Mr. Del Toro's attorney.

The Honorable
John L. Mica, Chairman,
Subcommittee on Criminal Justice,
Drug Policy and Human Resources,
House of Representatives.

For its part, the State Department and our Embassy in Mexico City sought the extradition and communicated to Mexican officials our strong interest in seeing Mr. Del Toro returned. Enclosed is a summary of recent State Department activity generally with respect to the extradition relationship with Mexico and specifically with respect to the Del Toro case. Recently, on June 30, 1999, the Secretary of State wrote to Mexico's Secretary of Foreign Relations, Rosario Green Macias, expressing our continued concern about several issues in the U.S.-Mexico extradition relationship and specifically citing the Del Toro case in addressing the frustrating delays caused by the filing of dilatory *amparos* in the Mexican courts.

We understand that you have spoken with Attorney General Reno about your interest in the Del Toro case, and that the Justice Department is separately providing a chronology of the case.

We trust that this information will prove responsive to your inquiry. If you require additional information or believe that we may be of further assistance in this or any other matter, please do not hesitate to contact us.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure: Summary of Recent State Department Efforts Relating to the U.S.-Mexico Extradition Relationship

SUMMARY OF RECENT STATE DEPARTMENT EFFORTS RELATING TO THE U.S.-MEXICO EXTRADITION RELATIONSHIP

General: Working with the Department of Justice, the Department of State carefully monitors and helps manage the U.S. relationship with Mexico under the 1978 extradition treaty. As with any busy extradition relationship, much of our work relates to preparing and presenting requests, following particular cases, and working with Justice and our Mexican counterparts to improve the effectiveness and efficiency of the process.

The State Department is also actively engaged in efforts to improve major aspects of the relationship. For example, the status of the extradition relationship was discussed at the last two High Level Contact Group meetings between senior U.S. and Mexican officials in December 1998 and June 1999, and, most recently, at a full-day meeting on extradition issues between senior State and Justice Department officials and their Mexican counterparts on July 14. In addition, on June 30, 1999, Secretary of State Albright, in a letter to Mexico's Secretary of Foreign Relations, Rosario Green Macias, followed up on the High Level Contact Group meeting in June by stressing the importance of the extradition relationship and U.S. concerns about recent adverse developments. U.S. Ambassador Jeffrey Davidow also has raised extradition issues frequently in recent months with Mexican cabinet level officials and Assistant Secretary of State Rand Beers underscored U.S. extradition concerns at a meeting on June 21 with Mexico's Ambassador to the United States Jesus Reyes Heroles and this past Spring with Mexican Deputy Foreign Minister Juan Rebolledo. These are representative contacts in recent months; others have taken place regularly for many years at both senior and junior levels. For instance, State and Justice Department officials discussed extradition matters with their Mexican counterparts at a Senior Law Enforcement Plenary on May 3 and 4, and at a Fugitives and Legal Issues Working Group meeting on March 25 and 26, 1999.

Jose Luis Del Toro, Jr.: After requesting Mr. Del Toro's provisional arrest on November 14, 1997 and making a formal extradition request on January 9, 1998, the State Department, together with the Justice Department, raised the status of the Del Toro case on a number of occasions with the Government of Mexico. The Secretary of State's June 30, 1999 letter to Mexico's Secretary of Foreign Relations expressly referred to Del Toro in addressing U.S. concerns about dilatory appeal tactics by fugitives. The case was also raised by Ambassador Davidow, as well as by U.S. officials at working group meetings. In addition, the U.S. Embassy's Judicial Attaché discussed the status of the case with Mexican officials on over 25 separate dates from November 1997 until Del Toro's extradition on July 12, 1999.

