7 FAM 1630
EXTRADITION OF FUGITIVES FROM THE UNITED STATES

(CT:CON-407; 06-29-2012)
(Office of Origin: CA/OCS/L)

7 FAM 1631 FIRST STEPS IN FOREIGN EXTRADITION CASES

7 FAM 1631.1 Provisional Arrest Requests Received

7 FAM 1631.1-1 Usual Routing

(CT:CON-161; 03-20-2007)

a. Like U.S. requests to foreign authorities, foreign authorities may initiate extradition either by seeking provisional arrest or by submitting a formal extradition request. Most extradition treaties stipulate that provisional arrest is available in cases of urgency. U.S. courts generally agree that whether urgency exists is left to the discretion of the executive branch. Reasons for urgency may include the fact that the fugitive is a flight risk, is in country for only a short period of time, or is deemed to be a danger to society. Absent urgency, a formal extradition request should be submitted.

b. A foreign country's embassy in Washington, DC usually submits a provisional arrest request by diplomatic note, hand-carried to the Department (L/LEI), often with a copy delivered simultaneously to the Department of Justice (DOJ), Criminal Division, Office of International Affairs (OIA). Several modern treaties allow countries to make direct requests through the Justice ministries (see 7 FAM 1621.2-3), but not all of countries use this channel routinely.

c. The request, whether received by diplomatic or direct channel, rarely comes to the attention of the U.S. Foreign Service post until the fugitive has been arrested in the United States and the deadline approaches for submission of the formal extradition request. The post then becomes involved because it must certify the foreign country's documents. (See 7 FAM 1633.)

7 FAM 1631.1-2 Redirecting Provisional Arrest Requests Originally Made to Posts

(CT:CON-161; 03-20-2007)

a. A few countries, especially those not experienced in extradition relations with the United States, may submit a diplomatic note to post asking for a provisional arrest. The post, unless it perceives the possibility of an adverse reaction by the host government, should redirect the request and suggest that the most appropriate and efficient channel is through the country's embassy in the United States.

b. The post may stress that the request will be processed more expeditiously if the note were presented in Washington, DC to L/LEI and OIA (the latter office often being informed by International Criminal Police Organization (INTERPOL) channel of the fugitive's location and description).

c. Another reason for a post's declining to accept a provisional arrest request is that the note may not contain enough information to support a warrant for the fugitive's arrest. OIA may have to ask for further information or clarification; this is best done in Washington DC, particularly if the foreign embassy has a lawyer on its staff with whom OIA may consult on deficiencies in the request.

d. If the requesting country's embassy in Washington, DC does not have a legal attaché or other resident officer with legal expertise, OIA may communicate directly with the Ministry of Justice or request further information through the INTERPOL channel.

e. Although truly rare, it could happen that a post cannot redirect a request, but instead feels compelled to accept the direct request from the host government for provisional arrest. If that happens, the post should fax the foreign government's request to L/LEI, along with any other information it has about the case. Post may also opt to send a telegram that includes the substance of the request. If the information provided by the note is sufficient and the fugitive can be located, L/LEI and OIA will act on the request as soon as possible.

7 FAM 1631.2 Delay in OIA Action, Pending Availability of Documents

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

a. OIA may refuse, or delay action on, a provisional arrest request if it has reason to doubt that the foreign prosecutor will be able to prepare acceptable documents in time to meet the treaty deadline following the fugitive's arrest. It may also question the sufficiency of the requesting

state's case or the extraditability of the charged crime. In such cases, OIA will not act on a provisional arrest request until it is sure that the foreign documents are available and sufficient to justify extradition.

b. In some instances, OIA may ask to review an advance copy of the foreign documents. If deficiencies are identified, OIA provides guidance or examples to the requesting embassy to assist the foreign prosecutor in improving the request.

c. If OIA is unable to act immediately on a provisional arrest request, OIA may ask the U.S. Marshals Service or another appropriate government agency to keep the fugitive under surveillance. It will proceed after it has received either an acceptable provisional arrest request or a formal extradition request with acceptable documents.

d. Even when the provisional arrest request was not made through the post, it may be necessary for the post to ask for additional details or documents. Commonly, OIA will contact the foreign justice agency directly, or through an INTERPOL channel. In rare instances, however, L/LEI may notify post via telegram or directly.

e. At the earliest possible time during the extradition process, if a post has reason to believe that a foreign request for provisional arrest or extradition of a fugitive is motivated by political rather than law enforcement reasons, the post should report its assessment of the request immediately, using a classified message if appropriate.

