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Title
Extradition and International Cooperation: Lessons from the U.S.-Colombia Relationship

Permalink
https://escholarship.org/uc/item/6b0010z7

Journal
UCLA Journal of International Law and Foreign Affairs, 29(1)

ISSN
1089-2605

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Publication Date
2025

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Extradition and International Cooperation: Lessons from the U.S.-Colombia Relationship

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Abstract

This Article provides a detailed examination of U.S.-Colombia extradition policy and the bilateral context in which they occur and makes at least two important contributions. First, using a novel dataset provided by the U.S. Marshals Service and corroborated by data from the Colombian Ministry of Law and Justice, we demonstrate recent empirical trends in the volume and type of extraditions from Colombia to the United States. Second, drawing insights from the internationalist school and theories of asymmetrical international relations, we explain how at various moments Colombia, despite being the weaker or smaller partner in the bilateral relationship, was able to exercise some measure of autonomy to pursue goals that contradicted U.S. foreign policy preferences, and later adapt the use of extradition to promote its own domestic political goals.

Acknowledgements

The authors would like to acknowledge the valuable research assistance provided by Grace Caponetto.

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Introduction

In the spring of 2022, the Colombian government extradited Dairo Antonio Úsuga David, a.k.a. "Otoniel," to the United States to face drug trafficking charges.[1] Otoniel is the alleged leader of the *Clan del Golfo*, a Colombian paramilitary drug trafficking organization reported to be one of the largest distributors of cocaine in the world.[2] In an act of protest against Úsuga's arrest, the *Clan del Golfo* imposed a four-day shut-down of 138 municipalities in northern Colombia that included stay-at-home orders, suspension of public transportation and services, and widespread business closures. Alleged violations of the order led to at least six deaths and widespread destruction of property, including 180 automobiles.[3]

To many, this event was reminiscent of the 1990s, when drug traffickers like Pablo Escobar used extreme violence to push back against government attempts to extradite them to the U.S.[4] It also evoked memories of a time when U.S. frustrations with Colombia's unwillingness to cooperate led Congress to condition bilateral aid on formal "certification" of the steps taken by the Colombian government to protect human rights and advance counter-narcotics cooperation.[5] During the

1. *Dairo Antonio Úsuga, Alias 'Otoniel',* InSight Crime (Jan. 30, 2023), https://insightcrime.org/colombia-organized-crime-news/dario-antonio-usuga-otoniel/.

2. Sophia Cox et al., *Colombian Drug Lord 'Otoniel' Sentenced to 45 Years in Prison by US Court*, CNN (Aug. 8, 2023), https://www.cnn.com/2023/08/08/us/otoniel-dairo-antonio-usuga-david-sentence-prison/index.html.

3. Astrid Suarez, *Colombia Cartel Shuts Down Towns Over Leader's Extradition,* AP News (May 10, 2022), https://apnews.com/article/travel-sports-soccer-caribbean-extradition-158cfb095305d7dc4e03802099ab6b5a.

4. Timothy Ross, *Escobar Escape Humiliates Colombian Leaders*, Guardian (July 24, 1992), https://www.theguardian.com/world/1992/jul/24/colombia.fromthearchive.

5. *Colombia: Flawed Certification Squanders U.S. Leverage*, H.R. Watch (Jan. 22, 2004),

1970s, 80s, and 90s, U.S. authorities regularly complained that drug traffickers were protected by Colombian officials, who often appeared to drag their feet or actively resist cooperation. In 1983, for example, Colombian President Belisario Betancur (1982–1986) flatly refused to extradite Jesus Mejía Romero and twenty-two other alleged drug traffickers, insisting that they be tried at home.[6] Various court decisions also prevented the extradition of other traffickers during the 1980s, and legislators banned the practice altogether from 1991–1997.[7] During that time, resisting U.S. extradition became a question of protecting national sovereignty, albeit at the behest of Colombian traffickers who purportedly preferred a tomb in Colombia to a jail cell in the United States.[8]

Since the restoration of the U.S.-Colombia extradition treaty in 1997, there has been a dramatic reversal. Today, no country in the world has extradited more fugitives to the U.S. than Colombia. In total, according to Colombia's Ministry of Law and Justice, Colombia extradited 2,789 suspects to the U.S. between 1997 and March 31, 2023. Of these, ninety-four percent were Colombian citizens, and eighty-two percent were charged by the U.S. government with drug trafficking crimes.[9] What accounts for this dramatic change in Colombian extradition policy? Why did Colombia refuse to extradite its citizens to the U.S. during the early phases of the war on drugs, only to then do an about-face and become the world's single most prolific exporter of fugitives?

A traditional power politics explanation would suggest that, as the stronger actor in a consistently asymmetric relationship, the U.S. can reliably dictate Colombian extradition policy. Yet for years, Colombia successfully fended off U.S. demands for extradition during a time when it was otherwise highly cooperative and even deeply dependent on the U.S. in some areas of the bilateral relationship. To attain a better understanding of the use of extradition in the U.S.-Colombia relationship, there

https://www.hrw.org/news/2004/01/22/colombia-flawed-certification-squanders-us-leverage.

6. *See* Reuters, *Colombia Bars Extradition*, N.Y. Times (Nov. 14, 1983), https://www.nytimes.com/1983/11/14/world/colombia-bars-extradition.html; *see also* Nicholas Gage, *Lack of Treaties Hinders Drug Control Effort Here*, N.Y. Times (Apr. 24, 1975), https://www.nytimes.com/1975/04/24/archives/lack-of-treaties-hinders-drug-control-effort-here.html.

7. Luz E. Nagle, *The Rule of Law or the Rule of Fear: Some Thoughts on Colombian Extradition*, 13 Loy. L.A. Int'l & Compar. L. Rev. 851 (1991); Joshua H. Warmund, *Removing Drug Lords and Street Pushers: The Extradition of Nationals in Colombia and the Dominican Republic*, 22 Fordham Int'l L. J. 2373, 2387–2388.

8. *See* Jon Lee Anderson, *The Afterlife of Pablo Escobar*, New Yorker (Feb. 26, 2018) https://www.newyorker.com/magazine/2018/03/05/the-afterlife-of-pablo-escobar (noting that the phrase "better a tomb in Colombia than a cell in the United States" is often attributed to "The Extraditables" of Colombia).

9. Grupo de Extradiciones (DAI), *Report on Extraditions Between 1997 and March 31, 2023*, Ministerio de Justicia y Del Derecho de Colombia (Apr. 12, 2023).

is a need for a careful analysis of the trends we have seen over the last few decades and the underlying political dynamics that have affected them. Until recently, such an analysis was impossible because of the difficulty of gaining access to detailed data on extradition flows. Partly as a result, U.S.-Colombian extradition policy has largely been the domain of legal scholars rather than political scientists or international relations scholars.[10]

This paper provides a detailed examination of U.S.-Colombia extradition policies and the bilateral context in which they occur and makes at least two important contributions. First, using a novel dataset provided by the U.S. Marshals Service and corroborated by data from the Colombian Ministry of Law and Justice, we demonstrate recent empirical trends in the volume and type of extraditions from Colombia to the U.S. Second, drawing insights from the internationalist school and theories of asymmetrical international relations, we explain how at various moments Colombia, despite being the weaker or smaller partner in the bilateral relationship, was able to exercise some measure of autonomy to pursue goals that contradicted U.S. foreign policy preferences, and later adapt the use of extradition to promote its own domestic political goals.

Background on the U.S.-Colombia Relationship

The Republic of Gran Colombia achieved de facto independence from Spain in 1819 and was recognized by the U.S. in 1822, initiating a long and (generally) friendly relationship between the two nations.[11] To be sure, the U.S.'s repeated use of military intervention and "dollar diplomacy" in the early years of the twentieth century created tensions with other countries in the Americas, including Colombia.[12] For exam-

10. *See, e.g.,* Igor Kavass, *Colombia: Supreme Court Decision on Law Concerning the Extradition Treaty Between Colombia and the United States*, 27 Int'l Legal Materials 492 (1988); Nagle, *supra* note 7; Joshua H. Warmund, *Removing Drug Lords and Street Pushers: The Extradition of Nationals in Colombia and the Dominican Republic*, 22 Fordham Int'l L. J. 2373 (1999); William Magnuson, *The Domestic Politics of International Extradition*, 52 Va. J. Int'l L. 839 (2012).

11. *See* Jorge Orlando Melo, Historia Mínima de Colombia 128–129, 131, 142, 146–147 (2017); Office of the Historian, *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Colombia*, U.S. Dep't. of State, https://history.state.gov/countries/colombia (last visited Mar. 28, 2025). Between 1826 and 1830, the federation of Gran Colombia went through a series of internal conflicts, and by 1831 it had dissolved into the separate sovereign states of Venezuela, Ecuador, and New Granada. The Republic of New Granada later became known as the Grenadine Confederation in 1858. It was renamed the United States of Colombia in 1863, and in 1886 it finally became the Republic of Colombia. It was recognized by the U.S. in 1822.

