

GIR KNOW-HOW EXTRADITION

United States

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I N S I G H T

1 Are extradition proceedings regulated by domestic legislation, treaties or both?

US extradition proceedings are regulated by both treaty and US domestic legislation. In general, the United States will extradite an individual to a foreign country only when (1) an applicable bilateral extradition treaty is in place, (2) all the requirements of the treaty are met, and (3) none of its exceptions apply. US extradition treaties are individually negotiated, and the extradition analysis turns on the provisions of the particular treaty in question. Proceedings also must comply with US statutory law, most importantly the requirements set forth in 18 USC Section 3181 et seq. (see <https://www.govinfo.gov/app/details/USCODE-2017-title18/USCODE-2017-title18-partII-chap209/summary>).

As a matter of US statutory law, extradition generally is possible ‘only during the existence of any treaty of extradition with [the] foreign government’ (18 USC Section 3181(a)). Section 3181(b) provides a narrow exception authorising the surrender of persons other than US citizens, nationals or permanent residents who have committed crimes of violence against US nationals abroad, provided the Attorney General makes certain certifications in writing.

2 Is there a central register of extradition treaties that your state has entered into?

The US Department of State compiles an annual publication titled *Treaties in Force*, which lists treaties and other international agreements ‘in force for the United States as of the stated publication date for each edition’ (US Department of State, *Treaties in Force*, <https://www.state.gov/treaties-in-force/>). Extradition treaties appear under the ‘Law Enforcement’ heading for each listed country or international entity, and under the ‘Law Enforcement’ heading for multilateral agreements to which the United States is a party. Although the publication provides basic information about the listed treaties, such as the dates they were signed and entered into force, it does not contain copies of the treaties themselves. In addition, a list of countries with which the United States has extradition treaties appears in the note to 18 USC Section 3181 (see <https://www.govinfo.gov/app/details/USCODE-2017-title18/USCODE-2017-title18-partII-chap209-sec3181>).

Recent US extradition treaties are available on the Department of State website. For older treaties, ‘[n]o single source contains a comprehensive collection of all treaties and international agreements’ (US Department of State, *How to Find Treaty and Agreement Texts*, <https://www.state.gov/texts-of-agreements/>). The Department of State website provides guidance on locating agreement texts at <https://www.state.gov/finding-agreements/>.

3 Do special extradition arrangements apply to certain foreign states, for example states that are geographically proximate, or politically, legally or economically closely linked?

The extradition framework set forth in 18 USC Section 3181 et seq. applies to all US extradition relationships, including those with close partners such as Canada and the United Kingdom. The United States enters into extradition treaties with countries with which it has strong law enforcement relationships. In deciding whether to enter into a new extradition relationship, the United States considers factors such as its level of confidence in the fairness and due process protections of the foreign country’s legal system.

The United States and its treaty partners periodically update their extradition arrangements to ensure that they continue to meet the parties’ needs. For example, in 2003, the United States and European Union signed an extradition treaty (US–EU Treaty) that sets forth streamlined processes for the authentication and transmission of documents, the transmission of requests for provisional arrest and the furnishing of supplementary information, among many other provisions (see *Agreement on Extradition, US–EU*, articles 5, 6, 8, 25 June 2003, TIAS 10-201). The United States and individual EU member states subsequently entered into separate bilateral instruments to implement these provisions.

4 Is extradition possible to states that have no bilateral or multilateral extradition treaty with your state if they are party to an international convention?

When a foreign state is not a bilateral treaty partner, the United States will not extradite to that state based solely on the provisions of a multilateral convention (US Department of State, 7 *Foreign Affairs Manual* 1613.3(d)). This position is documented in written Notifications to the United Nations and testimony by US executive branch officials to Congress. For example, the United States submitted a formal Notification to the United Nations stating that it would not apply Article 16(4) of the UN Convention Against Transnational Organized Crime, 15 November 2000, TIAS 13127 (the Convention), which provides that governments that ‘make[] extradition conditional on the existence of a treaty’ – a category that includes the United States – may consider the Convention to be ‘the legal basis for extradition in respect of any offence to which this article applies’ (see ‘United Nations Convention Against Transnational Organized Crime, New York, 15 November 2000, United States of America: Ratification’, C.N.1153.2005.TREATIES-23 (Depositary Notification) (15 November 2005), <https://treaties.un.org/doc/Publication/CN/2005/CN.1153.2005-Eng.pdf>).