7 FAM 1631.3 Execution of Provisional Arrest Requests

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

a. Upon receipt from a foreign embassy of a request for the provisional arrest of a fugitive, L/LEI transmits it to OIA for action, unless it perceives an objection or gross defect. If OIA determines that the provisional arrest request is facially sufficient, it refers the request to the U.S. Attorney in the district where the fugitive is believed to be located. An Assistant U.S. Attorney (AUSA) seeks a warrant for provisional arrest from a federal district judge or magistrate judge ("extradition judge"). The judge will review the request and, if satisfied that there is a sufficient showing, will issue a warrant for the fugitive's arrest. The local office of the U.S. Marshals Service arrests the fugitive.

b. The arrested fugitive is brought before the extradition judge and informed of the reason for his arrest. An AUSA represents the requesting government during this and all later judicial proceedings, including any litigation of habeas corpus proceedings. The fugitive may be represented by counsel of his own choosing, but if he cannot afford counsel the court

will appoint a lawyer to represent him.

c. At this hearing, the court may either consider bail or, if the fugitive is not represented by an attorney or unprepared to make a bail application, commit the fugitive to custody and defer the issue of bail to a later hearing. Under current U.S. law and practice, it is extremely rare that an extradition judge will release on bail a person sought in international extradition. The Supreme Court has held that bail is allowed only in "special circumstances," which lower courts narrowly construe to apply only to extraordinary and unusual cases, such as when the fugitive has serious medical problems that cannot be adequately addressed in jail.

7 FAM 1631.4 Waiver of Extradition Proceedings

(CT:CON-326; 05-04-2010)

a. At the first or a later court appearance, the fugitive may decide to not contest extradition. If so, the fugitive and his counsel, in the presence of the extradition judge, will generally sign a waiver document. In it, the fugitive acknowledges that he or she is the individual wanted by the foreign country. The fugitive also acknowledges that he or she is waiving the right to a hearing under U.S. law and to not be returned to the requesting country unless a judge certifies extraditability and the Secretary of State authorizes the surrender. The extradition judge will require, and take steps to ensure, that the fugitive's waiver of those rights is knowing and voluntary.

b. When the fugitive waives extradition proceedings, the extradition judge orders the U.S. Marshal to retain custody of the fugitive and to surrender the fugitive to the custody of the escort agents of the requesting country. OIA makes the arrangements directly with the authorities of the requesting country. L/LEI has no role in the transfer, as the waiver has obviated the need for formal extradition proceedings and a surrender warrant.

c. It is the U.S. position that a fugitive who waives extradition is not protected by the rule of specialty. (See 7 FAM 1612.) For this reason, some fugitives, although they do not intend to seriously contest extradition, will not waive extradition at the time of their provisional arrest. Instead, they may consent to extradition; in effect, they concede that the requirements of extradition are met, and ask the extradition judge to certify extraditability to the Department of State. Under the U.S. position, it is the issuance of a surrender warrant by the Secretary or Deputy Secretary that triggers the protection of the rule of specialty. Posts should take note of the U.S. position on the effect of a waiver on the rule of specialty, in the event this question arises after the return of the fugitive to the requesting country.

7 FAM 1631.5 Notification of Provisional Arrest

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

When a fugitive is provisionally arrested in the United States in response to a foreign request, OIA immediately notifies the foreign government, informally by telephone to the Justice Ministry of the requesting country, with a reminder of the deadline for submission of the formal extradition request with supporting documents. Some treaties require that notification of arrests be made through the diplomatic channel. In this case, L/LEI will notify the foreign embassy through diplomatic note. Rarely is a U.S. Foreign Service post involved in the notification process.

