

7 FAM 1630 EXTRADITION FROM THE UNITED STATES OF FOREIGN FUGITIVES

(TL:CON-20; 10-6-86)

7 FAM 1631 HOW A REQUEST IS MADE

A request by a foreign government for the extradition of a fugitive located in the United States must be addressed to the Department of State. Such a request is usually made by the government's embassy in Washington, D.C. Sometimes such a request is made directly to the post by the officials of the host country. In that event, immediately notify the Department. The post should never contact U.S. law enforcement authorities (Federal or State) directly to arrange a fugitive's arrest in the United States, unless instructed to do so by the Department.

7 FAM 1632 GENERAL U.S. EXTRADITION PROCEDURE

7 FAM 1632.1 Information on U.S. Extradition

Host country government officials may contact the post for information on U.S. extradition. The following information may be helpful in responding to such inquiries.

7 FAM 1632.1-1 Treaty Requirements

A foreign government's extradition request must meet the requirements of the applicable treaty. These usually include requirements that the request be supported by copies of the documents formally charging the fugitive with an offense, the outstanding order for the fugitive's arrest, and the relevant criminal statutes (including those defining the offense, setting forth the punishment for the offense, and indicating the applicable statute of limitations).

7 FAM 1632.1-2 Identification Evidence

The extradition request should contain evidence from which the fugitive can be identified (such as photographs or fingerprint cards, if available, or a detailed physical description).

7 FAM 1632.1-3 Evidence of Extraditable Offense

Almost every extradition treaty to which the United States is a party demands that the request be supported either by such evidence as would justify the fugitive's committal for trial had the crime been committed in the United States, or by proof that the fugitive is the person convicted in the requesting country. Therefore, a request for the extradition must be accompanied by sufficient evidence (such as statements or depositions from the victims, the witnesses, or the investigating officials) to show probable cause to believe that an extraditable offense was committed and that the fugitive committed it. When a fugitive has been convicted of the offense for which extradition is sought, evidence of this fact should be included in the request.

7 FAM 1632.1-4 Treaty in Force with Requesting Country

A person may be extradited from the United States only if there is an extradition treaty in force with the foreign country requesting extradition.

7 FAM 1632.1-5 Judicial Hearing

Federal law in the United States requires that a judicial hearing be held to determine if extradition is in order. Points to note are:

(1) The fugitive may be released on bond pending this hearing only if special circumstances are shown.

(2) At the hearing, the fugitive may be represented by counsel, and can raise any of the defenses to extradition specified in the treaty or available under international law.

(3) The Department of Justice will argue on behalf of the requesting country at the hearing when it is obliged to do so by treaty or when that country agrees to provide reciprocal representation; otherwise, the requesting country must retain private counsel to argue the case in favor of extradition.

(4) If the judge or magistrate conducting the hearing is convinced that the evidence is sufficient to sustain the charges under the provisions of the applicable treaty, the judge must order the fugitive incarcerated, and transmit the evidence submitted by the foreign government and a copy of testimony taken at the hearing to the Secretary of State (18 U.S.C. 3184).

7 FAM 1632.1-6 Decision to Extradite

The Secretary of State may order that the person be surrendered (18 U.S.C. 3186). The fugitive must then be removed from the United States within 2 calendar months of the judge's committal order or be released from custody, unless sufficient cause is shown to the judge why the fugitive must not be released (18 U.S.C. 3188).

7 FAM 1632.1-7 Payment of Expenses

The requesting country must pay all expenses incurred in connection with an extradition request (18 U.S.C. 3195) unless the treaty specifies otherwise or other arrangements have been made.

7 FAM 1632.2 Opinion on Proposed Extradition

Host country government officials may ask the post for advice on the likely success of a particular proposed extradition request. The post should be aware that determining whether extradition may be granted in a specific case is sometimes a difficult task which requires familiarity with the decisions of U.S. courts in similar cases (many of which are not published). For this reason, the post should seek guidance from the Department before venturing an opinion.

7 FAM 1633 TRANSLATION OF FOREIGN EXTRADITION DOCUMENTS

All documents supporting an extradition request must be translated into English before presentation to a court or magistrate. The requesting state normally makes such translations.

7 FAM 1634 CERTIFICATION OF FOREIGN EXTRADITION DOCUMENTS

7 FAM 1634.1 Basis of Requirement

18 U.S.C. 3190 provides that the documentation submitted by a foreign government in support of a request for extradition is admissible at the extradition hearing if it is authenticated so as to be admissible for similar purposes in the tribunals of the requesting country, and that the certificate to this effect by the principal diplomatic or consular officer of the United States resident in that foreign country shall be conclusive proof of authentication in the manner required. All documentation submitted by the foreign government should be certified in accordance with these provisions. The authentication of the signature or official character of a foreign official named in the documents (see 7 FAM 840 and 7 FAM 842) does not satisfy the requirements for certification under this section.

7 FAM 1634.2 Form of Certification

a. Use Form FS-36, Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition (available in the Department's Forms Facsimile Handbook; see 7 FAM 1634 Exhibit 1634.2), for making the certification.

b. Exercise great care in filling out the certificate.

NOTE: The "tribunals" referred to on the certificate are those of the foreign country, and not those of the United States.

NOTE: The certificate assumes some familiarity with local rules of evidence. Unless the certifying officer is certain of the pertinent local law, obtain advice on this matter from competent local officials.

c. It is important that each of the extradition documents be attached to the FS-36. Assemble the certification and all extradition documents under the official seal of the post and secure them by a ribbon passed through the upper left-hand corner (see sample in 7 FAM 816 Exhibit 816.4).

7 FAM 1634.3 Who May Certify

The certificate may be signed only by the chief of mission over the title of Ambassador, or Charge d'Affaires ad interim, or by a principal consular officer (including the chief consular officer in the embassy) accredited to the country requesting extradition. If at all possible, the chief of mission should sign the certification.

7 FAM 1635 THROUGH 1639 UNASSIGNED

7 FAM 1634 Exhibit 1634.1

Sample Certificate To Be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition

Sample Certificate To Be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition

Form No. 44-Extradition

Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition

AMERICAN FOREIGN SERVICE

Bern, Switzerland, July 2, 1936
(Date)

I, Mary G. Walker, _____, _____ of the United States of America do hereby certify that the annexed papers, being _____

_____ proposed to be used upon an application for the extradition from the United States of Ein Woe Young, charged with the crime of _____ alleged to have been committed in Switzerland, are properly and legally authenticated so as to entitle them to be received as evidence for similar purposes by the tribunals of Switzerland, as required by the Act of Congress of August 3, 1932.

In witness whereof I hereunto sign my name and cause my seal of office to be affixed this second day of July, 1936
(Date)

Mary G. Walker

AMERICAN FOREIGN SERVICE, U.S. DEPT. OF STATE