US executive branch officials who testified before Congress in connection with the Convention made representations consistent with this position. See, for example, Hearing on Law Enforcement Treaties: Hearing Before the S. Comm. on Foreign Relations, 108th Cong., 63 (2004) (responses of Samuel M Witten and Bruce Swartz to additional questions for the record submitted by Senator Joseph R Biden) ('The United States would not use the Convention as an independent legal basis for extradition from the United States in cases where the United States has no extradition treaty with another State Party seeking extradition. We will continue our practice of extraditing persons under the authority of bilateral extradition treaties, and will deem offenses under this Convention to be extraditable offenses under such treaties as are in force between State Parties to the Convention.').

5 Is extradition possible to states that are not extradition treaty partners as an ad hoc arrangement?

The United States will extradite to a foreign state only if the requirements of 18 USC Section 3181 et seq. and applicable treaty provisions are met. It will not extradite pursuant to ad hoc arrangements.

6 For which offences is extradition from your state allowed?

Each US extradition treaty is individually negotiated and each specifies the particular offences for which extradition is permitted under the treaty. Older US extradition treaties typically included a list of extraditable offences, such as theft or kidnapping. For example, the extradition treaty between the United States and Brazil provides that '[p]ersons shall be delivered up according to the provisions of the present Treaty for prosecution when they have been charged with, or to undergo sentence when they have been convicted of, any of the following crimes or offenses' (Treaty of Extradition, US–Brazil, article 2, 13 January 1961, TIAS 5691). The treaty then lists specific crimes, such as murder, robbery and larceny.

Beginning in the 1970s, the United States and other countries shifted away from the use of lists and towards a dual criminality standard. This standard makes an offence extraditable when the underlying conduct is punishable in both countries by a specified penalty, frequently imprisonment of at least one year. For example, in the first protocol to the US–Canada extradition treaty (US–Canada First Protocol), the parties deleted the schedule of offences and added the following provision: 'Extradition shall be granted for conduct which constitutes an offense punishable by the laws of both Contracting Parties by imprisonment or other form of detention for a term exceeding one year or any greater punishment' (Protocol Amending the Treaty on Extradition, US–Canada, articles 1 and 2, 11 January 1988, 1853 UNTS 407).

In a report on the US–Canada First Protocol, the US Senate Committee on Foreign Relations explained the shift from a list approach to a dual criminality approach as follows:

Most extant extradition treaties, including our own extradition treaty with Canada, have traditionally listed specific crimes which are to be considered extraditable offenses. More recent extradition treaty-drafting practice has involved including in the text of the treaty instead of specifically enumerated crimes, a "dual criminality clause." Such a clause permits extradition for any crime that is punishable in both countries by imprisonment for a year or more. The Protocol now before the committee would incorporate this new approach into our extradition treaty with Canada, instead of the current treaty language which lists specific crimes. As a result of this approach, there will no longer be any need to renegotiate and/or amend the extradition treaty if and when new offenses become punishable under the laws of both countries.

(S. Exec. Rep. No. 102-12, at 1-2 (1991))

In more recent decades, the United States and its treaty partners have included similar dual criminality provisions in both new treaties and amendments to existing treaties.

7 Is there a requirement for double (dual) criminality? How is this assessed?

Dual criminality refers to the general principle that 'the crime charged in the requesting state is also a crime in the requested state' (M Cherif Bassiouni, *International Extradition: United States Law and Practice*, 500 (6th ed. 2014)). Modern US extradition treaties permit extradition only if the requirement of dual criminality is satisfied.