7 FAM 1632 RECEIPT OF FOREIGN EXTRADITION DOCUMENTS BY POST

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

a. In foreign countries, the prosecutor or examining magistrate in the local jurisdiction is responsible for preparing extradition documents. Many foreign countries submit excellent documentation in support of their extradition requests, but others do not. Unlike OIA in the United States, the Justice Ministries of some countries may not advise or assist local prosecutors or examining magistrates. As a result, the quality of foreign extradition documents can vary widely.

b. The documents in support of an extradition request must be in English or translated into English. They should include the following:

   (1) An indictment, complaint, or other document reflecting that the fugitive has been accused of a crime;

   (2) A warrant for the fugitive's arrest;

   (3) Copies of the statutes that define the crime, specify its punishment, and state any time limitations on initiation of prosecution;

   (4) The prosecutor's affidavit or legal statement;

   (5) Unless the fugitive has been convicted, evidence establishing probable cause (or, in some instances, establishing a prima facie case) to believe that a crime was committed (such as reports by investigative and arresting officers, affidavits of victims and witnesses, autopsy reports, and chemical analyses);

   (6) Evidence of identity of the fugitive (such as photograph, fingerprint card, and/or physical description); and

   (7) If the fugitive has been convicted, a certified copy of the conviction. (See 7 FAM 1622.2 a.)

c. In some countries, the investigating magistrate can only initiate an indictment or charge the defendant in the person's actual presence. In those instances, where the pronouncement of a formal charge is a procedural step requiring the presence of the charged defendant, U.S. courts recognize that the magistrate's accusation meets the requirement of a charge. Additionally, U.S. courts are flexible in interpreting the requirement of an arrest warrant.

d. When completed and translated by the requesting country, the documents are authenticated and certified by that country's Justice and Foreign Ministries and presented (usually by the Foreign Ministry) to the post for its certification. (See 7 FAM 1633 for certification requirements.)

e. Before certifying the original foreign documents, the post should try to determine if the requesting state has also prepared at least one identical copy of the original. Though the treaty may not require it, delivery of copies (that will not be certified and ribboned) along with the certified and ribboned original request facilitates the extradition. The certified original is filed, with ribbon uncut, with the extradition court. The prosecutor representing the requesting state needs his own complete set of the extradition documents, as does the fugitive or his attorney and OIA. Photocopying is difficult after the documents are ribboned together by the post.

7 FAM 1633 CERTIFICATION OF FOREIGN EXTRADITION DOCUMENTS

7 FAM 1633.1 Certification Automatically Renders the Documents Admissible

(CT:CON-407; 06-29-2012)

a. U.S. law (18 U.S.C. 3190) provides that extradition. "[D]epositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunal of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required."

b. In other words, certification by the principal U.S. diplomatic or consular officer will guarantee the admissibility of the requesting country's

documents into evidence at the extradition hearing. It is possible that the court may accept the requesting state's documents that are authenticated by other means, but the preferable manner is to follow the provisions of the statute. Otherwise, unless the extradition treaty specifically sets out the alternative method of authentication, the admissibility of these essential documents will certainly become a serious issue at the hearing.

NOTE: At present only Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, *Latvia*, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Thailand and the United Kingdom, by reason of special treaty language that provides a manner of authentication that is different than that set out in the statute, are exempt from having its extradition documents certified under 18 U.S.C. 3190.

c. For countries not familiar with U.S. extradition procedures, posts should make a special effort to ascertain that it's Foreign and Justice Ministries are aware of the U.S. certification requirement, providing them with a copy of 18 U.S.C. 3190. Liaison with a specific post officer should be established for certification purposes so that the documents are delivered directly to that officer.

