

Ralls & Wille, P.C.

314 South Sixth Avenue

Tucson, Arizona 85701

(520) 884-1234

(520) 884-9687 fax

grant@rallslawoffice.com

Attorney for Cabrera

Grant D. Wille, AZ Bar #031989

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Jose Bibiano Cabrera Cabrera,

Defendant.

CR21-01864-TUC-SHR-MAA-002

Motion to Compel Disclosure

Jose Bibiano Cabrera Cabrera, through counsel, respectfully moves the Court to compel the disclosure of information related to the circumstances of his transfer from Mexico to the United States, pursuant to U.S. CONST., amend. V, VI, *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Barton*, 995 F.2d 931, 935 (9th Cir. 1993), and Fed. R. Crim. P. 12(b)(2), 16. The requested disclosure is essential to preserving Mr. Cabrera's right to litigate motions to dismiss for lack of personal jurisdiction due to a treaty violation, as well as for outrageous government conduct either in the form of a due process violation or as an exercise of this Court's supervisory powers.

MEMORANDUM OF POINTS AND AUTHORITIES

1. FACTUAL BACKGROUND:

1.1 Mr. Cabrera's Extradition Process.

Mexico and the United States entered their modern extradition treaty in 1978. Since then, the two sovereigns have regularly exchanged individuals for prosecution. Each state can send the other a request for extradition through diplomatic channels, after which the receiving state's executive is authorized to pursue the matter through that country's judicial process. Extradition Treaty Between the United States of America and the United Mexican States, U.S.-Mex., art. 13, May 4, 1978, 31 U.S.T. 5059 ("Extradition Treaty" or "Treaty").

Mr. Cabrera is a Mexican citizen who had never entered the United States prior to his transfer in this case. From 2018 through 2020, the Government and its agents conducted an investigation against Mr. Cabrera. They enlisted the assistance of a source of information who operated almost exclusively from within Mexico, obtained pen register/trap and trace information from Mexican phone numbers, and coordinated the international controlled delivery of controlled substances from Mexico to the United States.¹

Upon information and belief, the Government shared some of the information it developed with Mexico, and in turn, Mexico elected to prosecute Mr. Cabrera for the equivalent of a drug conspiracy. Mexican officials arrested him on April 18, 2021. Mr. Cabrera ultimately prevailed in that prosecution, though he was later charged with a second offense and remained in custody.

¹ Because the disclosed materials relating to this investigation are under a protective order, and because the source's specific activities are not relevant here, further details are not provided at this time.

On March 1, 2023, the United States requested the provisional arrest of Mr. Cabrera “for the purpose of extradition.” [Ex. 50, Extradition Packet, p. 6.] On June 6, 2023, the United States requested Mr. Cabrera’s extradition, citing the April 27, 2022 superseding indictment in this case. [Ex. 50, 6-7.] During the extradition proceedings, the first Mexican court to consider the matter committed a procedural error, failing to permit the parties sufficient time to present their cases. In turn, Mr. Cabrera filed an “amparo,” which is a writ of protection from a violation of the Mexican Constitution. The amparo requested the equivalent of an interlocutory stay to prevent a final order in the extradition proceedings. The 24th District Court of the State of Sonora granted that relief on October 29, 2024. [Ex. 51, Suspension Incident, 1501/2024-IV (Oct. 29, 2024).]

In early 2025, Mr. Cabrera’s attorney in Mexico received word that the United States and Mexico intended to send him to the United States in violation of the stay. The attorney filed a new amparo, and on February 26, 2025, the Sixth District Court of the State of Sinaloa granted relief. [Ex. 52, Amparo Demand 117-2025 (Feb. 26, 2025).] In that ruling, the Mexican court said:

Based on the provisions of Articles 125, 126, and 160 of the current Amparo Law, *an immediate suspension is decreed so that the plaintiff is not extradited, remaining at his current location at the disposal of this jurisdictional body*, solely with regard to his personal liberty, and at the disposal of the responsible judges for the continuation of the corresponding proceedings. This must be communicated to the responsible authorities so that they comply under their strictest responsibility.

[Ex. 52, 3 (emphasis added).] Although the relevant authorities received notice of this stay, [Ex. 52, 18,] Mr. Cabrera was transferred from Mexico to the United States on February 27, 2025.

1.2 History of U.S. Threats Leading to Transfers.

In 2020, during his first term, President Trump inquired with his then-Defense Secretary Mark Esper as to whether the U.S. could use military force in Mexico to stem drug trafficking. Mark T. Esper, *A SACRED OATH: MEMOIRS OF A SECRETARY OF DEFENSE DURING EXTRAORDINARY TIMES*, pp. 312-16 (2022). According to public reporting, President Trump continued to openly consider military action against Mexico between his first and second terms.² During the campaign that led to his second term, President Trump released a campaign video promising to designate cartels as foreign terrorist organizations and to use “special forces, cyber warfare, and other covert and overt actions to inflict maximum damage on cartel leadership, infrastructure, and operations,” use of military force in Mexico. *President Donald J. Trump Declares War on Cartels* (Jan. 5, 2023), <https://web.archive.org/web/20230520142221/https://www.donaldjtrump.com/agenda47/president-donald-j-trump-declares-war-on-cartels>.

President Trump remained focused on military force in Mexico after his election. Dan Lamothe, Tara Copp, Mary Beth Sheridan, Warren P. Strobel, *Trump administration weighs military action against drug cartels*, WASH. POST (Aug. 8,

²Asawin Suebsaeng, Adam Rawnsley, *Trump asks advisors for ‘battle plans’ to ‘attack Mexico’ if reelected*, ROLLING STONE (March 29, 2023), <https://www.rollingstone.com/politics/politics-features/donald-trump-mexico-military-cartels-war-on-drugs-1234705804/>; Asawin Suebsaeng, *Trump is planning to send kill teams to Mexico to take out cartel leaders*, ROLLING STONE (May 7, 2024), <https://www.rollingstone.com/politics/politics-features/trump-mexico-kill-teams-drug-cartels-1235016514/>; Ashley Carnahan, *Strikes against Mexican drug cartels are ‘absolutely’ still on the table, says former President Trump*, Fox News (July 23, 2024), <https://web.archive.org/web/20241210040628/https://www.foxnews.com/media/strikes-against-mexican-drug-cartels-absolutely-still-table-says-former-president-trump>.

2025), <https://www.washingtonpost.com/national-security/2025/08/08/trump-mexico-pentagon-drug-cartels/>. On the day of his inauguration, the President satisfied one of his campaign promises, signing an executive order listing cartels as “foreign terrorist organizations.” Exec. Order No. 14157, 90 Fed. Reg. 8439 (Jan. 20, 2025). In it, the Attorney General and Department of Homeland Security Secretary were directed to “make operational preparations regarding the implementation of any decision [the President may] make to invoke the Alien Enemies Act.”³ *Id.*, § 3(b). That act is a wartime law passed in 1798 that allows a president to detain, relocate, or deport noncitizens from a country deemed an enemy of the United States. *See* 50 U.S.C. § 21. One legal commenter suggested, “President Trump has seemingly been building the case that Mexico should be considered a mafia state, and that acts of the Mexican drug cartels in the United States should be considered acts of the Mexican government itself.” George Fishman, *Trump Prepares to Use the Alien Enemies Act*, CENTER FOR IMMIGRATION STUDIES (March 10, 2025), <https://cis.org/Fishman/Trump-Prepares-Use-Alien-Enemies-Act-0>.

After Trump followed through with his promise to designate cartels as terrorists, the real possibility that he would do the same with his other promise—to use military force—was not lost on Mexico’s leadership. *See President Donald J. Trump Declares War on Cartels, supra*. In fact, according to President Trump, each time he spoke with Mexico’s President, Claudia Sheinbaum, he raised the possibility of sending in military forces. Erin Hale, *Trump threatens Colombia’s Petro, says*

³ Apart from this invocation of the Alien Enemies Act, the only other powers actually invoked in the Order related to immigration controls, *see* 8 U.S.C. § 1189, and blocking certain financial transactions, *see* 50 U.S.C. § 1702. A proclamation signed the same day also activated reservists and freed up construction funding for the border. *See* Proclamation 10886, 90 F.R. 8327 (Jan. 20, 2025).