12. In the first three decades of the twentieth century, U.S. administrations sought to bolster its leverage in the Western Hemisphere by encouraging U.S. banks to take over the debts of Central American and Caribbean countries facing financial difficulty. Dubbed "dollar diplomacy,"

ple, after Colombia's Congress refused to ratify the Hay-Herrán Treaty, which would have authorized the construction of a trans-isthmian canal on its territory, U.S. President Theodore Roosevelt supported the independence of Panama.[13] In particular, Roosevelt's decision to send U.S. troops to "defend" the sovereignty of the rebel territory was seen by Colombian authorities as a betrayal, and caused deep animosities that an offer of reparations did little to soften.[14] U.S. efforts to pressure the Colombian government, this time to take actions against its own citizens, were on full display in the 1928 "Banana Massacre." After refusing to work until basic work conditions were improved, striking workers and their families were violently assassinated by Colombian soldiers at the behest of their employer, the U.S.-owned United Fruit Company.[15]

Nonetheless, in the post-war era, the governments of the U.S. and Colombia were gradually drawn together by their mutual interests. U.S. efforts to prevent the spread of communism during the Cold War aligned well with the interests of the Colombian political establishment.[16] Despite the bitter and often violent rivalry between the dominant liberal and conservative parties, the political elite generally shared the belief that a strong partnership with the U.S. was the best way to combat the growth and influence of leftist insurgency groups. In Colombia, threats to the establishment included the National Liberation Army (ELN) formed by Cuban-influenced insurgents in 1964, and the agrarian self-defense forces that evolved into the Revolutionary Armed Forces of Colombia (FARC) in 1966.[17] In response, both liberal and conservative governments welcomed U.S. military support and training (e.g. via the School of the Americas), coordinated counterinsurgency strategies (e.g. Plan Lazo), and economic resources (e.g. Alliance for

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this approach included promises to help to aid the banks in recouping their investments, often by seizing customs houses by force and using the military to guarantee repayment of debts. Peter Smith, Talons of the Eagle: Latin America, The United States, and The World (2008).

13. The Hay-Herran Treaty, Theodore Roosevelt CTR. Encyclopedia Foreign Aff's., https://www.theodorerooseveltcenter.org/Learn-About-TR/TR-Encyclopedia/Foreign-Affairs/Hay-Herran-Treaty (last visited Aug. 07, 2024).

14. Theodore Roosevelt & Marco Fidel Suárez, *Two Presidents' Views: "I Took the Isthmus" and "I Was Dispossessed, Insulted, and Dishonored to No End"*, *in* Colombian Reader (2017).

15. Jorge Enrique Elías Caro & Antonio Vidal Ortega, *The Worker's Massacre of 1928 in the Magdalena Zona Bananera*, Revista Digital de Historia y Arqueologia Desde el Caribe Colombiano (2012).

16. Michael J. LaRosa & Germán Mejía, Colombia: A Concise Contemporary History 231–232 (3d ed. 2023).

17. *See* Winifred Tate, Counting the Dead: The Culture and Politics of Human Rights Activism in Colombia 43 (2007); *see also* Garry Leech, The FARC: The Longest Insurgency 15–17 (2011).

Progress) in what became a decades-long fight to defeat the leftist armed groups that aimed to overthrow the government in Bogotá.[18]

The deep bilateral security cooperation during the Cold War also served as a foundation for a coordinated effort to combat drug trafficking in the latter part of the twentieth century. Following President Richard Nixon's decision in 1971 to make the "War on Drugs" a top national priority, and the subsequent creation of the Drug Enforcement Administration, the U.S. dramatically increased its counter-drug operations around the world.[19] These developments coincided with and became a response to the rise of powerful drug cartels in Colombia. The Medellín Cartel (led by Pablo Escobar and Carlos Lehder) and the Cali Cartel (led by the Rodríguez Orejuela brothers) were responsible for trafficking mass quantities of cocaine (and, to a lesser extent, heroin and marijuana) worth billions of dollars to the U.S. and Europe from the 1970s to the mid-1990s.[20] Gaining the upper hand on these cartels was made more difficult by the Colombian government's long-simmering civil war against the ELN and the FARC. The government also had a complicated relationship with right-wing paramilitary units, since all of these organizations used drug trafficking as a means of generating revenue to fund their political, military, and criminal activities.[21]

After failed efforts to negotiate a peace agreement with rebel and paramilitary groups in the late 1990s, the government of President Andrés Pastrana (1998–2002) appealed to the U.S. for greater assistance in bolstering Colombian national security. The U.S. was eager to work with Pastrana, both as a way to combat leftist insurgents and to reaffirm its commitment to the War on Drugs.[22] Since 1986, the U.S. Congress required the State Department to formally report on and certify the counternarcotics measures taken by foreign governments, and Pastrana's willingness to cooperate created an important opening after a contentious

18. Lesley Gill, The School of the Americas: Military Training and Political Violence in the Americas (2004); *see also* Stephen J. Hadley & Rachel Kleinfeld, Fostering a State-Society Compact 3 (2016).

19. Ed Vulliamy, *Nixon's 'War on Drugs' Began 40 Years Ago, and the Battle is Still Raging*, Guardian (Jul. 23, 2011), https://www.theguardian.com/society/2011/jul/24/war-on-drugs-40-years.

20. Elaine Shannon, *The Cali Cartel: New Kings of Coke*, Time (Jul. 1, 1991), https://time.com/archive/6718034/the-cali-cartel-new-kings-of-coke/.

21. John Otis, *The FARC and Colombia's Illegal Drug Trade*, The Wilson Ctr. Latin Am. Program (Nov. 2014), https://www.wilsoncenter.org/publication/the-farc-and-colombias-illegal-drug-trade.

22. William J. Clinton, *The President's News Conference with President Andres Pastrana of Colombia*, The Am. Presidency Project: UC Santa Barbara (Oct. 28, 1998), https://www.presidency.ucsb.edu/documents/the-presidents-news-conference-with-president-andres-pastrana-colombia.

period with his predecessor, Ernesto Samper (1994–1998). The result was "Plan Colombia," a multi-year, multi-billion-dollar initiative aimed at strengthening the Colombian state by arming and training the military to fight drug trafficking, eradicate the production of illegal narcotics, and, to a lesser extent, promote economic development.[23] After the terrorist attacks of 9/11 and the subsequent U.S. focus on combating global terrorism, the Andean region received renewed attention as a hotspot of "narcoterrorism."[24] With the cooperation of Colombian presidents Álvaro Uribe (2002–2010) and Juan Manuel Santos (2010–2018), over the next twenty years, the U.S. invested more than $12 billion in security and development aid in Colombia and neighboring countries.[25]

Given the initial decline in the production of illicit drugs and gradual, but significant, improvements to the country's security situation, including the eventual negotiation of a peace agreement for rebel groups and paramilitaries to cease hostilities, many argue that Plan Colombia was a success.[26] Indeed, some U.S. government officials have pointed to it as a model and one of the most successful U.S. foreign policies of the past several decades.[27] There is little doubt that generous and sustained U.S. assistance from the late 1990s to the mid-2010s helped strengthen the Colombian government and put it in a position to both disrupt the leadership structures of the country's drug cartels and gain the upper hand against leftist guerrilla groups.[28] Extradition was a key element of this strategy: by sending over 2000 suspects facing drug trafficking charges to the U.S. between 1997 and early 2023, the two countries were able to gut the Medellín and Cali cartels and pressure groups like the FARC to come to the bargaining table.[29]

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23. Cong. Rsch. Serv., Colombia: Background and U.S. Relations 28 (Dec. 16, 2021), https://crsreports. congress.gov.

24. Emma Bjornehed, *Narco-Terrorism: The Merger of the War on Drugs and the War on Terror*, 6 Glob. Crime 305 (2004).

25. Cong. Rsch. Serv., *supra* note 23.

26. U.S. Global Leadership Coalition, Plan Coalition: A Development Success Story (2024), https://www.usglc.org/resources/plan-colombia-development-success-story/.

27. Arlene Ticknor et. al., *Revisiting the Supposed Success of Plan Colombia*, Inst. For Glob. Aff's. (Oct. 27, 2022), https://instituteforglobalaffairs.org/2022/10/revisiting-the-supposed-success-of-plan-colombia/ (noting that, at the beginning of his term, President Biden claimed that Plan Colombia was one of "the most successful foreign policy undertakings of the last half century"); Cong. Rsch. Serv., *supra* note 23 (demonstrating that President Biden's statement echoes the words of former U.S. Ambassador to Colombia, William Brownfield, in 2009, describing Plan Colombia as "the most successful nation-building exercise that the United States has associated itself with perhaps in the last 25–30 years").

28. National Planning Department (DNP) & Department of Justice and Security (DJS), Plan Colombia Profress Report, 1999–2005 41–42, (2006).

29. Grupo de Extradiciones, *supra* note 9.

However, critics point out that U.S.-Colombian counter-drug cooperation came at a high cost in terms of human lives and treasure and ultimately failed to achieve its aims of reducing drug cultivation and trafficking.[30] For example, the partnership between the two governments did relatively little to dismantle or disrupt the activities of right-wing paramilitary organizations that worked on behalf of the government and large landowners to combat leftist insurgents, leading to widespread death, displacement, and human rights abuses.[31] Once the cartels and groups like the FARC and ELN were subdued, there was a wider opening for paramilitary organizations to fill the drug trafficking void, and these groups played a disproportionate role in committing human rights abuses.[32] By 2014, there was an undeniable increase in coca cultivation and cocaine production, both of which are now at historically high levels.[33] Moreover, despite a peace agreement with the FARC in 2016, and a temporary ceasefire with the ELN beginning in 2023, many armed groups are still actively engaged in a broad range of illicit activities from drug trafficking to oil theft and illegal mining.[34] Thus, some argue that rather than effectively addressing the roots of the problem, Plan Colombia's reliance on aggressive militarization did little to actually resolve the country's insecurity crisis.[35] These critics argue that Plan Colombia was instead

30. *See generally* Addicted to Failure: U.S. Security Policy in Latin America and the Andean Region (Brian Loveman, ed., 2000); Ted Galen Carpenter, Bad Neighbor Policy: Washingtons Futile War on Drugs in Latin America (2003); María Clemencia Ramírez Lemus, Kimberly Stanton & John Walsh, *Colombia: A Vicious Circle of Drugs and War*, *in* Drugs and Democracy in Latin America: The Impact of U.S. Policy (Coletta A. Youngers & Eileen Rosin, eds., 2004); Jonathan D. Rosen, The Losing War: Plan Colombia and Beyond (2014).