NOTE: Some ministries, apparently believing that a routine consular authentication is sufficient, send extradition documents by messenger to a post's notarial unit without signifying that they are to be used in a U.S. extradition proceeding. This will result in a post employee preparing the standard authentication, and a consular officer may sign it, without examining the documents and perceiving the need for their certification, rather than authentication.

d. The authorities of some countries may think incorrectly that their extradition documents have been duly certified if covered with the apostille of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, done at The Hague on October 5, 1961. Posts should advise host country authorities when necessary that, in acceding to the 1961 Convention on December 24, 1980, the United States made a declaration stipulating that the Convention does not supersede or override the provisions of 18 U.S.C. 3190 for certification of extradition documents by the principal diplomatic or consular officer of the United States in the requesting country. Posts may provide copies of the text of the U.S. declaration of December 24, 1980 to host country officials who

may not be aware of the requirement. (See Exhibit 7 FAM 1633.1 d and the Internet home page for the Hague Conference on Private International Law, Hague Legalization Convention, Status table, and go to the declarations for the United States of America.)

e. Thus, if L/LEI receives a foreign extradition request with supporting documents that bear only a consular authentication or the apostille of The Hague Legalization Convention, it will return the documents to the foreign embassy or to the appropriate Foreign Service post for proper certification. Such delay can be avoided by close attention to this onerous but essential detail.

f. Some countries submit documents that, though properly certified under 18 U.S.C. 3190, are also cluttered with consular authentications and/or The Hague Legalization Convention apostilles. Neither serves any purpose. A post noting such practice should clarify to host country officials that the additional authentications and apostilles are unnecessary.

7 FAM 1633.2 Form of Certification

(CT:CON-161; 03-20-2007)

a. To certify foreign extradition documents, the post uses Form DS-36, "Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition" (formerly Form FS-36) The post should not complete the Form DS-36 unless the documents are properly certified and authenticated by host country authorities.

b. Form DS-36 is available on the Department of State Intranet Directives Management Forms page. Posts that lack a supply of Form DS-36 may request from the Consular Section at post; in CD-ROM edition, if not in paper copy. If the form is not available at post, officers may type the text of the certificate on letter-size plain bond until the handbook can be requisitioned from A/OIS/PS/PR.

7 FAM 1633.3 Certification Procedures

(CT:CON-161; 03-20-2007)

a. Only the original set of the documents and translation must be certified. If the translation is included within or physically attached to the original set of documents, only one Form DS-36 is needed. If the translation is provided as a separate set of documents, the post should prepare a second, separate, certification.

b. In preparing the Form DS-36, the post ensures that the name of the fugitive typed on the form is spelled precisely as in the foreign

documents. The "annexed papers" may be described simply as "supporting documents." The "crime," if defined in a long technical description in the foreign documents, may be reduced to a simple term, such as "fraud" or "narcotic drug trafficking." The "tribunals" are always those of the requesting country, not the United States.

c. The Form DS-36, when typed and signed, is placed on top of the set of documents and secured by a red ribbon passing through the upper left corner of the certificate and through each and every piece of paper in the set. The two ends of the ribbon are brought down to the lower left corner of the certificate and affixed to the certificate under a red wafer seal, which is then impressed with the post's seal. (See 7 FAM 800.)

d. If the documents are too voluminous to be conveniently certified as one set, they may be divided into two or more sets, each set being certified with a separately prepared but identical Form DS-36 as described in the preceding paragraph.

e. The certificate must be signed by the "principal diplomatic or consular officer resident" in the requesting state. When possible, the certificate is signed by the U.S. Ambassador (few defense lawyers will argue that the Ambassador is not the principal diplomatic officer). If the Ambassador is temporarily out of the country, the Form DS-36 may be signed by the Chargé d'Affaires ad interim over that officer's specific title. When the Ambassador is temporarily out of the capital city, but still within the country, at the time the documents are presented to the post, hold the certification for signature, pending the return of the Ambassador to the Embassy.

f. Alternatively, the principal consular officer resident in the country may certify the documents. However, be aware that in some multi-post countries, the principal officer at a constituent consular post may outrank the senior consular officer at the U.S. Embassy. If so, it may be necessary to delay certification until the Ambassador or Chargé is available. There are only three exceptions to this rule: Canada, Germany and Italy, where the chief consular officer at the Embassy has been administratively designated as "principal consular officer of the United States" in the country for the purpose of certifying extradition documents.

g. Certification of foreign extradition documents is not listed in 22 CFR 22.1, the Tariff of Fees, Foreign Service of the United States, and the post does not charge a fee for the certification service. On the basis of reciprocity, foreign consular officers authenticate U.S. extradition documents gratis.

h. Upon completion of the certification, the post returns the documents to the Foreign Ministry for transmission to its embassy in Washington, DC and submission to the Department of State (L/LEI) with a formal request

for the extradition of the fugitive.

i. In the same manner used in processing the basic documents, the post certifies, assembles, and submits to the Foreign Ministry any supplemental documents subsequently prepared by the requesting country.