1 *Cuba looks ‘ready to fall’*, AL JAZEERA (Jan. 5, 2026), [https://www.aljazeera.com/news/2026/1/5/trump-threatens-colombias-petro-says-cuba-looks-like-its-](https://www.aljazeera.com/news/2026/1/5/trump-threatens-colombias-petro-says-cuba-looks-like-its-ready-to-fall)
2 *ready-to-fall*. The day after President Trump signed the executive order designating
3 drug traffickers as foreign terrorist organizations, President Sheinbaum held a press
4 conference. She stated Mexico would fully cooperate with the U.S.’s fight against
5 drug trafficking, but that she would not support U.S. military action. *Why has*
6 *Mexico handed over drug cartel leaders to US? Who are they?*, AL JAZEERA (Feb.
7 28, 2025), [https://www.aljazeera.com/news/2025/2/28/why-has-mexico-handed-](https://www.aljazeera.com/news/2025/2/28/why-has-mexico-handed-over-drug-cartel-leaders-to-us-who-are-they)
8 *over-drug-cartel-leaders-to-us-who-are-they*. She declared, “What we insist on is
9 the defense of our sovereignty and our independence.” *Id.*

11 In late January 2025, the Secretary of the Department of Defense and his
12 Senior Advisor initiated the Joint Service Interagency Advisory Group (JSIAG).
13 The core focus of this group—situated within our military’s command—was to
14 counter Mexican drug cartels and coordinate with the Mexican government. Dan
15 Lamothe, *Within Pete Hegseth’s divided inner circle, a ‘cold war’ endures*, WASH.
16 POST (May 27, 2025), [https://www.startribune.com/within-pete-hegseths-divided-](https://www.startribune.com/within-pete-hegseths-divided-inner-circle-a-cold-war-endures/601362370)
17 *inner-circle-a-cold-war-endures/601362370*. Only a few days after JSAIG’s
18 formation, Secretary Hegseth held his first phone call with Mexico’s top military
19 officials, during which he threatened unilateral military action. José de Córdoba,
20 Santiago Pérez, Vera Bergengruen, *Hegseth Warned of Military Action if Mexico*
21 *Fails to Meet Trump’s Border Demands*, WALL ST. J. (Feb. 28, 2025),
22 [https://www.wsj.com/politics/policy/trump-mexico-drug-cartel-tariff-hegseth-](https://www.wsj.com/politics/policy/trump-mexico-drug-cartel-tariff-hegseth-military-action-5f507ab0)
23 *military-action-5f507ab0*.

On February 1, 2025, President Trump signed another executive order imposing a 25% tariff on Mexico. Exec. Order No. 14194, 90 Fed. Reg. 9117 (Feb. 1, 2025). The order expanded a prior proclamation designating a national emergency at the border “to cover the failure of Mexico to arrest, seize, detain, or otherwise intercept DTOs, other drug and human traffickers, criminals at large, and illicit drugs.” *Id.*, § 1; *see* Proclamation 10886, 90 F.R. 8327 (Jan. 20, 2025). On February 5, 2025, the Attorney General issued a memorandum addressing the frustration of bringing traffickers to justice. Total Elimination of Cartels and Transnational Criminal Organizations, Office of the Att’y Gen. (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388546/dl>. In it, the Attorney General addressed the need to “remov[e] bureaucratic impediments to aggressive prosecutions.” *Id.*

By the end of February 2025, “Trump officials [were] embroiled in a debate over whether to carry out military strikes” Alan Feuer, Maria Abi-Habib, *Trump Officials Split Over How Hard to Go on Mexican Cartels*, N.Y. TIMES (Feb. 27, 2025), <https://www.nytimes.com/2025/02/27/world/americas/mexico-trump-cartels-washington.html>. In response, a delegation of Mexican officials traveled to Washington to negotiate over the threats the U.S. had levied. *Id.*

1.3 Taking Credit for the Transfers.

As the Mexican delegation traveled to Washington, Mexico attempted to appease the U.S. by transferring 29 individuals from Mexico, including Mr. Cabrera. In several press releases, the United States Government expressly took credit for the transfers. The White House press release on the matter stated:

Last night, 29 Mexican Cartel Members were extradited to the United States. President Trump directed the Department of Justice and the Department of State to make this happen, and Attorney General Bondi and

Secretary of State Rubio did a tremendous job in getting this done.

Statement from the Press Secretary, The White House (Feb. 28, 2025), <https://www.whitehouse.gov/briefings-statements/2025/02/statement-from-the-press-secretary-19a9/>. The Department of State wrote:

Yesterday Secretary of State Marco Rubio, Attorney General Pam Bondi, and Secretary of Defense Pete Hegseth met with Mexico's high-level security delegation, led by Foreign Secretary Juan Ramón de la Fuente Secretary Rubio expressed appreciation for . . . the expulsion of 29 major cartel figures

Secretary Rubio's Meeting with High-Level Mexican Security Delegation, U.S. Dep't of State (Feb. 28, 2025), <https://www.state.gov/secretary-rubios-meeting-with-high-level-mexican-security-delegation>.

In the Attorney General's press release, Acting Deputy Attorney General Emil Bove said the transfers were "a consequence of a White House that negotiates from a position of strength" Attorney General Pamela Bondi Announces 29 Wanted Defendants from Mexico Taken into U.S. Custody, Dep't of Justice Office of Pub. Affairs (Feb. 27, 2025), <https://www.justice.gov/opa/pr/attorney-general-pamela-bondi-announces-29-wanted-defendants-mexico-taken-us-custody>. The statement went on:

Many of the defendants were subject to longstanding U.S. extradition requests that were not honored during the prior Administration, but that the Mexican government elected to transfer to the current U.S. government in response to the Justice Department's efforts pursuant to President Trump's directive in Executive Order 14157, entitled *Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists*

Id.

1 Mexican officials similarly confirmed the U.S.'s responsibility for the
2 transfers. During a news conference, Secretary of Security and Citizen Protection
3 Garcia Harfuch and Attorney General Alejandro Gertz said that the transfers were
4 done "in coordination, cooperation, respect for sovereignty, and international
5 reciprocity with the government of the United States." [Ex. 53, *United States v.*
6 *Trevino*, 1:08-cr-00057-TNM, Doc. 797-4, 1 (D.C. Dist. Mar. 1, 2026) (transcript of
7 Conferencia de Prensa. Gabinete de Seguridad Ciudad de México, YOUTUBE (Feb.
8 28, 2025), <https://www.youtube.com/watch?v=r27QMvPu5Q4&list=PPSV>).] They
9 further stated, "the transfer of 29 generators of violence required by the United
10 States Department of Justice was agreed upon." [Ex. 53, 1.]

11 As to the legal mechanism underpinning the transfers, the Mexican officials
12 gave convoluted answers. Sometimes they referenced provisions of the
13 U.S.-Mexico treaty. For example, when a reporter asked about the death penalty, the
14 Mexican Attorney General replied that "we have a very clear agreement to the effect
15 that legislation such as Mexico's, which does not have that sanction, must be
16 respected in the countries where we have a treaty." [Ex. 53, 2.] At other times, he
17 referenced internal Mexican law, such as Article 5 of Mexico's Law of National
18 Security and Article 89 of the Mexican Constitution. [Ex. 53, 3-4.] They also
19 mentioned the United Nations Convention against Transnational Organized Crime,
20 also known as the Palermo Convention. [Ex. 53.] Regardless of these shifting
21 justifications, by the end of the conference, the Mexican Attorney General expressly
22 acknowledged that the U.S. had sent "a specific written request," which included
23 the names of the requested individuals, such as Mr. Cabrera. [Ex. 53, 4.]
24

1.4 Subsequent Developments.

During the year following Mr. Cabrera's transfer to the United States, the U.S. and Mexico coordinated the transfer of two more groups of Mexican citizens. On August 12, 2025 and January 20, 2026, a total of 63 people were transferred.

Throughout this time, the lines between the various U.S. agencies involved in counter-cartel operations continued to blur military and law enforcement roles. For example, a year after the establishment of JSIAG, the U.S. established the Joint Interagency Task Force-Counter Cartel, based out of Fort Huachuca, as part of the Homeland Security Task Force National Coordination Center. Joint Interagency Task Force-Counter Cartel established, U.S. N. Command Press Release (Jan. 15, 2026), <https://www.northcom.mil/Newsroom/News/Article/Article/4381245/joint-interagency-task-force-counter-cartel-jiatf-cc-established/>. The Task Force incorporates the Department of Defense, Department of Homeland Security, the Department of Justice, and various agencies in the Intelligence Community.

