

7 FAM 1640

OTHER EXTRADITION MATTERS

(CT:CON-100; 02-07-2005)
(Office of Origin: CA/OCS/PRI)

7 FAM 1641 SECONDARY ASPECTS OF EXTRADITION

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

- a. Some extradition cases raise peculiar or unique issues. They may include temporary surrender of fugitives for the purpose of prosecution, **in absentia** convictions, death penalty assurances, parental child abduction cases, and handling of public inquiries about extradition matters. Additionally, it may be more effective in some cases to deport or expel a fugitive rather than to extradite.
- b. Not all posts will have to deal with these special issues arising in extradition and some posts will encounter them only rarely. However, all posts should be aware of these issues.

7 FAM 1642 DEPORTATION OF FUGITIVES TO THE UNITED STATES (U.S.)

7 FAM 1642.1 POST REQUESTS TO FOREIGN AUTHORITIES FOR DEPORTATION OR EXPULSION OF FUGITIVE

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

- a. Formal extradition of a fugitive is not always feasible. The crime may not be an extraditable one or, the United States may not have a treaty at all with the country where the fugitive is located. In such situations, the United States may seek the person's return by way of deportation or expulsion, particularly if the fugitive is a U.S. citizen.
- b. After the U.S. prosecutor and OIA have decided to seek deportation or expulsion of a fugitive, OIA asks the Department of State (CA/PPT/PAS) to revoke the fugitive's U.S. passport and provides CA/PPT/PAS with a copy of the federal warrant for the person's arrest. (If the fugitive is charged in state court, not federal court, the federal prosecutor may

charge him with the federal crime of Unlawful Flight to Avoid Prosecution (UFAP), and a federal UFAP warrant will be issued). In the absence of a U.S. request for the fugitive's extradition, this federal warrant is a prerequisite for the revocation or denial of a U.S. passport. Presented with a copy of the federal warrant, CA/PPT/PAS will revoke the passport and place the person in a lookout system to prevent him from obtaining a new or renewed passport and provide specific instructions to post(s) by telegram.

- c. Both CA/PPT/PAS and L/LEI will communicate with post. CA/PPT/PAS will send a telegram to post informing it of the passport revocation and asking that post deny a new or renewed passport to the fugitive. L/LEI will send a telegram to post that requests that post approach the host government and seek the person's deportation or expulsion. The telegram will summarize the charges against the fugitive, provide a brief recitation of the facts of the case, confirm the fact of an outstanding U.S. warrant for the person's arrest, supply the person's physical description and whereabouts (the individual may already be in custody in the foreign country for immigration violations), and refers to the CA/PPT/PAS telegram regarding the revoked U.S. passport. (See Exhibit 1642.1c for example of telegram requesting deportation or expulsion of U.S. citizen.)
- d. Post will approach the authorities of the host government through a diplomatic note informing them that (1) an American citizen fugitive from U.S. justice is in their country without a valid travel document, and (2) specifically that the fugitive's U.S. passport has been revoked. It should ask that, if the individual is not already in custody, the authorities apprehend the person as an undesirable and illegal alien, and, if authorized by their laws, that they deport or expel the fugitive to the United States. The request may further ask that the person be held until U.S. Marshals arrive to remove him and accompany him on his return to the United States. Finally, the post informs the authorities that the United States will pay the cost of the fugitive's transportation (the Marshals would provide the person's ticket).
- e. Some governments do not require possession of a passport for an alien to enter and stay in their country. In such cases, revocation of a fugitive's U.S. passport may not affect the person's visitor or resident status in the asylum country. Even in those instances, however, CA/PPT/PAS, at the request of OIA, asks posts to revoke the passport of U.S. citizens as a means of hampering their further flight from U.S. justice.
- f. If a post has reason to believe that the revocation of a fugitive's U.S. passport does not make the person's presence illegal in the host country, the post, in seeking the person's deportation, should emphasize to host authorities that the person is charged or convicted of a crime, that is, that the person is an undesirable alien, if not an illegal one. If the

fugitive concealed the fact of his or her fugitive status in applying for entry to the foreign country, that may give the local authorities a legal basis to deport or expel the person (or to prosecute the individual for violation of their immigration laws).

