

## **7 FAM 1620**

# **EXTRADITION OF FUGITIVES TO THE UNITED STATES**

*(CT:CON-268; 10-15-2008)*  
*(Office of Origin: CA/OCS/PRI)*

## **7 FAM 1621 FIRST STEPS IN U.S. EXTRADITION CASES**

### **7 FAM 1621.1 Purpose of Provisional Arrest**

*(CT:CON-100; 02-07-2005)*

- a. Provisional arrest is the interim arrest of a fugitive by the requested state before the requesting state submits a formal extradition request. Its purpose is to prevent the fugitive's flight from the requested state before the requesting state has an opportunity to present the full request. Commonly, provisional arrest requires only a statement by the requesting state that the person is accused or convicted of an extraditable crime, a brief summary of the facts, proof of identity, and an assurance that the complete extradition request will be submitted within the period specified in the treaty, which as a general rule will be within 40-60 days after the fugitive is arrested. If the formal extradition request is not made by the treaty deadline, the requested state may release the fugitive from custody. Failure to submit the request by the treaty deadline ordinarily will not bar the requesting state from submitting a later request for extradition. However, since the provisional arrest has alerted the fugitive to the possibility of extradition, once released he may flee before the formal request is submitted.
- b. Because provisional arrests are sought in cases of urgency, it follows that a request for provisional arrest might be made very quickly. Though the fugitive has been charged with or convicted of multiple crimes, the provisional arrest request may refer only to one or some, but not all, of the crimes for which extradition ultimately will be sought. Notwithstanding that, the provisional arrest request does not address the full range of crimes; the requesting state may include additional related or unrelated crimes in its subsequent formal request for extradition.
- c. Not all countries welcome requests for provisional arrest. Some foreign magistrates are reluctant to issue arrest warrants for this purpose,

particularly if the fugitive is a citizen and resident of the host country, or if family members may be adversely affected. In such cases the prosecutor is informed that provisional arrest is not appropriate.

- d. Many U.S. extradition requests are preceded by a request for provisional arrest. L/LEI and OIA screen requests before they are made and will decline to seek provisional arrest unless there is a sufficient justification, but U.S. prosecutors are generally able to justify the need for or desirability of provisional arrest.
- e. The arrest of a fugitive in response to a request for provisional arrest results in considerable demands on the time of the action officer. Once the fugitive is arrested, the action officer must carefully monitor the progress of the case by close contact with local officials, attending extradition hearings where possible, and reporting significant developments to the Department (CA/OCS and L/LEI).

## **7 FAM 1621.2 Requesting Provisional Arrest**

### **7 FAM 1621.2-1 The Role of the Departments (LEI) of State and Justice (OIA)**

*(CT:CON-268; 10-15-2008)*

- a. When seeking the arrest of a fugitive the prosecutor provides the necessary information to the Department of Justice (OIA). The information is then transmitted to the Department (L/LEI), and the post concerned is advised as appropriate. The information is sent to the post by telegram in standard format, and includes the known or presumed location of the fugitive.
- b. Most extradition treaties currently provide that provisional arrest requests be submitted through the diplomatic channel, although many treaties negotiated since the early 1980's state that such requests may be handled directly between Justice Ministries. In urgent cases, when time is of the essence and a fugitive is known to be traveling to the country concerned on a specific air carrier or other means of transport, the Department or the Department of Justice may FAX or telephone information to the post subject to procedures in 7 FAM 1616 f.
- c. Upon receipt of a provisional arrest request instruction, the post must make the request of the host country by the most expeditious means. Whether the Department has sent a telegram to post or the request was conveyed directly between the Justice ministries, the request must be made or confirmed by diplomatic note. Posts should follow local practices concerning the submission of formal notes of requests, such as providing copies to the host country Ministry of Justice.

- d. The post's note verbale may be prepared without undue delay by using the Department's telegraphic text and format, modified as appropriate by adding the complimentary opening and closing paragraphs, and by including any special statements or formulations dictated by local procedures. Submission of the note text to the post by FAX depends on the urgency of the case.
- e. Absent specific instructions from the Department, neither diplomatic nor consular officers should take part in the arrest or detention of a fugitive in response to a U.S. request to the host country for provisional arrest.
- f. While the Regional Security Officer, FBI Legal Attaché, DEA Special Agent, or other U.S. government representatives work with host country law enforcement officials, in locating and identifying a fugitive, the apprehension of a fugitive is always the responsibility of foreign officials.
- g. As a rule, post officers should not participate in any judicial procedures following such arrest or detention, other than as observers in court sessions open to the public. For exceptions to this rule, see 7 FAM 1624.1.

## **7 FAM 1621.2-2 The "Two Foreign Countries" Route**

*(CT:CON-100; 02-07-2005)*

- a. Sometimes the United States can anticipate that a fugitive believed to be in one country may travel to a second country. In other instances, the United States may not know with certainty in which of two or more countries the fugitive is seeking refuge. In these cases, the Department (L/LEI) will include the post in the other countries as an action addressee and also request provisional arrest there. Upon confirmation by one country post of the fugitive's arrest and detention, the other posts should request L/LEI's authorization to withdraw their request for provisional arrest.
- b. When it appears that the fugitive may not be arrested or extradited, L/LEI may ask the other posts not to withdraw their requests before the host government pending further instruction.

## **7 FAM 1621.2-3 The "Justice-to-Justice" Route**

*(CT:CON-100; 02-07-2005)*

- a. Certain extradition treaties allow provisional arrest requests to be made directly between the U.S. Department of Justice and the appropriate ministry in the other country, often by INTERPOL channel.

**NOTE: The United States currently has extradition treaties providing for Justice-to-Justice provisional arrest requests with**

**several countries, including the following: Argentina, Australia (Attorney General's Department), Canada, Costa Rica, Denmark, Germany, Italy, Jamaica, Korea, The Netherlands, Peru, The Philippines, Spain, Sweden (Ministry of Foreign Affairs), Switzerland, Thailand (Interior), Turkey and Uruguay (Interior). Other countries will be added to this list as new treaties enter into force/are negotiated.**

- b. L/LEI promptly instructs the post by telegram to submit a provisional arrest request by diplomatic note in confirmation of the OIA request. Although such a request is not required by treaty, the L/LEI instruction ensures that the post is aware of the arrest and facilitates the eventual submission of the formal extradition request by the post.

## **7 FAM 1621.3 Notification of Provisional Arrest**

*(CT:CON-100; 02-07-2005)*

- a. After notification by a foreign government (whether formally or informally) that a fugitive has been provisionally arrested on the basis of a U.S. request, the post must immediately inform L/LEI by telegram of the effective date of the arrest, since the arrest starts the clock for the submission of a formal extradition request with supporting documents. The treaty deadline – the period stipulated by treaty for presenting the request – varies but is generally between 40 to 60 days.
- b. Early notification of the deadline date to L/LEI is essential, particularly when the extradition request and documents must be translated, and/or the treaty deadline is short (within 40 or 45 days). The post must specify in its telegram the date the host government has set as the deadline date for submission of a formal extradition request. (For a sample post provisional arrest notification telegram to L/LEI, see Exhibit 1621.3.)
- c. If a U.S. citizen fugitive is arrested (provisionally or on a formal request) in a foreign country for extradition even to the United States, the post having consular jurisdiction over the fugitive's place of detention should also report the arrest to the Department in the standard telegraphic format and carry out its normal consular responsibilities toward an American citizen arrested abroad. (See 7 FAM 400.) If at the time of arrest the fugitive was accompanied by a minor child who is a U.S. citizen, the post should also report the welfare and whereabouts of the child. In a child abduction case, when a child custody order has been violated, the post's telegram should be captioned for CA/OCS/CI.
- d. Occasionally, after the provisional arrest of a fugitive, Federal or state prosecutors or other U.S. law enforcement officials may wish to interview a fugitive who is in foreign custody pending extradition. This is a

sensitive matter in many countries, particularly if the object of the visit is perceived to be evidence taking. The foreign government may require that such information be obtained by letters rogatory or mutual legal assistance treaty (MLAT).