US courts have developed case law addressing the standard for dual criminality. In *Collins v. Loisel*, 259 U.S. 309, 312 (1922), an early US Supreme Court case that is often relied upon by the lower courts, the Court held that dual criminality is satisfied 'if the particular act charged is criminal in both jurisdictions'. It is well established that the names and elements of the offences 'need not be identical'; rather, the question is whether the conduct is criminalised in both the requesting and the requested state (*Clarey v. Gregg*, 138 F.3d 764, 766 (9th Cir 1998) (collecting cases)).

8 How would your state deal with a request that includes an offence for which extraterritorial jurisdiction is claimed?

This determination depends on the provisions of the applicable treaty. For example, the US–Canada First Protocol amended the treaty to read as follows: ‘When the offense for which extradition is requested was committed outside the territory of the requesting State, the executive or other appropriate authority of the requested State shall grant extradition if the laws of the requested State provide for jurisdiction over such an offense committed in similar circumstances. If the laws in the requested State do not so provide, the executive authority in the requested State may, in its discretion, grant extradition.’ (US–Canada First Protocol, article 3). Other treaties use different language and some do not contain extraterritoriality provisions.

9 What must be included as part of a valid extradition request made by the foreign state?

US extradition treaties generally contain articles setting forth the documents and information required to support an extradition request, as well as applicable language requirements and authentication procedures. These details vary by treaty.

Typically, all requests must include documents relating to the identity of the person sought, a description of the case and the text of relevant laws. Other requirements differ based on whether the person is sought for prosecution or to serve a sentence. For example, the 2003 extradition treaty between the United States and the United Kingdom, as amended by an instrument incorporating provisions from the US–EU Treaty (US–UK Treaty), provides that a request for extradition of a person sought for prosecution must include ‘a copy of the warrant or order of arrest issued by a judge or other competent authority’, ‘a copy of the charging document, if any’ and, ‘for requests to the United States, such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is requested’ (Annex to Instrument Amending the Treaty of 31 March 2003, US–UK, article 8(3), 16 December 2004, TIAS 10-201.23). A request for a person sought to serve a sentence must include, among other things, ‘information that the person sought is the person to whom the finding of guilt refers’, ‘a copy of the judgment or memorandum of conviction or, if a copy is not available, a statement by a judicial authority that the person has been convicted’ and ‘a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out’ (article 8(4)).

With respect to individuals sought for prosecution, courts have interpreted US extradition treaties and statutory law as requiring evidence sufficient to, at minimum, support a finding of ‘probable cause’ to believe that the individual is guilty of the charges pending in the requesting state. See, for example, *United States v. Fernandez-Morris*, 99 F. Supp. 2d 1358, 1360 (S.D. Fla 1999); see also 18 USC Section 3184 (providing for a determination of whether there is evidence ‘sufficient to sustain the charge under the provisions of the proper treaty or convention, or under section 3181(b)’). The US Supreme Court has described this standard as requiring ‘competent evidence to justify holding the accused to await trial, and not to determine whether the evidence is sufficient to justify a conviction’ (*Collins v. Loisel*, 259 U.S. 309, 316 (1922)).

Some older US extradition treaties, including the previous US–UK extradition treaty, required evidence sufficient to make out a prima facie case, but that is not the prevailing modern practice (see S. Exec. Rep. No. 109-19, at 3-4 (2006), explaining that the previous US–UK treaty’s requirement ‘to present a prima facie case . . . often proved to be burdensome’ and that the new treaty would use a probable cause standard for requests to the United States). If the parties negotiating a treaty have agreed to a level of evidence that exceeds probable cause, however, the requesting state must satisfy that standard.

US extradition treaties also address technical matters such as language requirements and procedures for the authentication of documents. For example, the US–Japan extradition treaty requires that all documents ‘shall be duly certified as required by the laws of the requested Party, and accompanied by a duly certified translation in the language of the requested Party’ (Treaty on Extradition, US–Japan, article 8(6), 3 March 1978, 31 UST 892). Some treaties provide for specific authentication procedures.

Separately, US statutory law provides that documents are admissible in proceedings before the extradition judge when they are authenticated in a manner that would ‘entitle them to be received for similar purposes’ in the foreign country’s courts, and that authentication by the top US diplomatic or consular officer in the foreign country satisfies that requirement (18 USC Section 3190).

