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9-15.100 - GENERAL PRINCIPLES RELATED TO OBTAINING FUGITIVES FROM ABROAD

The Department of State may revoke the passport of a U.S. citizen who is the subject of an outstanding Federal or State warrant. Revocation of a U.S. passport can result in loss of the fugitive's lawful residence status in a foreign country, which may lead to his or her deportation.

[updated April 2018]

9-15.650 - FOREIGN PROSECUTION

If the fugitive has taken refuge in the country of which he or she is a national, and is thereby not extraditable, it may be possible to ask that country to prosecute the individual for the crime that was committed in the United State. This can be an expensive and time consuming process and in some countries domestic prosecution is limited to certain specified offenses. In addition, a request for domestic prosecution in a particular case may conflict with U.S. law enforcement effort to change the "non extradition of national" law or policy in the foreign country. Whether this option is available or appropriate should be discussed with OIA.

[cited in [JM 9-15.600](#)]

9-15.700 - FOREIGN EXTRADITION AND PROVISIONAL ARREST REQUESTS

Foreign requests for extradition of fugitive located in the United States are ordinarily submitted by the embassy of the country making the request to the Department of State, which reviews and forwards them to the Criminal Division's Office of International Affairs (OIA). Such requests may seek the fugitive's provisional arrest for purpose of extradition or may seek extradition and be fully supported by all documents required under the applicable treaty. (Under more contemporary extradition treaties, requests for provisional arrest may be transmitted directly to the Department of Justice if the treaty permits. See [JM 9-15.230](#) for an explanation of provisional arrest.)

The Department of State works with OIA to determine compliance with the treaty requirements. The Department of State will separately verify in a transmission to OIA that there is a treaty in force between the United States and the country making the request, that the crime or crimes are extraditable offenses under the terms of the treaty, and that the supporting documents are properly certified.

When OIA receives a foreign extradition request, in summary, the following occurs:

1. OIA reviews the request, and, if it is sufficient and appropriate, forwards it to the U.S. Attorney's Office in the district where the fugitive is located.
2. An Assistant United States Attorney will be assigned to the case and will seek a warrant for the fugitive's arrest. Once arrested, the fugitive is brought before the magistrate judge or the district judge, who informs the fugitive of the reasons for the arrest and the nature of the proceedings. The prosecutor, when appearing in court in support of the request for extradition, is representing the United States in fulfilling its obligations under the extradition treaty.
3. The government opposes bond in extradition cases.
4. Neither the Federal Rules of Evidence nor the Federal Rules of Criminal Procedure apply. Fed. R. Evid. 1101(d)(3), Fed. R. Crim. P. 1(a)(5)(A). Both the extradition statute, 18 U.S.C. § 3184, and the local rules of most federal courts provide that a magistrate judge may conduct extradition proceedings.
5. A hearing under 18 U.S.C. § 3184 is scheduled to determine whether the fugitive is extraditable. When scheduling the extradition hearing in cases of provisional arrest, prosecutors should ensure that courts are cognizant of the time allotted in the treaty for submission of the documents in support of the request. Prosecutors should also take into account the transmission of the documents from the Department of State to the court and counsel. If the court finds the fugitive to be extraditable, it certifies the extradition and sends the record to the Secretary of State, who decides whether to surrender the fugitive. In some cases a fugitive may waive the extradition process or consent to extradition.

6. Although the certification of extradition following the hearing is not appealable (by either the fugitive or the government), the fugitive may petition for a writ of habeas corpus under 28 U.S.C. § 2241 as soon as the certification is issued. The district court's decision on the writ of habeas corpus is subject to appeal, and the extradition may be stayed if the court so orders.
7. Prosecutors must notify OIA immediately if a habeas petition is filed.
8. Following the decision of the Secretary of State (or his or her designees) to issue the surrender warrant, OIA notifies the foreign government and arranges for the transfer of the fugitive to the custody of the agents of the country requesting extradition.

OIA attorneys are subject-matter experts on extradition, and OIA is responsible for ensuring that the government's position in such cases remains consistent. Therefore, prosecutors must consult with OIA regarding both pleadings and significant legal issues arising in extradition litigation.

[updated June 2018]

9-15.800 - PLEA AGREEMENTS AND RELATED MATTERS—PROHIBITION

Persons who are cooperating with a prosecutor may try to include a "no extradition" clause in their plea agreements. Such agreements, whether formal or informal, may be given effect by the courts. If a foreign country subsequently requests the person's extradition, the United States faces the unpleasant dilemma of breaching its solemn word either to the person involved or to its treaty partner. *Petition of Geisser*, 627 F.2d 745 (5th Cir. 1980), describes the enormous practical problems of resolving such a dilemma. Related matters involve agreements with potential witnesses to prevent or delay their removal.

Prosecutors may not agree either formally or informally to prevent or delay extradition or removal unless they submit a written request for authorization, and receive an express written approval from the Assistant Attorney General, Criminal Division. Requests should be submitted to the Office of International Affairs (OIA) after endorsement by the head of the section or office responsible for supervising the case.

Similarly, prosecutors may not agree, either formally or informally, absolutely not to share with a foreign government evidence provided by an individual or entity without prior approval from OIA. (Prosecutors may, however, without seeking OIA approval, agree with individuals or entities that they will share such evidence only under the same conditions that bind U.S. prosecutors, as long as any such agreement does not discriminate against foreign authorities.) OIA will work with prosecutors to ensure that production of evidence and information developed in U.S. cases is consistent with U.S. law enforcement interests as well as treaty obligations. In appropriate cases, OIA can invoke provisions of the treaty to ensure that foreign authorities use the evidence produced consistent with any conditions or limitations that may apply to disclosure or use of the evidence.

[cited in [JM 9-16.020](#); [JM 9-73.510](#)][updated June 2018]

9-15.900 - COSTS RELATING TO EXTRADITIONS

In general, translation costs associated with the extradition of fugitives from abroad are borne by the requesting USAO or state prosecutor's office. In extraditions in federal cases, the U.S. Marshals Service generally pays the transportation and lodging costs associated with transporting a prisoner back to the United States. Translation costs associated with a foreign government's request for extradition are generally borne by the foreign government. Prosecutors should contact OIA for additional information in specific cases.

[updated June 2018]

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