- e. If U.S. law enforcement personnel contact a post directly for assistance in setting up a meeting with a detained fugitive, they should be referred to OIA. OIA screens all requests to interview detained fugitives overseas. If a request is determined to be a legitimate judicial assistance matter, outside the area of routine evidence taking, OIA requests the Department's (CA/OCS) assistance in obtaining country clearance for the visit. (See 7 FAM 941.)

## **7 FAM 1622 EXTRADITION DOCUMENTS**

### **7 FAM 1622.1 Preparation and Delivery of Documents**

*(CT:CON-100; 02-07-2005)*

- a. Federal or state law enforcement authorities ordinarily prepare the documentation to support an extradition request. The documents are then sent to the Department of Justice (OIA), for review of sufficiency and compliance with the applicable treaty, and, if necessary, for translation. OIA then sends the package of documents to L/LEI for authentication. The documents are then transmitted to the post with appropriate instructions for submitting a formal request for the fugitive's extradition.
- b. It is often difficult to obtain, prepare, and translate the package of extradition documents within the treaty time frame. Telegraphic reminders to OIA and L/LEI of approaching deadlines should be kept to a minimum, however, since both offices are acutely aware of the time sensitivity in extradition cases.
- c. "Pilot Packages" or special air couriers are sometimes used to deliver documents from Washington to posts on time. Some countries may also accept un-translated documents within the treaty deadline, if assurances are given that the translation will follow a short time thereafter. In very rare circumstances, foreign authorities have released fugitives because of failure to submit documentation in accordance with the treaty requirements.

### **7 FAM 1622.2 Content of Documents**

*(CT:CON-100; 02-07-2005)*

- a. Most extradition treaties list the specific documents that must be provided in support of an extradition request. Generally, U.S. requests will contain the following:
- (1) The prosecutor's summary affidavit;
  - (2) A certified copy of an indictment or complaint or other charging document;
  - (3) A warrant for the fugitive's arrest;
  - (4) Copies of the statutes that define the crime, specify its punishment, and (as is required by some treaties) state the time limitations on initiation of prosecution);
  - (5) Evidence establishing probable cause (or in a few treaties, a prima facie case) to believe that a crime was committed (including such items as reports by investigative and arresting officers, sworn affidavits or testimony of victims and witnesses, autopsy reports, chemical analyses of drugs, et cetera);
  - (6) Identification materials (photograph, fingerprint card, or physical description); and
  - (7) If the fugitive has already been convicted of the crime for which extradition is sought, a copy of the court's judgment in lieu of the evidence establishing probable cause or a prima facie case.

**NOTE. Most treaties do not require an arrest warrant in conviction cases; U.S. practice, however, is to submit a warrant in all cases.**

- b. If there are two or more cases against a fugitive in the same jurisdiction, the set of documents will include separate indictments, warrants, and evidence. If a fugitive is wanted by two or more jurisdictions, each jurisdiction prepares its own set of documents, which will be separately translated (if required) and authenticated.

## **7 FAM 1622.3 Translation of Documents**

*(CT:CON-100; 02-07-2005)*

- a. OIA arranges for the certified translation of documents destined for non-English speaking countries.
- b. In very rare occasions, OIA may not be able to secure a translator, and the post will be instructed to engage a local contract translator. The instruction will include fiscal data to cover the costs of translation of documents for Federal cases. Fiscal data is not submitted in state cases. L/LEI's instruction will therefore include the name and address of the

state official, usually the prosecutor, responsible for payment of translation services. In such cases, the post will be asked to arrange for the contract translator to bill the state concerned directly for payment.

- c. The post should select a translator whose competence is recognized by the host government to obviate the need for certification of the translation by the post.

## **7 FAM 1622.4 Authentication of Documents**

*(CT:CON-100; 02-07-2005)*

- a. U.S. documents in Federal cases are authenticated by the Department of Justice. Documents for state cases are sometimes covered by a requisition/certification signed by the Governor of the State and bearing the great seal of the state. If there is insufficient time to route the documents to the Office of the Governor, the Department of Justice will certify as well as authenticate the state documents. The Department of State authenticates either the authentication of the Department of Justice or the great seal of the state, as appropriate.
- b. A number of treaties, particularly those with civil law countries, require that extradition documents also be authenticated by a consular officer of the requested country. In such cases, the foreign consul's authentication may be attached to the Department's authentication or stamped on its reverse.
- c. When the documents are received by the post, the consular officer, if local practice requires, may authenticate the signature of the Authentication Officer of the Department of State before the documents are submitted to the host government.

## **7 FAM 1623 EXTRADITION REQUESTS**

### **7 FAM 1623.1 Transmission of Documents to Posts**

*(CT:CON-100; 02-07-2005)*

- a. The Department will send the original set of certified and authenticated documents, and three additional copies of the full set, to the post via express delivery, such as Federal Express or another similar service, along with a certified and authenticated translation. OIA pays the expense of shipping; the Federal Express airbill will bear the OIA account number, and Federal Express bills OIA as the "sender".
- b. Airbills normally are addressed to a specific officer at the post to assure delivery to an individual and not to a mailroom. Post office box numbers



of Foreign Service posts are not used in addressing airbills.

- c. Posts should identify the local Federal Express or other delivery agent in advance, so that the post will be in a position to assure the earliest possible delivery of the documents or, in a very urgent case, to arrange for their pickup by special messenger to meet a treaty deadline. If necessary, post intervention may facilitate customs clearance of the package.
- d. The Department (L/LEI) notifies the post by telegram of all shipments of documents, providing the shipment date, airbill number, and the expected day of arrival of the material at post. The contents of the package are listed as "legal papers" with no monetary value, to assure that the package will not be delayed by local customs officials.
- e. If the post has not previously requested the fugitive's provisional arrest, the Department telegram will include all of the information needed for the Embassy's note, including the whereabouts of the fugitive. The telegram informing the post of the shipment of the documents will also instruct the post to submit the documents to the host government with a formal request for the fugitive's extradition.
- f. If the fugitive was provisionally arrested pursuant to a U.S. request originally made by the post, and the formal extradition request neither amends nor adds to the crimes for which extradition is sought, the telegram will not repeat the information about the extraditable crime that was previously provided to the post but will simply provide information about the shipment of the documents. The post will be asked to submit the documents to the host government with a formal request for the extradition of the fugitive.
- g. Sometimes in the interval between a provisional arrest and the submission of an extradition request, or even after the formal request has been submitted, criminal charges may be amended or new charges may be added. In such instances, the Department's telegram, in addition to data on the shipment of documents, will provide information about the additional charges or the new case against the fugitive and instruct the post to include the additional or new charges in its request for the fugitive's extradition.

## **7 FAM 1623.2 Submission of Formal Extradition Requests**

*(CT:CON-100; 02-07-2005)*

- a. Upon receipt of extradition documents, the post must submit them to the host government by formal diplomatic note requesting the extradition of the fugitive and enclosing the documents submitted in support of that



request.

- b. In some countries, it is the practice of the post to list in its note all of the documents submitted with its request. This may result in an overly detailed note, and such listing should be avoided unless local procedures require it. The various components of a set of extradition documents are usually identified in proper sequence in the prosecutor's covering affidavit, obviating any need to list them in the post's note.\*
- c. When a fugitive's extradition is requested following provisional arrest, the post's formal extradition note should be brief if the information previously provided was complete and has not changed. The second note may merely refer to the previous note, formally request the extradition of the fugitive, and cite the enclosed supporting documents.
- d. If a case has evolved since the submission of the post's request for provisional arrest, the post should include in its formal extradition request the additional information provided by the Department (L/LEI) telegram.
- e. When an extradition case is initiated by a formal extradition request, or if the fugitive was provisionally arrested on the basis of a direct request by OIA without the post having submitted a confirming note, the post's note requesting his extradition should include all of the information about the case against the fugitive as provided by the Department telegram.
- f. Occasionally, as the requested state, the host government needs additional information about the U.S. case against the fugitive. This information is normally supplied by supplementary documents prepared in the same manner as the basic documents, and again will be submitted by the post via diplomatic note.
- g. The post should pouch immediately to the Department for L/LEI (Main State, 2201 C Street, NW, Rm. 5419), a copy of the post's note requesting extradition or presenting supplementary information or documents. This requirement also applies to substantive notes from the Foreign Ministries of host governments regarding individual extradition cases or extradition matters in general.