1.5 Disclosure Requests.

On November 14, 2025, the Government told to the Defense that Mr. Cabrera was not extradited and that he had been transferred under Mexico's national security law. On February 10, 2026, the Defense gave the Government with a copy of Mr. Cabrera's amparos from Mexico that prohibited his transfer out of that country. The Defense submitted a disclosure request, identifying various types of communications related to the circumstances of the transfer of Mr. Cabrera, as well as entities that may have participated in generating such communications. [Ex. 54, Disclosure Request.] On March 20, 2026, the Government indicated the prior extradition request was irrelevant because Mr. Cabrera "is now in the United States

1 and subject to United States law.” It added, “What Mexico chooses to do is up to
2 Mexico.”

3 **2. LAW:**

4 Two opposing legal principles govern the issue at hand. The first is the
5 Supremacy Clause, which makes treaties the supreme law of the land alongside the
6 Constitution itself. U.S. CONST. art. VI, cl. 2. The second is the *Ker/Frisbee*
7 Doctrine, which permits the Government to bring a defendant before a federal court
8 through forcible abduction, unless the means of doing so were sufficiently extreme.
9 *E.g., United States v. Toscanino*, 500 F.2d 267 (2d Cir.), *petition for rehearing en*
10 *banc denied*, 504 F.2d 1380 (1974). Courts have synthesized these principles into a
11 single rule: if the defendant’s arrival before the court either violated an applicable
12 extradition treaty or the Government engaged in misconduct of the most shocking
13 and outrageous kind to obtain the defendant’s presence, the *Ker/Frisbee* Doctrine
14 does not apply and a court is deprived of jurisdiction. *United States v. Anderson*,
15 472 F.3d 662, 666 (2006).

16 The statement of law below proceeds in three sections. Section 2.1 describes
17 the U.S.-Mexico Extradition Treaty and personal jurisdiction. Section 2.2 describes
18 outrageous government conduct, including (§ 2.2.1) dismissal based on due process
19 violations and (§ 2.2.2) dismissal pursuant to the Court’s supervisory powers.
20 Section 2.3 provides the law on disclosure and, in particular, *Brady* obligations.

21 **2.1 U.S.-Mexico Extradition Law.**

22 The Government always bears the burden of establishing jurisdiction, and a
23 judicial order absent personal jurisdiction is a violation of the Due Process Clause.
24 *United States v. Marks*, 530 F.3d 799, 810 (2008); *see Sinatra v. National Enquirer*,

1 *Inc.*, 854 F.2d 1191, 1196 (9th Cir. 1988); *cf. J. McIntyre Mach., Ltd. V. Nicastro*,
 2 564 U.S. 873, 879 (2011). In most cases, personal jurisdiction in a criminal case is
 3 a simple matter—so simple that it is often not expressly addressed. However, if the
 4 Government submits an extradition treaty request to obtain jurisdiction over a
 5 person in foreign territory, then the treaty’s terms and restrictions apply. *See United*
 6 *States v. Struckman*, 611 F.3d 560, 571 (9th Cir. 2010); *Oen Yin-Chon v. Robinson*,
 7 858 F.2d 1400, 1404 (9th Cir. 1988) (it is the U.S.’s “demand” that distinguishes
 8 extradition from the unilateral acts of a foreign government).⁴

9 Treaties are the supreme law of the land, U.S. CONST. art. VI, cl. 2, and a
 10 violation of the treaty’s terms deprives the courts of personal jurisdiction, *Anderson*,
 11 472 F.3d at 666. This is so, regardless of whether the foreign state formally protests
 12 the removal or not. *See United States v. Fontana*, 869 F.3d 464, 469 (6th Cir. 2017)
 13 (discussing *United States v. Alvarez-Machain*, 504 U.S. 655 (1992) and *United*
 14 *States v. Rauscher*, 119 U.S. 407 (1886)). “Extradition treaties exist so as to impose
 15 mutual obligations to surrender individuals in certain defined sets of circumstances
 16” *Alvarez-Machain*, 504 U.S. at 664-65. Such treaties “establish[] the procedures
 17 to be followed when [they] are invoked.”⁵ *Id.*

18
 19 ⁴ *Ker v. Illinois*, 119 U.S. 436, 438 (1886) suggests that the treaty’s provisions
 20 do not become binding if the requested State never receives the request. In *Ker*, an
 21 agent for the U.S. never delivered the extradition request that had been issued and,
 22 instead, abducted the defendant from the foreign country. That exception is
 23 inapplicable to this case because the U.S. delivered its extradition request for Mr.
 Cabrera to Mexico. [Ex. 50, 6.] Moreover, the request had immediate effect, as it
 included a provisional arrest warrant submitted in a diplomatic note on March 1,
 2023. [Ex. 50, 6.]

24 ⁵ This is one of many reasons why the “Act of State” Doctrine is inapplicable
 in this case. That doctrine states, “In the absence of a treaty or other unambiguous
 agreement regarding controlling legal principles, courts in the United States will

U.S. courts are bound to defer to the prior decisions of Mexican courts regarding the treaty's application to an individual. *United States v. Van Cauwenberghe*, 827 F.2d 424, 428-29 (9th Cir. 1987). "[A]n American court must give great deference to the determinations of the foreign court in an extradition proceeding." *Casey v. Dep't of State*, 980 F.2d 1472, 1477 (D.C. Cir. 1992) (declining jurisdiction because foreign court's decision on extradition was not yet final). Extraditions are a matter of international reciprocity and comity. *Van Cauwenberghe*, 827 F.2d at 428-29. If the U.S., its judicial branch, and its citizens wish for U.S. court orders to be upheld in Mexico, our courts must also uphold the rulings of their Mexican counterparts.

The U.S.-Mexico Extradition Treaty describes the minimal process required for extradition. Article 13 addresses the role of each branch of government in the context of extradition:

1. The request for extradition shall be processed in accordance with the legislation of the requested Party.
2. The requested Party shall make all arrangements necessary for internal procedures arising out of the request for extradition.

assume the validity of an official act of a foreign sovereign performed within its own territory." Restatement 4th of Foreign Relations Law of the U.S. § 441(1). However, the Doctrine is based in federal common law and is not jurisdictional. *Id.*, cmt. a (Doctrine provides a rule of decision). The Doctrine is inapplicable when there is a treaty or other unambiguous agreement between the States, *id.*, cmt. g; when the foreign state's act has effect outside that state's territory, *id.* cmt. e, when the question presented to the court does not require the court to declare the foreign act invalid, *id.*, cmt. d, or when the foreign act amounts to a violation of *jus cogens* norms, see *Sarei v. Rio Tinto, PLC*, 671 F.3d 736, 759 (9th Cir. 2011) (*en banc*), vacated and remanded, 569 U.S. 945 (2013), *rev'd on other grounds*, 722 F.3d 1109 (9th Cir. 2013) (*en banc*).

3. The competent legal authorities of the requested Party shall be authorized to employ all legal means within their power to obtain from the judicial authorities the decisions necessary for the resolution of the request for extradition.

The language of Article 13 addresses legislation, executive authority (*i.e.*, the “competent legal authorit[y]”), and the role of the judiciary. The United States and Mexico were bound to enact legislation and internal procedures to put the Extradition Treaty into effect within each country. Mexico’s Congress of the Union enacted its Law of International Extradition in 1975. That statute lays out the specific steps for extradition across its 37 articles, similar to 18 U.S.C. §§ 3181-96. [Ex. 55, Ley de Extradición Internacional [LEI], Diario Oficial de la Federación [DOF] 29-12-1975, últimas reformas DOF 20-05-2021.] Next, the executive branch of each state was given the authority needed to pursue the extradition on behalf of the other sovereign. *See Quinn v. Robinson*, 783 F.2d 776, 782 (9th Cir. 1986) (“The right of a foreign sovereign to demand and obtain extradition of an accused criminal is created by treaty.”). As to the final decision on the matter, the Extradition Treaty places ultimate authority to resolve the “decisions necessary” for an extradition in the hands of the “judicial authorities” of each sovereign, akin to the basic principle of judicial review first espoused in *Marbury v. Madison*, 5 U.S. 137 (1803).

Exactly what a court needs to adjudicate is addressed throughout the Treaty. Article 3 describes the appropriate standard of review. Article 10 lists the evidence needed to support an extradition request. It also addresses what evidence each judicial branch is obligated to “receive[] in evidence.” Art. 10, § 6. The Treaty notes specific defenses, such as the Rule of Specialty, which prevents prosecution for anything but the offense specifically approved of by the requested state. Art. 17. Other defenses include dual criminality, Art. 2, the prohibition of extradition for

1 political and military offenses, Art. 5, *non bis in idem* (a common law corollary to
2 double jeopardy), Art. 6, statutes of limitation, Art. 7, and capital punishment, Art. 8.

