An Extradition Process Overview

May 19, 2024 Milwaukee, Wisconsin

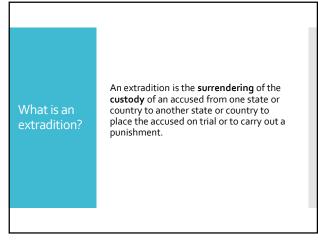
Heather Procter, Chief Deputy Attorney General

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Extradition IAD Permanent transfer Temporary transfer Arrestee in county jail • Inmate in prison Paperwork • Forms Untried charges, · Untried charges only v. IAD conviction or Impact of time violations constraints: Impact of time Charges dismissed with prejudice constraints: Released from custody

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EXTRADITION PROCESS



Definitions

Pefinitions – States • Asylum State: • Where wanted person is currently located • Demanding State: • State which seeks to extradite person Example – Person located in Wisconsin and wanted in Nevada Asylum State – Wisconsin Demanding State – Nevada

Definitions – Fugitive v. Non-Fugitive/ Accused

- <u>Fugitive</u> Person **physically present** in Demanding State at time of commission of crime
 - Examples Crime against person, escape, parole/probation violations
- <u>Non-Fugitive/Accused</u> Person physically outside Demanding State at time of commission of crime
 - Examples Internet crimes, telemarking, criminal non-support

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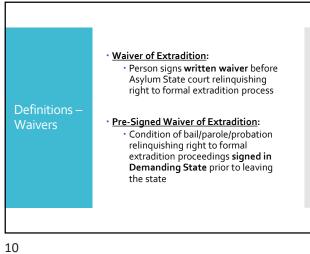
Definitions – "Fugitive" Complaint & Warrant

- Fugitive Complaint:
 - Charging document filed by prosecutor in Asylum State
 - Initiates "local charges" as fugitive (or non-fugitive) from justice
- Fugitive Warrant:
 - Arrest warrant issued by the local court in the Asylum State
 - Authorizes arrest/detainment of person in Asylum State while awaiting Governor's Warrant

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Definitions – Application, Requisition, Governor's

- Application for Requisition:
 - Formal written request from Demanding
 State prosecutor to Demanding State
 Governor
 - Requests Demanding State Governor issue a Requisition to Asylum State Governor for return of person
- Requisition:
 - Formal demand for return of person from Demanding State Governor to Asylum State Governor
 - Supports Asylum State Governor's issuance of a Governor's Warrant
- Governor's Warrant:
 - Warrant issued by Asylum State Governor commanding the arrest and delivery of person to Demanding State



Extradition: • Fugitive – Mandatory and summary procedure Non-Fugitive – Discretionary procedure • Intent: • Return person to Demanding State as swiftly as possible for prosecution/further action Purpose: • To **preclude** any state from becoming a sanctuary

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Extradition Law

• Extradition Clause of the U.S. Constitution (1789) (Art. IV, § 2, cl. 2) • Federal Act of 1793 (18 U.S.C. § 3182) • Uniform Criminal Extradition Act (UCEA) of 1936 (as adopted by party states/territories) • NAEO Manual, App. A

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Federal Act (18 U.S.C. §

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice... and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor ... the executive authority of the State, District, or Territory to which such person has fled shall cause him to be arrested and secured, ... [and] ... shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

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Extradition Clause of the Constitution (Art. IV, §2, cl. 2) A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on the demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction.

• Federal Act and Extradition Clause treason, felony or "other crime" (i.e. misdemeanor) Clause – "A • UCEA: Fugitives – felony, misdemeanor, escape, abscond (parole/probation), unsatisfied judgment or sentence, failure to appear, juveniles Non-fugitives 16 • Applies to all States and U.S. territories Puerto Rico v. Brandstad, 483 U.S. 219 (1987) Clause – "any State"
"another • Does not apply to the federal government Does not apply to foreign countries U.S. Department of Justice (DOJ), Office of International Affairs (OIA) 17 • UCEA dependent on each state's laws • UCEA NOT adopted by: Federal government Mississippi · North Dakota South Carolina • Guam

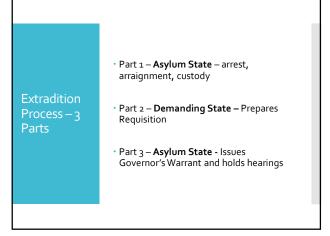


• Mandatory and summary procedure in Asylum State • Puerto Rico v. Brandstad, 483 U.S. 219 (1987) Extradition Clause — "shall" • Asylum State: • No discretionary power over extradition of fugitives • Michigan v. Doran, 439 U.S. 282 (1978) • Discretionary power over nonfugitives