## **7 FAM 1624 EXTRADITION PROCEEDINGS IN FOREIGN COUNTRIES**

### **7 FAM 1624.1 Representation in Foreign Courts**

*(CT:CON-100; 02-07-2005)*

- a. Extradition requests made by the United States generally is referred by the requested state's Foreign Ministry to its country's Ministry of Justice

or the equivalent government agency. Typically, the Ministry of Justice designates a public prosecutor to represent the U.S. Government in extradition proceedings. (See 7 FAM 1624.2 for exceptions.)

- b. Most U.S. extradition treaties provide for reciprocal representation. The U.S. generally takes an activist approach to such representation and the Department of Justice rigorously represents the requesting state.
- c. Some foreign public prosecutors may play too passive a role in the extradition process, reducing the possibility of success. If the post perceives that local representation of a U.S. extradition request is inadequate, it should notify the Department (L/LEI), by telegram and explain any perceived deficiencies in the representation of a U.S. case.
- d. A few treaties, notably the 1931 Extradition Treaty between the United States and the United Kingdom, (which is applicable to a number of former territories of the United Kingdom), do not provide for mutual representation. In such cases, the Department is usually able to arrange for reciprocal representation by an exchange of notes with the foreign government, either in Washington or through the U.S. Embassy. The U.S. note proposes that the Department of Justice will represent the foreign government in our courts in extradition proceedings without cost to the requesting state if the foreign government will provide like services for the United States in its courts. A favorable response to the U.S. proposal constitutes an agreement for reciprocal representation.

## **7 FAM 1624.2 Private Representation in Foreign Courts**

*(CT:CON-100; 02-07-2005)*

- a. In a few countries, the United States may have to depend on a private attorney to present the U.S. extradition request in the courts of the requested state. The Justice Ministries of those countries may not have adequate staff to provide competent representation. In other cases, while providing nominal representation for the United States, the Justice Ministry, in a particularly complicated case, may recommend that the U.S. retain private counsel to assist the government prosecutor in the presentation of the U.S. extradition request. If the services of a private attorney are required, the foreign government usually expects the United States to bear the costs, regardless of any treaty provision for mutual representation.
- b. If the need for private representation arises, the post should request authority, by telegram to L/LEI, to arrange for the services of a local attorney. The post may propose a specific attorney or, if in doubt, the post may nominate two or three attorneys, providing their qualifications and the post's recommendation. L/LEI will consult with OIA on the

selection of an attorney, and endeavor to obtain the U.S. prosecutor's approval and agreement to pay for such representation. The post should make a final agreement with a private attorney only on the Department's specific authorization, which will include the terms of payment.

- c. The post may provide a copy of the extradition documents to the private attorney.
- d. In federal cases (where the criminal charges are brought by the U.S. Department of Justice or a United States Attorney), L/LEI will provide fiscal data, supplied by the U.S. Attorney's Office, for payment by the post of the fees of the private attorney. In state cases, the private attorney may be asked to bill the State prosecutor directly.

## **7 FAM 1624.3 Presenting the Request**

*(CT:CON-100; 02-07-2005)*

- a. While procedures vary country to country, extradition is usually a combination of executive and judicial branch action. The request is presented in the first instance to the appropriate Ministry in the executive branch. If that authority agrees to pursue the extradition, it will take the necessary steps to effect the fugitive's arrest.
- b. Upon arrest, the fugitive will be brought before the appropriate court and notified of the receipt of the U.S. request and documents. He may also be offered an opportunity to enter the U.S. voluntarily and waive extradition proceedings.

## **7 FAM 1624.4 Waivers of Extradition or Simplified Extradition**

*(CT:CON-268; 10-15-2008)*

- a. Some countries allow a fugitive to opt for simplified extradition at the time of first court appearance following provisional arrest, that is, without waiting for presentation of documents. If the fugitive chooses not to contest extradition, the court may immediately order the fugitive to be transferred to U.S. custody without conducting an extradition hearing in a process that may be called either a waiver of or consent to extradition. (See 7 FAM [1612](#).)
- b. Other countries do not allow waivers of extradition, but will permit a simplified extradition process. Before allowing the fugitive to agree to simplified extradition, moreover, some countries may require the requesting state to submit the formal extradition request with supporting documents, despite the fugitive's willingness to return immediately to the United States.

- c. Finally, countries deal differently with the rule of specialty. (See 7 FAM 1611, item (15).) For some requested countries, the rule of specialty does not apply in simplified extradition cases. Others apply the rule of specialty, especially if the fugitive stipulates it in agreeing to simplified extradition. See 7 FAM 1631.4 c for U.S. position on this point.
- d. If the requested state is prepared to allow an expedited simplified extradition, with the protection of the rule of specialty, the post should notify L/LEI and OIA immediately, so that OIA can inquire whether additional or amended charges are likely to be forthcoming. This is particularly important if the fugitive has been provisionally arrested on what may be a recitation of only some of the pending criminal charges. (See 7 FAM 1621.1 b.) Failure to present the full range of charges to the foreign court before it orders a simplified extradition may restrict the prosecutor's ability to prosecute on new or different charges unless the requested state later waives specialty. (See 7 FAM 1611, item (21).)
- e. In all cases of simplified extradition or waiver of extradition, the post follows the transfer procedures used in a formal extradition case. (See 7 FAM 1625.) If there is a transfer order but it does not clearly specify the crimes for which extradition is ordered, the post should verify whether the rule of specialty is applicable and so report.

## **7 FAM 1624.5 The Process in Contested Extraditions**

*(CT:CON-100; 02-07-2005)*

- a. A fugitive who contests extradition normally may choose private defense counsel or accept one appointed by the court. The extradition hearing may take place in one court session in a simple case or in several successive sessions in a complex case. As needed, the court provides an interpreter for the fugitive. The post should monitor these sessions to the extent possible and report significant developments to the Department (L/LEI).
- b. In some cases, the foreign court conducting the extradition hearing may order the submission of additional U.S. documentation, usually by a stipulated date. The Foreign Ministry informs the post by note of the need for supplementary documentation. Upon receipt of the note, the post should immediately inform L/LEI by telegram, including either the text of the note or its informal translation.
- c. In a few instances, the court in the requested state may ask that a U.S. consular officer present the U.S. documents to the court or testify regarding the U.S. request. U.S. diplomatic and consular officers should limit their participation in extradition proceedings to being observers at public hearings. Faced with such a request, the post may wish to point

out that U.S. representation in the court is the responsibility of the host government appointed prosecutor.

- d. If the foreign court insists on the appearance of a post officer, the post should immediately report the situation to the Department by telegram for L/LEI and L/DL (Assistant Legal Advisor for Diplomatic Law), explaining the court's requirements and seeking instruction. No post officer should appear in court without the Department's authorization.
- e. If a foreign court refuses a U.S. request, the case is usually closed and the fugitive is generally released. The court's order should state the reason for denial of the U.S. request.
- f. If the foreign court acts favorably in whole or in part on the extradition request, the fugitive has the right in most countries to seek judicial review of the decision. After the fugitive has exhausted available avenues of review, and, if the higher courts maintain the decision, the matter is referred to the executive branch of the host government for final action on the U.S. request.