3 In contrast to the Extradition Treaty and the well-defined extradition statutes
4 enacted in Mexico's Law of International Extradition, the legal authorities cited by
5 Mexico's Attorney General during his press conference have nothing to do with
6 deporting or otherwise transferring citizens out of Mexico. The first of those cited,
7 Article 5 of the Law of National Security, provides only statutory definitions for
8 "threats to national security." [Ex. 56, Ley de Seguridad Nacional [LSN] art. 5,
9 Diario Oficial de la Federación [DOF] 31-01-2005, últimas reformas DOF 14-11-
10 2025.] It states, in full:

11 For the purposes of this Law, the following constitute
12 threats to national security:

13 I. Acts intended to commit espionage, sabotage,
14 terrorism, rebellion, treason, or genocide against the
United Mexican States within the national territory;

15 II. Acts of foreign interference in national affairs that
may adversely affect the Mexican State;

16 III. Acts that prevent the authorities from acting against
17 organized crime;

18 IV. Acts intended to undermine the unity of the
19 constituent parts of the Federation, as set forth in Article
43 of the Political Constitution of the United Mexican
States;

20 V. Acts intended to hinder or block military or naval
21 operations against organized crime;

22 VI. Acts against aviation security;

23 VII. Acts targeting diplomatic personnel;

24 VIII. Any act aimed at facilitating the illegal trafficking
of nuclear materials, chemical, biological, and
conventional weapons of mass destruction;

IX. Illegal acts against maritime navigation;

X. Any act of financing terrorist actions and organizations;

XI. Acts intended to hinder or block intelligence or counterintelligence activities;

XII. Acts intended to destroy or disable infrastructure of a strategic nature or indispensable for the provision of public goods or services, and

XIII. Illegal acts against the federal treasury referred to in Article 167 of the National Code of Criminal Procedure.

[Ex. 56, art. 5.]

The second authority cited, Article 89 of the Mexican Constitution, is also devoid of anything relevant to the transfer of citizens out of the country.⁶ Constitución Política de los Estados Unidos Mexicanos (“CPEUM”), art. 89, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 06-05-2026, https://www.oas.org/ext/Portals/33/Files/Member-States/en_mex-int-text-const.pdf (Mexican government’s English translation). That article defines the powers and duties of the Mexican President. The only provision in Article 89 that comes close to the issue at hand here is Section X, which states that the President can “direct diplomatic negotiations and make treaties with foreign powers, submitting them to the ratification of the federal Congress.” CPEUM, art. 89 § 10.

The third authority that the Mexican Attorney General made reference to was the Palermo Convention. That treaty expands the offenses for which an extradition can occur, but it otherwise affirms that domestic law and applicable extradition

⁶ Notably, there is a separate provision of the Mexican Constitution that references the “power to expel,” but it applies solely to foreigners within Mexico. *See* CPEUM, art. 33. Moreover, that article requires due process through established administrative procedures. *Id.*

1 treaties are still controlling. *See* United Nations Convention against Transnational
 2 Organized Crime, art. 16 § 7, Nov. 15, 2000, 2225 U.N.T.S. 209.

3 In sum, extradition treaties define the procedural mechanisms that bind each
 4 state once a request is submitted to the other. *See Alvarez-Machain*, 504 U.S. at
 5 664-65. The Treaty between the U.S. and Mexico lays out the minimal process
 6 required for the extradition of a Mexican citizen to the U.S., including a final order
 7 from a Mexican court authorizing extradition. *See* Extradition Treaty arts. 2, 3, 6, 7,
 8 10, 13, 17. In contrast, the authorities cited by the Mexican Attorney General (and,
 9 now, the Government) to justify the threat-induced transfers post-hoc have nothing
 10 to do with transfers, deportations, or expulsions.

11 **2.2 Outrageous Government Conduct.**

12 The *Ker/Frisbee* Doctrine lies in the lawless grey area unaddressed by
 13 extradition treaties. Under the Doctrine, the United States or third parties can
 14 forcibly abduct a person from a foreign country and bring them before a federal
 15 court for prosecution, so long as the means of producing the person were not so
 16 shocking and outrageous “as to violate the universal sense of justice.” *United States*
 17 *v. Barrera-Moreno*, 951 F.2d 1089, 1092 (9th Cir. 1991).

18 If that limit—outrageous government conduct—is crossed, then a case may
 19 be dismissed under two parallel theories. First, conduct may be “so outrageous that
 20 due process principles would absolutely bar the government from invoking judicial
 21 processes to obtain a conviction.” *United States v. Russell*, 411 U.S. 423, 431-32
 22 (1973); *see United States v. Williams*, 547 F.3d 1187, 1199 (9th Cir. 2008). Second,
 23 outrageous conduct may compel courts to use their supervisory powers over the
 24 administration of justice. *McNabb v. United States*, 318 U.S. 332, 340-41 (1943).

2.2.1. Due Process and Outrageousness.

Under the first, due-process-based theory, courts have applied the standard of outrageousness to a variety of factual circumstances. It has arisen in the context of entrapment, wherein the Government acts so outrageously to manufacture the offense that courts determine proceeding would, in effect, make the courts collaborators in the injustice. *See United States v. Black*, 733 F.3d 294, 302 (9th Cir. 2013). Courts have also applied the standard when agents of the U.S. have kidnapped and tortured individuals in foreign countries to secure their presence in the United States. *See United States v. Toscanino*, 500 F.2d 267 (2d Cir.), *petition for rehearing en banc denied*, 504 F.2d 1380 (1974) (“In an effort to deter police misconduct, the term has been extended to bar the government from realizing directly the fruits of its own deliberate and unnecessary lawlessness in bringing the accused to trial.”).

The topic of “shocking” conduct was recently addressed in the highly publicized case of Kilmar Abrego Garcia, which presents a helpful illustration for the present case. Like this case, Mr. Abrego was subjected to an international transfer that violated a standing court order, and thereafter, the U.S. government denied responsibility for the violation. Mr. Abrego is an El Salvadoran national living in the United States. [Ex. 57, *Abrego Garcia v. Kristi Noem*, 8:25-cv-00951-PX, ECF 31, 2-3 (D. Md., April 6, 2025).] In 2019, an immigration court imposed a withholding of removal order, preventing his deportation to El Salvador. [Ex. 57, 3-4.] The Government did not appeal that order, and the order became final. [Ex. 57.] Nonetheless, ICE agents arrested Mr. Abrego in 2025. [Ex. 57, 4.] On March 15, 2025, he and approximately 100 other individuals were flown to El Salvador to

1 be imprisoned in the Terrorism Confinement Center. [Ex. 57, 5.] The executive
 2 branch of our government purportedly justified this flight under the previously noted
 3 Alien Enemies Act. [Ex. 57.] To facilitate the transfer, the United States agreed to
 4 pay El Salvador six million dollars. [Ex. 57.]

5 Mr. Abrego and his family challenged the lawfulness of his transfer⁷ in a suit
 6 and moved for a preliminary injunction. [Ex. 57, 7.] In response, the Government
 7 argued that it (and the court) had no control over the situation because Mr. Abrego
 8 was now in the custody of El Salvador. [Ex. 57.] The District Court rejected the
 9 Government’s attempt to frame the issue as having anything to do with his custody
 10 and instead remained focused on the illegality of the transfer in violation of a court
 11 order. [Ex. 57, 7-8.] When addressing the Government’s deferral of responsibility
 12 to a foreign sovereign, the court wrote:

13 [T]o credit Defendants’ argument would permit the
 14 unfettered relinquishment of any person regardless of
 15 immigration status or citizenship to foreign prisons “for
 pennies on the dollar.”

16
 [T]he public remains acutely interested in “seeing its
 governmental institutions follow the law”

17 [Ex. 57, 9, 21 (*quoting Roe v. Dep’t of Def.*, 947 F.3d 207, 230-31 (4th Cir. 2020)).]

18 The Fourth Circuit later reiterated that reasoning:

19 If today the Executive claims the right to deport without
 20 due process and in disregard of court orders, what
 21 assurance will there be tomorrow that it will not deport
 American citizens and then disclaim responsibility to
 22 bring them home? And what assurance shall there be
 that the Executive will not train its broad discretionary
 23 powers upon its political enemies? The threat, even if
 not the actuality, would always be present, and the

24 ⁷ He did not challenge his confinement in El Salvador because, as the district
 court in that case noted, “[t]he removal itself lies at the heart of the wrongs.” [Ex.
 57, 7.]