7 FAM 1634 U.S. EXTRADITION PROCESS

7 FAM 1634.1 Transmission of Extradition Request to OIA for Action

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

a. When a foreign embassy submits to the Department an extradition request, with supporting documents, L/LEI reviews whether the treaty requirements are met. If it appears that the request meets the treaty requirements, L/LEI transmits it to OIA for action with a brief affidavit in "declaration" format.

b. This declaration confirms that the foreign request was received through diplomatic channel, that an extradition treaty is in force with the requesting country, that the offenses for which extradition is sought are covered by the treaty, and that the foreign documents are properly authenticated under 18 U.S.C. 3190. The L/LEI declaration may be used by the prosecutor at the extradition hearing to refute possible allegations by the defense questioning the validity of the foreign extradition request.

c. OIA gives the foreign documents a detailed review. When the documents are found to be acceptable for extradition proceedings, OIA transmits them, with the L/LEI declaration, to the Assistant United States Attorney (AUSA) in the jurisdiction where the fugitive is sought or has been provisionally arrested.

d. If the fugitive has not already been provisionally arrested, U.S. Attorney files an application for the fugitive's arrest. Practice varies by district; some prosecutors will file the extradition request when applying for the arrest warrant, others will merely refer to the request in the affidavit accompanying the application for the warrant and submit the actual request at the extradition hearing. The ensuing procedures are the same as those for provisional arrest (7 FAM 1631.3), except that, since the request is prepared and filed, there is no bar to conducting an extradition hearing.

7 FAM 1634.2 The Extradition Hearing

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

a. An extradition hearing is a public proceeding, presided over by a federal judicial officer sitting as an extradition judge. Anyone may attend as observers, including consular officers of the requesting state or the country of the fugitive's nationality. The hearing is not a trial, and the ordinary procedural and evidentiary rules applicable to trials do not apply.

b. To certify extraditability, the extradition judge must find that the person before the court is the person sought; that there is a treaty in force and that the crimes for which extradition is requested are extraditable; that the evidence presented establishes probable cause to believe that the fugitive committed the charged crimes; and that there are no treaty barriers to extradition.

c. Although the extradition judge ordinarily will rely solely on the extradition request and the supporting documents, both the government and the fugitive may offer additional evidence. The only statutory prerequisite for documentary evidence is that the evidence be authenticated. The extradition judge also has the discretion to allow live witness testimony. The fugitive may introduce evidence or testimony to establish, for example, that the crime charged is a political offense for which extradition should not be ordered, or raise other defenses or objections available under the treaty. It is generally held in U.S. courts that a fugitive may not offer evidence that "contradicts" the evidence provided by the requesting country, but the fugitive can offer "explanatory" evidence that does not contradict but rather provides an exculpatory explanation of the requesting state's evidence. The lines between contradictory and explanatory evidence are imprecise, however, and the extradition judge may entertain defense evidence that, in the government's view, constitutes contradictory evidence. It is also increasingly common for extradition judges to admit sworn recantations by witnesses whose evidence is included in the requesting state's extradition package.

d. After the hearing, if the extradition judge agrees that the fugitive is extraditable, he will prepare an extradition order commonly titled "Certification of Extraditability and Order of Commitment". In this document, the judge certifies to the Secretary of State that he or she has conducted the hearing required by law and has found the fugitive extraditable for the offenses for which the extradition was requested. If the fugitive had previously been released on bail, the extradition judge is likely at this point to order that the fugitive be committed to custody pending surrender.

e. The extradition judge's certification should identify the offenses for which the fugitive has been found extraditable. If the fugitive is found extraditable for only some of the crimes for which the fugitive is charged

or convicted, the judge may explain why extradition on the other crimes was not certified.

