Extradition to the United States in practice involves activities initiated in, or undertaken by, the United States in seeking and obtaining the rendition of a fugitive, and activities undertaken by the requested country in response to a United States request for the extradition or other rendition of the fugitive. In view of the differences in the laws, procedures, policies, and practices of foreign countries governing extradition or other transfers of fugitives to the United States, and because of the focus of this treatise on United States extradition laws, procedures, policies, and practices, this Chapter does not discuss the subject of extradition to the United States from the standpoint of individual foreign countries; rather it focuses on the roles of various United States authorities in obtaining the extradition or other rendition of fugitives sought by the United States for prosecution or service of sentence. Nevertheless, many of the issues discussed in Chapter 4 of this Part, relating to the operation in practice of extradition from the United States, are also relevant to the operation in practice of extradition from other countries to the United States in that most countries have laws, procedures, policies, and practices analogous to, but often different from, those applicable to extradition from the United States.

§7-1 Processing of Request by United States

(1) Decision to Seek Extradition

The initiative in every extradition case rests with the federal or state prosecutor responsible for the underlying case. Unless a prosecutor contacts the Department of Justice to discuss the possibility of obtaining a person’s extradition, the extradition process will never be set in motion. For this reason, federal and state prosecutors should be aware of the steps they must take to obtain extradition, and the assistance that is available to them.
The Office of International Affairs (OIA), Criminal Division, U.S. Department of Justice (tel. 202-514-0000), which is primarily responsible for assisting United States prosecutors in extradition matters, meets periodically with groups of United States attorneys, state attorneys general, local district attorneys, and state extradition officials to keep them informed of the services OIA provides in obtaining extradition from abroad and of developments in the United States’ ability to obtain extradition or otherwise obtain the rendition of fugitives to this country. It is also responsible for responding to inquiries from individual United States prosecutors and for advising them in relation to extradition matters.

Ordinarily, United States extradition requests begin with a telephone call from a federal or state prosecutor to an OIA attorney responsible for extradition matters relating to the country in which the accused person is thought to be located. The prosecutor will be asked: (1) whether the person sought has been convicted or charged by means of indictment or information; (2) to describe the nature of the offense(s) for which the prosecutor wants to seek extradition; (3) to describe briefly the facts of the case; (4) to state the maximum punishment which may be imposed for the requested offense, and, if the person sought has been convicted, the sentence imposed and the portion of that sentence remaining to be served; (5) to provide a brief description of the person sought, his nationality, and the nature of the evidence available for purposes of identification; and (6) to provide any information he has with respect to the whereabouts of that person.

OIA will advise the prosecutor if there is a treaty with the country in which the person is thought to be located and, if so, whether the offense(s) is extraditable under that treaty. It will discuss the likelihood of obtaining extradition if the person is apprehended, including such matters as: possible defenses the person sought might raise against extradition (e.g., nationality); the general cooperativeness of the probable requested country in extradition matters; and other potential problems. OIA also will advise the prosecutor of his obligation to prepare the documentation in support of the extradition request and of the assistance OIA will provide to him. In addition, OIA will inform the prosecutor of the possibility of seeking provisional arrest if the person sought is in flight, or is likely to flee if he learns that the United States is seeking his apprehension for extradition, and the obligation the prosecutor will incur to prepare a fully documented request if the person is provisionally arrested. If the inquiry comes from a state prosecutor, OIA will inform him of the state’s responsibility for the costs of transportation of the fugitive and escort officers and, if necessary, translation of the extradition request