31. *See generally* Aldo Civico, The Para State: An Ethnography of Colombia's Death Squads (2016); Michael Evans, *Paramilitaries as Proxies: Declassified Evidence on the Colombian Army's Anti-Guerrilla "Allies"*, National Security Archive Electronic Briefing Book No. 166 (2005); David Schwam-Baird, *Frankenstein in Colombia: America's Policy Missteps and the Paramilitaries*, 32 J. Third World Stud. 123 (2015).

32. Howard LaFranchi, *Human Rights: A Casualty of Colombia's Drug War*, Christian Science Monitor (Sept. 4, 2000), https://reliefweb.int/report/colombia/human-rights-casualty-colombias-drug-war.

33. UNODOC, Survey of Territories Affected by Coca Cultivation (2021), https://www.unodc.org/unodc/ en/crop-monitoring/?tag=Colombia.

34. Luis Jaime Acosta, *Colombian Armed Groups and Gangs Have 17,600 Members, Intelligence Reports Find*, Reuters (April 13, 2023), https://www.reuters.com/world/americas/colombian-armed-groups-gangs-have-17600-members-intelligence-reports-find-2023–04–13/. Luis Jaime Acosta, *Colombia's Illegal Armed Groups Grew in 2023–Secret Security Report,* Reuters (May 7, 2024), https://www.reuters.com/world/americas/colombias-illegal-armed-groups-grew-2023-secret-security-report-2024–05–07/; *see also*, Oliver Griffin, *Colombia's Oil Theft Soars, Leaving Trail of Environmental Harm*, Reuters (Dec. 23, 2022), https://www.reuters.com/world/americas/colombias-oil-theft-soars-leaving-trail-environmental-harm-2022–12–23/.

35. Christy Thornton, *The U.S. Has Led the War on Drugs Abroad for Decades, and It's Been a Staggering Failure*, N.Y. Times (Sept. 7, 2022), https://www.nytimes.com/2022/09/07/

responsible for hundreds of thousands of deaths and rampant human rights abuses, as well as deforestation and environmental degradation, which, taken together, prolonged the internal conflict and led to massive internal displacement and economic instability.[36]

Despite the shortcomings of Plan Colombia, the two countries have undeniably forged deeper cooperation in other policy areas over the last two decades.[37] One important accomplishment was the U.S.-Colombia Trade Promotion Agreement (CTPA), which entered into force in 2012 and since then has facilitated an increase in bilateral trade and U.S. foreign direct investment in Colombia.[38] Additionally, the U.S. pledged hundreds of millions of dollars to promote economic development and strengthen Colombia's democratic institutions in the wake of the government's 2016 peace deal with the FARC.[39] More recently, the Biden administration sent millions of COVID-19 vaccines to Colombia, and in 2022 designated Colombia a Major Non-NATO Ally in recognition of 200 years of diplomatic relations and the country's consistent support of U.S. foreign policy priorities.[40]

Sustained and close cooperation with the U.S. on counter-narcotics and other issues has contributed to the view that Colombia has adopted a relatively servile posture towards U.S. security preferences. In the words of Hinojosa (2007), "Colombia largely acquiesces to U.S. pressures and does not publicly challenge the United States or U.S. policy."[41] With specific regard to extradition, there is a general perception that Colombia has consistently bent to U.S. pressure, especially

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opinion/colombia-drug-war-us.html.

36. 15th Anniversary of Plan Colombia: Learning from Its Successes and Failures, Wash. Office on Latin America (Feb. 1, 2016).

37. Sibylla Brodzinsky, *Colombia's 'Parapolitics' Scandal Casts Shadow Over President*, Guardian (Apr. 23, 2008), https://www.theguardian.com/world/2008/apr/23/colombia (U.S. members of Congress have periodically called for more conditions on U.S. aid to Colombia, especially in the lead up to the ratification of the CTPA and in the aftermath of the 2008 "parapolitics" scandal in which President Uribe's cousin and other close allies were charged with collaborating with and protecting right-wing paramilitaries from prosecution); Congress of the United States, Letter to Secretary Blinken (May 14, 2021) https://perma.cc/JV29–2RE3 (demonstrating that similar calls occurred after the Duque administration's brutal crackdown on demonstrations against its proposed tax reform in 2021).

38. *See* Congressional Research Service, The U.S.-Colombia Free Trade Agreement: Background and Issues (2022).

39. Cong. Rsch. Serv., *supra* note 23.

40. President Joseph Biden, *Remarks by President Biden and President Duque of the Republic of Colombia Before Bilateral Meeting*, The White House (Mar. 10, 2022), https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/10/remarks-by-president-biden-and-president-duque-of-the-republic-of-colombia-before-bilateral-meeting/.

41. Victor J. Hinojosa, Domestic Politics and International Narcotics Control: U.S. Relations with Mexico and Colombia, 1989–2000, 1 (2007).

given the number of fugitives sent to the U.S. since the early 2000s amid increased security cooperation through Plan Colombia. To better understand these trends, below we look at newly available data on extraditions between Colombia and the U.S.

Trends in Extradition

To provide a detailed analysis of the evolution of U.S.-Colombian cooperation on international extraditions, we reviewed publicly reported information from media reports and government agencies. We also submitted multiple requests to U.S. government agencies in an attempt to identify the available official data on extraditions and other types of removals (including deportation, expulsion, MLAT agreements, and other removal procedures). Ultimately, we obtained a dataset of extraditions handled by the U.S. Marshals Service (USMS), which is the primary U.S. law enforcement agency responsible for managing extraditions. The cleaned dataset consists of 14,512 unique cases involving removals between the U.S. and other countries from 2002 to 2021. Unfortunately, the dataset does not include data on the number of extraditions between Colombia and the U.S. before or immediately following the 1997 constitutional reform. However, the Colombian Ministry of Justice and Law (*Ministerio de Justicia y Derecho*, MJD) reports that a total of fifty individuals were extradited between 1997 and 2001.[42] All of these cases were pursuant to narcotics charges or related charges, per the terms of the 1997 constitutional reform.[43]

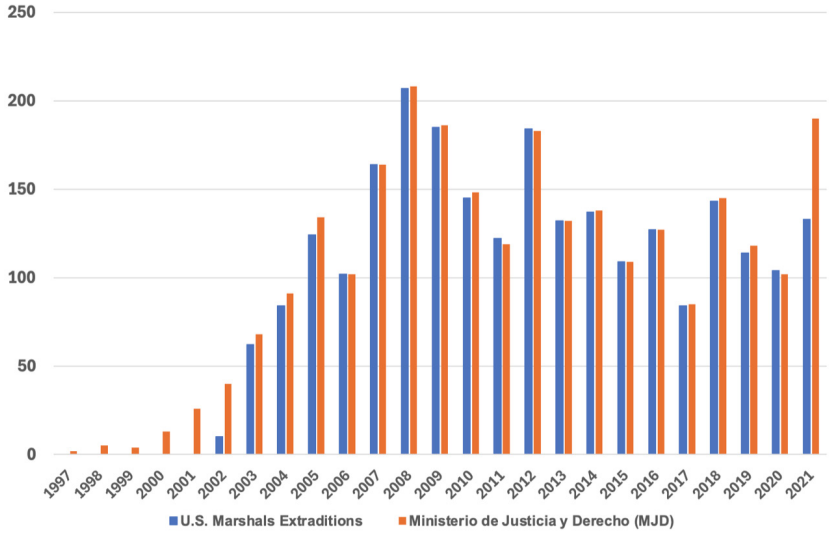
A quick glance at the data would appear to confirm claims that Colombia has been a compliant partner in response to U.S. demands. For example, Figure 1 illustrates how quickly and dramatically Colombia sent fugitives to face justice in the U.S. after the implementation of Plan Colombia in 2001. Indeed, data from both the MJD and the USMS demonstrate a substantial increase in the number of extraditions from 2002 to an all-time peak in 2008, when MJD reported 207 cases and USMS reported 208. Thereafter, the numbers edged gradually lower and tended to range between 100–150 extraditions per year

42. Grupo de Extradiciones, *supra* note 9.

43. *Colombia Extradites Drug Suspect to U.S.*, Wash. Post (Nov. 22, 1999). In 1997, the extradition of Colombian nationals was reauthorized was 1998, which saw the extraditions of Jaime Orlando Lara (the first Colombian national extradited in eight years), as well as Martin Allen Ebright (a U.S. national), Fernando Jose Flores (a Venezuelan national), and Sergio Gonzalez (a Cuban national); *see also* Report on International Extradition Submitted to Congress Pursuant to Section 3203 of the Emergency Supplemental Act, 2000, as enacted in the Military Construction Appropriations Act, 2001, Public Law 106–246 Related to Plan Columbia, U.S. Dept. of State (Jan. 17, 2001), https://2009–2017.state.gov/s/l/16162.htm.

through 2021.[44] Furthermore, almost ninety percent of all extradition cases from Colombia involved Colombian citizens charged with narcotics offenses (see Figures 2 and 3).

Figure 1: Number of Extradition Cases from Colombia to the U.S., 1997–2021



Source: Ministerio de Justicia y Derecho; U.S. Marshals Service.