Executive’s obligation to “take Care that the Laws be faithfully executed” would lose its meaning.

....
The respect that courts must accord the Executive must be reciprocated by the Executive’s respect for the courts. Too often today this has not been the case, as calls for impeachment of judges for decisions the Executive disfavors and exhortations to disregard court orders sadly illustrate.

Garcia v. Noem, 2025 U.S. App. LEXIS 9237, *6, No. 25-1404 (Order), p. 5 (4th Cir. 2025) (*quoting* U.S. CONST. art. II, § 3.); *see also Noem v. Abrego Garcia*, 604 U.S. __, No. 24A949 (2025) (Statement of Sotomayor, J.) (“The Government’s argument, moreover, implies that it could deport and incarcerate any person, including U.S. citizens, without legal consequence, so long as it does so before a court can intervene.”). The Fourth Circuit described this conduct as “shocking”:

The government is asserting a right to stash away residents of this country in foreign prisons without the semblance of due process that is the foundation of our constitutional order. . . .

This should be *shocking* not only to judges, but to the intuitive sense of liberty that Americans far removed from courthouses still hold dear.

Abrego Garcia, 2025 U.S. App. LEXIS 9237, *2 (emphasis added). In sum, forcibly removing citizens from their own homeland without due process is “shocking.”

2.2.2. Dismissal Using Supervisory Powers.

If the Government’s conduct is not so “shocking” or “outrageous” to constitute a due process violation, a court may still dismiss an indictment under its supervisory powers. *Struckman*, 611 F.3d at 574-75. The Ninth Circuit has approved of invoking supervisory powers to remedy the violation of certain rights that would otherwise go unanswered, to preserve judicial integrity, or to deter future illegal

1 conduct.⁸ *Id.* (citing *United States v. Matta-Ballesteros*, 71 F.3d 754, 763, 764 n.5
 2 (9th Cir. 1995)). The defendant must show that the rights violated are grounded in
 3 an international *jus cogens* norm, the Constitution, or a statutory provision. *Id.* at
 4 575-76. In addition, a showing of prejudice is necessary. *Id.* Prejudice is presumed,
 5 however, for structural errors which “affect[] the framework” of the proceedings
 6 rather than the substance of the evidence, such as a biased judge or a defendant
 7 without counsel. *Arizona v. Fulminante*, 499 U.S. 279, 230, 310 (1991).

8 *Jus cogens* norms are those international norms that cannot be diminished by
 9 law or treaty and that are universally recognized as inviolable. *Struckman*, 611 F.3d
 10 at 576. For example, no state would recognize the legalization of torture, slavery, or
 11 genocide. These norms carry the force of “the highest status within international
 12 law.” *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 715 (9th Cir. 1992).
 13 They carry that weight not because sovereign states consent to them, but because
 14 they are so fundamental that they are shared universally. *Id.* In turn, these norms are
 15 *erga omnes*, meaning all states (and courts) are bound to enforce them. *Id.*

16 After World War II, the United States abandoned the theory of war proposed
 17 by Prussian military strategist Carl von Clausewitz (“war is nothing more than a
 18 continuance of the political process by other means”) and formally adopted the
 19 natural-law⁹ based theory of just war originally developed by Christian theologians

20 ⁸ Although these are technically separate grounds for dismissal, the case in
 21 *Struckman* indicates that the tests for each overlap when the offense conduct at issue
 22 arises from the conduct of the executive branch. Specifically, if one seeks to dismiss
 23 to preserve judicial integrity or deter future illegal conduct due to government
 24 conduct, the defendant still needs to show a violation of certain rights. *Struckman*,
 611 F.3d at 576-77.

⁹ “Positivism holds that binding law comes through the affirmative acts of
 states and other international actors. Treaties, which require affirmative consent, and

1 like Thomas Aquinas. See Mary E. O'Connell, The Just War Tradition and
 2 International Law against War: The Myth of Discordant Doctrines, 35 J. Soc'y
 3 Christian Ethics 33, 35-39 (2015) ("Just War Tradition") (describing development
 4 of theory). Specifically, in 1945, the U.S. Senate ratified and President Truman
 5 signed the United Nations Charter. Article 2, section 4 of the Charter states: "All
 6 Members shall refrain in their international relations from the threat or use of force
 7 against the territorial integrity or political independence of any state"

8 Since the 1980s, the prohibition codified in Article 2, section 4, has been
 9 recognized as a *jus cogens* norm. Just War Tradition, at 43. Its status as a *jus cogens*
 10 norm is recognized in the Restatement on U.S. Foreign Relations Law. See Restat.
 11 3d of the Foreign Relations Law of the U.S., § 102, cmt. h, k; Just War Tradition, p.
 12 43 ("The perception that Article 2(4) is a peremptory norm acknowledges the rule's
 13 origin in just war theory and its connection to fundamental moral teaching."). The
 14 International Court of Justice ("ICJ") has also recognized the prohibition as a *jus*
 15 *cogens* norm. See *Military and Paramilitary Activities in and Against Nicaragua*
 16 (*Nicar. v. U.S.*), Merits, Judgment, 25 I.L.M. 1023, ¶¶ 189-90 (1986).¹⁰ Moreover,
 17 the ICJ has rejected the idea that threatening force is distinct from the use of force.
 18 Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 35 I.L.M. 809
 19 (1996), [https://www.icj-cij.org/sites/default/files/case-related/95/095-19960708-](https://www.icj-cij.org/sites/default/files/case-related/95/095-19960708-ADV-01-00-EN.pdf)
 20 *ADV-01-00-EN.pdf*. In its reasoning, the ICJ noted that "no State" (including the

21
 22 customary international law, which is built on state practice and state expression of
 23 *opinio juris*, can be explained by positivism. General principles and rules of *jus*
cogens, however, require natural law explanations." Just War Tradition, at 38

24 ¹⁰ In briefing on this case, the U.S. Government relied on several scholars and authorities who also concluded Article 2, section 4 was universal and a *jus cogen* norm. See *Nicar. v. U.S.*, Merits, Judgment, ¶ 190.

United States) had “suggested to the Court that it would be lawful to threaten to use force if the use of force contemplated would be illegal.” *Id.*, ¶ 47; *see Letter from the Acting Legal Advisor to the Department of State, together with Written Statement from the Government of the United States of America* (June 20, 1995), <https://www.icj-cij.org/sites/default/files/case-related/95/8700.pdf>. In fact, Congress has codified Article 2, Section 4, of the U.N. Charter, writing “armed force shall not be used except for individual or collective self-defense.” 22 U.S.C. § 2301.

In addition to when *jus cogens* norms are violated, an exercise of supervisory powers is also appropriate when statutory violations would otherwise go unremedied. The U.S. Code contains prohibitions germane to the use of force abroad. A sitting president can “introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, . . . *only* pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.” 50 U.S.C. § 1541 (emphasis added). It is a war crime under U.S. Code to conspire to kill people “taking no active part in . . . hostilities.” 18 U.S.C. § 2411(d)(1)(D) (murder).

Like the statutory limits to the President’s war powers, Congress has also imposed limits on economic pressure abroad. Congress expressly provided the President with the power to use economic regulation to respond to foreign threats through the International Emergency Economic Powers Act (“IEEPA”). *See* 50 U.S.C. § 1701 *et seq.* But the limits of this authority have already been addressed recently by our Supreme Court. *See Learning Resources, Inc. v. Trump*, 607 U.S. _____, 146 S. Ct. 628 (2026). That litigation involved one of the same executive

orders at issue here. *See* Exec. Order No. 14194, 90 Fed. Reg. 9117 (Feb. 1, 2025). In *Learning Resources*, the government “concede[d], as it must, that the President enjoys no inherent authority to impose tariffs during peacetime,” and it did not “defend the challenged tariffs as an exercise of the President’s warmaking powers.” *Id.* at 631. After analyzing the specific provisions of IEEPA, the Court concluded that “IEEPA does not authorize the President to impose tariffs.” *Id.* at 633-34.