TAB 1

Congress of the United States

Washington, DC 20515

June 24, 1999

The Honorable Madeleine Albright
Secretary
Department of State
2201 C St. NW
Washington, DC 20520

Dear Madame Secretary:

On June 23, 1999, the Subcommittee on Criminal Justice, Drug Policy and Human Resources held a hearing concerning the extradition of United States criminals harbored in Mexico. The hearing was entitled "Is Mexico a Safe Haven for Murderers and Drug Traffickers?" This hearing examined the failed attempts to extradite from Mexico Jose Luis Del Toro, a cold-blooded killer who took the life of a thirty-five year old wife of a highly decorated United States Marine, and mother of two daughters and quadruplets. There are many unanswered questions as to why her killer, Jose Luis Del Toro, has not been turned over to US officials in accordance with the US-Mexico Extradition Treaty.

Del Toro is a United States citizen born and raised in Texas. As his parents were also born in the United States, he has no claim to dual citizenship. The murder took place in the home of Sheila and James Bellush in Sarasota, Florida on November 7, 1997. Immediately following this heinous offense, he fled to San Antonio, Texas leaving a trail of evidence including a fingerprint at the scene of the crime, the two murder weapons, and his bloody clothes. Del Toro's own cousin, Samuel Gonzalez, who has already pled guilty to solicitation of capital murder, is willing to testify against him.

Unfortunately, Del Toro crossed the Mexican-US border before state police could apprehend him. Mexican officials arrested him on November 20, 1997, but they have failed to turn him over to US officials. His deportation process was initiated but mysteriously halted. He is an American citizen formally charged with first degree murder, hiding behind appeal after appeal in the Mexican Justice System. His extradition has been upheld in the Mexican courts thus far, however he has appealed to the Mexican Supreme Court. The fact of the matter is that he should have been deported from Mexico immediately upon his arrest.

Testimony presented at this week's hearing indicates that Mexican officials have been uncooperative and have disseminated misleading information. They have not

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provided explanations as to when this much delayed process will be completed and Del Toro will be returned. They have not answered our questions about how he is financing his numerous and costly appeals in the Mexican courts. On several occasions Mexican officials have told the State Attorney's office in Florida that he will be returned within weeks. It is now 19 months later and there are no results.

Madame Secretary, we are very concerned that such cases, if not handled properly and efficiently, will lead to a further breakdown in our justice system.

Therefore, we respectfully request that you personally intervene in this case by bringing this matter to the attention of your counterparts in the Mexican government. Often times such issues are brushed underneath the carpet. However, you have the ability to make a difference in this case and demonstrate that the United States government will not tolerate fugitives getting away with murder by simply running across the border. We are outraged with the lack of progress in this case. Your efforts to raise this issue would be most appreciated by us and especially by the victim's family who have suffered immeasurably.

We also request that you send the Subcommittee all correspondence your Department has initiated or received concerning the Del Toro case. This is to include both written and verbal communication that has been documented. It should not be limited to your Department and Mexican officials, but should include all dialogue between you and your department and other government agencies including the President, the Department of Justice, Members of Congress, and the Florida State Attorney's Office.

It is imperative that we receive answers to our questions, and it is imperative that it is done expeditiously. If necessary, it is our intention to hold another hearing to address the progress of this case. As part of our examination we will request that both yourself and Attorney General Janet Reno personally testify to your efforts to expedite the process.

We would be most appreciative of your personal attention to this matter. As Members of Congress interested in pursuing justice in the case of Jose Luis Del Toro, we respectfully request the immediate and complete cooperation of your Department in this matter.

Sincerely,

Ms. BOREK. I don't believe so, sir.

Mr. MICA. Can you check the files? And if there are, I'd like to request—and I'll ask staff to make a formal request to the Department of State for any written communications.

Now, there was a high-level working group just a couple of weeks ago. I know the Attorney General was there. Is that correct? I think the Secretary of State was scheduled to go, but she got waylaid to go into the Balkans region and the conflict there. Who represented the Department of State at those high-level groups, Ms. Borek?

Ms. BOREK. We had the Acting Secretary for Western Hemisphere Affairs and also the Assistant Secretary for International Narcotics and Law Enforcement.

Mr. MICA. And was this case in particular——

Ms. BOREK. An Ambassador.

Mr. MICA [continuing]. Raised by those representatives?

Ms. BOREK. Sir, I believe Ms. Warren was actually present at all of the meetings.