Figure 2: U.S. Extradition Cases from Colombia by Citizenship, 2002–2021

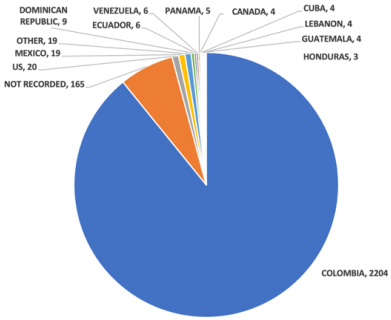
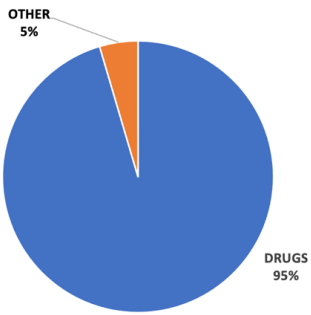


Figure 3: U.S. Extradition Cases from Colombia by Charge, 2002–2021



Source: U.S. Marshals Service

44. The minor discrepancies between these two sources of information appear to be attributable to differences in reporting periods and the fact that not all extraditions to the United States are handled by the USMS. Still, it is worth noting that in most years there is very close alignment between the figures reported by the two government agencies.

As noted earlier, these data appear to substantiate claims that Colombia has been acquiescent to U.S. demands and that increases in extradition occurred in parallel with Plan Colombia. Indeed, the sheer number and single-minded focus of these extraditions contributes to the appearance that the U.S. has, in effect, dictated Colombia's counternarcotics efforts over the past twenty-five years. However, this view of U.S.-Colombian extradition ignores the numerous complexities and subtleties that have granted a substantial degree of agency to national and subnational actors in Colombia since well before the advent of Plan Colombia. In other words, we argue that rather than simply complying with U.S. demands for extradition at critical points and in different ways, Colombian authorities have shaped the terms of the relationship, defying the standard expectations of asymmetrical power politics. Thus, to better understand the course of U.S.-Colombian extraditions, we look to international relations theories that closely examine the options smaller states have in order to navigate their interactions with larger states.

Theorizing Colombian Cooperation on Extraditions

International relations theorists generally agree that all states are constrained by the material resources that they have available. Realist and neorealist scholars further argue that states operate in an anarchic environment where their material capabilities (e.g., military strength, economic resources, and geographical location) necessarily establish their power—that is, their degree of control—relative to other states.[45] For example, according to Morgenthau, "When we speak of the political power of the United States in Central America, we have in mind the conformity of the actions of Central American governments with the wishes of the government of the United States."[46] Importantly, when comparing the "distribution of capabilities" among states that shape the overarching structures of the international system, such theories generally presume that smaller states have limited capabilities and are therefore more likely to acquiesce to the preferences of larger states.[47]

However, in the field of international relations, there has been a growing body of literature challenging the traditional realist perspective that emphasizes material constraints on state behavior. For example,

45. *See* Hans J. Morgenthau, Politics Among Nations: The Struggle for Power and Peace 73–105 (1948); *see also* Kenneth N. Waltz, Theory of International Politics 114–128 (1979).

46. Morgenthau, *supra* note 45 at 30.

47. Waltz, *supra* note 45 at 194.

constructivism offers various alternatives to pure power-based realist theories by emphasizing the role of ideas, norms, and identities in shaping state behavior. That is, constructivist scholars argue that states can overcome their material constraints by influencing ideas and normative frameworks in order to garner support and legitimacy for their actions.[48] In this view, states, regardless of size, can shape international outcomes through strategic maneuvering and shrewd diplomacy.

In a similar vein, scholars from the internationalist school emphasize the need to include multiple state perspectives in the analysis (rather than focus solely on great powers), and those from the "small state" school focus on the ways in which the smaller states are sometimes able to utilize their characteristics and talents in ways that allow them to exercise some degree of autonomy, even in their asymmetrical relationships with larger states. Early scholars of small state politics argue that small states are often nimbler than larger states, excelling at diplomatic negotiations and developing innovative methods for resolving potential conflicts, especially in "niche" areas of diplomacy that are of special interest to them. For example, Elman (1995) offers the U.S. case as an example of the way that the internal decision-making of small states can shape their responses in order to overcome their circumstances.[49] Similarly, Easterly and Kraay (2000) argue that small states have a remarkable flexibility and adaptability to external circumstances and pressures, despite their limited population size, economic capacity, and military strength; in fact, in many cases, the relative disadvantages of small states belie higher proportional capabilities per capita when compared to larger states, such as in economic growth.[50] These capabilities have been particularly advantageous as increased globalization, stronger international institutions, and competition among major powers have granted small states more degrees of freedom in the post-WWII era.[51]

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48. Martha Finnemore, The Purpose of Intervention: Changing Beliefs About the Use of Force 5, 23 (2004) (highlighting that the agency of states in constructing and contesting international norms, which offers opportunities for small states to play a role through advocacy and coalition-building).

49. Miriam Fendius Elman, *The Foreign Policies of Small States: Challenging Neorealism in its Own Backyard*, 25(2) Brit. J. Pol. Sci. 171, 173 (1995).

50. William Easterly & Aart Kraay, *Small States, Small Problems? Income, Growth, and Volatility in Small States* 28 World Dev. 2013, 3 (2000).

51. *See* Baldur Thorhallsson & Anders Wivel, *Small States in the European Union: What Do We Know and What Would We Like to Know?,* 19 Cambridge Rev. Int'l Aff. 651 (2009); *see also* Andrew F. Cooper et al., The Diplomacies of Small States: Between Vulnerability and Resilience (2009); Jack Corbett & John Connell, *All the World is a Stage: Global Governance, Human Resources and the 'Problem' of Smallness,* 28(3) Pac. Rev., 435 (2015).

With specific regard to Latin America, it is no surprise that those working in the region have been at the forefront of analyses that center on the agency of small state actors. For example, Carlos Escudé's "peripheral realism" encouraged a reconsideration of anarchy as a defining feature of the international system for smaller, weaker states.[52] Meanwhile, scholars like Arlene Tickner question the purported universalism of concepts like sovereignty and security for post-colonial and small states.[53] There are also a number of Latin American scholars whose work focuses on the foreign policy interests and strategies used in the region and with the U.S.[54]

Most relevant to our analysis is the work of Tom Long whose work highlights the agency and creativity with which small states have been able to achieve their goals in asymmetrical relationships.[55] He acknowledges that power asymmetries constrain and influence state interests but, rather than assume that power differences lead to predictable outcomes, he argues that it is important to examine when, why, and how smaller states are able to exert influence and achieve their goals in their interactions with much larger or stronger counterparts. His work helps us reconceptualize power dynamics in asymmetrical relationships as multifaceted and relational, and therefore more nuanced than they may appear on the surface.[56]

In order to understand how small states exercise influence, Long emphasizes the need to clarify how the policy or problem is understood by both states and the interaction of those understandings. That is,

52. Luis Schenoni & Carlos Escudé, *Peripheral Realism Revisited*, 59 Revista Brasileira De Política Internacional 1 (2016), https://www.scielo.br/j/rbpi/a/X5zyX4f6qY8hYk5hWt3Rhhy/?format=pdf&lang=en.

53. *See generally* Arlene B. Tickner, *Autonomy and Latin American International Relations Thinking*, *in* Routledge Handbook of Latin America in the World 74–84 (Jorge I. Domínguez & Ana Covarrubias eds., 2015); Carlos Escudé, *Realism in the Periphery, in* Routledge Handbook of Latin America in the World 45–57 (Jorge I. Domínguez & Ana Covarrubias eds., 2015).

54. *See* Ana Covarrubias, *Los Principios y la Política Exterior de México*, En Busca De Una Nación Soberana: Relaciones Internacionales De México, Siglos XIX-y-XX

387–422 (2006); Rafael Fernández de Castro & Jorge I. Domínguez, *The Changes in the International System Since 2000*, *in* Contemporary U.S.-Latin American Relations: Cooperation Or Conflict In The 21st Century (2015); Roberto Russel & Juan Gabriel Tokatlian, *From Antagonistic Autonomy to Relational Autonomy: A Theoretical Reflection from the Southern Cone*, Latin Am. Pol. And Soc'y, Spring 2003, at 1–24; Javier Corrales, *Understanding International Partnership: The Complicated Rapprochement Between the United States and Brazil*, 130 Pol. Sci. Q. 213–44 (2015).

55. Tom Long, Latin America Confronts the United States 18–21 (2015).

56. *See* Tom Long, A Small State's Guide to Influence in World Politics 39–59 (2022) (In his more recent work, Long constructs an analytical scorecard to indicate the ways in which a small state's ability to exert influence depends upon the interaction of three factors in the bilateral relationship: policy divergence, issue salience and preference cohesion).

when there is no singular understanding of the problem (i.e., because it is new, or because it is perceived as a crisis brought on by a policy failure), small states have an opening to help define (or redefine) the problem and hence the solutions. By contrast, if there is a cohesive understanding of the problem, there is not likely to be much leeway for a small state to influence an outcome. In cases where the smaller state proposes a policy solution, it must gauge the larger state's response to get a sense of how much room it has to maneuver and persuade the larger state to support the small state's goals. Finally, in order to ascertain whether an outcome reflects small state agency, or something else (e.g., a shift in priorities or public pressure) attention must be paid to how the large state's interests were redefined.[57]

Long uses this approach to guide his inquiry into the development of Plan Colombia in the late 1990s. Through archival research and process tracing, he convincingly demonstrates that contrary to popular understanding, Plan Colombia was not designed and implemented by the U.S. against Colombia's will. Instead, it was a policy initiative pursued by the Pastrana administration, which in its final form reflected some important Colombian interests and priorities as a result of Colombian decision-makers' ability to prevail in negotiations by aligning and adapting their preferences to those of key players in the U.S.

