



U.S. Department of Justice

Criminal Division
International Prisoner Transfer Unit

Office of International Affairs

Washington, D.C. 20530

Prisoner Transfer Information for Americans Incarcerated Abroad

Introduction

When an American is arrested abroad the arresting country is obligated to notify U.S. consular officials. Once the American Embassy or Consulate is notified, a consular official will visit and interview the prisoner. However, before the U.S. consular official can provide consular services he must determine whether the prisoner is a U.S. citizen. To make this determination, the prisoner needs to provide strong evidence of citizenship, such as a passport or an original birth certificate with official identification. If convinced that the prisoner is a U.S. citizen, the consular official will prepare and send an arrest cable that states how the Embassy was notified of the arrest, whether the prisoner has consented to the release of information to others and information about the nature of the offense. In addition, the consular official will provide the prisoner with various types of information including the availability of the International Prisoner Transfer Program. Prisoner transfer is only available to a prisoner who was sentenced by a country with which the United States has a transfer treaty relationship.

The International Prisoner Transfer Program, which is authorized by federal law and international treaties, is administered by the United States Department of Justice. An American prisoner is not eligible for transfer to the United States until he has been convicted and sentenced by the foreign country and the conviction and sentence are final (i.e. no pending appeals or other legal challenges to the sentence). Once that has occurred, the prisoner can initiate the application process.

In addition to the requirement that the prisoner's sentence be final, there are other requirements that must be satisfied before a transfer can occur. One of the most important requirements is that the sentencing country, the receiving country and the prisoner must all consent to the transfer. Another requirement is that dual criminality must exist, which means that the crime in the sentencing country is also a crime in the receiving country. There also must be sufficient time remaining on the sentence for an application to be processed. Normally this period is six months but sometimes the applicable treaty requires that at least 12 months remain on a sentence. Some foreign governments require the prisoner to pay any fines or restitution that were imposed as part of the sentence before transfer can occur and sometimes even before the approval decision is made. Finally, some treaties prohibit the transfer of certain types of offenses. The Mexican bilateral, for example, does not allow the transfer of immigration offenses.

Determining if Transfer is in the Best Interest of the Prisoner

A prisoner who is interested in transferring should contact the Defender Services Division of the Administrative Office of the U.S. Courts to obtain advice as to whether a transfer would be an

advisable option for the prisoner. Some prisoners decide not to apply for transfer after consulting with a federal public defender (“FPD”) and learning that they will spend less time in custody if they remain in the foreign country than if they transfer to the United States and have their sentence administered according to U.S. sentencing provisions.

If the prisoner has questions concerning how his sentence will be administered in the United States, he should write to:

Chief, Defender Services Division
Administrative Office of the United States Courts
Washington, DC 20544
Attn: Prisoner Transfer Treaty Matters

In this letter, the prisoner should clearly state that he is seeking advice about international prisoner transfer and should provide the following information to allow the FPD to give the best advice possible:

1. Full name and any aliases;
2. Date and place of birth;
3. Date of the offense and date of arrest;
4. Precise offense of conviction including any known statutory cites;
5. Sentence imposed including any fines or restitution;
6. Any projected release dates through parole or other form of early release;
7. Any labor credits or other prison work credits that may be earned;
8. A detailed description of the offense which includes the foreign government’s version of the offense. This description should include any mitigating or aggravating circumstances including whether a weapon was used or present when the offense was committed. If a drug offense is involved, the offense description should include the type of drugs involved and the quantity;
9. A description of the prisoner’s role in the offense in relation to others who may have participated in the offense;
10. Whether the prisoner cooperated, provided any confession or took any other action showing that he accepted responsibility for his unlawful conduct;
11. An accurate description of his prior misdemeanor or felony record in the United States including prior sentences, whether he was under criminal justice supervision (probation, parole or supervised) at the time of the offense and whether any outstanding warrants exist against him; and
12. An accurate mailing address where the prisoner can be reached.

Upon receiving this information, the Defender Service Division will assign the matter to a FPD for review and response. If the prisoner has provided all of the information listed above, the FPD should be able to give the prisoner a reasonably informed estimate of how the foreign sentence will be administered in the United States should the prisoner be transferred there. Once the case is assigned, it usually takes four to eight weeks for the FPD to respond to the prisoner with advice about the likely manner in which the sentence will be administered.

