

An Introduction to **International Prisoner Transfers Going Home**



By Alan Ellis



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In 1998, Israel, Costa Rica, and Chile became signatories to the Council of Europe Convention, wherein nationals from those countries, who are serving sentences in U.S. prisons could be transferred back to their home countries for the service of their sentences.

This brings to 59 the number of countries and their territories with which the United States has such treaties.¹

Under these treaties, inmates serving federal sentences as well as inmates serving state sentences in certain states, can apply to be considered for transfer to their home countries to serve their sentences.² For federal prisoners, the transfers in some cases (depending upon the treaty) may not be available to: (1) inmates in custody for civil contempt; (2) inmates with committed fines without permission of the court; (3) inmates serving sentences for certain immigration law violations; and (4) inmates with pending court proceedings, e.g., appeals, 2255 motions, etc.³

Additionally, most of the prisoner transfer treaties outline some restrictions on eligibility. In general, the conditions that must be met include: (1) the prisoner must be a citizen or national of the receiving country; (2) the prisoner must not be a citizen of the U.S.; (3) the offense for which the prisoner is incarcerated must be a crime under the laws of the country to which the prisoner wishes to be transferred; (4) the prisoner must have at least six months left to serve on the sentence at the time of application. Individual treaties may have additional transfer requirements. The United States' treaties with Canada and Mexico, for exam-

ple, preclude the transfer of prisoners who are serving out sentences for immigration or military offenses; the treaty with Mexico further precludes the transfer of persons who have been present for at least five years, with an intent to remain permanently in the United States.

A federal inmate can obtain an application for transfer from his unit team. A federal inmate must wait until he is in the custody of the Bureau of Prisons (BOP) before the application can be made. Once made, if the application is rejected, he cannot reapply for another two years unless compelling, humanitarian reasons develop.

Once the application is completed and returned to a unit team staff member, a package is put together and forwarded to the warden.

Request Packet

A transfer request packet is compiled by BOP and typically contains: (1) the prisoner's application; (2) the criminal judgment; (3) the pre-sentence investigation report (PSI); (4) any information about the prisoner's adjustment to prison life; (5) the prisoner's sentence computation information; (6) information about the prisoner's ties to the receiving country (as reflected in the PSI); and (7) information about pending appeals or detainees.

The warden then transmits the package to the BOP Assistant Director, Correctional Programs Division, Bureau of Prisons, in Washington, D.C. who checks the package to make sure it contains all the necessary documents. The package is then sent by messenger to the Office of Enforcement Operations (OEO), Criminal Division, International Prisoner Transfer Unit (IPTU), Department of Justice (DOJ). Once it arrives at the DOJ, a case analyst is assigned to review the paperwork to determine eligibility and to contact interested parties such as the U.S. Attorney's Office that prosecuted the case and the investigative agency (Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Internal Revenue Service (IRS), etc.) to ascertain their position on the transfer.

The role of the U.S. Attorney's Office is to provide facts and recommendations to the IPTU that can be considered in approving or denying an offender's transfer request. Typically, absent compelling factors, any relevant information requested by IPTU must be supplied within ten days of the request. The views of the fed-

eral law enforcement agency involved in the case, concerning the prisoner's involvement in related crimes or the subject of other investigations, are always sought as well. Although the views and recommendations of the U.S. Attorney's Office are accorded greater weight than those of law enforcement agencies, neither are determinative of the final decision on any particular transfer request.⁴

While there are no formal regulations governing the considerations to be applied to prisoner transfer requests, non-binding internal guidelines — setting forth a number of factors which are considered — do exist. These factors include: (1) the seriousness of the underlying offense; (2) the payment of fines or restitution; (3) the existence of a prior record; (4) the offender's ties to each country; and (5) the likelihood of rehabilitation.

If DOJ approves the transfer, it is then forwarded to the embassy or ministry of justice of the receiving country (the country to which transfer is sought). The receiving country's embassy or ministry of justice then determines whether to accept the inmate. If the inmate is accepted, the paperwork goes back via the same pipeline and winds up back on the desk of DOJ's International Prisoner Transfer Unit. The inmate is then notified, and preparations are made for the physical transfer.

Two-Fold Benefits

The benefits of being transferred to one's home country to serve one's sentence are twofold: (1) the inmate is closer to his friends and family and, according to studies, is better able to be rehabilitated in his or her home culture; and (2) the amount of time to be served is governed by laws of the receiving or home country which oftentimes results in an earlier release. Parole eligibility, if any, and good time are determined by the receiving/home country.

Defense counsel can facilitate a client's transfer by negotiating a provision in the plea agreement wherein the U.S. Attorney's Office agrees to recommend — or at least, not to oppose — the defendant's transfer and to recommend to the sentencing judge that the court itself, make such a recommendation to the International Prisoner Transfer Unit.

Counsel can also, once the application is made, assist the Department of Justice by providing relevant information that will make the likelihood of approval that much greater.

NOTES

1. The countries include: Austria, Bahamas, Belgium, Bolivia, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Federated States of Micronesia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Mexico, Netherlands (Netherlands Antilles and Aruba), Norway, Panama, Peru, Poland, Portugal, Republic of Palau, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, Trinidad/Tobago, Turkey, Ukraine, United Kingdom and U.K. Territories.

2. States with legislation authorizing the transfer of foreign prisoners include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Northern Mariana Islands (United States Territory), Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont (transfers to Canada only), Virginia, Washington, Wisconsin, and Wyoming.

3. 318 U.S.C. § 4100 (c).

4. U.S. Department of Justice, UNITED STATES ATTORNEYS' CRIMINAL RESOURCE MANUAL § 735 (1998). ◀



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