Although the research presented here overlaps somewhat with Long's study of Plan Colombia, it is different in several important respects. First, rather than focus on a single event (the adoption of Plan Colombia), we concentrate on how Colombia's decisions and behavior in a particular policy area (extradition) have varied over time as its own domestic preferences have shifted. Specifically, we consider the country's willingness to extradite Colombian citizens during three different time periods over the past forty years. Second, our work elucidates a set of policy decisions related to, but distinct from those considered in Long's analysis. By focusing on how states cooperate (or do not) over time in iterated policy areas, such as extradition, our work complements and builds on Long's discussion of U.S.-Colombian security relations, and it helps to understand how shifting dynamics and policy preferences can affect policy outcomes. As we discuss below, when applied to the case of extradition between Colombia and the U.S., focusing on small state interests and opportunity structures helps provide insight on why and how Colombia has managed to shape its own path, even when faced with strong U.S. preferences and dictates.

57. Long, *supra* note 55.

The following sections focus on explaining how changing international and domestic circumstances can help inform our understanding of Colombia's extradition policies over the last few decades. We first examine the renegotiation and implementation of the U.S.-Colombia extradition treaty in the late 1970s and early 1980s, when it appeared that the U.S. was able to impose its desire for a new treaty. We then turn our focus to Colombia's ban on extradition enacted in 1991, which demonstrates Colombia's ability to successfully assert its preferences in defiance of a much larger and stronger counterpart. We round out the analysis by explaining how Colombia's decision to declare extradition legal in 1997, while indeed a response to U.S. pressure was also, counterintuitively, an opportunity for Colombian President Álvaro Uribe to further his domestic political agenda and consolidate the power of his party.

I. A Dubious Agreement: The U.S.-Colombia Bilateral Extradition Treaty (1979-1991)

The nature of U.S.-Colombian relations between 1979 and 1991 undoubtedly shaped the conventional wisdom that the bilateral relationship represents a realist's textbook case of hegemonic domination of a weaker power. While it is undeniable that the power asymmetry between the two countries helps explain how the U.S. was able to extract unusual concessions in the bilateral treaty, a closer look reveals that Colombia was at times willing to risk its relationship with a powerful partner by resisting U.S. demands to extradite its citizens. Moreover, as we demonstrate below, Colombia did not comply fully with the terms of the new treaty (and hence U.S. demands) until domestic political factors made it expedient to do so.

Amid the drug violence and domestic insurgencies Colombia experienced during the late 20th century, international extradition played a prominent and controversial role in U.S.-Colombian security cooperation. The first bilateral extradition treaty between the two countries was signed in 1888 and was subsequently updated in 1941, yet neither of these treaties authorized the surrender of the signatories' own citizens.[58] As international crime and terrorism gained a more prominent role in U.S. security concerns in the 1970s, the U.S. began to expand its negotiation (and renegotiation) of such agreements around the world,

58. Kavass, *supra* note 10, at 492 (noting that the 1941 treaty did, however, add drug charges to the list of extraditable offenses).

and the two countries revised their extradition treaty for a third time on September 14, 1979.[59]

On one hand, the new U.S.-Colombia extradition treaty looked very much like other contemporary U.S. bilateral extradition treaties in that it specified that drug offenses were extraditable, and—in a nod to the sovereignty and domestic preferences of the sending country—expressly prohibited extraditions that would result in double jeopardy, capital punishment, or prosecution for military or political offenses.[60] On the other hand, the U.S.-Colombian treaty was unlike most other extradition treaties of that period because it included provisions that permitted extradition even in cases where the offense occurred outside of U.S. territory, and perhaps most importantly, required Colombia to extradite its own citizens except under specific conditions.[61] This last provision was highly controversial in Colombia and later proved to be particularly problematic as the drug war escalated in the 1980s and 1990s. In the vigorous public and congressional debates over whether to ratify the treaty, many expressed reservations about the implications for Colombia's sovereignty if it were to extradite its own nationals. Others argued that, whether or not it violated national sovereignty, extradition of nationals was in and of itself unconstitutional.[62]

Yet, as the weaker partner in an asymmetrical bilateral negotiation, and at a time of strong bipartisan consensus in the U.S. supporting the treaty's terms, Colombia had little room for maneuver. Furthermore, Colombia had spent the past fifteen years combating domestic insurgencies from groups like the FARC and the ELN with limited success, contributing to the fragility of the Colombian state. By the late 1970s, new challenges posed by the Medellín and Cali cartels added to the pressures on Colombian officials and increased the attractiveness of U.S. military and economic aid. Under these circumstances, Colombian officials were susceptible to U.S. pressure. Despite vigorous debate and some strong opposition, the treaty was quickly approved by Colombia's

59. *The Treaty of Extradition Between the United States of America and the Republic Of Colombia, Signed At Washington On September 14, 1979,* H.R. Treaty Doc. No. 97–8, 97th Cong. (1981), https://www.congress.gov/treaty-document/97th-congress/8/document-text. The Treaty Document 97–8 for the 1979 U.S.-Colombia extradition treaty was submitted to Congress by the Reagan administration on June 1, 1981, ratified by the U.S. Senate (96–0) on December 2, 1981, and entered into force on March 2, 1982.

60. Charles Doyle, *Extraterritorial Application of American Criminal Law*, 94–166 (13) Cong. Rsch. Serv. (Mar. 21, 2023).

61. Kavass, *supra* note 10, at 492–494; *see also* Warmund, *supra* note 10 (demonstrating that one of the conditions for exemption was presidential approval, which was not always granted).

62. Hernando Gómez Buendía, *Extradición: Cuál Debate*, El Tiempo (Sept. 24, 1996), https://www.eltiempo.com /archivo/documento/MAM-509824.

legislature on October 14, 1980, and moved on to President Julio César Turbay Ayala (1978–1982) for his signature.[63] Because Turbay was out of the country, the treaty was signed by his delegate, Minister of Government Germán Zea Hernández, on November 3, 1980.[64] This turn of events, together with ongoing disagreements about whether the extradition of Colombian nationals violated the national penal code—and, therefore, the Colombian constitution—led to multiple Supreme Court challenges in the early 1980s.[65]

Persistent acrimonious congressional debate and subsequent legal challenges strongly suggest that many Colombian officials were uncomfortable with the arrangement from the moment the new treaty came into force. Indeed, although the Colombian government had the legal authority to extradite its own citizens after 1982, newly elected President Betancur refused the first U.S. requests ostensibly on legal grounds. However, it is also true that Betancur benefited in the court of public opinion by taking a stand against the U.S. and blunting attacks from those who argued that extraditing Colombian citizens (even drug traffickers) was tantamount to capitulation to U.S. interests.[66] It was not until the murder of Justice Minister Rodrigo Lara Bonilla that Betancur changed course and began to extradite fugitives under the new treaty.[67]

As a member of the Colombian Congress, Lara Bonilla had been critical of the growing power and influence of Colombian drug traffickers, whose fortunes were rising as U.S. demand for cocaine boomed.[68]

63. *Extradición de colombianos un caso insólito*, Semana (May 15, 1983), https://www.semana.com/nacion/articulo/extradicion-de-colombianos-un-caso-insolito/2388–3/; L. 27, Noviembre 3, 1980, Diario Oficial [D.O.] (Colom.), https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1698775.

64. Kavass, *supra* note 10, at 493.

65. Alejandro Ramelli Arteaga, *El control de constitucionalidad de los tratados internacionales en Colombia*, 20 REVISTA DERECHO DEL ESTADO 19, 27 (2007); *see also*, Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Plen. diciembre 12, 1986, M.P: J. Pérez, Expediente número 5-R, Gaceta Judicial [G.J.] (Colom.), www.camara.gov.co/sites/public_html/leyes_hasta_1991/csj_nf/sp/1986/csj_sp_ s111_1212_1986.html (complaint filed by Javier Hernando Hernández in Corte Suprema de Justicia).

66. *La historia jurídica de la extradición*, El Tiempo, (Jun. 20, 1997), https://www.eltiempo.com/archivo/documento /MAM-597829, *see also* Warmund *supra* note 10; Juan Carlos Palou et al., Fundación Ideas Para La Paz, Usos Y Abusos de la Extradición en la Lucha Contra Las Drogas 22 (2011), https://www.files.ethz.ch/isn/151938/Extradicion%20Info.15.pdf.

67. *See* Agencias, *El presidente Betancur declara la guerra a los traficantes de drogas en Colombia tras el asesinato del ministro de Justicia*, El Pais (May 1, 1984), https://elpais.com/diario/1984/05/02/internacional/ 452296806_850215.html.

68. Associated Press, *Justice Minister Slain in Bogotá*, N.Y. Times (May 1, 1984), https://www.nytimes.com/ 1984/05/01/world/ justice-minister-slain-in-bogota.html; *see also* Robert Lindsey, *Cocaine Trafficking and its Huge Profits Luring the Middle Class*, N.Y Times (Oct. 24, 1982), https://www.nytimes.com/1982/10/24/us/cocaine-trafficking-and-its-huge-profits-luring-middle-class.html.

At that time, the handful of cocaine barons who controlled the drug trade in Colombia were believed to be worth hundreds of millions, or even billions, of dollars.[69] Up to this point, their wealth had given them the ability to operate with impunity by buying off corrupt officials, and the prospect of being extradited to face justice abroad was one of the few serious threats to their ability to evade prosecution.[70] Lara Bonilla was one of the few Colombian politicians who took an assertive stand against the cartels, even publicly denouncing Pablo Escobar and his associates.[71] When Betancur won the 1982 presidential election, he named Lara Bonilla as his Justice Minister. While in that post, Lara Bonilla lobbied for extraditing Colombian drug traffickers to face justice in the U.S. and worked actively to strip Escobar of his legislative immunity.[72] Perhaps unsurprisingly, on April 30, 1984, Lara Bonilla was attacked by two of Escobar's hitmen toting an automatic weapon on a motorcycle and died of gunshot wounds within minutes.[73]

With the assassination of his top prosecutor, Betancur changed his stance, and at Lara Bonilla's funeral announced that he would authorize the extradition of Colombian drug traffickers to the U.S. Soon after, he approved the extradition of several cases that had previously been delayed by court challenges, including that of Escobar's right-hand man, Carlos Lehder.[74] Lara Bonilla's assassination thus marked a major shift in extradition policy. Importantly, rather than coming about because of pressure exerted by the U.S. on a much smaller counterpart, the change in policy implementation was precipitated by domestic events and the changing preferences of key Colombian decision makers, who were more concerned about domestic threats than foreign pressure.