## **7 FAM 1624.6 Post Action and Notification in Extradition Cases**

*(CT:CON-100; 02-07-2005)*

- a. If the foreign court refuses an extradition request (see 7 FAM 1624.5 e), the post should notify the Department (L/LEI) as soon as possible, provide the reasons for denial, and also FAX a copy of the court order. (See Exhibit 1624.6 for a sample post telegram notifying the Department of a denial of a U.S. extradition request.) If the denial appears to be ill founded, or otherwise raises questions, the Department, in consultation with OIA, may ask the post to explore with the host government authorities the possibility of appealing the denial or reopening the case.
- b. It can happen that the requesting state seeks extradition on multiple charges, and the requested state denies one or more of the charges but grants extradition on the remainder. Most Foreign Ministries, when informing posts by note of the finding of extraditability, specify the charges for which extradition is granted. Some diplomatic notes, however, are not specific even though the fugitive is charged with multiple offenses and numerous counts. The post should, in all cases, request a copy of the court's decision or opinion as well as the decree, surrender warrant or similar document issued by the requested government. The post should report to the Department any specific limitation on extraditability by telegram and pouch or fax any documents relating to the extradition to L/LEI for transmittal to OIA.
- c. Some Foreign Ministries specify in their notes the precise amount of time

that a fugitive spent in detention for the sole purpose of extradition. If this information is not provided, the post should immediately request it and report the findings by telegram, since obtaining it later may be extremely difficult. This information is important since the time spent in foreign detention awaiting extradition is often credited to a fugitive's U.S. prison sentence.

- d. Finally, after the fugitive has departed the requested state in custody of U.S. escorts, post must advise the Department (L/LEI) by IMMEDIATE telegram or by fax the date and time of departure. (See Exhibit 1626.1.) The post should also report any problems or incidents that may have arisen in the course of the transfer.

## **7 FAM 1625 TRANSFER OF FUGITIVES TO THE UNITED STATES**

### **7 FAM 1625.1 Notification that the Fugitive is Ready to be Surrendered and Transferred**

*(CT:CON-100; 02-07-2005)*

- a. After a foreign court rules in favor of extradition, that judicial finding is normally ratified by the executive branch of the government in the form of a decree, order or surrender warrant signed by the appropriate official of the requested state. The Foreign Ministry, by diplomatic note, formally notifies the post of the final decision to extradite.
- b. In practice, the Ministry of Justice often first notifies the post informally, and the confirming note from the Foreign Ministry follows. In some cases, the foreign prosecutor advises OIA directly; in others, the U.S. Marshals Service and OIA are informed by INTERPOL channel. Regardless of how the U.S. Government is informed, the formal notification should be made by diplomatic note to the post that requested extradition.
- c. When first notified, (formally or informally) that the host country is prepared to extradite the fugitive, the post must immediately inform L/LEI by telegram that includes the following information:
  - (1) The fact and date of the judicial and/or executive decisions on extradition;
  - (2) Any limitations on the finding (see 7 FAM 1624.6 b);
  - (3) The time frame within which the fugitive must be surrendered (some countries, by law or practice, impose a deadline for the fugitive's removal); and
  - (4) The place of transfer (usually the international airport serving the

capital of the requested state).

If the fugitive is ready to be surrendered, the post's telegram will also request the names of the U.S. escorts and their travel arrangements. (Exhibit 1625.1 shows an example of such a telegram.)

- d. In some cases, the foreign government's notification of a fugitive's extraditability may stipulate that the fugitive has a specified number of days in which to appeal the court's or the executive's decision. In such cases, the post must include this information in its telegram to the Department, adding that U.S. Marshals should make no travel arrangements for transfer until the post confirms by telegram that the fugitive is available for transfer. In principle, the U.S. Marshals Service will not allow its escorts to depart the United States without post confirmation that the host government has found the proposed transfer plans acceptable and that all logistical arrangements (7 FAM 1625.2) are in place.

## 7 FAM 1625.2 Transfer Arrangements

*(CT:CON-100; 02-07-2005)*

- a. The Bureau of Consular Affairs, specifically the Directorate of Overseas Citizens Services (CA/OCS) coordinates with Foreign Service posts on the travel arrangements for the transfer of fugitives to the United States. All post telegrams regarding the transfer of fugitives should be captioned for both L/LEI and CA/OCS.
- b. When told that the fugitive is ready to be transferred, the U.S. Marshal Service (USMS), having coordinated with the local U.S. Marshal in the state or district seeking extradition, advises CA/OCS by FAX of the transfer arrangements. CA/OCS then transmits the necessary information by telegram to the post, including the names and ranks of the escorts, passport and firearms data (if the escorts are armed), complete travel itinerary with hotel arrangements included, meet-and-assist requirements, and instructions regarding a travel document for the fugitive.
- c. The post must provide all travel information to host government authorities informally or by diplomatic note. The post must also make hotel reservations as requested, and provide staff or vehicle. If post resources are not available, every effort should be made to engage local police or INTERPOL officers to render the required services.

**NOTE: Some countries prefer that transfer arrangements be made by INTERPOL channel; in such cases the Department of Justice (OIA) handles the arrangements.**



- d. Many countries require that the names of the U.S. escort agents be submitted to them before the surrender warrant is prepared, because the warrant will bear the names of the agents to whom the fugitive will be surrendered. In such cases, the post must request the names of the escorts in advance and thereafter confirm by telegram to the Department when the surrender warrant has been signed and the fugitive is available for transfer.
- e. Should an escort agent whose name has been entered on a surrender warrant be replaced before the transfer takes place, the name of the other escort agent must appear on the warrant. Should both escorts be replaced, a new surrender warrant must be executed, possibly delaying the transfer.
- f. When all escort travel arrangements have been made and are acceptable to the host government, the post must notify the Department (CA/OCS) by telegram, furnishing full information on accommodations and transportation arrangements. Information should include the name, address, and telephone number of the hotel, and the cost of each room. If feasible, the name and rank of the post or police officer(s) meeting the escorts should be added. If the escorts cannot be met at the airport or the hotel, the post should provide the name and telephone number of the contact officer. (See Exhibit 1625.2 for example of telegram.)
- g. It is USMS practice to send at least two escort agents for each fugitive. If the fugitive is female, one escort will be female. For federal fugitives, only U.S. Marshal escorts are used (occasionally other federal officers may accompany the team). For state cases, the state jurisdiction has the option of sending one or more of its own officers. The USMS has primary responsibility for the transfer of all fugitives, and a U.S. Marshal always heads an escort team.
- h. USMS may take special precautions if it determines that the surrender and transit may present a security risk. Additional escorts may be assigned to the team, and the escorts may be armed. Most governments will not permit foreign police officers to enter their countries with firearms. If escorts must be armed to accompany a fugitive, USMS will provide the description and serial number of each firearm, and will include this information in their message to CA/OCS. Typically, USMS proposes that escort agents leave their firearms with airport authorities on arrival and retrieve them on departure. The post must advise local authorities of the proposal and inform the Department of the host country's response.
- i. In extreme security situations, the USMS may arrange with the U.S. Department of Defense for the use of a military aircraft to transfer a fugitive. USMS generally makes such arrangements directly with the Department of Defense.

## **7 FAM 1625.3 Transit of Fugitives through Third Countries Responsibilities of Post**

*(CT:CON-100; 02-07-2005)*

- a. Sometimes the transfer of a fugitive to the United States may require stopovers or aircraft changes in a third country. Some extradition treaties stipulate that the requesting state must obtain transit authorization from the government of the third country before the requested state will transfer the fugitive. Accordingly, a post in this stopover country may be asked to submit a formal request for such authorization.
- b. Even if the requested state does not require advance transit authorization, if it appears that the escort agents and fugitive will have to transit through a third country, the Department (L/LEI) may request the post in the third country to submit a formal request to the third country government for authorization on a stand-by basis (flight data to follow).
- c. Many of our extradition treaties contain specific provisions for transit of fugitives extradited from other countries. If the escort agents will be transiting through a third country with which the United States has an extradition treaty that contains a specific transit provision, the telegram to the post in that third country will include the information required under that extradition treaty.
- d. If the treaty does not require the provision of specific information for transit authorization, the telegram contains information similar to that generally included in a telegram asking a post to request the fugitive's provisional arrest. Absent a more liberal rule under that country's internal law, the post's request for transit authorization must meet the basic criterion for extradition: the offense for which the fugitive is being extradited to the United States must also be an extraditable offense under the U.S. extradition treaty with the third country. In addition, the offense must not be subject to any of the exceptions to extradition under the treaty. Some countries require the submission of translated documents in support of a transit request; other countries grant transit authorization on the basis of information only. Even when documents must be attached to the diplomatic note, a minimal submission (arrest warrant and a summary of the case against the fugitive), is usually sufficient. If the transit country requires documents, the telegram will include information on the shipment of documents as well as the necessary summary information for making the request.
- e. Obtaining transit authorization may delay the transfer of a fugitive. The USMS tries to select routes that obviate the need for such authorization. But even if a particular stopover country does not insist on its right to authorize transit, posts are almost always asked to notify host

governments of the passage of fugitives and escorts and, if applicable, to request the assistance of airport police in assuring security during aircraft changes.