Extradition Clause — "shall" (cont'd) • Extradition part of arrest process: • Determination of guilt not an issue • California v. Superior Court (Smolin), 482 U.S. 400 (1987) • Alleged violation of constitutional right if extradited not an issue • See Pacileo v. Walker, 449 U.S. 86 (1980)

Uniform Criminal Extradition Act (UCEA) Uniform Criminal Extradition Criminal Extradition Criminal Extradition Act (UCEA) Uniform Criminal Extradition Act (UCEA) Criminal Extradition Act (UCEA) United Store thereof, it is state of the charged or other	ure for orderly arrest and on: est aignment tention vice of Governor's Warrant t of habeas corpus o the provisions of this act	
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Extradition Pr		

How An Extradition Starts	Person commits crime in Demanding State and: avoids arrest fails to appear at sentencing escapes custody violates parole/probation Arrest warrant issued in Demanding State and entered into NCIC Person located in Asylum State
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Part 1 – Asylum State's Initial Actions

· When person found, Asylum State authorities may: Arrest person without "fugitive" warrant · Arrest person with "fugitive" warrant · Conduct surveillance, arrest with Governor's Warrant • Do nothing/release person – Demanding State will not extradite 28 • Judicial officer (judge/magistrate) only has authority over peace officers in the State where the warrant issued · Arrest warrant can only be executed in issuing state State v. Everett (520 P.2d 301, 303 (Ariz. 1974) ("The general rule of law ... is that a warrant of arrest issued in one state cannot be executed outside the boundary of the issuing state.") Warrants issued to: "To any Sheriff, Constable, Marshall, Policeman, or Peace Officer in this State"

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Demanding state's
Arrest B. Warrant (cont'd)

- Demanding State NCIC warrant not served/executed by Asylum State law enforcement
- Bail specifications in Demanding State arrest warrant:
 - Asylum State judge/magistrate not bound by amount specified in Demanding State warrant

· Locate Demanding State arrest warrant Demanding State's arrest warrant provides sufficient reasonable/ probable cause for arrest in Asylum State Charged with crime punishable by death or imprisonment for term exceeding one year (i.e. felonies only) Convicted of crime punishable by death or imprisonment for term exceeding one year (i.e. escaped; violated bail, probation or parole) 31 Asylum State contacts Demanding State to determine if Demanding State will extradite • If Demanding State will <u>not</u> extradite, release person (unless local charges pending) · If Demanding State will extradite, person must be taken before magistrate for first appearance/ arraignment pursuant to Asylum State laws 32 · If Demanding State will extradite, Asylum State prosecutor: Requests <u>certified</u> copies of Demanding State charging document and warrant Immediately files Fugitive Complaint Asylum State court issues Fugitive and Warrant Warrant (required for arrest if misdemeanor/gross misdemeanor) · Does prosecutor file Fugitive Complaint and Warrant before or after first

appearance/arraignment?

• Person is fugitive or non-fugitive • Person committed crime, failed to appear, escaped, absconded and/or violated in Demanding State Arrest warrant issued by Demanding Content State Attach certified copies of charging document and arrest warrant from Demanding State (if available) • NAEO Manual, Forms 7, 7-A 34 • Is it still a "fugitive" complaint/warrant if person is a "non-fugitive" under Fugitive extradition law? Complaint and Warrant • Is it still a "fugitive" complaint/warrant if person is wanted for a misdemeanor/gross? 35 After Asylum State prosecutor files Fugitive Complaint, Asylum State court issues Fugitive Warrant Arrest With Fugitive Warrant required to arrest person charged with misdemeanor/ gross misdemeanor · Asylum State serves Fugitive Warrant on wanted person

* Asylum State prosecutor provides to court at first appearance/arraignment * Must be recognized under Asylum State laws * NAEO Manual, App. A-5 * Interstate Compact * Questions: * Is person wanted for violation of bail, probation or parole? * If yes, is there a pre-signed waiver? * Does pre-signed waiver satisfy Asylum State law (if they exist)? * If yes to all, Asylum State prosecutor should obtain certified copy of presigned waiver

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First Appearance/ Arraignment

- Asylum State court informs the person:
 - Reason for arrest criminal matter pending in Demanding State
 - Right to counsel appointed vs. retained?
 - Right to issuance of Governor's Warrant
 - Right to waive issuance of Governor's Warrant
 - Right to bail until Governor's Warrant issued
 - NAEO Manual, App. A-10
- · Do you waive extradition?