In short, while the U.S. was able to get Colombia to agree to join an extradition treaty in 1979, the law that ratified the treaty was challenged for several years, and officials were slow to comply with U.S.

69. Bruce Bagley, *Colombia and the War on Drugs*, 67(1) Foreign Aff's. 70, 76 (Fall 1988), *see also Lara, La Voz de Justicia que la Muerte no Apagó,* El Colombiano, https://www.elcolombiano.com/medellin-es-mas-que-pablo-escobar/asesinato-de-rodrigo-lara.

70. Amanda Macias, *Pablo Escobar's Chief Assassin Reveals the Two Things that Scare Drug Lords,* Business Insider, (Sep. 25, 2015), https://www.businessinsider.com/pablo-escobars-chief-assassin-reveals-the-2-things-that-scare-drug-lords-2015–9.

71. Carlos Caballero Argáez, *La economía de la cocaína, algunos estimativos para 1988*, Coyuntra Económica (1988); Bagley, *supra* note 69, at 83.

72. Mauricio Rubio, *Colombia: Coexistence, Legal Confrontation, and War with Illegal Armed Groups*, *in* Dangerous Liasons: Organized Crime and Political Finance in Latin America and Beyond 76, 83 (Kevin Casas-Zamora, ed., 2013). Escobar had been elected to the legislature as a member of the Liberal Party and used his position to levy corruption charges against Lara Bonilla.

73. Associated Press, *supra* note 68.

74. Nagle, *supra* note 7, at 867; *see also*, Kavass, *supra* note 10, at 494.

extradition requests. However, the willingness of Colombian officials to cooperate changed when a national crisis—the assassination of the country's Justice Minister—shifted Betancur's views on the utility of extradition as a tool in combating the country's organized crime groups. Thus, while many view the 1979 U.S.-Colombia Extradition Treaty as a U.S. imposition, a closer look helps illustrate the way that domestic political events shaped Colombia's decision to turn to the use of extradition in the 1980s. As we discuss below, domestic factors also help to explain why the pendulum swung in the opposite direction in the 1990s.

II. Colombian Defiance: Constitutional Ban on Extradition of Colombian Citizens (1991-1997)

The response of Colombia's drug traffickers to Betancur's decision to extradite Colombian drug trafficking suspects was quick and brutal. Pablo Escobar, along with other top leaders of the web of criminal organizations that made up the Medellín Cartel, formed a violent resistance movement known as "The Extraditables," which adopted the anti-extradition slogan, "better a tomb in Colombia than a prison cell in the United States."[75] In an effort to deter the use of extradition, this group was believed to be responsible for issuing death threats and murdering hundreds of politicians (including judges, attorneys general, and presidential candidates), journalists, and others who sought to curtail their business or diminish their power.[76]

Adding to the politically charged atmosphere, dozens of armed members of the leftist revolutionary group M-19 stormed the Palace of Justice in November of 1985.[77] Ignoring appeals by the president of the Supreme Court to negotiate with the rebels, the government instead ordered the army to counterattack the building.[78] In the ensuing two days of violence 120 people were killed, including most of the

75. Douglas Farah, *Escobar Killed in Medellin*, Wash. Post (Dec. 2, 1993), https://www.washingtonpost.com/archive/politics/1993/12/03/escobar-killed-in-medellin/36339ba2–8021–4942–8c7a-00604b95070a/.

76. Nagle, *supra* note 7.

77. Joseph Treaster, *Death Toll at 100 After Rebel Siege in Colombian City*, N.Y. Times (Nov. 9, 1985), https://www.nytimes.com/1985/11/09/world/death-toll-at-100-after-rebel-siege-in-colombian-city.html. Decades later, some still debate the rationale for M-19's attack. Many former rebels claim that the goal was to hold the Betancur administration solely responsible for violating the terms of the peace treaty negotiated in 1984. Other people claim that M-19 was acting on behalf of Pablo Escobar based on the fact that M-19's vocally opposed the use of extradition on ideological grounds, and the fact that important documents pertaining to pending extradition cases were destroyed in the siege. However, there appears to be little concrete evidence to support the latter claims; Adriaan Alsema, *Pablo Escobar's Involvement in 1985 Palace of Justice Siege Another Urban Myth?,* Colombia Reports (Jun. 18, 2020).

78. *See* Alsema, *supra* note 77.

Supreme Court and several high court justices. Whether or not M-19 was acting in collaboration with Colombian drug traffickers, as some have claimed, the devastating outcome of this assault appears to have helped shift Colombian extradition policy in line with the position of the Extraditables because, one year after the siege, the newly constituted Colombian Supreme Court declared the 1979 extradition treaty to be unenforceable.[79]

Facing intense pressure from the U.S., and determined to gain the upper hand on drug traffickers, newly elected President Virgilio Barco (1986–1990) sought to keep the treaty alive and, failing that, appointed a special commission to find alternative legal means for extraditing nationals.[80] Taking advantage of the state of siege that was still in effect after initially being declared upon the assassination of Lara Bonilla in 1984, Barco used the executive's emergency powers to extradite Colombian citizens facing drug trafficking charges in the U.S. on the basis of the Colombian penal code and the legal principle of reciprocity, rather than by way of a bilateral treaty. This practice was upheld by the Supreme Court and was continued by Barco's successor César Gaviria (1990–1994) during the first year of his administration.[81] However, the practice came to an abrupt end in July 1991, with the promulgation of a new constitution that definitively prohibited the extradition of Colombian nationals.[82] Given that both Presidents Barco and Gaviria were committed to gaining the upper hand on the cartels, and viewed extradition as an essential tool in that fight, the decision to ban it completely might seem puzzling.[83]

79. *See* Kavass, *supra* note 10 at 495 (their reasoning was that the bill had not been constitutionally approved by the president because it was signed by the Minister of Government. This unleashed another debate about whether the original bill could be signed by the sitting president (Virgilio Barco), or whether a new bill was needed). *See also* Nagle, *supra* note 7, at 869 (arguing that fear, rather than legal considerations, was what drove the decision to invalidate the treaty: "[A]nyone who publicly voiced a pro-extradition opinion was kidnapped or killed. Those whom the cartels could not buy, died. Those who survived were forced to leave the country. The drug cartels attempted to turn public opinion against extradition by terrorizing the nation with bombings of newspapers, public places, and businesses . . . They swore to fight extradition to the death.").

80. Stefan Riesenfeld, *International Decisions*, 85 Am. J. Int'l L. 352 (1991).

81. Warmund, *supra* note 10, at 2388 n.94 (only two dozen Colombian nationals were extradited between 1987 and 1991); *see also La Historia Jurídica de la Extradicíon*, El Tiempo, (Jan. 18, 2024), *https://www.eltiempo.com/archivo/documento/MAM-597829*.

82. James Brooke, *Colombia's New Charter Opens Politics to New Forces*, N.Y. Times (Jul. 5, 1991), https://www.nytimes.com/1991/07/05/world/colombia-s-rewritten-charter-opens-politics-to-new-forces.html.

83. Joseph Treaster, *Virgilio Barco Vargas; The President With the Biggest War on Drugs*, N.Y. Times (Sep. 10, 1989), https://www.nytimes.com/1989/09/10/weekinreview/colombia-s-virgilio-barco-vargas-the-president-with-the-biggest-war-on-drugs.html.

Because the constitutional ban on extradition outwardly defied U.S. interests, it is best understood as the coming together of several domestic forces, including nationalism on the left and the right, tacit support for the general economic boost provided by drug trafficking, and the extreme and violent pressure campaign waged by Pablo Escobar and the Extraditables against public officials who favored extraditing them to the U.S.[84] Indeed, the entire process of drafting a new constitution took place amid threats and communiques that functioned as informal negotiations between the administration of César Gaviria and drug traffickers who sought to ensure that they would never face justice outside of Colombia.[85] Thus, the domestic costs of omitting such a ban were understandably thought to be higher than any punishment the U.S. might seek to impose. Indeed, the Colombians understood that their help was desperately needed to stem the tide of narcotics fueling the cocaine and crack epidemic that had plagued the U.S. since the early 1980s. If there were any doubts that the dangers posed by the Extraditables overshadowed the potential pain that could be inflicted by the U.S., they were effectively allayed when the Bush administration pledged $41 million in anti-narcotics aid four months before the ban was formally included in the new constitution.[86]

III. Colombia Gets Wise: Using Extradition to Achieve Domestic Goals (1997 to Present)

Once the extradition question was settled, Pablo Escobar negotiated his own surrender, giving himself up in exchange for what amounted to house arrest in a luxurious setting and a government

84. *See* Mark Bowden, Killing Pablo: The Hunt for the World's Greatest Outlaw 59 (2001) (noting that it is estimated that Pablo Escobar was responsible for thousands of deaths, including four presidential candidates, and 110 passengers aboard Avianca Flight 203, which he believed would be carrying presidential candidate César Gaviria. Gaviria missed the flight and went on to win the 1990 election); *see* also Associated Press, *Medellin Cartel Victims Demand Justice as Boss Ochoa Walks Free in Colombia*, VOA (Dec. 24, 2024), https://www.voanews.com/a/medellin-cartel-victims-demand-justice-as-boss-ochoa-walks-free-in-colombia/7912971.html; AFP, Colombia's Ex-Intelligence Chief Jailed Over 1989 Assassination of Liberal Presidential Candidate, Colombia Reports (Nov. 25, 2016), https://colombiareports.com/amp/colombias-ex-intelligence-chief-jailed-1989-assassination-liberal-presidential-candidate/.