- g. Because U.S. immigration laws give illegal aliens the opportunity to depart the United States voluntarily or to undertake a lengthy process to contest deportation, the post is also asked to inform the foreign authorities that while we would welcome their deporting the fugitive, the United States, because of U.S. legal restrictions, cannot guarantee reciprocity. Some countries may not initially realize that we cannot promise reciprocity, and posts should make the U.S. position clear to the host government to avoid any misunderstandings. See 7 FAM 1643.
- h. Upon receipt of telegrams from CA/PPT/PAS and L/LEI regarding revocation of fugitive's passport and proposed deportation to the United States, the post should delay its process of notifying the person that his passport has been revoked until it knows the fugitive is in custody. The post's premature mailing of a passport revocation notice would alert the fugitive that U.S. authorities know his or her location and provide an opportunity for flight. CA/PPT/PAS's revocation decision, reflected in its telegram to the post, is a sufficient basis for the post to inform the host government that the fugitive's passport has been revoked, even though it still may be in the fugitive's possession.
- i. In certain cases, even if the fugitive is not a U.S. citizen, OIA may wish to seek the person's return by deportation or expulsion. The fugitive's country of origin ties may be weak; the person may have had long-term alien resident status in the United States; or the person's crimes in the United States may be particularly heinous. If there is reason to believe that the country in which the fugitive is located may be willing to deport a third country national to the United States rather than to the fugitive's own country, L/LEI may instruct the post to attempt to obtain the fugitive's return by such means. The post should pursue such efforts with the same vigor used to obtain the return of a U.S. citizen fugitive.

7 FAM 1642.2 POST RESPONSIBILITIES IN ARRANGING THE TRANSIT OF THE DEPORTABLE FUGITIVE

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

- a. CA/PPT/PAS's revocation telegram also normally instructs the post regarding issuance of a travel letter or a passport limited for immediate and direct return to the United States. The consular officer should give the travel letter or limited validity passport to the escorts, not the fugitive. Should the fugitive be deported without escorts, the action

officer should give the travel letter or limited passport to the pilot or chief purser of the flight.

- b. If the fugitive is allowed to use his or her passport limited for immediate and direct return, the post should advise the U.S. Marshals to return the passport to CA/PPT/PAS after it has served its purpose. (See 7 FAM 1625.5c.)
- c. U.S. Marshals may accompany fugitives who are deported or expelled by foreign countries to the United States. If U.S. escort agents will be delivering the person to U.S. custody, the transfer arrangements are the same as for a fugitive being extradited. CA/OCS informs the post of the travel plans of the U.S. Marshals with their logistical requirements and posts should follow the guidance given under 7 FAM 1625.2.
- d. Fugitives being returned to the United States by deportation or expulsion do not fall under extradition treaty requirements. Nonetheless, if the deported or expelled fugitive must transit a third country en route to the United States in the company of U.S. escorts, the post in the third country may still have to notify authorities in the third country and make a formal request for transit authorization. (See 7 FAM 1625.3.)

7 FAM 1643 DEPORTATION OF FUGITIVES FROM THE UNITED STATES

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

- a. Occasionally a host country will approach a post to see if the United States would deport one of its nationals who is a fugitive from local justice. Such an approach is made in the absence of a bilateral extradition treaty or lack of treaty coverage for a specific offense. Deportation is rarely a viable means of obtaining the return of a fugitive from the United States (see 7 FAM 1642.1g). Posts should not encourage host country authorities to pursue this avenue.
- b. A post may point out that deportation proceedings do not ensure a fugitive's return. In most cases, the person whose deportation is sought has the choice of voluntarily departing the United States (presumably for a country other than the one in which the person is charged with or convicted of a crime) before the adjudication of deportability. The fugitive also may apply for political asylum in the United States.
- c. Should the fugitive challenge deportation and litigate the case, he will remain in the United States throughout the protracted proceedings. Nor is it guaranteed that, at the end of the proceedings, he will be deported to the requesting country, since he will have the option of designating the country to which he or she wishes to be deported. If the designated

country is willing to accept the fugitive, it is usually not possible for the United States to return the fugitive to the country of his or her nationality.