10 What are the stages of the extradition process?

Extradition proceedings in the United States are multi-stage proceedings involving both the executive and judicial branches. The main steps are summarised below.

Review by Department of State and Department of Justice

The process begins when the Department of State receives an extradition request from the requesting state through diplomatic channels. Both the State Department and the Justice Department’s Office of International Affairs (OIA) conduct an initial review,

which includes determining whether an applicable treaty is in force with the requesting state, whether the treaty's requirements appear to have been met and whether any exceptions appear to apply. If the request satisfies applicable requirements, the OIA will forward it to the US Attorney's Office (the federal prosecutor's office) in the district where the individual being sought for extradition is located.

Initiation of proceedings by US Attorney's Office

An Assistant United States Attorney initiates extradition proceedings by filing a complaint and supporting materials in the competent US district court (Ronald J Hedges, Federal Judicial Center, *International Extradition: A Guide for Judges*, 4 (2014)). US statutory law sets forth the procedure for initiating extradition proceedings and bringing the accused before the court:

Whenever there is a treaty or convention for extradition between the United States and any foreign government, or in cases arising under section 3181(b), any justice or judge of the United States, or any magistrate judge authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, or provided for under section 3181(b), issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate judge, to the end that the evidence of criminality may be heard and considered.

(18 USC Section 3184)

Thus, the court determines whether the complaint and supporting materials are sufficient to support the issuance of a warrant under Section 3184. Many US treaties provide that the requesting state may seek the provisional arrest of the person being sought for extradition prior to submitting a full extradition request (see question 12). If the person is already in custody pursuant to a provisional arrest warrant, that warrant 'is withdrawn and a warrant is substituted for it that is issued pursuant to 18 USC § 3184' (M Cherif Bassiouni, *International Extradition: United States Law and Practice*, 849 (6th ed. 2014)).

Proceedings before the extradition judge

The individual then appears before a magistrate or district court judge for proceedings, generally including an initial appearance, bail determination and probable cause hearing. During this stage, the individual may challenge the extradition request on various grounds, including that it does not comply with the provisions of the treaty or that the treaty's exceptions apply.

Certification by court and decision by the Secretary of State

If the court 'deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention', it will issue a certification of extraditability (18 USC Section 3184). The Secretary of State has final discretionary authority over whether to extradite a person found extraditable by the court (18 USC Section 3186; *United States v. Kin-Hong*, 110 F.3d 103, 109, 110 (1st Cir 1997)).

11 If an initial political decision is required, what factors can be considered?

The Secretary of State makes a determination at the end of the process regarding whether a fugitive found extraditable by the court should be extradited. The Secretary may consider human rights issues at that stage, and in theory can consider political factors, though the long-standing US practice has been to view extradition as a law enforcement issue rather than a political one (see question 24).

12 Is provisional arrest, before the extradition request is received, possible?

Yes, subject to the requirements of the applicable treaty. The US Senate Committee on Foreign Relations has recognised that articles providing for provisional arrest 'are included in all modern U.S. extradition treaties' (S. Exec. Rep. No. 106-26, at 31 (2000)). The specific terms under which provisional arrest is permitted and the length of time a person can be held until a full extradition request is filed varies from treaty to treaty. The US-Canada treaty, for example, states that '[i]n case of urgency a Contracting Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel' (Treaty on Extradition, US-Canada, article 11(1), 3 December 1971, 27 UST 983). A person arrested pursuant to this provision may be held for no more than 60 days and must be released if an extradition request supported by the required documents is not received within that period (US-Canada First Protocol, article 6).

13 Must a domestic arrest warrant be issued or can an Interpol red notice be used to carry out a provisional arrest?

An Interpol red notice may provide a basis to detain a person upon entry to the United States, but it is not a substitute for a domestic arrest warrant. If a person is detained based on a red notice, the United States will require the domestic warrant to issue promptly, and will arrest a person pursuant only to a valid warrant.