f. The extradition proceeding will either be recorded or steno graphically transcribed. If a transcript is prepared, it will ultimately be included in the record and, if the finding of extraditability is certified, sent to the Secretary of State.

g. The extradition judge's finding is not appealable by either side. If the judge denies extradition on some or all of the crimes charged, the requesting state's only remedy is to make a new extradition request. The new request may rely on the original documents, though it will require a new diplomatic note and, perhaps, additional materials that must be authenticated and certified. On occasion, the U.S. Attorney representing the requesting state will ask that a different judge hear the second case. In the interim, however, the fugitive may be released from custody.

h. L/LEI notifies the embassy of the requesting country by diplomatic note of the judicial denial of the request, providing a copy of the magistrate's opinion justifying the denial. If there is a legal or factual basis for disagreeing with the extradition judge's decision, or if the requesting state believes it can remedy the defect that caused the judge to deny extradition, OIA and the U.S. Attorney will work with the authorities of the requesting state. The U.S. is generally willing to pursue any reasonable case even after the first extradition judge denies certification.

7 FAM 1634.3 Judicial Review of a Finding of Extraditability

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

a. If the judge finds extraditability on some or all of the charges, the fugitive's judicial remedy is to file a petition for a writ of habeas corpus.

b. The habeas corpus review is, typically, limited to an inquiry into whether the extradition judge had jurisdiction, whether the crime charged is covered by the extradition treaty, and whether there was "any evidence" in the record to support the extradition judge's probable cause finding.

c. The district court's decision on a habeas petition is appealable by the losing party – either the fugitive or the government -- to a U.S. Circuit Court of Appeals. If the district court grants the habeas petition, the government will typically also ask the court to stay its order pending appeal (in order to keep the fugitive in custody). If the court denies the stay request, the government may ask the appellate court to issue an order preventing the fugitive's release.

d. After the appellate court issues its decision, the losing party has two additional avenues of discretionary review. First, the party may ask the

three judge panel or all of the judges in that particular circuit to rehear the case. If the judges decline to rehear the case the party may file a petition for a writ of certiorari with the U.S. Supreme Court. The Supreme Court receives thousands of petitions a year and agrees to hear fewer than 100 of them, so the likelihood of Supreme Court review is very low. In fact, the Supreme Court has not taken an extradition case in the last 70 years.

e. The continued pursuit of judicial remedies interrupts the two-month period in 18 U.S.C. 3188 for the transfer of the fugitive who has been found extraditable by an extradition judge.

f. Under U.S. law (18 U.S.C. 3188), a fugitive who has been certified extraditable and committed to custody must be transferred to the requesting country within two calendar months of such certification and commitment. A fugitive who is not transferred by the expiration date of the statutory two-month period may petition the District Court for release. For this reason, the Department of State may initiate the final review of the case as soon as feasible after the receipt of the record of the case. However, if a fugitive seeks judicial review of the extradition judge's finding of extraditability, the Department suspends its final review of the case. After the district court denies the petition for habeas corpus, the Department typically begins or resumes its review process unless a court has stayed the surrender pending appeal.

7 FAM 1635 FINAL STAGES OF THE EXTRADITION PROCESS

7 FAM 1635.1 Review of the Case Record

(CT:CON-161; 03-20-2007)

a. After the extradition judge certifies extraditability, the clerk of the court is directed to transmit to the Secretary of State (c/o L/LEI), the "record of the case". This includes primarily the extradition judge's certification, the transcript of the hearing (if any), and the original set of documents submitted by the requesting country. If further litigation is expected, however, the court may retain the documents for future use.

b. In the Department's process of reviewing the judicial finding of extraditability, L/LEI studies the record of the case in detail. L/LEI also considers any written materials submitted to the Secretary of State by the fugitive, his or her counsel, family, or interested parties. L/LEI will consider the likely treatment of the fugitive in the requesting country, including possible issues under the Convention Against Torture, as well as questions about political motivation. In this context, L/LEI may consult

with regional bureaus, DRL, relevant posts, etc.

c. After L/LEI completes its review of the record of the case, the Legal Adviser submits the documents and an internal memorandum to the Secretary of State, Deputy Secretary of State, or the Under Secretary of State for Political Affairs for a determination on whether to extradite the fugitive.