- f. In some cases, the need for transit authorization may not arise until the fugitive is ready for transfer. USMS, despite its best efforts in making travel arrangements, may find that it has to route the return flight through a third country requiring transit authorization. In such cases, when authorization may be granted on the basis of information only, the Department CA/OCS, when providing travel information to the requested country post, includes the third country post as an action addressee and asks the latter post to submit an urgent request for transit authorization. The third country post informs the Department and the requested country post as soon as the transit authorization is granted.

## **7 FAM 1625.4 Travel Documents for All Fugitives**

*(CT:CON-100; 02-07-2005)*

- a. The Foreign Service post with consular jurisdiction over the district where the fugitive is detained is responsible for providing the fugitive with an appropriate travel document, and in sufficient time to permit the fugitive to travel in accordance with the travel itinerary of the USMS.
- b. If the fugitive is detained in the area of a constituent post, for example, Marseille or Palermo, the Consular Section of that post should prepare the travel document and give it to the local police officers taking the fugitive to the capital (in these examples, to Paris or Rome) for transfer to U.S. custody. In all cases, the travel document, whether for a U.S. citizen or alien fugitive, is to be turned over to the USMS escorts.

## **7 FAM 1625.5 Travel Documents for U.S. Citizen Fugitives**

*(CT:CON-268; 10-15-2008)*

- a. The Department (CA/PPT/L/LA) generally revokes the passport of a U.S. citizen fugitive a short time after the fugitive's arrest. The fugitive's original valid passport may be recovered by the post or retained temporarily by local authorities. If the passport is not revoked and the fugitive's valid passport is available to the post, the passport may be provided to U.S. law enforcement escorts. (See 7 FAM [1383.2](#).)
- b. Some U.S. citizen fugitives flee abroad with fraudulently obtained U.S. passports or false foreign passports. For a fugitive who is arrested without a valid U.S. passport but confirmed to be a U.S. citizen, the post may, in its discretion, issue a limited passport for his return to the United States. If post is in doubt about the nationality of a fugitive, post must

seek instructions from CA/OCS/PRI.

- c. When a fugitive is allowed to travel on a limited passport, the post ordinarily should ask the U.S. Marshal Service (USMS) escorts to return the passport to CA/PPT/L/LA after the fugitive returns to the United States. However, if the prosecutor requires the passport as evidence, the USMS escort agents may give the passport to the prosecutor when the fugitive is delivered. In passport fraud cases, the post may be instructed to transmit the fugitive's passport to the Office of Fraud Prevention Programs in the Bureau of Consular Affairs (CA/FPP) for appropriate action.
- d. Posts should issue travel letters only in rare or unusual circumstances where it is impossible to issue a passport. Such travel letters must be expressly authorized, in accordance with 7 FAM 1350 Appendix N.
  - (1) CA/PPT/L/LA works with the U.S. law enforcement authorities on matters related to revocation of a passport issued to the subject of an outstanding federal warrant. (See 7 FAM 1380 Passport Denial, Revocation, Restriction, Limitation and Surrender.)
  - (2) Travel letters generally should not be used in deportation situations or prisoner transfer situations (see 7 FAM 485.3-2 *and 7 FAM 1350 a(1) Appendix N*), as these cases are typically not emergencies and there is usually sufficient time for the post to issue a limited validity passport to the applicant.
- e. If an extraditee refuses to sign a passport application, the consular officer can sign it "without recourse." A detailed explanation of the circumstances under which the application was signed and a copy of the signed extradition order should be attached to the application. A limited passport may be issued and presented to the U.S. law enforcement escort. The U.S. law enforcement escort will maintain control of the travel document at all times.
- f. *In rare emergency situations when it is not possible to issue a passport limited for direct return to the United States, posts may issue travel letters in extradition situations with the authorization of CA/OCS/PRI as liaison with the Departments of Justice and Homeland Security and the Office of the Legal Adviser for Law Enforcement and Intelligence (L/LEI). (See 7 FAM 1350a(3) Appendix N.)*

## **7 FAM 1625.6 Travel Documents for Alien Fugitives**

*(CT:CON-268; 10-15-2008)*

- a. All extradited fugitives whose U.S. citizenship cannot be confirmed are processed as aliens and paroled into the United States regardless of any previous resident status.

- b. The Parole and Humanitarian Assistance Branch (PHAB), within the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Office of International Affairs, undertakes parole of an alien fugitive into the United States, in accordance with Section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)). The Parole facilitates the return of a fugitive as air and other carriers are prohibited from carrying as a passenger an individual who is not properly documented to enter the United States.
- c. Because these requests involve timeliness and sensitivity, they are expeditiously processed. An alien whom PHAB paroles into the United States for purposes of trial or service of a sentence is under a detainer while serving sentence in the United States.
- d. The Department of Justice, Criminal Division, Office of International Affairs (OIA) is responsible for initiating the request to DHS for parole. The request includes basic information about the fugitive, the jurisdiction(s) wherein the fugitive is charged, the crimes for which extradition is granted, and the travel arrangements for entry into the United States, with the names of the escorts and flight data.
- e. When PHAB authorizes parole, it advises posts of its action by fax, electronic email and/or cable. Upon receipt of a parole authorization, the post must issue a boarding or travel letter (7 FAM *1300 Appendix N*) for the fugitive's travel. PHAB also advises OIA of the authorization of parole by using the DHS Parole Tracking Form via fax, and OIA sends a copy of that letter to the U.S. Marshal Service; the escort agents will have a copy of that letter with them when they depart to take custody of the fugitive. Finally, upon approval of the parole, PHAB will submit an authorizing memorandum, which will provide the name of the parolee(s), the designated POE, and expected date of arrival to the DHS Customs and Border Protection (CBP) Headquarters Office of Field Operations who will then notify the designated port of entry.

## **7 FAM 1626 FINAL STEPS IN AN EXTRADITION CASE**

### **7 FAM 1626.1 Verifying the Fugitive's Transfer**

*(CT:CON-100; 02-07-2005)*

When the fugitive has left the requested state in the custody of U.S. escort agents, post must inform the Department (L/LEI), by IMMEDIATE telegram or FAX, of the date and time of departure. (See Exhibit 1626.1.) The post should also report any problems or incidents that may have arisen in the course of the transfer.

## **7 FAM 1626.2 Waiver of the Rule of Specialty**

*(CT:CON-100; 02-07-2005)*

- a. It may occur that, after the return of a fugitive, the Department may ask post to request the host government to waive the rule of specialty, that is, to allow the U.S. to prosecute or punish a fugitive for additional crimes that:
  - (1) The fugitive committed before he was extradited; and
  - (2) Were not included in the requested state's original extradition order.

Note: Many extradition treaties provide for such waivers, although the term "waiver of the rule of specialty" is rarely used. In practice, a waiver request is essentially the same as a request for extradition, with the post submitting certified and translated documents to support the request.

- b. The need to seek a waiver of specialty usually arises when a prosecutor brings new charges for other offenses that were not identified or documented in time to be included with the request for extradition. These additional charges may be the result of ongoing or new investigations. In a federal system like the United States, it can also occur that OIA only learns after extradition that another state or federal district has outstanding criminal charges pending against the fugitive.
- c. Some governments, including the United States, assign the decision on a request for waiver of specialty to the executive branch. Other governments refer requests for specialty waivers to its courts, which decide whether to grant the requested waiver after reviewing the requesting state's documents. A post that has sought a waiver of specialty should monitor the request and report developments as in a regular extradition case. (See Exhibit 1626.2 for a sample L/LEI telegram asking a post to submit a request for a waiver of the rule of specialty.)