Applying for Transfer

If the prisoner wishes to transfer after consulting with the FPD, he should notify the U.S. Consulate of his interest. Application to transfer must be made to both the foreign government and to the International Prisoner Transfer Unit (IPTU) in the Criminal Division of the United States Department of Justice. To apply for transfer with the IPTU, the prisoner should complete a form indicating an interest in transferring and complete an application questionnaire. These documents are available at the nearest U.S. Consulate or directly from the IPTU.

It is very important for the prisoner to apply with the foreign government as well as the United States because both governments must approve the transfer. The foreign government or the U.S. Consulate (depending on the treaty or local procedures) will assemble the necessary documents regarding the offense and sentence for the application package. This package will include the foreign sentencing documents, a summary and translation of the offense behavior and prison information, a copy of the travel documents or other proof of U.S. citizenship, information regarding the prisoner's classification and conduct. Occasionally it may also include an approval notice from the foreign government. Once the packet is assembled it will be forwarded to the IPTU for review.

Consent Verification Hearing

If both the IPTU and the foreign government approve the request to transfer, the IPTU will make arrangements for a consent verification hearing. A consent verification hearing is required by United States law, 18 U.S.C. § 4108, and is usually conducted at the prison. The hearing is presided over by a federal magistrate judge and a federal public defender will be appointed to represent the prisoner. Because of the logistics of selecting a judge and making travel arrangements, it can take several months to arrange a hearing. At the consent verification hearing a determination is made whether the prisoner understands the legal significance of the transfer and whether he consents to the transfer.

Preparing for Transfer

If the prisoner consents to transfer, arrangements are made with the Federal Bureau of Prisons (BOP) and the foreign government to transport the prisoner back to the United States where he will be incarcerated in a federal prison. The prisoner must maintain good behavior as disruptive prisoners may not be transferred. The BOP may also be interested in a health inventory to determine if any special needs are required for the transfer. All prisoners will have to be tested for tuberculosis prior to transfer.

When the day for the transfer arrives, the prisoner should be prepared. He should have sent home or otherwise disposed of all of his belongings. He will only be allowed to bring the clothes he is wearing and a small amount of personal property. The only property permitted are a wedding band with no stones, prescribed medicine, medical devices, eyeglasses, legal material on a current case only, identification cards, religious medal or daily prayer items and currency or negotiable instruments (preferably in a money order or other negotiable instrument denominated in dollars, which will be deposited in a trust fund or inmate account at the institution). No

jewelry is permitted including watches, earrings and necklaces. Hair bands, clasps and braids are also prohibited. Since the prisoner will likely wear leg irons for the transfer, a pair of socks for the day of the transfer is advisable. The prisoner will be subject to a full body search before transfer.

Process Following Transfer

The BOP will attempt to place prisoners in suitable prisons nearest the prisoner's home. The prisoner will first be brought to an administrative prison for initial processing. The foreign sentencing documents will be copied and given to a United States Probation Officer. The probation officer will review these documents and then visit the prisoner to collect background information. After a brief investigation, the probation officer will prepare a "post-sentence investigation report". This report, which takes about 30-60 days to prepare, will include a recommendation as to the period of confinement and period of supervised release that would apply after considering the relevant United States Sentencing Guidelines. Thereafter, the United States Parole Commission will review the case and, in most cases, hold a hearing to determine the length of time the prisoner should remain in prison and the period of supervised release that will apply when the prisoner is released from prison.

Additional Information

Family members and representatives can obtain additional information from three useful web sites:

<https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/International-Prisoner-Transfer-Program.html>
www.justice.gov/criminal-oia/iptu
www.bop.gov

Prisoners who are applying for transfer may be represented by an attorney but such representation is not required. The overwhelming majority of transfer applicants are not represented by an attorney. Because of limitations imposed by the Privacy Act, U.S.C. § 552a, the Department of Justice cannot provide information about individual prisoner transfer cases without a signed waiver of confidentiality from the prisoner. This law applies whether the inquiring party is the prisoner's Congressman or family member. A sample Privacy Act Waiver form can be found on the IPTU website: www.justice.gov/criminal-oia/what-prisoners-and-families-can-do.

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