

## SECOND 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. By supplemental declaration of October 26, 2016, I provided additional information related to the official position of the United States Government on the validity of an extradition treaty between the United States of America and Colombia.

2. On December 2, 2016, the Embassy of Colombia presented my office with Diplomatic Note S-EUSWHT-16-1982, which forwarded a copy of Diplomatic Note S-DM-16-109804, dated December 2, 2016, from the Director of the Office of International Judicial Affairs of the Ministry of Foreign Affairs of Colombia, as well as a courtesy translation. Copies of these documents are attached to this declaration.

3. Diplomatic Note S-DM-16-109804 confirms that the Government of Colombia shares the same position as the United States (as stated in my declaration of October 26) with regard to the status of the Extradition Treaty between the United States of America and the Republic of Colombia (the "Treaty"). Specifically, the Government of Colombia has confirmed that it agrees that the treaty remains in force "in accordance with the [sic] international law, and as provided by the Article 21(4) of the same Treaty and of the Article 54 of The Vienna Convention on the Law of Treaties, as neither the Republic of Colombia nor the United States of America have notified themselves their intention of terminating it." Furthermore, the Government of Colombia has confirmed that it made its request for the extradition of Mr. Andres Felipe Arias Leiva to the United States of America under the Treaty and that it expects that the United States would process the request based on the Treaty. Because these views come from the Ministry of Foreign Affairs of Colombia and were formally transmitted via diplomatic note, the Department of State considers them to be the official views of the Government of Colombia.

4. It is also important to note that the fact that Colombia's domestic law implementing the Treaty was struck down by the Colombian Supreme Court does not mean that the Government of Colombia is failing to fulfill its international legal obligation to extradite under the Treaty. Colombia routinely acts on U.S. extradition requests and, in fact, consistently extradites more fugitives annually to the United States than any other country.

# United States of America

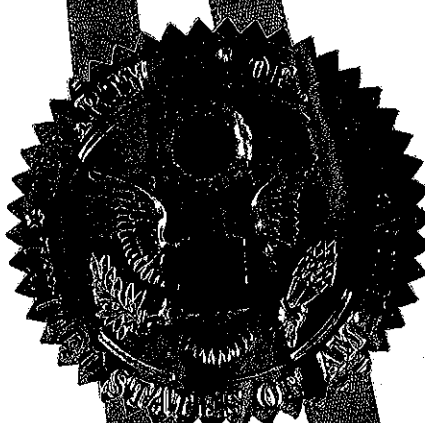


## DEPARTMENT OF STATE


*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 for Law Enforcement and Intelligence,  
Legal Adviser, Department of State, United States of America, and that full faith and  
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 sixteenth day of December, 2016.

  
Secretary of State

By   
Assistant Authentication Officer,  
Department of State

Issued pursuant to CHXIV, State  
Sept. 15, Stat. 68-69;  
USC 2657, 2651a; 5 US  
301; 28 US 3 et. seq.; 8 US  
1443(f); Rules of Federal Rules of  
Civil Procedure

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

Executed on December 16, 2016.

A handwritten signature in blue ink, appearing to read "Tom Heinemann", written over a horizontal line.

TOM HEINEMANN



**EMBASSY OF COLOMBIA  
WASHINGTON DC**

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2016 DEC -6 P 3:48

DEPARTMENT OF STATE

**S-EUSWHT-16- 1982**

The Embassy of Colombia presents its compliments to the Honorable Department of State – Office of the Legal Adviser - and following instructions of the Director of the Office of International Judicial Affairs of the Ministry of Foreign Affairs, has the honor to convey copy of the Verbal Note S-DM-16-109804 accompanied with a courtesy translation.

Washington D.C., December 2, 2016



To the Honorable  
**U.S. DEPARTMENT OF STATE**  
Washington D.C.