## **7 FAM 1626.3 Disposition of Articles Seized at Time of Arrest**

*(CT:CON-100; 02-07-2005)*

- a. When the authorities of the requested country arrest a fugitive, they may seize articles that are evidence or proceeds of the charged crime. Most extradition treaties provide for the seizure of such articles and their surrender when the fugitive is transferred to the custody of the requesting state, though due account must be taken of the rights of third parties to the articles.
- b. The escort agents generally receive the seized items (usually transportable documents or valuables) from the authorities of the

requested state along with the fugitive and turn them over to the U.S. prosecutor. In some cases, however, the seized items, e.g., boats or automobiles, cannot be conveniently removed with the fugitive.

- c. After the transfer, if authorities of the requested state query the post about disposing of remaining articles, post should seek advice by telegram to L/LEI, describing the items and their location and specifying if any storage charges have accumulated.

## **7 FAM 1626.4 Withdrawal of U.S. Requests**

*(CT:CON-100; 02-07-2005)*

- a. On occasion, a fugitive against whom an extradition or provisional arrest request is pending may return to the United States, voluntarily or through deportation or extradition from another country. In other instances, the U.S. prosecutor may dismiss the charges against the fugitive because an essential witness is no longer available or for some other reason.
- b. When the fugitive has returned, voluntarily or otherwise, to the United States, the Department will advise the post of the changed situation and ask the post to withdraw, by diplomatic note, any pending provisional arrest or extradition requests. The post's diplomatic note should provide a brief explanation of the reason for withdrawal and express appreciation for the foreign government's assistance.
- c. In no instance should the post withdraw a provisional arrest or extradition request unless the Department (L/LEI) has specifically directed it to do so.

## **7 FAM 1627 THROUGH 1629 UNASSIGNED**

### **7 FAM EXHIBIT 1621.3 SAMPLE PROVISIONAL ARREST CABLE**

*(CT:CON-100; 02-07-2005)*

UNCLASSIFIED  
P 202028Z OCT 04  
FM AMEMBASSY ROSSLYN  
TO SECSTATE WASHDC PRIORITY 1234  
DOJ WASHDC PRIORITY  
INFO DEA WASHDC

UNCLAS ROSSLYN 5678



STATE FOR WHA/AND  
STATE FOR L/LEI  
JUSTICE FOR CRM/OIA

E.O. 12958: N/A

TAGS: KJUS, KCRM, SNAR, PREL, CJAN, XX

SUBJECT: EXTRADITION: Provisional Arrest of JOHN DOE

REF: STATE 91011

1. This cable contains an action request -- see paragraph 4.
2. The Embassy has been officially notified by the GOZ that Zian national FIRST MIDDLE LAST NAME was arrested by Zian authorities for extradition purposes on DATE. According to reftel, the aforementioned individual is the subject of sealed superseding indictment No. XYZ, filed on DATE, in the U.S. District Court for the Southern District of ZYX, charging him with federal narcotics offenses.

#### Timeline and Action Request

3. Under Zian law, Embassy must submit the USG formal extradition request and supporting documents to the GOC no later than DATE. The 60-day deadline required under Colombian law for submission of extradition documents expires on DATE.
  4. Please send the documents no later than DATE, so they will be received no later than Friday, December 3 (five working days before the DATE deadline). Assuming a typical shipping time of three days, this will give Embassy sufficient time to prepare the documents for accurate and timely submission.
- JONES

YY

UNCLASSIFIED

## **7 FAM 1624.6 EXHIBIT - SAMPLE POST CABLE NOTIFYING THE DEPARTMENT OF DENIAL OF A PROVISIONAL ARREST REQUEST**

*(CT:CON-100; 02-07-2005)*

R 041253Z JUN 03  
FM AMEMBASSY ROSSLYN  
TO SECSTATE WASHDC 1705  
DEPT OF JUSTICE WASHDC  
FBI WASHDC  
AMEMBASSY ROSSLYN  
AMCONSUL METRO

UNCLAS ROSSLYN 000730

DEPARTMENT FOR CA/OCS/ACS/RS  
L/LEI  
DOJ/OIA

TAGS: CJAN, CASC, CPAS, KCRM, RS

SUBJECT: Extradition/Arrest: Contents of Diplomatic Note 123/456 from DFA outlining reasons from the Rosslyn High Court in refusing to grant Ms. Doe's extradition.

REF: A) State 135072 B) Rosslyn 00808 and previous

1. On May 4, 2003 post received a Diplomatic Note from the Rosslyn Department of Foreign Affairs in relation to the extradition of Jane Doe. The contents are contained in para 2.
2. BEGIN TEXT `The Department of Foreign Affairs presents its compliments to the Embassy of the United States of America and has the honour to refer to the Treaty on Extradition between Rosslyn and the United States of America, 1982 and to the Embassy's Notes no. 144 dated 5 March 2002, no.229 dated 7 April 2002 and no.393 dated 21 July 2002 concerning the request for the extradition of Ms. Jane Doe.

The Department has the honour to inform the Embassy that on 27 April 2003 Mr. Justice Law in the Rosslyn High Court refused to grant Ms. Doe's extradition. Ms. Doe has, accordingly, been discharged and is, therefore, at liberty. The points raised and the conclusions reached by Mr. Justice

Law are set out below:

Article VI (2) of the above mentioned Treaty provides that a request for extradition must be supported by the legal description of the offence and a statement of the maximum penalties therefore. This requirement is incorporated into the Rosslyn Extradition Act, 1964, as amended, by Section 24, which specifies in paragraph (d) that the request must contain "any other document required under the relevant extradition provisions".

In this instance, the affidavit did specify that the offences were punishable by more than one-year imprisonment (to bring the offences within the definition of extraditable offences) but the affidavit did not specify the maximum penalties. The maximum penalties were, however, set out in the extracts from the relevant provisions of the US Code, which were exhibited to the affidavit. Therefore, Mr. Justice Law held that the absence of such a statement in the affidavit as to the maximum penalties was not fatal to the application where that information is available in the documents exhibited to the affidavit.

Section 36(1) of the Rosslyn Extradition Act, 1964, as amended, provides that a document supporting a request for extradition shall be received in evidence without further proof if it is certified to have been sealed with the seal of a minister of state. It was contended in Court on behalf of Ms. Doe that this meant that each document supporting the request had to be separately certified and sealed.

In this instance, the principal affidavit was certified and sealed and all of the other documents were exhibits to the affidavit. Mr. Justice Law held that the certifying and sealing of the documents in this fashion did not constitute a failure to comply with the requirements in the Act: that the document which is sealed is the affidavit to which all the other documents are exhibits and that the exhibits form part of the affidavit and, therefore, do not require to be individually sealed.

It was further contended on behalf of Ms. Doe that the charge of perjury does not correspond to the offence of perjury under common law. Mr. Justice Law held that the making of a knowingly false declaration before a grand jury in the United States of America did correspond to perjury contrary to common law and that to hold otherwise would fly in the face of reason.

The warrant in respect of the first request commands the holder to arrest Ms. Doe and bring her to the nearest magistrate judge "to answer a violation notice charging him or her with possible violation of conditions of a pre-trial release". The request for extradition, however, relates to four charges of wire fraud and perjury, and there is no request for extradition on a charge of "possible violation of conditions of pre-trial release".

Mr. Justice Law held that he could not be satisfied that a request had been

duly made when the arrest warrant related to an offence for which no supporting documentation was furnished as required by the Extradition Act. This was exemplified by the fact that when Ms. Doe was arrested she was informed of the charges of wire fraud and perjury but not of the offence of "possible violation of conditions of pre-trial release".

The arrest warrant in the case of the second offence was issued by a deputy clerk and not a clerk of the court contrary to the provisions of rule 8 of the Federal Rules of Criminal Procedures.

Mr. Justice Law did not make a specific finding on this point but did say that in order to decide it in favour of the State it would be necessary that something more than an averment in the affidavit to the effect that the function of signing and delivering arrest warrants is customarily and lawfully exercised by deputy clerks of the court was produced; rather, some rule of procedure or court decision saying that this is the case would be required.