Moreover, if the U.S.¹¹ has destroyed any documentation relevant to arguments based in the U.S.-Mexico Extradition Treaty or the Due Process Clause, above, [*see, e.g., Ex., 58, American Historical Association v. Trump*, No. 26-1169, ECF 24 (D.D.C. May 20, 2026) (injunction to stop destruction of records); *Ex. 59, American Oversight v. Hegseth, et. al.*, No. 1:25-cv-883, Doc. 1 (D.D.C. Mar. 25, 2025) (lawsuit on similar basis)¹²], then various statutes would have also been violated. *See* 44 U.S.C. §§ 2201-09 (Presidential Records Act); 44 U.S.C. § 2111 (Presidential Recordings and Materials Preservation Act); 44 U.S.C. ch. 21, 29, 31, and 33 (Federal Records Act); 22 U.S.C. §§ 4351-57 (Foreign Relations of the United States Historical Series); *see also* 18 U.S.C. § 2071 (Concealment, Removal,

¹¹ To be absolutely clear, the Defense has no reason to believe the prosecutors specifically assigned to this case have acted in any improper manner.

¹² *See also, e.g., Mitchell Lerner, An important source of declassified materials for scholars of American diplomacy is now under threat*, London School of Economics and Political Science (May 7, 2025) (discussing termination of members of the Advisory Committee on Historical Diplomatic Documentation), <https://blogs.lse.ac.uk/usappblog/2025/05/07/an-important-source-of-declassified-materials-for-scholars-of-american-diplomacy-is-now-under-threat/>; *Trump’s Hostile Takeover of the National Archives – and Our Nation’s History*, American Oversight (Mar. 12, 2025), <https://americanoversight.org/investigation/trumps-hostile-takeover-of-the-national-archives-and-our-nations-history/>.

or Mutilation of Records); 18 U.S.C. § 641 (Public Money, Property, or Records); 18 U.S.C. § 793(f) (Espionage Act on National Defense Information). A violation of these statutes would satisfy the requirements for invocation of a court’s supervisory powers, as well as amount to an additional form of prejudice to support the supervisory-powers dismissal. *See Struckman*, 611 F.3d at 574-75.

2.3 The Duty to Disclose Favorable, Material Evidence.

In addition to the normal disclosure obligations under Rule 16(a)(1)(E), Fed. R. Crim. P., the Due Process Clause requires that prosecutors search for and disclose evidence that is favorable to the accused. *Comstock v. Humphries*, 786 F.3d 701, 708 (9th Cir. 2015); *see also* U.S. CONST., amend. IV, V, VI; *Brady v. Maryland*, 373 U.S. 83 (1963). In *United States v. Barton*, the Ninth Circuit explained that evidence favorable to the accused includes materials that are relevant to a motion to defend a recognized constitutional right. 995 F.2d 931, 935 (9th Cir. 1993) (discussing how, absent disclosure, defendant is deprived of his Fourth Amendment right to pursue a motion to suppress).

Because “prosecutors are in a ‘unique position to obtain information known to other agents of the government,’” *United States v. Cano*, 934 F.3d 1002, 1023 (9th Cir. 2019) (quoting *Carriger v. Stewart*, 132 F.3d 463, 480 (9th Cir. 1997) (en banc)), a prosecutor’s duty extends to evidence outside the prosecution’s possession, *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). They have a duty to search for favorable evidence that may be known to “others acting on the government’s behalf in the case.” *Id.*; *see also United States v. Price*, 566 F.3d 900, 903 (9th Cir. 2009).

One simple example of “others acting on the government’s behalf” is the Office of International Affairs (“OIA”). The DOJ’s Justice Manual imposes a

comprehensive, multi-stage coordination requirement between federal prosecutors and the OIA whenever a target is located in a foreign jurisdiction. *See* Justice Manual, Criminal Resource Manual¹³ § 266, <https://www.justice.gov/archives/jm/criminal-resource-manual-266-international-legal-assistance>. The OIA is a part of the DOJ’s Criminal Division. *Id.* It assists in international evidence gathering, legal advice to prosecutors handling international investigations, and manages international relations and treaty matters. “Office of International Affairs,” U.S. Dep’t of Justice, Criminal Division (last accessed May 28, 2026), <https://www.justice.gov/criminal/criminal-oia>. The Justice Manual imposes sweeping restrictions obligating prosecutors to coordinate with the OIA during international investigations. Prosecutors are prohibited from engaging in unilateral investigative acts outside the United States without OIA’s approval. JM 9-13.500, <https://www.justice.gov/jm/jm-9-13000-obtaining-evidence>. The OIA is also the mandatory gateway to requesting an extradition. JM 9-15.200, <https://www.justice.gov/jm/jm-9-13000-obtaining-evidence#9-13.200>. Prosecutors and the OIA work together from the moment a prosecutor has the intention of extraditing a target. *Id.* Prior to an extradition request, it is the OIA’s prerogative to request a provisional arrest warrant. JM 9-15.230, <https://www.justice.gov/jm/jm-9-15000-international-extradition-and-related-matters#9-15.230>. Each extradition request is reviewed and approved by the OIA. *Id.* at § 9-15.210. The Government is also required to maintain communication with the OIA as the case proceeds and defendants raise issues regarding their extradition. *Id.* at § 9-15.500. In compiling the extradition request, the OIA reviews and approves of documentation, including:

¹³ Hereafter, the Justice Manual is cited as “JM” and the Criminal Resource Manual is cited as “JM CRM.”

Evidence, which may need to be in the form of witness affidavits, reports, or documentary evidence, or summaries thereof, establishing that the crime was committed, including sufficient evidence (i.e., photographs, fingerprints, and affidavit of identifying witness) to establish the defendant's identity.

Id. at § 9-15.240. From there, the OIA enlists the Department of State to transmit extradition requests. *Id.* at § 9-15.300. The OIA also manages the physical transfer of defendants. *Id.* at § 9-15.400. And if the U.S. seeks some other means of obtaining a suspect in a foreign jurisdiction, such as a kidnapping or luring a person into the United States, the Justice Manual still mandates the OIA's involvement. *Id.* at § 9-15.600-630.

In addition to the kind of agencies mentioned above, *Brady* requires prosecutors to search for materials in the possession of people other than those officers or agencies acting on behalf of the Government in the case. If the prosecutor knows of the existence of information that would qualify for disclosure under *Brady*, then the prosecutor has a duty to attempt to obtain and disclose that information. *United States v. Bryan*, 868 F.2d 1032 (9th Cir.), *cert. denied*, 493 U.S. 858 (1989); *see United States v. Santiago*, 46 F.3d 885, 893-94 (9th Cir. 1995); *see also Cano*, 934 F.3d at 1023 (obligation to “disclose what they do not know but could have learned”) (internal quote and alterations omitted).

Although the *Brady* rule is often articulated with a “materiality” prong, that standard “should not be applied” during litigation regarding the “pretrial discovery of exculpatory materials.” *United States v. Cloud*, 102 F.4th 968, 979-80 (9th Cir. 2024) (internal quote omitted). This is because a post-conviction *Brady* analysis permits courts to consider the evidence actually introduced at trial, whereas, from a pretrial perspective, materiality is indeterminate. *Id.*

3. ANALYSIS:

The Government must disclose the requested materials. The following analysis addresses the Defense’s anticipated motion to dismiss due to (§ 3.1) a violation of the Extradition Treaty, (§ 3.2) for outrageous government conduct pursuant to either (§ 3.2.1) the Due Process Clause or (§ 3.2.2) the Court’s supervisory powers. Throughout those sections, the analysis describes how the missing materials are necessary for the substance of those arguments. The final section (§ 3.3) addresses why the Government’s disclosure obligations apply to those missing materials.

3.1 The Materials are Necessary to Pursue the Treaty Defense.

The U.S.-Mexico Extradition Treaty governed Mr. Cabrera’s transfer. The United States submitted a formal provisional arrest warrant on March 1, 2023, ensuring Mr. Cabrera’s detention. Next, it submitted a formal extradition request on June 6, 2023. The request is dispositive. Under *Struckman* and *Oen Yin-Chon*, it is the U.S.’s own demand that distinguishes an extradition from a unilateral act of a foreign government. In fact, after Mr. Cabrera’s arrival, the White House expressly stated that his transfer was an “extradition[.]” Statement from the Press Secretary, *supra* p. 7. The Treaty applies.

Once invoked, the Treaty’s procedural architecture bound both sovereigns. The judicial role defined in the Treaty is not ceremonial. Mexican courts issued two injunctions prohibiting Mr. Cabrera’s transfer, both valid exercises of the judicial authority that Articles 3 and 13 of the Treaty contemplate. Both injunctions were in effect on February 27, 2025, when Mr. Cabrera was removed from Mexico. Transferring him in defiance of those orders and without a final order of extradition

1 violated Article 13 of the Treaty. It also amounts to a violation of Articles 3 and 10
2 of the Treaty and precluded the Mexican courts from resolving any potential issues
3 under Articles 2, 5, 6, 7, 8, and 17. That violation deprives this Court of personal
4 jurisdiction over Mr. Cabrera. *See Anderson*, 472 F.3d at 666.