Libertad y Orden

REPÚBLICA DE COLOMBIA  
MINISTERIO DE RELACIONES EXTERIORES

S-DM-16-109804

El Ministerio de Relaciones Exteriores de la República de Colombia, saluda atentamente al Honorable Departamento de Estado de los Estados Unidos de América en la oportunidad de hacer referencia a la solicitud verbal formulada por la Agregaduría Judicial de la Embajada de los Estados Unidos de América en Colombia el día 18 de noviembre de 2016, en relación con la solicitud de extradición del señor Andrés Felipe Arias Leiva y el estado actual de vigencia del "*Tratado de extradición entre la República de Colombia y los Estados Unidos de América*", suscrito el 14 de septiembre de 1979.

Sobre el particular, se informa que la República de Colombia aprobó internamente el precitado Tratado mediante la Ley 27 del 3 de noviembre de 1980, y su entrada en vigor internacional se produjo el día 4 de marzo de 1982, fecha en la cual las partes intercambiaron los respectivos instrumentos de ratificación.

La Ley 27 de 1980, aprobatoria del "*Tratado de extradición entre la República de Colombia y los Estados Unidos de América*", suscrita el 14 de septiembre de 1979, así como la Ley 68 de 1986, expedida para los mismos fines, fueron declaradas inconstitucionales mediante sentencias de la Corte Suprema de Justicia del 12 de diciembre de 1986 y 25 de junio de 1987, respectivamente.

Los efectos de la declaratoria de inconstitucionalidad de las leyes aprobatorias del mencionado tratado son exclusivamente de carácter interno y tienen como consecuencia que en la República de Colombia no pueda aplicarse el tratado, pero no afectan, la vigencia del mismo.

Al Honorable  
Departamento de Estado de los Estados Unidos de América  
Washington, D.C.



REPÚBLICA DE COLOMBIA  
MINISTERIO DE RELACIONES EXTERIORES

En este sentido, las solicitudes de extradición que presenta a Colombia los Estados Unidos de América, no pueden ser tramitadas ni concedidas o negadas, conforme al Tratado de 1979, sino que estas se tramitan a la luz de la legislación procesal penal vigente (Libro V, Capítulo II, de la Ley 906 de 2004), la cual permite la extradición conforme a los tratados vigentes o, en su defecto, conforme a la ley.

De conformidad con lo anterior, es preciso señalar que, el "*Tratado de extradición entre la República de Colombia y los Estados Unidos de América*", suscrito el 14 de septiembre de 1979, continúa actualmente vigente en cuanto, a la luz del derecho internacional, y de conformidad con lo previsto por el artículo 21(4) del mismo Tratado y del artículo 54 de la *Convención de Viena sobre el Derecho de los Tratados*, ni la República de Colombia, ni los Estados Unidos de América se han notificado su intención de darlo por terminado.

Por lo tanto, la República de Colombia entiende que las solicitudes de extradición que formula a las autoridades de los Estados Unidos de América, incluyendo la solicitud de extradición del señor Andrés Felipe Arias Leiva, se fundamentan y tramitan de conformidad con las disposiciones previstas en el Tratado de 1979, tal como ha ocurrido con solicitudes previas que, en efecto, se han tramitado y aprobado o negado por las autoridades judiciales de los Estados Unidos de América, con base en este Tratado, como se observa, por ejemplo, en los casos de Eduardo Perea Chávez y Reginaldo Bray Bohórquez.

En consideración a lo anteriormente expuesto, la República de Colombia reitera que la solicitud de extradición del señor Andrés Felipe Arias Leiva, fue presentada por requerimiento de la Corte Suprema de Justicia de Colombia bajo el entendido que los Estados Unidos de América le otorgaría el respectivo trámite con fundamento en el Tratado de 1979 y que se entregaría en extradición al señor Arias Leiva con base en ese mismo Tratado.



REPÚBLICA DE COLOMBIA  
MINISTERIO DE RELACIONES EXTERIORES

En consecuencia, la República de Colombia confía en que la solicitud de extradición del señor Arias Leiva, formulada por la Corte Suprema de Justicia colombiana, sea concedida por los Estados Unidos de América de conformidad con el "*Tratado de extradición entre la República de Colombia y los Estados Unidos de América*", suscrito el 14 de septiembre de 1979.