Finally, in relation to the warrant in the second request, three alternative purposes are typed onto the template of the warrant, one of which needs to be identified as the relevant one. In this case, the warrant is marked to the effect that the purpose of the arrest is "to answer to charges of violation of conditions of probation imposed by the United States District Court".

In line with the decision on the first warrant Mr. Justice Law held that that offence was not the subject of the supporting documents supplied with the request and, accordingly, the request could not be considered to be made in accordance with the Extradition Act.

The Department, therefore, has the honour to inform the Embassy that the High Court held against the State in relation to both requests as the arrest warrants which were contained in the documentation in both requests referred to their purpose as that of bringing Ms. Doe to a court to answer offences (breach of bail and/or bail conditions) for which extradition was not requested and for which supporting documentation was not provided. The first request, rather, seeks Ms. Doe for offences of wire fraud and perjury while the warrant, however, requires her arrest to face a charge of "possible violation of conditions of pre-trial release". The second request seeks Ms. Doe for the offence of conspiracy to defraud and while the documentation relates to those charges, the arrest warrant relates to a charge of "violation of conditions of probation imposed by the United States District Court".

The Department has the honour to further inform the Embassy that the Office of the Attorney General is awaiting advice from Counsel as to whether this case should be appealed. Furthermore, the Office of the Attorney General has, in the alternative, suggested that pending a final decision as to whether such an approach be taken, the US authorities may wish to pursue the avenue of obtaining fresh arrest warrants which correctly specify the offences for which Ms. Doe was arrested.

Therefore, the Department has the honour to advise the Embassy to ascertain from the relevant U.S. authorities whether they wish to pursue the avenue of obtaining fresh arrest warrants which correctly specify the offences for which Ms. Doe was arrested.

The Department of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the renewed assurances of its highest consideration." END TEXT

3. Please advise soonest if the content of this note in any way alters the request contained in REF A. Assistance appreciated.

OMALLEY

YY

UNCLASSIFIED

**7 FAM 1625.1 EXHIBIT - SAMPLE  
POST CABLE NOTIFYING DEPARTMENT OF  
EXTRADITION APPROVAL AND REQUESTING  
ESCORT INFORMATION**

*(CT:CON-100; 02-07-2005)*

R 291139Z AUG 04  
FM AMEMBASSY ROSSLYN  
TO SECSTATE WASHDC 1234  
DEPT OF JUSTICE WASHDC

UNCLAS ROSSLYN 002678

STATE FOR L/LEI  
JUSTICE FOR DOJ/OIA

E.O. 12958: N/A

TAGS: CJAN, CVIS, KCRM, RS (DOE, JANE)

SUBJECT: EXTRADITION CASE OF JANE DOE

REF: STATE 047336

1. Embassy has been unofficially informed of the decision by the National Court dated August 19, 2004, approving U.S. request for subject's extradition to the United States.
2. This decision is subject to appeal by the full panel of Judges of the National Court. Copy of decision will be faxed to L/LEI.
3. We are advised that she must be surrendered by Oct. 6, 2004.
2. Please contact the U.S. Marshals Service (USMS) to request that arrangements be made to escort Doe back to the United States. The U.S.M.S. should schedule their departure from Rosslyn on a U.S. airline, which departs after midday on a weekday.

TORO

YY

UNCLASSIFIED

**7 FAM 1625.2 EXHIBIT - SAMPLE  
POST CABLE VERIFYING ACCEPTABILITY TO  
THE HOST GOVERNMENT OF ESCORT TEAM  
TRAVEL PLANS AND WHO WILL MEET THE  
ESCORTS**

*(CT:CON-100; 02-07-2005)*

R 181105Z NOV 04  
FM AMEMBASSY ROSSLYN  
TO SECSTATE WASHDC 1234  
DEPT OF JUSTICE WASHDC  
INFO FBI WASHINGTON DC

UNCLAS ROSSLYN 45678

STATE FOR L/LEI

JUSTICE FOR OIA, CRIMINAL DIVISION

E.O. 12958: N/A

TAGS: CJAN, CVIS, KCRM, OVIP, OTRA, xx (Jones, Kenneth)

SUBJECT: EXTRADITION CASE OF Kenneth Jones; COUNTRY CLEARANCE FOR U.S. MARSHALS.

1. Embassy Rosslyn is pleased to grant country clearance to deputy U.S. Marshals, first name last name, and first name last name, to visit Rosslyn from November 20-23, 2004, for of escorting a fugitive to the United States.
2. Control officer in AmEmbassy Rosslyn is first name, last name, title, embassy phone number [country code][city code] [number] [extension]; fax; email address.
3. THE U.S. MARSHALS SHOULD CONTACT POLICE CONSTABLE Z OF THE ROSSLYN EXTRADITION SQUAD AT Rosslyn National Police Headquarters, telephone number. First Name, Last Name AT THE EMBASSY IS THE CONTACT TO ARRANGE COLLECTION OF THE PAROLE LETTER TO FACILITATE subject's ENTRY INTO THE United States; telephone number.
4. CONFIRMED RESERVATIONS ARE HELD FOR U.S. MARSHALS FIRST NAME LAST NAME AND FIRST NAME LAST NAME AT XYZ HOTEL ROSSLYN. (NOTE: THE ZERO IN PARENTHESES (0) IS REQUIRED WHEN DIALING IN rosslyn.) XYZ HOTEL IS LOCATED AT ADDRESS; THE TELEPHONE NUMBER IS [COUNTRY CODE][CITY CODE]NUMBER; FAX: XXX. THE RESERVATION NUMBERS ARE XXXXXXXX.
5. HOTEL CHECK-IN:
6. CHANGES/CANCELLATION OF RESERVATIONS:
7. ACCOMMODATION EXCHANGE: ATMS ARE WIDELY AVAILABLE IN ROSSLYN AND ACCEPT MOST MAJOR U.S. ATM CARDS. ATM AND CREDIT CARD TRANSACTIONS OBTAIN THE BEST AVAILABLE EXCHANGE RATES. EXCHANGE SERVICES ARE AVAILABLE FROM WELL-KNOWN FIRMS AT THE AIRPORTS AND TRAIN STATIONS. IN ADDITION, THE U.S. EMBASSY'S ON-SITE CONTRACT BANK, ZXY, IS PREPARED TO EXCHANGE U.S. DOLLARS FOR ZIAN DOLLARS DURING THEIR OFFICE HOURS AT THE CHANCERY. U.S. CITIZEN DIRECT-HIRES MAY CASH PERSONAL CHECKS; ALL OTHERS



SHOULD BRING CASH OR TRAVELER'S CHECKS.

8. VISA: U.S. CITIZENS DO NOT REQUIRE A VISA, ONLY A VALID PASSPORT. REQUIREMENTS FOR ENTRY TO ROSSLYN OF CITIZENS FROM OTHER COUNTRIES VARY. NON-U.S. CITIZEN VISITORS SHOULD CHECK WITH THEIR LOCAL ROSSLYN CONSULATE TO DETERMINE VISA REQUIREMENTS.

9. SECURITY CLEARANCE: IF CONFIRMATION OF THE LEVEL OF TRAVELER'S SECURITY

CLEARANCE WAS NOT CONTAINED IN THE ORIGINAL COUNTRY CLEARANCE REQUEST, PLEASE SEND IT VIA CABLE TO FACILITATE UNESCORTED ACCESS TO THE EMBASSY AS REQUIRED BY 12 FAM 443.3.

10. HEALTH CONCERNS: THE EMBASSY MEDICAL UNIT, LOCATED ON THE LOWER GROUND FLOOR, HAS DAILY WALK-IN SICK CALL FROM 0830-1000. TDY PERSONNEL ARE WELCOME TO SEEK MEDICAL CONSULTATION FOR ACUTE ILLNESS OR OTHER MEDICALLY RELATED CONCERNS AT THE UNIT.