85. Douglas Farah, *Colombian Drug Lords Offer to Surrender*, Wash. Post (Nov. 24, 1990), https:// www.washingtonpost.com/archive/politics/1990/11/24/colombian-drug-lords-offer-to-surrender/59f010c2-ba01–42d7–8df1–6fe61906f942/.

86. Ronald J. Ostrow & Stan Yarbro, *U.S., Colombia Pledge Mutual Drug Case Aid: Agreement: The Action is Intended to Counter the South American Nation's Expected Ban on Extradition*, L.A. Times (Feb. 27, 1991), https://www.latimes.com/archives/la-xpm-1991–02–27-mn-2110-story.html.

pledge never to transfer or extradite him to the U.S.[87] Yet, rather than bringing peace to Colombia, taking extradition off the table seemed to embolden other drug traffickers, leftist guerrillas, and right-wing paramilitary organizations, all of whom were competing to dominate the cultivation and export of illegal narcotics.[88] Using everything from bribes and threats to torture, assassination, and forced disappearance, these groups manipulated and corrupted the judicial system to ensure they could operate with impunity. As a result, between 1992 and 1997, violence in Colombia reached some of its highest levels, and drug shipments destined for the U.S. and other overseas markets continued unabated.[89] It was also during this time that evidence emerged to show that Colombian president, Ernesto Samper Pizano, (1994–1998) had accepted campaign funding from the Cali cartel.[90] In response, the U.S. decertified Colombia from continued economic assistance in 1996 and 1997.[91] In effect, this was a public reprimand for not cooperating in the drug war and cut off Colombia's most significant sources of foreign economic aid.[92]

There is no doubt that, with decertification, the U.S. meant to exert maximum pressure on Colombia to comply with its demands to cooperate more fully on drug trafficking. And to a large degree, the U.S. got

87. Bowden, *supra* note 84.

88. *See generally* Alvaro Camacho Guizado & Andrés López Restrepo, *Perspectives on Narcotics Trafficking in Colombia*, 14 Int'l J. of Pol., Culture, & Soc'y 151, 151–182 (Fall 2000). After the death of Escobar, the Medellín cartel began to decline in importance and other groups moved to fill the void. Competition over the drug trade led to heightened levels of violence and an increase in drug production: Between 1991 and 1996, coca cultivation increased 70 percent from 37,500 to 67,200 hectares, and opium poppy cultivation increased a whopping 210 percent, from 2,028 hectares to 6,300 hectares.

89. Michael Pahl, *Wanted: Criminal Justice-Colombia's Adoption of a Prosecutorial System of Criminal Procedure*, 16 Fordham Int'l L. J. 608, 609 (1992). 217 police officers and dozens of law enforcement officials were assassinated by narco-terrorists in 1992.

90. *See* Russell Crandall, *Explicit Narcotization: U.S. Policy Toward Colombia During the Samper Administration*, 43 Latin Am. Pol. & Soc'y 95, 114 (2001). This dovetailed with the concern of Democrats that they would be branded by congressional Republicans as weak on crime and security.

91. Douglas Farah, Colombia Threatens Reprisals, Wash. Post (Mar. 2, 1997), https://www.washingtonpost.com/archive/politics/1997/03/02/colombia-threatens-reprisals/06c60311-da25–4512-aff6–34a8b07b5304/

92. Douglas Farah, *U.S.-Bogota: What Went Wrong: 'This is a Decertification Not of Colombia, but of President Samper*,' Wash. Post (Mar. 3, 1996), https://www.washingtonpost.com/archive/politics/1996/03/03/ us-bogota-what-went-wrong-this-is-a-decertification-not-of-colombia-but-of-president-samper/d46219cd-2c84–4eef-b041–632121cddab0/?utm_term=.f83f091b84ed. Drug certification was the process by which the U.S. Congress sought to elicit accountability, by requiring countries that received aid for counter-narcotics efforts to verify the effectiveness of their anti-drug policies and law enforcement efforts. Not surprisingly, this process was vociferously rejected in most of Latin America. Yet in many cases, it had an important influence on domestic policies and events.

exactly what it wanted: Colombia almost immediately repealed the ban on extraditing nationals, and shortly after, committed itself to a multi-year, multi-pronged effort to combat drug trafficking in Plan Colombia. However, to view this simply as Colombia capitulating to U.S. pressure would be to miss some important elements of the bilateral relationship, because in neither case did Colombia fully acquiesce to U.S. demands.[93] Long has already provided compelling evidence to show how President Andrés Pastrana deftly influenced conversations and negotiations with the U.S. to ensure that Plan Colombia included resources to help build state capacity and provided leeway for his administration to continue the peace process–two elements that the U.S. initially had no interest or intention of incorporating. Similarly, the discussion below highlights the ways in which Colombia exerted its autonomy with regard to extradition.

In April of 1997, Samper called on the Colombian Congress to lift the constitutional ban on extradition of Colombian citizens. After months of debate and new threats from drug trafficking organizations, and several modifications, the Colombian Congress voted overwhelmingly in favor of the measure.[94] Unlike the late 1980s, Colombians now widely favored extraditing their fellow citizens because they were angry and exhausted from living under a near-constant threat of siege.[95] Additionally, the stigma of being seen as a lawless hotbed of violence and corruption had taken a toll on Colombia's international image as a democracy.[96] Also important was the pressure applied by the business community, who argued that the threat of continued economic sanctions brought about by decertification threatened Colombia's export sector and therefore its long-term financial prospects. Together with a group of reform-minded politicians, there was a concerted effort to rehabilitate

93. *See* Steven Ambrus, *Colombia OKs Weak Extradition Law*, L.A. Times (Nov. 26, 1997).

94. Latin America Digital Beat Staff, *Colombian President Ernesto Samper Seeks to End Extradition Ban*, U of. Mex. Digit. Repository (Apr. 25, 1997) https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article= 13351&context=notisur.

95. *See* Warmund, *supra* note 10, at 2407; *see also Crece la Audiencia*, Semana, (Oct. 20, 1996) https://www.semana.com/crece-la-audiencia/30453–3; *see also Presidente Gustavo Petro Llega Al 69 Por Ciento de Favorabilidad*, Semana (Sep. 3, 2022), https://www.semana.com/nacion/articulo/presidente-gustavo-petro-llega-al-69-por-ciento-de-favorabilidad-semana-revela-encuesta-del-centro-nacional-de-consultoria/202258/. Interestingly, at the time of this writing, a majority of Colombians now oppose the idea of exempting drug traffickers who surrender from extradition to the United States.

96. *See* Warmund, *supra* note 10, at 2407. Many argued that together with tougher criminal laws, extraditing nationals would reinforce, rather than violate, sovereignty because it effectively reduced impunity.

the country's reputation with a package of laws that gave the state more power to confiscate ill-gotten gains and go after money laundering.[97]

Thus, Colombia's domestic preferences had become more closely aligned with policymakers in the U.S., and this made it easier for Samper to comply with the U.S.'s demands. However, the final bill resisted U.S. pressure in some very important ways. First, although the new law changed the constitution to allow the extradition of nationals, it also put in place some protections, including guarantees that Colombian nationals would not face harsher punishment than they would in Colombia. In addition, the new law exempted extraditions for political offenses, for crimes committed outside of Colombian territory, for those who surrendered, and for those already serving time in Colombia.[98] Finally, it gave the Colombian government discretion to deny the extradition of nationals.[99]

Not surprisingly, these provisions were fiercely criticized by U.S. government officials and law enforcement agencies, who argued that the non-retroactivity clause would make it impossible to bring well-known kingpins to justice, and in effect, render the new law moot.[100] These claims seemed to have been borne out by the fact that none of the leaders of the then-dominant Cali cartel (who had been shown to have provided Samper with financial support) were immediately extradited to the U.S., and that most other extradition requests from the U.S. faced bureaucratic delays that lasted years after the law went into effect.[101] The revised legal landscape paved the way for subsequent

97. Ambrus, *supra* note 93.

98. Comisión Conjunta de Modernización, Oficina de Asistencia Técnica Legislativa, *Extradición de Colombia con los Estados Unidos de Norteamérica*, Congreso de la Rebública de Colombia (Nov. 2005).

99. *See* Laura Brooks, *Colombians Ease Ban on Extradition*, Wash. Post (Nov. 27, 1997), https://www.washingtonpost.com/archive/politics/1997/11/27/colombians-ease-ban-on-extradition/a6037518-e7d3–4e53-abf3-f7a4562c64d3/. This provision meant that some of the most wanted drug bosses, like the Rodríguez Orejuela brothers, would not be eligible for extradition to the United States unless they were indicted on new crimes); *see also* Warmund, *supra* note 10, at 2427.

100. Juanita Darling, *Colombia Congress Votes to Lift Ban on Extradition*, L.A. Times (Jun. 21, 1997), https://www.latimes.com/archives/la-xpm-1997–06–21-mn-5547-story.html.

