

SUPPLEMENTAL DECLARATION OF TOM HEINEMANN

I, Tom Heinemann, hereby declare and say as follows:

1. On April 20, 2016, in my capacity as the Assistant Legal Adviser for Law Enforcement and Intelligence in the Office of the Legal Adviser, Department of State, Washington, D.C., the office responsible for extradition requests, I executed a declaration based upon my personal knowledge and upon information made available to me in the performance of my official duties, affirming that the relevant and applicable provisions of the extradition treaty between the United States of America and the Republic of Colombia are in full force and effect. This declaration is intended to supplement the declaration previously submitted by me in order to provide additional information related to the validity of an extradition treaty between the United States of America and Colombia.

2. As stated in paragraph 3 of my declaration of April 20, 2016, the Extradition Treaty between the United States of America and the Republic of Colombia (the "Treaty") is the relevant and applicable treaty in relation to the extradition case of Andres Felipe Arias Leiva.

3. Colombia ratified the Treaty on November 3, 1980. The United States Senate gave advice and consent to ratification on December 2, 1981, and the President of the United States ratified the Treaty on January 4, 1982. The Treaty entered into force March 4, 1982, when the parties exchanged instruments of ratification. It was proclaimed by the President of the United States on March 25, 1982.

4. Article 21 of the Treaty governs its ratification, entry into force, and termination. Pursuant to this article, the Treaty "shall enter into force on the date of the exchange of instruments of ratification." Either Party may terminate the Treaty "by giving notice to the other Party, and the termination shall be effective six months after the date of receipt of such notice."

5. Since the Treaty's entry into force, neither the United States nor Colombia has given the notice of termination specified in Article 21. Therefore, the Treaty remains in force between the United States and Colombia.

6. The decisions of the Colombian Supreme Court of December 12, 1986 and June 25, 1987 did not terminate or suspend the operation of the Treaty. The two court decisions ruled invalid the relevant Colombian legislation approving and giving domestic effect to the Treaty. Whatever the effect of those decisions may have been under the internal law of Colombia, the United States has never considered that the Colombian court's decisions had the effect of terminating or suspending the operation of the Treaty, either as a matter of international law generally or under the express terms of Article 21.

United States of America

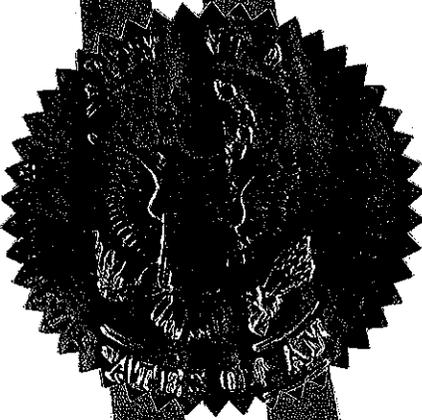


DEPARTMENT OF STATE

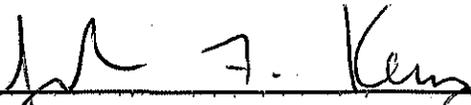
To all to whom these presents shall come, Greetings:

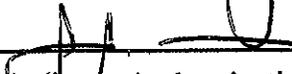
That Tom Heinemann, whose name is subscribed to the document hereunto annexed, was
of subscribing the same Assistant Legal Adviser, Office of the Legal Adviser, Department
United States of America, and that full faith and credit are due to his acts as such.

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



In testimony whereof, I, John F. Kerry, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Assistant Authentication Officer, of the said Department, at the city of Washington, in the District of Columbia, this twenty-sixth day of October, 2016.


Secretary of State

By 
Assistant Authentication Officer,
Department of State

Issued pursuant to CHX, State of
Sept. 15, 1952, 1 Stat. 22
USC 2651, USC 2652, USC
301; 28 USC 733 et. seq. USC
1443(f); 44 Federal Register of
Civil Pro

7. Under international treaty law and practice, a treaty that has entered into force remains in force, unless it is set aside on one of the grounds and under the conditions provided for in international law¹. The United States considers that the Vienna Convention on the Law of Treaties, to which Colombia but not the United States is a party, provides an authoritative guide to international treaty law and practice on the validity and termination of treaties². Article 46 of the Vienna Convention provides that a State may not invoke a violation of its internal law as invalidating its consent to be bound "unless that violation was manifest and concerned a rule of its internal law of fundamental importance."³ A violation would be "manifest" only "if it would be objectively evident" to any State acting "in accordance with normal practice and in good faith." The circumstances relied upon in the Colombian Supreme Court's decisions do not meet this threshold. Moreover, Articles 65 and 67 of the Convention provide that a State wishing to invalidate, terminate or suspend a treaty on one of the grounds specified in the Convention must provide a written notification to the other Party.⁴ Colombia has not provided such a notification to the United States.

8. In conclusion, notwithstanding the Colombian court's decisions, Colombia has not provided the United States either a notice of termination under Article 21 of the Treaty, or a notice of invalidity or termination under the principles set forth in the Vienna Convention. In the view of the United States, the obligations of the Treaty remain legally binding upon both Parties. This has been the consistent view of the United States since the Supreme Court rulings, and the United States – both at the executive and judicial level - has relied on the Treaty numerous times since 1987 as the authority for approving extraditions to Colombia.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on October 26th, 2016.



TOM HEINEMANN

¹ See Sinclair, *The Vienna Convention on the Law of Treaties* (2d ed. 1984) 162-63, quoting from Yearbook of the International Law Commission (196641) 236. See also Aust, *Modern Treaty Law and Practice* (3d ed. 2013) 273-74.

² See, Restatement (Third) of the Foreign Relations Law of the United States, Part III, International Agreements, 145-146.

³ *Accord* Restatement (Third) of the Foreign Relations Law of the United States § 311, paragraph 3.

⁴ *Accord* Restatement (Third) of the Foreign Relations Law of the United States § 337, paragraph 1 and comment (b).