FOR UP-TO-DATE INFORMATION REGARDING OTHER HEALTH PRECAUTIONS FOR ROSSLYN FROM THE WORLD HEALTH ORGANIZATION SEE [HTTP://WWW.WHO.INT/COUNTRY/GBR/EN/](http://www.who.int/country/gbr/en/)

11. SECURITY INFORMATION FOR ROSSLYN:

12. ROSSLYN AIRPORT ARRIVAL INFORMATION:

FOLLOWING ARE DIRECTIONS ON THE PRINCIPAL ROUTINGS AND MEANS TO GET TO THE HOTEL OR CHANCERY FROM THE AIRPORT.

13. WEATHER/DRESS:

14. U.S. EMBASSY ROSSLYN - WEBSITE:

PLEASE VISIT OUR WEBSITE FOR ADDITIONAL INFORMATION:

[HTTP://10.162.193.11/LONDONHOME\\_800\\_600.HTML](http://10.162.193.11/LONDONHOME_800_600.HTML)

15. EMBASSY ROSSLYN LOOKS FORWARD TO YOUR VISIT.

JOHNSON

YY

UNCLASSIFIED

## **7 FAM 1626.1 EXHIBIT SAMPLE POST CABLE ADVISING DEPARTMENT**

# **OF DEPARTURE OF FUGITIVE UNDER ESCORT**

*(CT:CON-100; 02-07-2005)*

UNCLASSIFIED

R 171024Z NOV 04  
FM AMEMBASSY ROSSLYN  
TO SECSTATE WASHDC 1234  
DEPT OF JUSTICE WASHDC  
INFO FBI WASHINGTON DC

UNCLAS ROSSLYN 005678

STATE FOR L/LEI  
JUSTICE FOR OIA, CRIMINAL DIVISION

E.O. 12958: N/A  
TAGS: CJAN, CVIS, KCRM, (DOE, JOHN)  
SUBJECT: EXTRADITION CASE OF JOHN DOE

1. This is to confirm that the U.S. Marshals Service successfully escorted john doe back to the United States on Saturday, November 13, 2004.
2. Post's DHS - Immigration assisted in paroling Doe into the United States.  
SMITH

YY

UNCLASSIFIED

## **7 FAM 1626.2 EXHIBIT - SAMPLE L/LEI CABLE ASKING A POST TO SUBMIT A REQUEST FOR A WAIVER OF THE RULE OF**

## **SPECIALITY**

*(CT:CON-100; 02-07-2005)*

UNCLASSIFIED

P 032024Z JUN 02  
FM SECSTATE WASHDC  
TO AMEMBASSY ROSSLYN IMMEDIATE  
INFO AMCONSUL METRO PRIORITY  
DEPT OF JUSTICE WASHDC PRIORITY

UNCLAS STATE 123456

E.O. 12958: N/A

TAGS: CJAN, CVIS, SNAR, KCRM

SUBJECT: EXTRADITION: JOHN SMITH: REQUEST TO EXTRADITE TO A  
THIRD COUNTRY (WAIVER OF THE RULE OF SPECIALTY)

1. This is an action request. See para. 5.
2. As Embassy is aware, in March 2000, the USG submitted a request to Rosslyn for the extradition of John Smith, under the 1970 Extradition Treaty between the United States and Rosslyn, to stand trial on two charges of narcotics trafficking. In the same year the Government of Y submitted a concurrent extradition request to Rosslyn also requesting the surrender of Mr. Smith to stand trial on narcotics charges. The USG and Yian charges were not related. Although the initial USG extradition request was denied by a Rosslyn district court, the USG won on appeal, and the case was remanded back to the district court. The district court then found Smith extraditable on one of the two counts for which the USG sought his extradition. Smith filed a petition for writ of habeas corpus, but withdrew his petition and consented to his extradition to the USG in March 2001. He was extradited to the USG under escort on April 6, 2001. Mr. Smith has since pled guilty and entered into a plea agreement in the Eastern District of New York. DOJ informs us that the court has accepted his plea subject to reviewing the Department of Probation's Pre-sentence Report, which is scheduled to be heard on June 21, 2002. It is anticipated that Smith will receive a 2 year sentence.

3. On December 31, 2001, the Government of Y submitted a request to the United States for the surrender of Smith to stand trial on narcotics charges. Specifically, Y has asked that Mr. Smith be surrendered on two counts of possession of a dangerous drug for the purpose of unlawful trafficking, contrary to Section 7 of the Dangerous Drugs Ordinance, Chapter 134, Laws of Y. In its extradition request, Y states that a warrant for Smith's arrest was issued on December 23, 1985. (We believe that these charges are the same charges that were presented in its original extradition request to the Government of Rosslyn.)

4. Before Department and DOJ can present the extradition request to the U.S. district court, Rosslyn authorities must provide consent to the extradition of Mr. Smith to Y. In particular, Rosslyn must waive Article XIII of the 1970 U.S.-Rosslyn Extradition Treaty, which states that a person extradited under the Treaty cannot be extradited or surrendered to a third state unless certain criteria have been met. Article XIII sets forth the rule commonly known as the rule of speciality. Although the U.S.-Rosslyn Extradition Treaty does not have an explicit provision allowing for the waiver of the rule of speciality, including with respect to re-extradition to a third State, U.S. courts have held that fugitives may be tried in U.S. courts on charges other than those for which they have been extradited if the foreign government that has extradited the fugitive agrees to waive the relevant rule of speciality, including in cases where the specific treaty has a rule of speciality provision, but no express provisions for its waiver. By analogy, it is consistent with U.S. law in such situations to allow re-extradition of a fugitive with the consent of the state from which the fugitive was originally extradited.

5. Based on the foregoing, Embassy is asked to request that Rosslyn either waive the rule of speciality in this matter or consent to the re-extradition of Mr. Smith to Y, using the following suggested text for the diplomatic note:  
(Complimentary Opening)

... and has the honor to refer to the extradition of John Smith. The United States seeks the Government of Rosslyn's consent to the re-extradition of John Smith to the State of Y. Mr. Smith was extradited from Rosslyn to the United States on April 6, 2001.

The United States seeks a waiver of the rule of speciality under Article XIII of the Extradition Treaty between the United States and Rosslyn, signed on January 12, 1970 and entered into force December 8, 1970. The purpose of the waiver is to re-extradite, or surrender, Mr. Smith to the State of Y pursuant to a request submitted by the Government of Y on December 14, 2001, under the Agreement Between the Government of the United States of America and the Government of Y for the Surrender of Fugitive Offenders,

signed on December 20, 1996, and entered into force on January 21, 1998 (the "1998 U.S.-Y Agreement"). Y seeks to prosecute Mr. Smith on narcotics charges arising from crimes he allegedly committed in Y in July 1985. The narcotics offenses with which Mr. Smith is charged in Y are extraditable offenses under Article II, Item 31, of the 1970 U.S.-Rosslyn Extradition Treaty, as well as under Article 2(vii) of the 1998 U.S.-Y Agreement. The Department of Justice's Office of International Affairs has reviewed the documents submitted by the Government of Y, and has concluded that the documents provide sufficient evidence to provide a factual basis for the charges brought.

The Rosslyn Government's consent to waive the rule of speciality or to the re-extradition of Mr. Smith is necessary because the U.S.-Rosslyn Extradition Treaty provides that a requesting Party may not extradite a fugitive to a third State for offenses committed prior to the original extradition. Although the U.S.-Rosslyn Extradition Treaty does not have an explicit provision allowing for the waiver of the rule of speciality, including with respect to re-extradition to a third State, U.S. courts have held that fugitives may be tried in U.S. courts on charges other than those for which they have been extradited if the foreign government that has extradited the fugitive agrees to waive the relevant rule of speciality, including in cases where the specific treaty has a rule of speciality provision, but no express provisions for its waiver. It is consistent with U.S. law in such situations to allow re-extradition of a fugitive with the consent of the state from which the fugitive was originally extradited.

The Government of the United States asks that its waiver request be given the most expeditious review possible.

(Complimentary Closing.)

6. Department and DOJ ask that Embassy present the request as soon as possible so that we may present Y's extradition request and supporting documents to the district court. Please caption response cables for L/LEI and DOJ/CRIM/OIA. Embassy's assistance is greatly appreciated.

POWELL

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