- d. Should the host government, after the post has explained U.S. deportation procedures, persist in seeking the deportation of a fugitive, the post should report the matter with all available information to the Department. L/LEI will refer the case to OIA for consultation with INS on the possibilities of deportation and inform the post in due course of OIA's findings.

7 FAM 1644 TEMPORARY SURRENDER OF FUGITIVES FOR PROSECUTION

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

- a. If an extraditable fugitive is being prosecuted or is serving sentence in the requested state, his surrender may be deferred until after the conclusion of the proceedings and the full execution of the sentence. This deferral of surrender is authorized in most extradition treaties, and many countries apply this stipulation stringently.
- b. Some newer treaties, however, also provide that a fugitive who is facing proceedings or punishment in the requested state may be surrendered to the requesting country temporarily for the purpose of prosecution. In addition, a few countries will temporarily surrender an extraditable fugitive for this purpose pursuant to their own domestic legislation, even without a treaty provision. Such temporary surrender serves the cause of justice by permitting a timely prosecution of the fugitive while the evidence against the person is still fresh and witnesses are readily available.
- c. After the prosecution in the requesting state is completed, the fugitive, whether found guilty or not, must be returned to the requested state. All expenses in connection with the round trip transportation of the fugitive are borne by the requesting state, which also provides escort agents for the fugitive.
- d. When a requested state offers to surrender a fugitive temporarily to the United States for prosecution, the modalities of the fugitive's temporary transfer are the same as those for a person being extradited to the United States (see 7 FAM 1625). This transfer is usually arranged directly between OIA and the Ministry of Justice of the requested state. By telegram, CA/OCS asks the post to make hotel reservations for the U.S. Marshals and provide a travel document for the fugitive.
- e. When the U.S. Marshals return the fugitive to the requested state after

prosecution, the post will be notified so that the post, if the fugitive is a U.S. citizen, can resume consular visitations while the fugitive is in custody in the host country. If the fugitive was convicted and sentenced in the criminal proceedings in the United States, after he completes his sentence in the host country he may again be surrendered to the United States. Again, all the modalities for transfer of an extradited person will apply.

7 FAM 1645 IN ABSENTIA CONVICTIONS

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

- a. Many countries, particularly those with civil law systems, legally convict defendants in their absence (in absentia or par contumace) if they have fled the country or otherwise fail to appear for trial after due notice. Generally, in such cases the defendant is tried by the court, without a jury, usually on the basis of documents without the live testimony of witnesses. Under the laws of many such countries, if the defendant is convicted in absentia and later is arrested or surrenders, the conviction and sentence may be voided and new proceedings are instituted at which the defendant may be given a full hearing with the aid of counsel.
- b. A request to the United States for the extradition of a person convicted in absentia convictions poses potential complications and may require close consultation between the post and L/LEI.
- c. The traditional U.S. position has been to treat requests for the extradition of a fugitive convicted in absentia, as if the person were merely charged with, and not convicted of, a crime. The United States might require the requesting state to submit the same probable cause evidence that would be necessary if the fugitive were facing criminal charges. It also will require an explanation of the procedures that would be available to a fugitive who wishes to reopen the case after extradition to the requesting state. In addition, it might ask the requesting state to give formal assurances that the fugitive, if extradited, would receive a new trial upon return to that state.
- d. The Department of State, in providing the surrender warrant to the embassy of the requesting state for a fugitive convicted in absentia, may ask the embassy to remind the authorities of that country of the need for a new trial or for judicial review, as applicable. L/LEI may also notify the post in the requesting state by telegram that the surrendered fugitive was convicted in absentia.
- e. To the extent feasible, the post monitors the subsequent proceedings if the fugitive chooses to reopen the case. If the extradited fugitive alleges that he or she has been deprived of the right to a new trial or judicial

review, the post informs L/LEI by telegram, providing appropriate information.

