



EXTRADITION: THE PROCESS AND PROCEDURES

AND

**ASSET FORFEITURE AND RECOVERY: THE LAWS AND
PRACTICE OF THE UNITED STATES**

OUTLINE

Charles A. Caruso
Regional Anti-Corruption Advisor

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EXTRADITION: THE PROCESS AND PROCEDURES *

- I. Extradition Defined – The process through which one sovereign surrenders a fugitive found on its territory to the authorities of a requesting authority for purposes of subjecting that State.**
- II. Preliminary Procedures**
 - A. The Initiating Process In:**
 - 1. Formal Extradition**
 - a. Transmittal Of Documentation**
 - b. Required Documentation**
 - c. Executive Department Participation
Coordinated With Judicial Participation**
 - d. Requisite Formalities**
 - 2. Provisional Arrest Requests**
 - a. Differences Between A Request For
Provisional Arrest And Formal Extradition**
 - b. Request For Provisional Request And
Required Information**
 - c. *Probable Cause* Requirement**
 - B. The Concept Of Judicial Determination Of The
Availability Of Extradition In A Particular Case**
 - 1. Certification Of Availability Extradition In A
Particular Case**
 - 2. Administrative Review Of Judicial And
Executive Branch Determinations**
 - 3. Finality Of Extradition Surrender Warrant**
- III. The Judicial Authority And The Documents Applied For
And Filed Before That Authority**
 - A. The Representation Of The Requesting Authority
Before The Magistrate**
 - B. The Charging Document—The Complaint**
 - 1. Contents Of The Complaint**

- a. Contents Of The Complaint In Cases Where Formal Extradition Is Requested
 - b. Contents Of The Complaint In Cases Where Provisional Arrest Is Requested
 - i. Probable Cause In Provisional Arrest Cases
 - ii. Probable Cause In Traditional Extradition Requests
 2. Urgency As An Issue In Provisional Arrest Requests
 - C. Necessity For Adherence To Demanded Procedures
 - D. Necessity For Adherence To Temporal Strictures
- IV. The Arrest Warrant And Attendant Processes
 - A. Contents Of A Properly Composed Application To Obtain A Warrant For Arrest
 - B. Affidavit Accompanying Application For Warrant
 - C. Reference To Foreign Warrants Previously Obtained
 1. Sworn Statements And Affidavits
 2. Appending Foreign Documentation
- V. The Arrest And Hearing
 - A. Notification Of Arrest To Appropriate Foreign Officials
 1. Officials Of Requesting State
 2. Officials Of The Fugitives State Of Nationality Or Permanent Residence
 - B. Initial Appearance Before Assigned Magistrate Or Other Judicial Authority
 1. Time Limitations
 2. Right To Counsel In Extradition Hearing Before Magistrate
 3. Advice Of Rights
 4. Availability Of Pre-Trial Release In Extradition Matters
 5. Advice As To The Charges Pending In The Foreign Jurisdiction.

- C. The Hearing Before The Judicial Authority To Determine Whether Extradition Is Available**
 - 1. Purpose Of Hearing**
 - 2. Necessary Elements To Be Proven Before Extradition Can Be Judicially Certified**
 - a. Existence Of Extradition Treaty Or Alternative Mechanism Currently In Effect**
 - b. The Crime For Which Extradition Has Been Requested Is Covered By The Treaty**
 - c. Foreign Charges Are Extant**
 - d. ‘Probable Cause’ ‘If On Such Hearing The Evidence Is Sufficient To Sustain The Charge Under The Provisions Of The Proper Treaty Or Convention’**
 - e. Requested Individual Is Appearing Before The Court**
 - 3. Rules Of Evidence And Procedure**
 - a. Hearsay Evidence**
 - b. Inadmissibility Of Evidence Contradicting Foreign Application**
 - 4. *Sui Generis* Nature Of Proceedings**
 - 5. Standard Of Proof**
 - 6. Burden Of Proof**
- D. Defenses**
 - 1. Political Offense Exception**
 - a. History**
 - b. Current Status**
 - c. Political Motivation For The Prosecution**
 - 2. Exclusion Of Nationals As Subjects Of Extradition**
 - 3. *Non Bis In Idem***
 - 4. Statute Of Limitations**
 - 5. Death Penalty**
 - 6. Immunity, Amnesty Or Pardon**
 - 7. Lack Of Dual Criminality Or Necessity For**
 - 8. Conviction In Absentia**