El Ministerio de Relaciones Exteriores de la República de Colombia hace propicia la oportunidad para reiterar al Honorable Departamento de Estado de los Estados Unidos de América las seguridades de su más alta y distinguida consideración.

Una firma manuscrita en tinta, que parece ser la del representante del Ministerio de Relaciones Exteriores de Colombia.

Bogotá, D.C., 2 de diciembre de 2016

**COURTESY TRASLATION**

**REPUBLIC OF COLOMBIA**

**MINISTRY OF FOREIGN AFFAIRS**

**S-DM-16-109804**

The Ministry of Foreign Affairs of the Republic of Colombia presents its compliments to the Honorable Department of State of the United States of America in occasion to refer to the oral request presented by the Office of the Judicial Attaché of the Embassy of the United States of America in Colombia on November 18, 2016, with regard to the extradition request of Mr. Andres Felipe Arias Leiva and the current status of validity of the "Treaty of Extradition between the Republic of Colombia and the United States of America", signed on September 14, 1979.

In this regard, it is informed that the Republic of Colombia internally approved the aforementioned Treaty through the Law 27 of November 3, 1980, and its international entry into force was on March 4, 1982, date on which the parties exchange the respective instruments of ratification.

The Law 27 of 1980, approbatory of the "Treaty of Extradition between the Republic of Colombia and the United States of America", signed on September 14, 1979, as well as the Law 68 of 1986, issued for the same purposes, were declared unconstitutional through sentences of the Supreme Court of Justice of December 12, 1986, and June 25, 1987, respectively.

The effects of the declaration of unconstitutionality of the approbatory laws of the mentioned treaty are exclusively of internal nature and have the consequence that in the Republic of Colombia the treaty cannot be applied, but they do not affect, the validity thereof.

To the Honorable

**Department of State of the United States of America**

Washington, D. C.



In this sense, the extradition requests that the United States of America presents to Colombia, cannot be processed, neither granted or denied, in accordance to the Treaty of 1979, but these are processed based on the current criminal procedural law (Book V, Chapter 11, of Law 906 of 2004), which allows the extradition according to the current treaties or, in the absence of those, under the law.

Based on the above, it must be highlighted that, the "Treaty of Extradition between the Republic of Colombia and the United States of America", signed on September 14, 1979, continues currently in force, in accordance with the international law, and as provided by the Article 21(4) of the same Treaty and of the Article 54 of The Vienna Convention on the Law of Treaties, as neither the Republic of Colombia nor the United States of America have notified themselves their intention of terminating it.

Therefore, the Republic of Colombia understands that the extradition requests that it submits to the authorities of the United States of America, including the extradition request of Mr. Andres Felipe Arias Leiva, are based upon and processed in accordance to the provisions referred in the Treaty of 1979, as has occurred with previous requests, which, in fact, have been processed and approved or denied by the judicial authorities of the United States of America, based on this Treaty, as shown, for example, in the cases of Eduardo Perea Chavez y Reginaldo Bray Bohorquez.

Considering the above exposed, the Republic of Colombia reiterates that the extradition request of Mr. Andres Felipe Arias Leiva, was submitted at the request of the Supreme Court of Justice of Colombia with the understanding that the United States of America would process it based on the Treaty of 1979 and that the extradition of Mr. Andres Felipe Arias Leiva would be based on the same Treaty.

Thus, the Republic of Colombia is confident that the extradition request of Mr. Arias Leiva, made by the Colombian Supreme Court of Justice, would be granted by the United States of America in accordance with the "Treaty of Extradition between the Republic of Colombia and the United States of America", signed on September 14, 1979.

The Ministry of Foreign Affairs of the Republic of Colombia avails itself of this opportunity to reiterate to the Honorable Department of State of the United States of America the assurances of its highest and distinguished consideration.

Bogota, D. C., December 2, 2016

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