101. Warmund, *supra* note 10, at 2384. Furthermore, the new law created uncertainty and debate about the fate of the bilateral extradition treaty. While the United States saw the change as tantamount to reviving the treaty, many in Colombia disagreed, pointing out that it solely codified the extradition of nationals (at the discretion of the government) in the country's domestic penal code. There continues to be disagreement about this issue in Colombia. While some argue that the treaty was nullified in 1991 by the constitutional prohibition on extradition of nationals, others argue that the larger treaty framework has always been in place, with extradition of nationals being the one issue that has varied over time. As a practical matter, Colombia appears to abide by the terms of the treaty on the procedural aspects of extradition.

administrations to use extradition both as a tool to achieve the domestic goal of punishing drug traffickers and as a way to appease U.S. demands for Colombia to do more in the war on drugs. Indeed, as the negotiations for Plan Colombia got underway, the government of Andrés Pastrana began to gain the upper hand and extradited seventy-eight individuals, including the Cali kingpins Gilberto and Miguel Ángel Rodríguez Orejuela as well as other important capos.[102]

Events of the early 2000s appeared to confirm the notion that the U.S. determined the nature of the bilateral relationship. Plan Colombia deepened the role of U.S. security forces and stepped up the militarization of counter-narcotics efforts in Colombia. In addition, the number of extraditions from Colombia to the U.S. increased ten-fold to an average of over one hundred per year, almost all of them for drug trafficking offenses. Moreover, changes in the political climate created an opening for extradition to become a pivotal part of the bilateral relationship. In Colombia, Álvaro Uribe (2002–2010) was decisively elected on a platform that scrapped peace talks and emphasized the need for a strong militarized response to long-standing public security threats posed by the FARC and the ELN and, to a lesser extent, the right-wing paramilitary Autonomous Self-Defense Forces (*Autodefensas Unidas de Colombia,* AUC) and drug cartels.[103] On the U.S. side, the post-9/11 hyperfocus on terrorism facilitated the reclassification of the FARC and the ELN from armed guerrilla movements into narco-terrorists (given their involvement in drug trafficking as a means of revenue), thus making them a foreign policy priority worthy of increased attention and resources.[104]

102. Juan Carlos Palou et al., Fundación Ideas Para La Paz, Usos Y Abusos de la Extradición en la Lucha Contra Las Drogas (2011), https://www.files.ethz.ch/isn/151938/Extradicion%20Info.15.pdf.

103. *Colombian Armed Conflict*, Just. for Colom., (Feb. 18, 2018), https://justiceforcolombia.org/about-colombia/ colombian-armed-conflict/. The FARC and ELN were leftist armed military movements formed in the 1960s for the purpose of overthrowing the Colombian government and establishing a Communist regime. The AUC was a coalition of right-wing paramilitaries formed in the 1980s ostensibly for the purpose of protecting civilians from groups like the FARC and ELN. All of these groups and their various off-shoots engaged in kidnapping, extortion, brutal violence, drug trafficking, and, together with the drug cartels, were responsible for terrorizing Colombian society for decades. The Pastrana administration, like many before them, had failed to broker a lasting peace agreement with any of these groups.

104. Deborah Sontag, *The Secret History of Colombia's Paramilitaries and the U.S. War on Drugs*, N.Y. Times (Sept. 10, 2016), https://www.nytimes.com/2016/09/11/world/americas/colombia-cocaine-human-rights.html. Over the previous decade, drug trafficking has become an increasingly important source of revenue for the leftist revolutionary groups and right-wing paramilitary groups alike.

Yet, it is important to recognize that, in this political context, extradition had become an invaluable tool for politicians in both states to achieve their objectives. U.S. lawmakers could credibly claim to be making gains in the war on drugs. At the same time, the Colombian president could please the U.S. by cooperating on drug trafficking while simultaneously making good on his pledge to bring domestic order and security and protect his allies.[105] In essence, these extraditions were the "stick" that accompanied Uribe's Justice and Peace Law of 2005, which incentivized illegally armed groups to demobilize by offering reduced prison sentences in exchange for full confessions and reparations for victims. Those who refused to lay down their arms for this "carrot" were threatened with the full force of the law, including extradition, which was legally possible because of a newly created process by which the government "certified" guerrillas and paramilitaries as drug traffickers, thus making them extraditable.[106]

Uribe's efforts to crack down on leftist guerrillas were aided by the U.S. Department of Justice's agreement to indict its members on drug charges.[107] This gave him an unprecedented opportunity to achieve three interrelated domestic goals. Uribe could fulfill his campaign security promises, inflict real damage on the FARC, his most hated enemy, and gain favor with powerful domestic allies in the AUC by giving them an avenue to avoid prosecution in Colombia for human rights violations by instead serving relatively short drug-related sentences in the U.S., which allowed them to keep any ill-gotten gains in Colombia.[108] Thus, Uribe deftly used extradition to bolster his *mano*

105. Nat'l Sec. Archive, Briefing Book No. 718, The Friends of "El Viejo": Declassified Records Detail Suspected Paramilitary, Narco Ties of Former Colombian President Uribe (Michael Evans, ed., 2020), https://nsarchive.gwu.edu/briefing-book/colombia/2020–08–31/friends-el-viejo-declassified-records-detail-suspected-paramilitary-narco-ties-former-colombian. Uribe was long suspected of having ties to right-wing paramilitary organizations involved in drug trafficking.

106. Palou, *supra* note 102, at 57. Previous to this, members of leftist organizations like the FARC were not strong candidates for extradition because they could plausibly argue that they had committed political offenses, which were expressly excluded by the extradition treaty.

107. *Id.* at 51. Many argued that Uribe singled out the FARC, who he blamed for the murder of his father. Members of the ELN and AUC were extradited to a much lesser degree); Pablo Bachelet & Steven Dudley, *FARC Indicted in U.S. on Drug Charges*, Mia. herald (Mar. 23, 2006), https://www.latinamericanstudies.org/colombia/farc-indictment.htm.

108. Luz E. Nagle, *Better a Jail Cell in the United States: Using Extradition to Avoid Criminal Accountability in Colombia*, 28 Int'l Enf't L. Rep. 397, 397–403 (2012); *see also Editorial, ¿Fracasó la extradición de narcotraficantes?*, Semana (Apr. 13, 2012), https://www.semana.com/fracaso-extradicion-narcotraficantes/256408–3/; *see also* Rory Carroll, *US Drugs Prosecutors Switch Sides to Defend Accused Colombian Traffickers*, Guardian (Feb. 27, 2013), https://www.theguardian.com/world/2013/feb/27/us-drugs-prosecutors-defending-traffickers. Another important development during this time was that retired U.S. prosecutors began to hire

dura (iron fisted) narrative, cultivate a broad political base that facilitated his reelection in 2006, and create a political movement that would outlast his presidency.[109] Indeed, Uribe's stance and actions on extradition appear to have set the tone for the next two decades during which his political movement controlled the presidency and had solid public support. During his eight years in office, Uribe extradited 1,146 people to the U.S. (almost fourteen times the number of his predecessor), most of them Colombians. His hand-picked successor, Juan Manuel Santos, outdid him by extraditing 1,402 people, again mostly Colombian citizens. Had he been elected to a second term, Ivan Duque (2018–2022) might have bested them both as, in just one four-year term, his government sent 760 people to face justice abroad.[110]

Conclusion

Extradition is a policy area that is remarkably under-studied and under-theorized in the study of international relations. This is somewhat surprising, considering the degree to which extradition plays a role in international security, diplomatic negotiations, and the lives of individuals who may be turned over by their own country to face judgment in another. However, part of the problem is that extradition is a highly legalistic policy area in which empirical data are often difficult to obtain, which presents a number of barriers for political scientists and international relations experts. This paper is therefore an attempt to overcome some of these challenges and offer theoretical insights on how and why extradition policy has varied in the specific case of the U.S.-Colombia relationship.

Taking a closer look at the use of extradition policy in this case study, we can see how smaller states, such as Colombia, can navigate

themselves out to Colombian drug traffickers facing extradition; they counseled their clients to offer up information quickly before it became stale and worthless. In the first nine months of 2012, roughly one in three waived the right to have the Supreme Court review the constitutionality of their case. This shaved six months off the process that sent them to the United States. Indeed, many appear to have calculated that by surrendering early, they would be able to offer new information to U.S. authorities before their comrades did and thereby negotiate a better deal.

109. Palou, *supra* note 102, at 54. This is not to say that there were no detractors. Uribe's approach was routinely criticized by the opposition for potentially undermining the prohibition on extradition for political offenses and also because many believed it would make it harder to negotiate a lasting peace agreement in the future.

110. Editorial, ¿Se acaba la extradición en Colombia? Esto es lo que piensan expresidentes, exvicepresidentes, exfiscales, exmagistrados, y abogados, Semana (Aug. 27, 2022), https://www.semana.com/nacion/articulo/cirugia-a-la-extradicion-lo-bueno-y-lo-malo-de-la-propuesta-del-presidente-gustavo-petro/202240/. Between 2002 and 2022, these suspects were overwhelmingly extradited to the United States).

asymmetrical power relationships when negotiating the terms of extradition arrangements with a powerful actor like the U.S. As we have attempted to demonstrate, the renegotiation and implementation of the U.S.-Colombia extradition treaty, Colombia's ban on extradition in 1991, and the legalization of extradition in 1997 illustrate the dynamic interplay between domestic preferences and international pressures.

On the surface, U.S.-Colombian relations seem to illustrate hegemonic domination by the U.S., given the significant power imbalance. However, a closer look reveals that Colombia often resisted U.S. demands to extradite its citizens, complying only when domestic political factors necessitated it. Furthermore, Colombian presidents like Álvaro Uribe used extradition as a way to achieve domestic policy goals and solidify political influence. In short, by focusing on small state interests and opportunity structures, we gain a deeper understanding of how Colombia has navigated its relationship with the U.S., demonstrating resilience and strategic acumen in its foreign policy decisions. This approach provides a more comprehensive view of power dynamics in international relations, emphasizing the importance of context, agency, and the multifaceted nature of influence among states. In the area of extradition, the Colombia case clearly illustrates that hegemonic powers can successfully impose terms and extract wanted fugitives by flexing their influence, but the circumstances and strategic responses of smaller states—and key actors within those states—can often prevent a larger power from getting its way.