Mr. MICA. I'm not asking about Ms. Warren. She's already testified. I'm asking about the Department of State, which is responsible to deal with these other countries. Was that raised by either of these individuals, this case?

Ms. BOREK. Not as a case. They raised the extradition——

Mr. MICA. Have either of those individuals transmitted any communications with any officials in the Mexican Government relating to this case? Can you also check that.

Ms. BOREK. I'll check that.

Mr. MICA. And provide the subcommittee with a copy.

Do you know if the Secretary of State plans to raise this as an issue now, this particular case?

Ms. BOREK. There is not a present plan to raise it. If there is usefulness in doing so, I'm sure we would.

Mr. MICA. We have had the Department of Justice testify today that this is going to be the subject of immediate and intensive consultation. As the Department of State, this whole issue of extradition and the problems we're having with deportation, who's going to participate in that or who is participating? Is that going to be the Secretary of State or some of the individuals you just mentioned?

Ms. BOREK. The plan is not final, but as I understand it would be high-level individuals, at the level that we've been discussing, short of the Secretary of State, and then if there were remaining issues, they would be raised to higher levels.

Mr. MICA. I would like staff to prepare a letter from the committee asking that this be raised, and we'll get the members to sign that both by the Secretary of State or the Secretary of State's representatives, and to the Department of Justice, the Attorney General and their representatives.

Now, you've been here before, Ms. Moreland on this issue; and you're back again, and I understand that you've testified that this is going to be the subject of immediate and intensive consultation. I will tell them, the minority and the other members of the panel, and we'll notify them that we will have another hearing on this issue. I don't know if we'll be able to do that the first week in Au-

gust or when we return in September, but if necessary, we will request the presence or subpoena both the attorney general and the Secretary of State to testify on the progress of this.

We believe this is a very, very important issue. I don't know how we're going to get attention from those—and our job is only as representatives of the people to try to make the executive branch respond to our request and what our citizens are requesting. Certainly, the Bellush family deserves justice in this case, not to mention the dozens and dozens of drug kingpins who still are at bay.

Ms. Moreland, do we have any hope on the extradition of any—I'm sorry, Ms. Moreland. Ms. Warren. I'm sorry. I'll get it straight. If I'm going to pick on you, I need to at least get your name right. I should know you very well after having you back again. Ms. Warren, is there any hope on any of the fronts in any of the cases involving Mexican nationals for extradition?

Ms. WARREN. There are many of those cases moving through their courts.

Mr. MICA. Can you tell me one? Is there one? Can we ever see one Mexican national extradited to the United States?

Ms. WARREN. Well, we have had Mexican nationals extradited——

Mr. MICA. I'm talking about major drug kingpins. I have a photographic gallery, and we can provide you with the names. Last night I submitted the names in the Congressional Record and will supply you with that. Is there any hope of getting any of those specific——

Ms. WARREN. Looking at your array here of photographs, as I understand it, through their deputy attorney general in Mexico, the courts have recently decided in favor of the extradition of Arturo Paez-Martinez. That is the case that may very well be the conflict of law case that will go to their supreme court, along with the adverse decisions that we've had. But that case is moving more swiftly now.

Mr. MICA. That may be our only hope.

Ms. Borek, one question I forgot to ask and request, the President of the United States met with the President of Mexico in the Yucatan peninsula earlier this year. Do you know if the President of the United States brought, in particular, the Del Toro case to the attention of President Zedillo then or since? And I would imagine that the Department of State would have copies of any of his communications. If so, could you provide the subcommittee with a copy of any of the above?

Ms. BOREK. Sir, I did check because you asked before and I'm informed that the President didn't raise this case in Merida. As for subsequent communications, I would have to consult with the NSC.

Mr. MICA. Would you also do that. And could we also have the staff prepare a letter to the President requesting his attention to this case.

Mr. BRADY. Mr. Chairman, if I may note that both the head of the Department of Justice, the Attorney General and the Secretary of State, Madeleine Albright, were also present at that trip in Merida. And may we ask if either of those raised this issue directly with the key people?