14 What is required to apply for a domestic extradition arrest warrant?

Under 18 USC Section 3184, which sets forth the process for bringing before the court a person being sought for extradition, a warrant may issue 'upon complaint made under oath, charging any person found within [the court's] jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, or provided for under section 3181(b)'. Alternatively, the requesting state may seek provisional arrest subject to the requirements of the applicable treaty. Provisional arrest provisions typically specify how the application must be transmitted and the information it must include, such as a description of the person being sought and a statement of the offence.

15 What rights does the requested person have while under arrest?

A person detained in the United States is entitled to all rights and protections available under the US Constitution and US statutory law. It is important to note, however, that certain protections available in criminal proceedings, such as the right of indigent defendants to court-appointed counsel, do not extend to extradition proceedings (see *DeSilva v. DiLeonardi*, 181 F.3d 865, 868, 869 (7th Cir 1999)).

16 Is bail available in extradition proceedings?

There is a presumption against bail in US extradition proceedings (*Wright v. Henkel*, 190 U.S. 40, 63 (1903)). The rationale is that 'the non-appearance of a bailed extraditee would prevent the United States from complying with its treaty obligations' (*In re Extradition of Ernst*, Case No. 97CRIMMISC1PG22, 1998 WL 30283, at *11 (SDNY 27 January 1998)). This does not mean that bail will never be granted, but the burden is on the individual to overcome the presumption.

17 If so, what are the factors that a court will take into account in deciding whether to grant bail?

Bail in extradition proceedings is not governed by the procedures set forth at 18 USC Section 3181 et seq. or statutes that relate to bail in US criminal proceedings. Rather, 'courts have developed federal common law in this area, resulting in sometimes contradictory rulings' (Ronald J Hedges, Federal Judicial Center, *International Extradition: A Guide for Judges*, 7 (2014)).

In general, bail pending an extradition hearing is available only if 'special circumstances' exist, a requirement that some courts have interpreted extremely narrowly. In *Extradition of Ernst*, for example, the court declined to grant bail despite acknowledging that Ernst was a naturalised US citizen with ties to the community. The court reasoned: 'Although I agree that Ernst is a low risk of flight, that fact alone is not a special circumstance' (*In re Extradition of Ernst*, 1998 WL 30283, at *12, citing *United States v. Leitner*, 784 F.2d 159, 161 (2d Cir 1986) (per curiam)). The special circumstances analysis is fact-specific and varies by case.

18 Can the court impose conditions when granting bail? What conditions can be, and usually are, imposed?

Yes, a court may impose conditions when granting bail in an extradition proceeding. Bail in extradition proceedings is not governed by US statutory law, and decisions regarding the grant of bail and any conditions are at the discretion of the judge.

19 What bars can be raised to resist extradition?

Defences to extradition may be raised in proceedings before the extradition judge, including at the probable cause hearing. This hearing is not a trial on the merits, and the rules of evidence and criminal procedure do not apply (see *Skaftouros v. United States*, 667 F.3d 144, 155 and n.16 (2d Cir 2011)). Rather, the extradition judge's role is limited to ensuring that the extradition request is valid and complies with the requirements of the applicable treaty and US law.

Common defences to extradition include the following:

- Lack of dual criminality: The subject of the extradition request may argue that the conduct in question does not constitute a crime in both jurisdictions. In evaluating a dual criminality defence, the extradition judge would consider US case law regarding the dual criminality requirement and the relevant criminal laws of the two jurisdictions.
- Sufficiency of the evidence: If the extradition request is based on pending criminal charges, the subject may argue that the evidence is not sufficient to meet the ‘probable cause’ standard (or a heightened standard, if so provided by the terms of the treaty).
- Prior proceedings (non bis in idem): US extradition treaties typically contain non bis in idem provisions, which bar extradition if the individual has been convicted or acquitted in the requested state for the offence for which extradition is requested. The availability of the defence depends on the language of the relevant provision. For example, in describing the non bis in idem provision in the US–Austria extradition treaty, the US Senate Committee on Foreign Relations explained that the provision ‘applies only when the person sought has been convicted or acquitted in the Requested State of exactly the same crime that is charged in the Requesting State’ and that ‘[i]t is not enough that the same facts were involved’ (S. Exec. Rep. No. 105-23, at 39 (1998)).
- Political offences: US extradition treaties generally contain exceptions to the extradition obligation for offences of a political character and requests with a political motivation. The availability of the defence depends on the exact language of the provision.
- Other treaty-based defences: An individual may raise defences based on any other provisions of the applicable treaty, such as provisions regarding the statute of limitations and extradition of nationals (see question 20), provisions prohibiting extradition for capital offences, and provisions permitting the requested state to decline to extradite based on humanitarian considerations relating to age or health.
- US law: Proceedings also must satisfy applicable US statutory and constitutional requirements, including the requirements of 18 USC Section 3181 et seq.