7 FAM 1646 DEATH PENALTY AND OTHER ASSURANCES

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

- a. The penal codes of many countries prohibit the imposition of the death penalty for any crime, including first-degree murder. Most of the U.S. extradition treaties allow the requested state to require the requesting state to provide assurances that, if the fugitive is extradited, a death penalty will not be imposed or carried out. Other countries will request such assurances even though the extradition treaty may be silent on this point.
- b. If a post receives such a request from the host government, the post should notify L/LEI of the request and pouch a copy of the Foreign Ministry's note to L/LEI. The post should make no response to the note until or unless the Department instructs the post to do so.
- c. Upon receipt of such a request, L/LEI asks OIA to obtain the necessary written assurances from the appropriate federal or state authorities, usually the prosecuting district attorney, and the governor of the state. (Historically, almost all death penalty assurance requests have arisen in state capital murder cases, but the Attorney General has given a death penalty assurance in at least one federal case.)
- d. When assurances are provided by state authorities, OIA and L/LEI carefully examine them and, if they are acceptable to the Departments of Justice and State, L/LEI instructs the post to submit by note the formal assurance of the U.S. Government (not that of the state authorities) that the death penalty will not be imposed or, if imposed, will not be carried out.
- e. Some countries also ask for assurances that the requesting state will not impose a life sentence or a sentence exceeding a certain duration, on a fugitive as a condition to his extradition. The authority to seek such a condition is rarely based on a treaty provision, but states may demand them nonetheless because their own constitutions or penal codes prohibit sentences exceeding a certain number of years.
- f. Because such demands do not have a treaty basis, the U.S. Government resists them in principle. The post and the Departments of State and Justice handle a request for such assurances in the same manner as one for death penalty assurances. See 7 FAM 1646 Exhibit for a sample post cable regarding host country requests for assurances.

7 FAM 1647 EXTRADITION AND PARENTAL CHILD ABDUCTION

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

- a. "Parental child abduction" or "childnapping" is a troublesome matter. Posts receiving inquiries or requests for assistance from the U.S. parent(s) of the kidnapped child or the attorney of the parent(s) should draw on 7 FAM 1700 when for guidance. The parent or attorney who inquires about the possibility of extraditing the abducting parent may be referred to the Department of State pamphlet, "International Parental Child Abduction," available from CA/OCS/CI, which has a section on the use of the criminal justice system in a child abduction case, including the possibility of extradition. Posts should never counsel inquiring victim parents to seek the return of their abducted children through the extradition of the other parent. Rather, the parent is referred to the Department (CA/OCS/CI) for consultation and information about recourse to the courts of the foreign country under The Hague Convention on the Civil Aspects of International Child Abduction of October 25, 1980 (Hague Child Abduction Convention).
- b. The extradition to the United States of the abducting parent or the prosecution of that parent in the foreign country is rarely a viable solution to a child abduction case. Extradition is designed to obtain the return of fugitives from criminal justice, not the recovery of abducted children.
- c. The nationality of the abducting parent is another major obstacle. Many countries, particularly civil law countries, will not extradite their own citizens. Since many abducting parents flee to the country of their origin, extradition from such countries is effectively barred.
- d. A prior obstacle to extradition for parental kidnapping has been eased through congressional enactment of the Extradition Treaties Interpretation Act of 1998, Public Law 105-323, Title II, §§ 201 to 203, Oct. 30, 1998, 112 Stat. 3033, published at 18 U.S.C. 3181 Note. Section 203 of this Act states, "For purposes of any extradition treaty to which the United States is a party, Congress authorizes the interpretation of the terms 'kidnapping' and 'kidnapping' to include parental kidnapping." Thus, the United States can urge foreign governments to extradite on a promise of reciprocity in interpreting a list treaty or, if the treaty is a dual criminality treaty, an assurance that parental kidnapping is a crime in the United States. Nonetheless, some countries may not similarly criminalize parental kidnapping.
- e. Ultimately, though, even if the offense is extraditable and nationality is not an issue, the U.S. experience in parental kidnapping cases has

demonstrated that foreign governments are generally reluctant or unwilling to extradite anyone, including U.S. citizens, for parental child abduction.