Mr. MICA. If they raised it is one question, and then any written communications I would like to have as part of the record. If you

would comply with that request, we would be most appreciative. I will leave the record open for 30 days without objection to provide that information. The gentleman from Maryland.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I just wanted to have a few comments before we close. I think that one of the things that has frustrated me in being in Congress is a lot of times we have motion, commotion, and emotion, and no results. And that doesn't serve anybody very well.

I'm glad to hear you say what you just said, Mr. Chairman. I mean, when you were the ranking member of the civil service—chairman. I'm sorry, chairman. Next year I will be able to call you ranking member but——

Mr. MICA. The gentleman from Maryland is recognized to continue to dream on.

Mr. CUMMINGS. But when you were the chairman, one of the things that I think we shared—and I was the ranking member of that subcommittee—is that we tried to make sure that we acted so that things got done, so that we didn't come back a month, 2, 3 months later or a year later and have the same discussions over and over again. And so I was very pleased to hear you say what you just said. And I would only echo what you have said. Some kind of way we have to try within our power to address these issues and make them No. 1 issues.

When you hear the kind of testimony that we heard today and you see those pictures, those pictures—and this will forever be imbedded in the DNA of every cell in my brain. When you have that kind of testimony, if you can't do it under these circumstances, I don't know how we're going to do it.

I'm constantly reminded that this is the most powerful country in the world and that if we can accomplish all the things that we are able to accomplish, certainly we ought to be able to pull this one off. And so I just wanted to say that. I want to thank you, Mr. Bellush, for being with us. I wish you and your family well. And you will all be in my prayers. Thank you.

Mr. MICA. I thank the gentleman. I had one more question, really, to ask Mr. Earl Moreland. And you don't have to submit your answer now. But I would like to have you submit, if you can—you have dealt with this situation and with the whole extradition process. I asked Ms. Warren and I ask you, if you could provide the subcommittee with any recommendations for changes in laws or procedures at the Federal level that we may be able to institute. Some we may not be able to make changes in. We're dealing in an international arena here. But any recommendations you might have and could think about and submit to the subcommittee, we would like to make as part of the record. If you would be so kind to provide that based on your experience.

Mr. MORELAND. Yes, sir I will. Thank you for that opportunity.

Mr. MICA. Well, the purpose of this hearing, again, was to find out if Mexico is a safe haven for murderers and drug traffickers. Unfortunately that question has to be answered today in the affirmative. I didn't hold this hearing just to pick on Mexico, but to try to hopefully bring justice at the request of one of my members who I respect very deeply, Mr. Miller, the gentleman from Florida, and for his constituent, Mr. Bellush, who has given, again, some

of the most compelling and riveting testimony I think that's ever been presented before a congressional panel, one man and one family seeking justice for their loved one.

Hopefully we can bring this to national, international attention; and as Mr. Cummings said, whatever it takes, working together, to see that justice is served. Again, we are most grateful to you, sir, for testifying, for having the courage to come forward and, again, seek justice for your wife and for your family.

And there being now, I'll—excuse me. We do have the unanimous request consent, the unanimous consent request by Mr. Souder that statement by Mrs. Mink and other Members be submitted to the record. We have another statement by Mr. Kucinich to be considered by unanimous consent. And any others? There being no objection, so ordered. There being no further business to come before this subcommittee of Congress, this meeting is adjourned.

[Whereupon, at 12:36 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

June 23, 1999

Draft Opening Statement

Ranking Member, Patsy T. Mink

Mr. Chairman, thank you for holding today's hearing on extradition.

In our prior extradition hearing, we discussed the use of extradition as a means to prosecute individuals accused of drug trafficking offenses. Drug trafficking involves committing criminal acts in several countries. Any country where any one of the illegal acts occurs, including cultivation, processing, transporting and selling, may claim a rational legal basis for arresting and prosecuting an accused person. At our last hearing, several members of this subcommittee expressed a preference that the United States criminal justice system should obtain jurisdiction over such criminal actors, even if they are foreign nationals.