20 Does your state extradite its own nationals and residents?

The long-standing position of the United States is that nationality should not operate as a bar to extradition. In line with this principle, the United States, as a practice, extradites its own nationals and seeks in its extradition treaties provisions obligating both parties to permit extradition regardless of the nationality of the person sought. Because this position has not always prevailed in negotiations, however, some US extradition treaties contain provisions that permit the requested state to decline to extradite on the basis of nationality. In the unlikely event that the US were to decline to extradite a US national based on such a provision, that decision would be a matter for the executive branch in its discretion, not a legal issue for the court.

Consistent with the US position stated above, US statutory law expressly permits the Secretary of State to surrender US citizens to a foreign country when ‘the other requirements of [the applicable] treaty or convention are met’ (18 USC Section 3196). There is no restriction on the extradition of US residents.

21 Are potential breaches of human rights after extradition considered in the extradition process?

Human rights issues are addressed in US practice by the Secretary of State. Under the rule of non-inquiry, considerations such as ‘the procedures or treatment which await a surrendered fugitive in the requesting country’ are entrusted exclusively to the executive branch (*United States v. Kin-Hong*, 110 F.3d 103, 110 (1st Cir 1997), quoting *Ambjornsdottir-Mendler v. United States*, 721 F.2d 679, 683 (9th Cir 1983)). Thus, US courts do not analyse these factors as part of the extraditability analysis, but instead focus on the requirements for extradition and certain agreed exceptions under the treaty.

22 Can a person consent to extradition, and what is the procedure? Is consent irrevocable?

Some US extradition treaties contain express provisions relating to waiver of formal extradition proceedings. If the individual wishes to waive the rights otherwise available under the treaty and US statutory law, the judge must obtain a written waiver and ensure that it is ‘knowing and voluntary’ (Ronald J Hedges, Federal Judicial Center, *International Extradition: A Guide for Judges*, 9 (2014)). In theory, an individual could later challenge a waiver accepted by the court (for example, on the basis that it was given under duress) but such a challenge would be unlikely to succeed.

23 Is there a speciality protection? How is it provided? Does it apply if a person consents to extradition?

US extradition treaties generally incorporate the rule of speciality. A common modern formulation of this rule, as explained by the US Senate Committee on Foreign Relations in its report on the US extradition treaty with Cyprus, is that ‘a person extradited

under the Treaty may only be detained, tried, or punished in the Requesting State for: (1) the offense for which extradition was granted or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) an offense committed after the extradition; or (3) an offense for which the executive authority of the Requested State consents' (S. Exec. Rep. No. 105-23, at 66, 67 (1998)). The long-standing position of the United States is that 'the rule of specialty does not apply when a fugitive waives extradition and voluntarily returns to the Requested State' (S. Exec. Rep. No. 106-26, at 19 (2000)).

24 If there is a political decision at the end of the extradition process, what factors can be considered?

As noted in questions 10 and 11, the Secretary of State has final responsibility for determining whether an individual found extraditable by the court should be surrendered (18 USC Section 3186; *United States v. Kin-Hong*, 110 F.3d 103, 109, 110 (1st Cir 1997)). In making the decision, the Secretary may take human rights and other considerations into account.

25 What ability is there to appeal against or judicially challenge decisions made during the extradition process? What are the requirements for any appeal or challenge?