- f. If a parent files a felony complaint against the abducting parent and a warrant is issued for that parent's arrest, OIA will consult with the U.S. Attorney to decide whether to pursue the extradition of the abducting parent. L/LEI and OIA would then determine whether the circumstances of the case are appropriate for submission of an extradition request.
- g. In those cases in which L/LEI and OIA, after consultation, agree that an extradition request is appropriate, L/LEI will transmit a cable, cleared with CA/OCS/CI, instructing the post to submit a formal request for the provisional arrest and/or extradition of the abducting parent (following procedures set forth in 7 FAM 1620). If the abducting parent is apprehended at the request of the United States, the post immediately verifies the welfare and whereabouts of the abducted child and reports by telegram to CA/OCS/CI and L/LEI. If the child will also return to the United States, post should refer to 7 FAM coordinate with CA/OCS/ACS and CI on ways to facilitate the child's return.

7 FAM 1648 PUBLIC INQUIRIES ABOUT EXTRADITION

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

- a. L/LEI and OIA occasionally receive inquiries from the public, private attorneys, and the media regarding extradition generally or individual extradition cases specifically. In cases with sensitive political and public relations aspects, the Department furnishes press guidance to appropriate posts. Should a post anticipate inquiries in an extradition matter, the post may request or propose press guidance by a telegram captioned for L/LEI and the public affairs officer of the relevant geographic bureau.
- b. The policy of the Departments of State and Justice in dealing with such inquiries is stated in the following paragraphs. To ensure consistency in the handling of public inquiries in Washington, D C, and in the field, posts should follow this guidance in responding to inquiries made directly to the posts.
- c. It is the policy of L/LEI and OIA, and of the public affairs officers of the Departments of State and Justice, regardless of whether L/LEI and OIA are aware of an incipient extradition case or of a provisional arrest or extradition request already made to or received from another country, to respond to inquiries about specific individuals by neither confirming nor denying the fact of a U.S. or foreign provisional arrest or extradition request:

- (1) If the inquiry is a general question about extradition procedures or a request to verify whether the United States has an extradition treaty with a certain country, L/LEI and OIA are responsive within reason.
 - (2) If the inquiry appears to be motivated by interest in a particular matter currently in litigation in which the U.S. Government is a party, U.S. officials are circumspect in their response.
 - (3) After a fugitive has been taken into custody in the United States or in a foreign country, L/LEI and OIA acknowledge that a provisional arrest or extradition request has been made and that the fugitive is in custody for the purpose of extradition. No further information is provided because the case is before the courts and authorities of the requested country and that any comment or speculation about the case would be inappropriate while the request is under consideration by those authorities.
- d. The government gives a noncommittal response to public inquiries because the premature release of news that the United States or another state has made a provisional arrest or extradition request could alert the fugitive or his confederates, friends, or family, enabling the fugitive to flee and/or avoid apprehension. Likewise, after the arrest of a fugitive and while the case is before the courts, it is not in the interest of justice for L/LEI, OIA or a post to provide information that could be used by the fugitive and fugitive's counsel in contesting extradition. Finally, for security reasons the government will not give any information about the surrender, including timing, process, or itinerary, until the fugitive is safely in the requesting state.

7 FAM 1649 UNASSIGNED

7 FAM 1642.1C EXHIBIT – SAMPLE CABLE REQUESTING DEPORTATION OR EXPULSION OF U.S. CITIZEN

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

UNCLASSIFIED

L/LEI:

11/09/2004 tel:xxx

L/LEI:

DOJ/OIA

CA/PPT/PAS, CA/OCS/ACS/XXX

IMMEDIATE ROSSLYN

E.O. 12958: N/A

TAGS: CJAN, CASC, CPAS, KCRM, SNAR, xx

SUBJECT: RETURN OF AMCIT FELON FUGITIVE FROM ROSSLYN

1. At the request of the U.S. Department of Justice Office of International Affairs (DOJ), Department requests assistance in effecting the return of U.S. citizen fugitive felon [name of fugitive], by way of deportation or expulsion. Per DOJ, subject last known to be [location information]. Further information concerning the fugitive's whereabouts may be obtained from [FBI, DEA or other law enforcement contact].