Today, in our examination of the Del Toro case, we are presented with a different situation. Mr. Del Toro is an American citizen who has been charged with murder. He has fled to Mexico and is using legal means to fight his extradition from that country. The crime at issue was committed in the United States, the witnesses and evidence are in the United States and the accused is an American citizen.

Mr. Del Toro should be returned to the United States to stand trial. The Mexican Secretariat of Foreign Relations and at least one Mexican court have concluded that Mr. Del Toro should be returned to the United States. The Departments of State and Justice have worked with the Mexican authorities

to expedite Mr. Del Toro's return.

However, Mr. Del Toro has availed himself of the protections available under Mexican law. His multiple appeals have caused a two year delay in this case. As a foreign national in Mexico, Del Toro has not received second-class treatment by the Mexican judicial system. Mexico has granted him the same rights and privileges which it would grant one of its own citizens.

One day soon, Mr. Del Toro's appeals will run out and he will be returned to the United States to stand trial. At that time, I am sure that the judicial system in this country will grant him all the rights and protections to which a defendant is entitled under our constitution. At times, those protections are unpopular and are regarded as unnecessary, yet they are an integral part of our democracy.

I look forward to hearing the testimony of the witnesses.

Statement of Chairman Benjamin A. Gilman
Subcommittee on Criminal Justice, Drug Policy and Human Resources
June 22, **1999**

Thank you, Mr. Mica, for holding this important hearing today. I want to welcome Congressman Miller and Mr. Bellush before our panel this morning.

Our hearing is a about a simple search for justice. That is what we are about today. We want extradition from Mexico of an American citizen charged with a heinous crime-pre-medicated murder.

We, and the family of the victim Sheila Bellush, want and deserve straight answers why Mexico and our government aren't doing all in can in the infamous Del Toro case.

There can be no safe havens for those charged with murder and fleeing our system of justice and accountability.

Whether these criminals flee to Thailand, Europe, Mexico or elsewhere around the globe, they must be held accountable to our institutions and the laws they violate. Other nations must help us obtain that accountability. We also have a mutual obligation to do the same on our end as well.

Today's hearing isn't about extraditions of high level drug kingpins from Mexico, and the numerous problems in the Mexican legal system when the U.S. government asks for extradition of Mexican nationals involved in the illicit drug trade.

We have had hearings on that vital question of Mexican drug kingpins and extradition to the U.S. We are all too familiar with those problems and the endless delays and procedural maneuvering that goes on south of the border .

THE UNITED STATES-MEXICO EXTRADITION TREATY ESTABLISHES THE MEXICAN GOVERNMENT MAY, MAY REFUSE TO EXTRADITE PERSONS FOR CRIMES PUNISHABLE BY THE DEATH PENALTY. THE WORDS `EXTRADITION MAY BE REFUSED' IN ARTICLE 8 OF THE TREATY, THESE NONMANDATORY WORDS SUGGEST THAT THE MEXICAN GOVERNMENT COULD HAVE RETURNED MR. DEL TORO WITHOUT DELAY.

ALTHOUGH THE STATE OF FLORIDA, CLEARLY FOR GOOD REASON, WISHED TO SEEK THE DEATH PENALTY, THE PROSECUTORS IN THE CASE AGREED TO WAIVE THE DEATH PENALTY AT THE MEXICAN GOVERNMENT'S INSISTENCE.

NOW MR. DEL TORO STILL SITS IN MEXICO, APPEALING THE EXTRADITION RULING, WHILE SHEILA BELLUSH'S FAMILY IS GRIEVING, DEPRIVED OF THE JUSTICE THEY TRULY DESERVE.

I will be raising these extradition concerns and problems at a inter-parliamentary meeting with the Mexican Congress later this week.

The case before us today involves a treaty between the U.S. and Mexico in effect since 1980. It is a treaty that both we and they have an obligation to honor and implement. If it is inadequate, or can be changed, then let us move forward on that front. If it is being misused or misinterpreted, then let us raise our voices in concern.

Our hearing today will highlight that need for more accountability in the legal system, and the tragic case of injustice that is before us today.

I look forward to reviewing today's testimony.

Thank you.