7 FAM 1635.2 Surrender Warrant - Authority and Process

(CT:CON-161; 03-20-2007)

a. Statutory authority to surrender a fugitive (18 U.S.C. 3186) rests with the Secretary of State. This authority has been delegated to the Deputy Secretary of State and to the Under Secretary of State for Political Affairs. Accordingly, the Secretary, the Deputy Secretary, or the Under Secretary of State for Political Affairs may decide to surrender, or refuse to surrender, a fugitive certified extraditable, and sign the surrender warrant.

b. If the Secretary, the Deputy Secretary, or the Under Secretary of State for Political Affairs agrees to extradite, he or she signs the warrant. The surrender warrant authorizes the U.S. Marshal who has custody of the fugitive to surrender the fugitive to the escort agents of the requesting country. The signed and dated warrant is sealed by the Department's Authentication Officer.

c. L/LEI provides copies of the surrender warrant to OIA and the U.S. Marshals Service and formally notifies the embassy of the requesting country of the availability of the fugitive, enclosing with its diplomatic note the sealed surrender warrant and a copy of the extradition judge's certification. If the extradition judge has limited the finding of extraditability, the surrender warrant lists only those offenses for which the fugitive has been found extraditable, and this finding is further conveyed in the diplomatic note.

7 FAM 1635.3 Transfer of a Fugitive

(CT:CON-161; 03-20-2007)

a. OIA coordinates the arrangements for the transfer of the fugitive with the embassy of the requesting state and the U.S. Marshals Service. The escort agents, normally police officers of the foreign country, travel to the United States and take custody of the fugitive, usually at the international airport nearest to the fugitive's place of detention. The U.S. Marshals Service transports the fugitive to the airport and assures security until the departure of the flight.

b. Occasionally, at the request of the foreign country or when the transfer must be done urgently, U.S. Marshals return the fugitive to the requesting country on a reimbursable basis (see 7 FAM 1617). In such cases, CA/OCS notifies the appropriate post, providing flight data and requesting the post to ensure that:

   (1) Hotel reservations have been made for the USMS escorts; and

   (2) Local authorities will meet the flight and take the fugitive into custody.

c. When the transferred fugitive is an American citizen, L/LEI, by telegram, will inform the post in the requesting country of the extradition so that a U.S. consular officer may visit the prisoner as soon as feasible after the extradition has taken place. The post then submits its standard report of arrest under 7 FAM Chapter 400.

d. L/LEI will provide the post with basic information about the case against an American citizen, particularly of any limitation on extraditability, so that the consular officer can monitor the proceedings in the local courts. The post should report by telegram, captioned for L/LEI, if the fugitive, whether an American citizen or an alien, makes any allegations that he or she is being prosecuted or punished in the requesting country for offenses other than those for which the fugitive was extradited, in violation of the rule of specialty.

7 FAM 1636 TRAVEL DOCUMENTATION FOR U.S. CITIZEN FUGITIVES BEING EXTRADITED ABROAD

(CT:CON-215; 12-04-2007)

a. CA/PPT/L/LA may authorize the issuance of a limited validity U.S. passport to the U.S. citizen to be extradited from the United States. CA/PPT/L/LA works with the U.S. law enforcement authorities on matters related to revocation of previously issued passports of the subject of an outstanding warrant and issuance of a limited validity passport to the extraditee.

b. If an extraditee refuses to sign a passport application, a senior passport specialist at a U.S. passport agency/center may be authorized by CA/PPT/L/LA to sign it "without recourse". A detailed explanation of the circumstances of the application and a copy of the extradition order should be attached to the passport record. A limited passport should 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.