2. [This paragraph will include the charges for which the fugitive's return is sought.]

3. [This paragraph will include a short summary of the facts upon which the charges are based.]

4. [This paragraph will include a physical description of the fugitive.]
5. [Name of fugitive]'s passport is being revoked at the request of DOJ and instructions will be sent by CA/PPT/PAS by septel. Embassy is asked to approach the Rosslyn authorities and inform them that [Name of fugitive], an Amcit felon fugitive from U.S. justice (cite above offenses) is in the Rosslyn without a valid travel document. His/her U.S. passport has been revoked, although it still may be in his/her possession. Also inform the Rosslyn authorities that because of the seriousness of the charges against [Name of fugitive], the U.S. Government would welcome his/her apprehension and detention, and any assistance Rosslyn authorities may be able to provide in his/her return to the United States.
6. If this proposal is acceptable to Rosslyn authorities and [Name of fugitive] is apprehended, we would request their assistance in detaining [Name of fugitive] for the brief time it will take to get U.S. Marshals to Rosslyn, and to assist in placing [Name of fugitive] aboard a flight to the United States in the company of U.S. Marshals.
7. In making above approach Embassy should make clear to Rosslyn authorities that while we would appreciate their assistance in returning [Name of fugitive], because of limitations imposed by U.S. law, we would not be in a position to guarantee reciprocity in the event of Rosslyn interest in returning someone to Rosslyn in a similar manner.
8. Please fax Department (for L/LEI) a copy of Embassy's note. Please also keep Department and DOJ informed of developments in the case, captioning cables for L/LEI and DOJ/OIA. Embassy's assistance is appreciated.

SEC STATE

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UNCLASSIFIED

**7 FAM 1646 EXHIBIT – SAMPLE
CABLE HOST COUNTRY REQUEST FOR
ASSURANCES**

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

P 152114Z OCT 04
FM AMEMBASSY ROSSLYN
TO SECSTATE WASHDC PRIORITY 12345
DOJ WASHDC PRIORITY
INFO DEA WASHDC

UNCLAS ROSSLYN 12345

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: FIRST MIDDLE LAST NAME - EXTRADITION
FULLY APPROVED - ASSURANCES REQUIRED

REF: 03 STATE 56789

1. This contains an action request -- see paragraph 5.
2. The Embassy has been officially notified by the GOZ that the extradition of Zian national FIRST MIDDLE LAST NAME has been approved on the counts in para. 3 pursuant to Resolutions No. 141, dated August 4, 2004, and No. 187, dated September 6, 2004.

3. According to reftel, FIRST MIDDLE LAST NAME is the subject of indictment No. 03-xxxxxx-CR-xxxx, filed on September 15, 2003, in the United States District Court for the Southern District of Florida, charging him with:

-- Count One: Conspiracy to import a controlled substance (heroin) into the United States from a place outside thereof;

-- Count Three: Aiding and abetting the importation of a controlled substance (heroin) into the United States from a place outside thereof;

-- Count Four: Conspiracy to possess with the intent to distribute a controlled substance (heroin); and

-- Count Six: Aiding and abetting the possession of a controlled substance (heroin) with the intent to distribute.

4. According to the aforementioned Resolution No. 140, FIRST MIDDLE LAST NAME has a pending criminal case in Z. Under Zian law, the GOZ may defer the surrender of an individual until the criminal trial is completed and the sentence, if any, is served in Z. However, the GOZ has decided to waive this provision and surrender this individual to the United States.

5. Assurances have been officially requested by the GOZ. Accordingly, Post requests that DOJ/OIA and L/LEI forward assurances, as appropriate, that FIRST MIDDLE LAST NAME will not receive life imprisonment, cruel and unusual punishment, etc., in return for his extradition.

6. Please note that FIRST MIDDLE LAST NAME's date of birth is MMM, DD, YYYY.

7. Copies of the aforementioned GOZ resolutions will be pouched to STATE/L/LEI and sent by FEDEX to DOJ/OIA.

WOOD

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