ROBERT G. TORRICELLI
NEW JERSEY

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Statement of Senator Robert Torricelli
Hearing on "Getting Away With Murder, Is Mexico a Safe Haven for Killers?: The Del Toro Case"
Subcommittee on Criminal Justice, Drug Policy, and Human Resources
June 23, 1999

The Bellush Family has been through a tremendous ordeal since November 1997, when Sheila Bellush was brutally murdered in Sarasota, Florida. Her accused murderer, Jose Luis del Toro, fled to Mexico to escape prosecution in the United States. From this time forward, there has been little consolation for the Bellush Family, and a great deal of hardship. While Del Toro was apprehended in Mexico just 13 days later, a nightmare of government delays and roadblocks have prevented his extradition to the United States.

The details of Sheila Bellush's murder are shocking. By all accounts, her four 23-month old quadruplets probably witnessed their mother's murder, and wandered around in her blood trying to wake her up for as many as 4 or 5 hours before the 13-year old daughter came home from school and found Mrs. Bellush's body.

There is overwhelming evidence that Del Toro was involved in the murder. The Sarasota police believe that he was, in fact, the gunman in a murder-for-hire scheme. Del Toro's cousin works at a golf course where Bellush's ex-husband plays golf. That cousin and one of the ex-husband's golfing partners have been arrested as co-conspirators. On the day of the murder, Del Toro asked directions to the Bellush house and left a clear fingerprint at the scene. He had directions to the Bellush house in his car, which was seen near the crime, and he stayed in a nearby motel, where a .45 caliber bullet was found, like the one used in the murder.

The Mexican government has refused his extradition unless the United States agrees to waive the death penalty. Amazingly, we approved such a provision in the U.S.-Mexico Extradition Treaty of 1978. This agreement allows Mexico the right to refuse extradition if the death penalty may be applicable in the case. In the Bellush case, this provision has allowed Del Toro to evade prosecution for over a year while awaiting his extradition. He appealed a Mexican Foreign Ministry decision to proceed with extradition, and to date there has been no apparent progress.

I became involved in this case when Jamie Bellush, moved their six children to Newton, New Jersey and sought my help with Del Toro's extradition. Since then, I have been in constant contact with the Justice and State Departments and the Mexican Embassy urging them to move quickly in returning Del Toro. It is clear that more needs to be done to help the Bellush Family, and prevent future tragedies from occurring on this scale. I introduced a resolution last Congress expressing the Sense of the Senate that the United States should renegotiate its extradition treaty with Mexico to prevent Mexico from refusing to extradite a suspect if the death penalty might be applicable in the case.

While the Senate did not act upon this measure, I was pleased that my colleague, Congressman Dan Miller introduced a similar measure which passed the House on September 15 by voice vote. I look forward to continuing to work with him, and other Members of Congress, to ensure that Mr. Bellush continues to received the support of this Congress in obtaining justice for his wife's brutal murder.

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Congressman Dennis Kucinich
"Is Mexico a Safe Haven for Murderers?"
June 23, 1999

STATEMENT

Mr. Chairman, one of the most important oversight aspects under the jurisdiction of this committee is to ensure that U.S. counternarcotics efforts are effective, addressing the all aspects of this multifaceted problem.

An important component of our counternarcotics effort is the ability of law enforcement officials to apprehend and prosecute individuals who commit drug related crimes. Because many criminals flee the country, the United States has developed extradition treaties with other governments to aid in bringing felons to justice.

The November, 1997 murder of Sheila Bellush by Jose Luis Del Toro highlights the need for congressional inquiry into the extradition process. Since fleeing to Mexico in 1997, Mr. Del Toro was apprehended by Mexican authorities. Currently, Mr. Del Toro is in jail awaiting the decision of an appeal to the Mexican courts since March of 1998. It is important to recognize that the Mexican judicial system allows for appeals to multiple courts. However, it is also important that Congress and this subcommittee evaluate our current extradition treaties and determine what, if any, reforms are required.

I look forward to the testimony of the witnesses and hope that the Congress and this subcommittee will closely evaluate the findings of this inquiry.

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