5 Disclosure is necessary for two reasons. First, the public record contains
6 irreconcilable accounts of the legal basis for the transfer, and the Defense is entitled
7 to materials that resolve those inconsistencies or bolster its argument. Second, if the
8 Government's stated justifications are not merely inconsistent but affirmatively
9 false, the Defense is entitled to prove it. These two issues are described in more
10 detail below.

11 The inconsistencies are significant. Some sources support the Defense's
12 position that the Treaty governed. The White House described the transfers as
13 "extraditions." The Mexican Attorney General, when asked about the death penalty,
14 invoked the Treaty's protections, an acknowledgment that makes no sense unless he
15 understood the Treaty to apply. But these same invocations were undermined by
16 other statements. *See, e.g., Attorney General Pamela Bondi Announces 29 Wanted*
17 *Defendants from Mexico Taken into U.S. Custody, supra* § 1.3 (U.S. prosecutors to
18 evaluate capital punishment of transferred defendants, which would violate the
19 treaty). Other sources frame the transfer as the product of a formal written request
20 or intergovernmental agreement. The Mexican Attorney General expressly
21 confirmed that the U.S. sent "a specific written request" identifying individuals such
22 as Mr. Cabrera by name. [Ex. 53, 4.] But, if framed as an extradition request, that
23 written request could independently trigger treaty obligations under *Struckman*,
24 regardless of how the parties chose to label the result post-hoc.

1 Against all of this, the Government and the Mexican Attorney General now
 2 point to three legal authorities that have nothing to do with transferring individuals
 3 across international borders. One cited law, Article 5 of Mexico’s Law of National
 4 Security, defines threats to national security. The second, Article 89 of the Mexican
 5 Constitution, enumerates presidential powers. The third, the Palermo Convention,
 6 expands extraditable offenses but defers to domestic law and applicable treaties on
 7 procedure. None of these authorities provide a mechanism for transferring a
 8 Mexican citizen out of Mexico. Their invocation, whether by design or confusion,
 9 does not change the legal framework that the Treaty established. But it does raise
 10 the question of whether the Government is attempting to recharacterize a
 11 treaty-governed transfer to avoid the jurisdictional consequences.

12 The Government bears the burden of establishing this Court’s jurisdiction.
 13 *Marks*, 530 F.3d at 810. Disclosure will either confirm what the public record
 14 already suggests—that the Treaty governed and its terms were violated—or expose
 15 misrepresentations in the Government’s account. Either way, Mr. Cabrera is entitled
 16 to the materials necessary to litigate his due process-based jurisdictional defense.
 17 *Barton*, 995 F.2d at 935. He cannot vindicate that right without them.

18 **3.2 The Materials are Necessary to Pursue the Outrageous** 19 **Government Conduct Defense.**

20 Even assuming *arguendo* that the Treaty did not govern Mr. Cabrera’s
 21 transfer, the circumstances of that transfer were so outrageous to amount to a Due
 22 Process violation and to warrant an exercise of this Court’s supervisory powers. The
 23 *Ker/Frisbee* doctrine permits forcible abductions, but it has a ceiling. Conduct so
 24 shocking and outrageous as to violate the universal sense of justice bars the
 Government from invoking the judicial process to obtain a conviction. *See Russell*,

1 411 U.S. at 431-32. And even short of that ceiling, the Court retains supervisory
 2 power to dismiss where the Government’s conduct violated cognizable legal norms
 3 and prejudiced the defendant. *Struckman*, 611 F.3d at 574-75. The requested
 4 materials are necessary to develop both theories.

5 **3.2.1. Due Process and Outrageousness.**

6 On its face, the Government’s conduct here was outrageous. But the complete
 7 details of that conduct are still unknown to this Court and the Defense. The public
 8 record provides a partial picture, but the full picture requires disclosure.

9 While signaling a general intent to remove “bureaucratic impediments to
 10 aggressive prosecutions,” *Total Elimination of Cartels and Transnational Criminal*
 11 *Organizations*, *supra* § 1.2, the Government engaged in a deliberate campaign to
 12 coerce Mexico into dispensing with the legal processes the Treaty established and
 13 to violate the amparo stay of proceedings prohibiting Mr. Cabrera’s transfer. [See
 14 Ex. 52.] To coerce Mexico, the U.S. President and Secretary of Defense spoke
 15 directly with the Mexican President and her military commanders and repeatedly
 16 threatened to invade Mexican sovereignty through military force. Hale, *supra* § 1.2;
 17 Córdoba, Pérez, Bergengruen, *supra* § 1.2. This amounts to a war crime, *see* 18
 18 U.S.C. § 2411(d)(1)(D) (conspiracy), a violation of the President’s war powers, *see*
 19 50 U.S.C. § 1541, and a violation of the *jus cogens* norm embodied by Article 2,
 20 Section 4, of the U.N. Charter and codified at 22 U.S.C. § 2301. Moreover, the
 21 President usurped Congress’s powers and threatened Mexico with unconstitutional
 22 tariffs, which had “economic and political consequences” that were, according to
 23 our Supreme Court, “astonishing.” *Learning Resources*, 146 S. Ct. at 641.
 24

1 Today, the Government denies responsibility, claiming in a discovery
2 response that “What Mexico chooses to do is up to Mexico.” This flies in the face
3 of the press releases issued by the White House, Department of Justice, and the
4 Department of State, all of which claimed responsibility for the transfer and
5 acknowledged the use of coercion to achieve that result.

6 Like the *Abrego Garcia* case, this claimed lack of responsibility endangers
7 U.S. citizens. In both cases, the Government triggered transfers that violated
8 standing court orders. And in both instances, the Government subsequently claimed
9 that it had no responsibility and there was no remedy for the results of those
10 transfers. As the Fourth Circuit noted, “If today the Executive claims the right to
11 deport without due process and in disregard of court orders, what assurance will
12 there be tomorrow that it will not deport American citizens and then disclaim
13 responsibility to bring them home?” *Garcia*, 2025 U.S. App. LEXIS 9237, *6. That
14 type of reasoning is equally applicable in this case. Consider what would happen if
15 this Court were conducting an extradition proceeding for a U.S. citizen wanted in
16 Mexico, but the Executive branch expelled the person in the middle of the
17 proceedings. Would the Mexican court decline jurisdiction in favor of this Court
18 rendering a final judgment as the Extradition Treaty requires? Would it be
19 outrageous for Mexico to proceed with the prosecution despite having obtained the
20 person’s presence via a Due Process violation? Under similar circumstances, the
21 Fourth Circuit concluded this type of conduct would be “shocking not only to
22 judges, but to the intuitive sense of liberty that Americans far removed from
23 courthouses still hold dear.” *Garcia*, 2025 U.S. App. LEXIS 9237, *2; *see Barrera-*
24

1 *Moreno*, 951 F.2d at 1092 (conduct is outrageous when it “violate[s] the universal
2 sense of justice”).

3 Of course, the devil is in the details. Here, the explicitness of the threats
4 levied and the nature of the “negotiations” to compel Mexico to transfer its own
5 citizens bears directly on the willfulness of this conduct and, therefore, on its
6 outrageousness. That information is not in the public record. It is in the files of the
7 agencies that orchestrated the transfer. Disclosure is, in turn, necessary.

8 **3.2.2. Supervisory Powers.**

9 If the conduct described above does not rise to the level of a Due Process
10 violation, the Court’s supervisory powers provide an independent basis for relief.
11 The standard is lower, but the showing still requires establishing predicate legal
12 violations and resulting prejudice. *Struckman*, 611 F.3d at 575-76. The requested
13 materials are necessary to establish both.

14 The predicate violations are substantial. The Government’s conduct to induce
15 the transfer of Mr. Cabrera and others—that is, threats of bombings—violate the *jus*
16 *cogens* norm codified in Article 2, Section 4, of the U.N. Charter and 22 U.S.C.
17 § 2301. The conduct also violates statutory provisions. It is a war crime. *See* 18
18 U.S.C. § 2411(d)(1)(D) (conspiring to kill others “taking no active part in
19 hostilities). It threatens the unconstitutional use of military power abroad beyond
20 what Congress has delegated to the President. *See* 50 U.S.C. § 1541. The
21 Government’s other form of international coercion—threatened economic
22 destruction through tariffs—is also a qualifying statutory violation. Our Supreme
23 Court has already held that the tariffs levied against Mexico immediately prior to
24 the first transfer of defendants from Mexico to the United States—which the

1 Government conceded were not imposed in a time of war—were unconstitutional.
2 *Learning Resources*, 146 S. Ct. at 631, 633-34.