7 FAM 1637 THROUGH 1639 UNASSIGNED

7 FAM EXHIBIT 1633.1(D)
U.S. DECLARATION THAT THE 1961 HAGUE CONVENTION ABOLISHING THE REQUIREMENT OF LEGALIZATION FOR FOREIGN PUBLIC DOCUMENTS DOES NOT SUPERSEDE 18 U.S.C. 3190

(CT:CON-161; 03-20-2007)

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW PERMANENT BUREAU

L.C. A No (81), L.C. ON No 7(81)

CONVENTION ABOLISHING THE REQUIREMENT OF LEGALIZATION FOR FOREIGN PUBLIC DOCUMENTS (concluded at The Hague 5 October 1961 and entered into force 24 January 1965)

Subject: Accession

The Permanent Bureau of the Hague Conference on private international law presents its compliments to the Diplomatic Missions of the Member States at The Hague and to the National Organs and has the honor to inform them that, by instrument deposited on 24 December 1980 with the Ministry of Foreign Affairs of the Kingdom of the Netherlands

The United States of America acceded to the above-mentioned Convention.

At the time of the accession the United States of America made a declaration. The text of this declaration is as follows

"On the occasion of the deposit by the United States of America of its instrument of accession to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents concluded October 5, 1961 (1961 Convention), the Department of State wishes to draw the attention of States currently Parties to the Convention and eventually of those becoming so in the future, to the provisions of Title 18, United States Code, Section 3190 relating to documents submitted to the United States Government in support of extradition requests. It does so for the purpose of preventing possible misunderstandings by stipulating that the 1961 Convention does not supersede or override the provisions of Section 3190.

Section 3190 provides:

To the Diplomatic Missions of the Member States at The Hague.

To the National Organs.

Section 3190 Evidence on (Extradition) Hearing

Depositions, warrants or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required.

The requirement of Section 3190 is satisfied by the certification of the principal United States diplomatic or consular officer resident in the State requesting extradition that the documents are in such form as to be admissible in the tribunals of that State. The certification by apostille under the 1961 Convention does not satisfy this requirement, as it only certifies the signature, the capacity of the signer, and the seal on the documents. It does not certify the admissibility of the documents. Thus, the requirement of Section 3190 is not deemed by the United States to be overridden by operation of Article 8 of the 1961 Convention.

It should be noted, however, that a certification by the principal diplomatic or consular officer of the United States as set out in Section 3190 has also served to legalize such documents, and will continue to do so without the need for any other legalization by United States officials or certification by the apostille under the 1961 Convention.

In light of the above, it is recommended that States party to the 1961 Convention continue as before to cover documents supporting extradition requests directed to the United States with the special certification provided for by Section 3190. Failure to cover extradition documents in this recommended manner could regrettably result in a finding by the United States judge or magistrate hearing the extradition request that the documents do not meet the requirements of Section 3190 and thus are not entitled to be received and admitted as evidence. Such a finding could, in turn, result in the irrevocable rejection of the extradition request."

In accordance with the terms of Article 12, paragraph 1, of the Convention any State not mentioned in Article 10 of the Convention (viz. any State other than Iceland, Ireland, Liechtenstein and Turkey not represented at the Ninth Session of the Hague Conference on private international law) may accede to this Convention. In accordance with Article 12, paragraph 2, such accession shall have effect only as regards the relation between the acceding State and those Contracting States (at present: Austria, Bahamas, Belgium, Botswana, Cyprus, Fiji, France, the Federal Republic of Germany, Hungary,

Israel, Italy, Japan, Lesotho, Liechtenstein, Luxemburg, Malawi, Malta, Mauritius, the Kingdom of the Netherlands, Portugal, Seychelles, Spain, Surinam, Swaziland, Switzerland, Tonga, the United Kingdom of Great Britain and Northern Ireland and Yugoslavia) which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph d, of Article 15. For practical reasons this six month period will in this case run from 16 February 1981 till 10 August 1981.

In accordance with Article 12, paragraph 3, the Convention shall enter into force as between the acceding State and the States which have raised no objection to its accession on the sixtieth day after the expiry of the six month period, i.e. on 15 October 1981.

The Permanent Bureau avails itself of this opportunity to renew to the Diplomatic Missions of the Member States and to the National Organs an assurance of its highest consideration and esteem.

THE HAGUE, 26 February 1981

(Seal of the Hague conference)