9. Humanitarian Reasons As Defenses To Extradition And The Rule Of Non-Inquiry

- VI. Waiver Of Extradition**
 - A. Simplified Extradition**
 - B. Consent To Extradition**
- VII. Appeal From Decision As To Judicial Determination That Extradition Is Legally Permissible**
- VIII. Irregular Rendition**
 - A. State Authorized Or Sanctioned Abduction**
 - B. Immigration Laws**
 - C. Expulsion**
- IX. The European Arrest Warrant And The 'Red Notice'**
- X. The United Nations Convention Against Corruption:
Articles 43 & 44 ****

***Most of the concepts contained in this outline are endemic to the Common Law systems in general and that of the United States in particular. The program outlined herein can be lengthened, shortened or modified depending upon interest and/or time available. The program, as outlined from items I thru IX would be covered in 3 hours.**

****The program outlined in item X can be covered within an hour and can be generally presented or specifically tailored to the special interests of State Parties to the Convention.**

ASSET FORFEITURE AND RECOVERY: THE LAWS AND PRACTICE OF THE UNITED STATES*

I. Introduction

A. Definition: The 1) uncompensated divestiture by a sovereign; 2) of property acquired or used; 3) contrary to the laws of the sovereign.

B. Jurisdiction

1) *In Rem* Jurisdiction

2) *In Personam* Jurisdiction

C. Methods Of Forfeiture

1) Summary Forfeiture

2) Administrative Forfeiture

3) Criminal Forfeiture

4) Civil Forfeiture

a. Civil *in rem* Forfeiture

b. Civil *in personam* Forfeiture

D. Theories Under Which Property Is Forfeit

1) Contraband

2) Proceeds

3) Facilitation

4) Property Constituting The Offending Enterprise

E. A Comparison Of The Methods Of Forfeiture

II. Methods Of Commencing Action

A. Judicial Authorization

1) Seizure Order

2) Arrest Warrant *in rem*

3) Seizure Without Warrant

B. Civil Forfeiture Proceedings

1) Initiation of Civil Forfeiture

a. Pleadings

b. Administrative Forfeiture

2) Basis Upon Which Civil Forfeiture Is Selected Over Other Methods Of Forfeiture

3) Pre-trial Matters



- a. Standing
 - b. Applications For Return Of Property
 - c. Probable Cause And Civil Forfeiture
 - d. Statute Of Limitations
 - C. The Civil Trial Proceedings
 - 1) Jury Trial?
 - 2) Proofs At Trial
 - 3) Nexus Between Criminal Activity And Seized Property
 - 4) Presumptions Indulged At Trial
 - 5) Defenses Available In Civil Forfeiture
 - 6) The Judgment And Ramifications Thereof
 - a. Attorney's Fees
 - b. Pre-judgment Interests And Costs
 - D. Criminal Forfeiture Proceedings
 - 1) Advantages And Disadvantages Of Criminal Forfeiture versus Civil Forfeiture
 - 2) Initiation Of Criminal Forfeiture And Indictment
 - 3) Seizure Of Property
 - 4) Remission/Mitigation
 - 5) Plea Agreement
 - 6) Trial
 - 7) Preliminary Order Of Forfeiture
 - 8) Final Order
- III. Disposition Of Forfeited Property
 - A. Equitable Sharing
 - B. Sale
 - C. Governmental Use

***This program can be adjusted to meet particularized needs as to time and national interests. As outlined, this portion of the program could be presented within 2 hours.**