There is no direct appeal from a court's certification of extraditability (see *Ordinola v. Hackman*, 478 F.3d 588, 598 (4th Cir 2007), citing *Collins v. Miller*, 252 U.S. 364, 369 (1920)). Rather, the only mechanism for challenge is a petition for a writ of habeas corpus (*Ordinola*, 478 F.3d at 598). On habeas review, the court must pay 'substantial deference' to the extradition judge's factual findings, although it is 'free to make its own legal conclusions so long as they [are] supported by the [extradition] judge's factual findings' (*Ordinola*, 478 F.3d at 599). If the court denies the petition, that decision may be appealed through the normal process in US court: for the decision of a US federal district court, by direct appeal to a US Court of Appeals and petition for certiorari filed in the US Supreme Court.

26 What are the time limits for the extradition process? How long does each phase of the extradition process take in practice?

The overall extradition process can take months or even years, with some stages fixed and others variable. US statutory law sets forth time limits for certain stages. For example, 18 USC Section 3188 provides that a person 'committed for rendition to a foreign government' may be ordered released if not 'conveyed out of the United States within two calendar months after such commitment', excluding defined periods. However, the length of the early stages of the process – particularly review by the US Departments of State and Justice – can vary widely depending on the complexity of the charges, the relationship between the United States and its treaty partner, the need for the United States to seek additional information from the treaty partner, and many other factors. Proceedings also may be extended by the filing of a petition for habeas corpus and related appeals.

27 In what circumstances may parallel proceedings delay extradition?

Many US extradition treaties contain provisions for temporary or deferred surrender, which allow the parties to coordinate the sequencing of extradition and domestic criminal proceedings so that both can proceed. For example, the US–UK Treaty provides that '[i]f the extradition request is granted for a person who is being proceeded against or is serving a sentence in the Requested State, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution' (US–UK Treaty, article 14(1)). If the requested state so requests, the requesting state must return the person after the conclusion of proceedings (article 14(1)). Likewise, '[t]he Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State' (article 14(2)). That 'postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed' (article 14(2)).

By contrast, extradition and asylum proceedings are not coordinated, although they are related in the sense that 'grounds for granting asylum may be the same as those for denying extradition' (M Cherif Bassiouni, *International Extradition: United States Law and Practice*, 206 (6th ed. 2014)). Because, in the United States, 'extradition is a judicial determination, while asylum is an executive one', the processes may proceed at the same time, and courts have held that neither may bar the other (M Cherif Bassiouni at 206 to 208). In *Castaneda-Castillo v. Holder*, 638 F.3d 354, 360 (1st Cir 2011), the court noted that 'asylum and extradition proceedings are separate and distinct, in the sense that the resolution of even a common issue in one proceeding is not binding in the other' (quotation marks omitted).

28 What provision is made for legal representation of the requesting state or the requested person?

The US Department of Justice (through the federal prosecutor's office in the relevant district) represents the interests of the requesting state in US extradition proceedings. A person sought for extradition may retain counsel, but certain protections available in criminal proceedings, such as the right of indigent defendants to court-appointed counsel, do not extend to extradition proceedings (see *DeSilva v. DiLeonardi*, 181 F.3d 865, 868, 869 (7th Cir 1999)). Under the federal judiciary's policy regarding discretionary appointment of counsel, however, '[c]ounsel may be appointed for persons held for international extradition' (US Courts, Guide to Judiciary Policy, Vol. 7, Pt. A, Ch. 2, Section 210.20.20(e), <https://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-2-ss-210-representation-under-cja>).

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Mr Witten's practice includes public international law, national security law, and international law enforcement cooperation. He is a former State Department Deputy Legal Adviser and earlier was Assistant Legal Adviser for Law Enforcement and Intelligence. In the latter position, he supervised the negotiation of the US government's international extradition treaties and coordinated the State Department's work with other countries and the US Department of Justice on the interpretation and implementation of the US government's extradition treaties. He testified as an Administration witness before the Senate Relations Committee on over 35 law enforcement treaties.

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