3 Moreover, the inconsistencies between the Government’s position today and
4 the press release immediately following the transfers suggest there has been a post
5 hoc effort to alter history. These inconsistencies, coupled with the recent examples
6 of the current administration’s willful destruction of records, [*see, e.g.*, Ex. 58,
7 *American Historical Association*, No. 26-1169, ECF 24 (D.D.C. May 20, 2026); Ex.
8 59, *American Oversight*, No. 1:25-cv-883, Doc. 1 (D.D.C. Mar. 25, 2025),] raises
9 the probability that records relevant to this issue have also been destroyed. If that is
10 the case, then various statutes concerning records preservation may also have been
11 violated. *See* 44 U.S.C. §§ 2201-09; 44 U.S.C. § 2111; 44 U.S.C. ch. 21, 29, 31, and
12 33; 22 U.S.C. §§ 4351-57; 18 U.S.C. § 2071; 18 U.S.C. § 641; 18 U.S.C. § 793(f).

13 Each of these violations, standing alone, is sufficient to support a
14 supervisory-powers dismissal. Together, they describe a course of conduct that
15 began with the recharacterization of legal process as obstruction, proceeded through
16 economic and military coercion of a treaty partner, and culminated in the expulsion
17 of Mr. Cabrera in defiance of two standing court orders. As for prejudice, the
18 Government’s course of conduct resulted in the abandonment of a judicial
19 proceeding: Mr. Cabrera’s extradition case. This prejudice did not diminish the
20 framework of that legal proceeding, it demolished it. That act, in turn, inherently
21 affects the present case. The Government always has the burden of establishing
22 jurisdiction. *Marks*, 530 F.3d at 810. Usually, the question of personal jurisdiction
23 is so simple that it is never expressly addressed. But here, the mandatory mechanism
24 by which personal jurisdiction was to be established was simply erased by the

1 Government. Through its acts, the Government threw out “the procedures to be
 2 followed,” *Alvarez-Machain*, 504 U.S. at 664-65, leaving the question of whether
 3 extradition would have occurred to be unanswerable. In turn, prejudice must be
 4 presumed. *Fulminante*, 499 U.S. at 230, 310.

5 Nonetheless, at this point, the Defense lacks the materials that are available
 6 to the Government and that are necessary to effectively litigate the defense. Whether
 7 that conduct is analyzed under the Due Process standard or the supervisory powers
 8 standard, the requested materials are necessary to fully develop the argument. The
 9 Court should order their disclosure.

10 **3.3 The Requested Materials Are Favorable to Recognized** 11 **Constitutional Defenses, and the Government Has a Duty to** 12 **Search for and Produce Them.**

13 The *Brady/Barton* framework compels the disclosure of the requested
 14 materials, and the Government’s excuse for refusing to do so—that Mexico acted
 15 unilaterally—is belied by prior statements of the U.S. government.

16 *Barton* requires disclosure of evidence relevant to a defendant’s recognized
 17 constitutional rights, or more specifically, relevant to a pretrial motion to vindicate
 18 those rights. 995 F.2d at 935. The defenses that Mr. Cabrera pursues here qualify.
 19 His personal jurisdiction challenge is rooted in the Due Process Clause, as is his
 20 claim that the Government’s conduct in securing his transfer was outrageous. The
 21 requested materials bear directly on both defenses.

22 Under *Kyles*, this obligation extends to all favorable evidence known to
 23 others acting on the Government’s behalf. 514 U.S. at 437. Here, the Government
 24 necessarily worked hand in hand with the OIA throughout the entirety of the
 investigation. For approximately two years, the Government conducted an

1 investigation based principally on a source operating within Mexico. That kind of
2 unilateral investigation could not occur, according to the Justice Manual, without
3 collaboration with the OIA. *See* JM 9-13.500. The Government also would have
4 been communicating with the OIA as soon as it developed the intent to extradite Mr.
5 Cabrera, *see* JM 9-15.200, and during the drafting of the provisional arrest warrant
6 and extradition request, *see* JM 9-15.210, 15.230. That process required the
7 Government to share with the OIA a range of evidence regarding the case. *See* JM
8 9-15.240. The OIA would have also managed Mr. Cabrera’s physical “arrest” and
9 transportation once he left Mexican custody. *See* JM 9-15.400. When the U.S.
10 sought to obtain Mr. Cabrera during the first two months of President Trump’s term,
11 the OIA again was necessarily involved. *See* JM 9-15.600, 15.610. In fact, in a press
12 release, the U.S. Attorney General thanked the OIA for “handling the prosecutions
13 of these cases” after the transfers. Attorney General Pamela Bondi Announces 29
14 Wanted Defendants from Mexico Taken into U.S. Custody, *supra* § 1.3. The OIA
15 will also continue to assist in the prosecution, because Mr. Cabrera has raised this
16 challenge regarding his transfer and the Justice Manual requires prosecutors to
17 consult with the OIA on such matters. *See* JM 9-15.210. In sum, the OIA is not just
18 “acting on behalf” of the Government in this case. Rather, due to the nature of the
19 underlying investigation, it is part of the prosecution team itself.

20 As for the other government actors involved in the threats and ultimate
21 transfer, the Defense is at a disadvantage due to the Government’s refusal to disclose
22 any information on this subject. Instead, the Defense can point to public reporting,
23 the President’s orders and proclamations, and the press releases following the
24 transfers that indicate involvement by the Department of State, the Department of

1 Defense, and others. But *Bryan* and *Cano* put the onus on the Government to search
 2 for and deliver such materials. The Government cannot escape this by characterizing
 3 the transfers as a unilateral Mexican decision, which is belied by both the press
 4 releases and is legally irrelevant under *Bryan*.

5 Between the extraordinary measures taken by the U.S. Government and the
 6 inconsistent statements various departments of the Government have provided post
 7 hoc, there is no reason to defer to the Government’s account when it claims no
 8 responsibility for the transfers. In many cases across the country today, courts have
 9 concluded the “presumption of regularity” normally afforded to the Government is
 10 no longer applicable. *See* Ryan Goodman, Siven Watt, Audrey Balliet, Margaret
 11 Lin, Michael Pusic, Jeremy Venook, The “Presumption of Regularity” in Trump
 12 Administration Litigation (4th ed., Mar. 19, 2026) (compiling cases),
 13 https://www.justsecurity.org/120547/#post-134271-_Toc224729403. As one district
 14 court recently stated:

15 The presumption of regularity that has been previously
 16 extended to [the Government] that it could be taken at
 17 its word—with little doubt about its intentions and
 18 stated purposes—no longer holds. When [the
 Government], in this case, conveys assurances . . . it
 must be thoroughly scrutinized and squared with its
 open and public statements to the contrary.

19 [Ex. 60, *United States v. Oregon*, No. 6:24-cv-01666-MTK, ECF 73, pp. 22-23
 20 (Opinion and Order) (D. Or. Feb. 5, 2026); *see also* Ex. 61, *Singh v. Tsoukaris*, 1:26-
 21 cv-01531-CPO, ECF 10, p. 2 (D.N.J. Feb. 20, 2026) (“The presumption of regularity
 22 and integrity previously and routinely afforded to the Executive branch and the
 23 United States Attorney’s Office has been undeniably eroded in this jurisdiction and
 24 across the country.”).]

Certificate of Service

I hereby certify that on July 30, 2026, I electronically transmitted/hand delivered the attached document to the Clerks' Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing/or hand delivered the following CM/ECF registrants:

AUSA
Stefani Hepford
Stefani.Hepford@usdoj.gov

AUSA
Ashley Culver
Ashley.culver@usdoj.gov

By: Stephanie Felix
5953/CT Compel 7/30/26

Certificate of Compliance with LRCrim 12.1(a) and LRCiv 7.2(j)

Pursuant to Local Rule of Criminal Procedure 12.1(a) and Local Rule of Civil Procedure 7.2(j), I hereby certify that after personal consultation and sincere efforts to do so, Defense counsel and the Government have been unable to satisfactorily resolve the discovery matters described herein.

s/ Grant D. Wille
GRANT D. WILLE
Attorney for Cabrera