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Waiver of Extradition

- If person waives extradition:
 - Waiver must be in writing
 Revised NAEO Sample Waiver (NAEO Manual, Form 6)
 - · No bail permitted on waiver
- Asylum State court sets status check (some states)
- NOTE Person cannot avoid local charges with waiver (unless Asylum State makes such arrangements with Demanding State)

 Asylum State court sets deadline for Demanding State to transport person • Reasonable time 30 days? • 18 U.S.C. § 3182 – "if no such agent appears within thirty days from time of arrest, the prisoner Deadline may be discharged" • Arrest = signing of waiver (puts person in same position as if Governor's Warrant served/arraigned) Allow Private Transport Company? • NAEO Manual, App. A-8 40 Asylum State sends copy of waiver to Demanding State prosecutor and Asylum State Governor/Attorney General · Asylum State notifies Demanding State that person ready for pick-up by: Teletype Telephone (followed-up in writing) • Demanding State arranges transport 41 Not a pre-signed waiver Only recognized in a few states Oregon is one • Process: Waiver of Sheriff/PD present waiver form to person in jail after arrest • IF signed, no need for Fugitive Complaint or first appearance/arraignment • Must comply with state law (i.e. in writing)

Identity Hearing	 Depends upon State law Used in California Only used where person denies identity Process: After first appearance/arraignment (within 10 days) Must find probable cause to believe person is the person wanted in 	
	Demanding State Booking photo/fingerprints can be sufficient evidence If not identified as wanted person, released from custody	
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	• Bail at Asylum State court's full discretion	
Person Refuses to Waive – Bail	 Bail may be set UNLESS: Offense punishable by life or death in Demanding State Escape and/or violated parole/probation (some states) Waived extradition 	
	 Need not honor Demanding State arrest warrant bail amount 	
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	 I	
	 Should not consider bail when held solely on Demanding State arrest warrant 	
Person Refuses to Waive – Bail (cont'd)	 May address at each status check before Asylum State court 	
(some d)	 Reminder – if arrested with a "fugitive" warrant – Asylum State's initial dentition does not execute Demanding State's warrant 	

• Local state charges: • If bail granted and posts bail on extradition Dependent on Asylum State law Waive – Bail • If fugitive matter held in abeyance? May use Fugitive Complaint to argue against bail on local charges 46 · Asylum State notifies Demanding State to start formal extradition process by completing Application for Requisition • Warns Demanding State of time limitations: Refuses to Date person arrested in Asylum State • Date refused to waive • Date of next court appearance in Asylum State Asylum State law on time limitations 47

Person Refuses to Waive – Time Limitations

- Calculated from date judge/magistrate commits person following finding of probable cause
 - Safer calculate from date taken into custody
- Generally person placed in custody for 30 days pending issuance of Governor's Warrant, with additional 60 days if needed at court's discretion = 90 days
 - Oregon 45 days
- Differs by State
 - NAEO Manual, App. A-3

 Only applies to persons in custody • Time limits at discretion of Asylum State court up to limits set by state law • If Governor's Warrant not issued within timeframe, person must be released · Can toll time in some states: Arraign person simultaneously with fugitive/non-fugitive charges? NAEO Manual, App. A-4 49 Part 2 – Demanding State Prepares Formal Requisition 50 • Process typically begins when Asylum State notifies Demanding State that person refused to waive extradition • Demanding State prepares application for issuance of Governor's Warrant to **Process** Asylum State Governor for extradition of person and Demanding State Governor issues **Requisition**

Demanding State Prepares Application for Requisition

- Application prepared by Demanding State prosecutor
 - NAEO Manual, Forms 1, 1-A, 1-B
- Prosecutor requests Demanding State Governor issue Requisition to Asylum State Governor
- Application includes:
 - Charging document
 - · Warrant "issued thereupon"
 - Proof of identity (sample affidavit)
 - Certifications (NAEO Manual, Form 3)
 - Special requirements by state
 - NAEO Manual, App. A-1

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Once Application Completed

- Demanding State prosecutor sends application and attachments to Demanding State Extradition Officer
- Demanding State Extradition Officer and legal counsel conduct legal review of paperwork
 - Ensure compliance with **Demanding State** UCEA Statute
 - Ensure compliance with **Asylum State** special requirements

	nd Review
Extradition Staff	DAG APPLICATION – MUST INCLUDE THE FOLLOWING:
	Name of the person charged
	Crime(s) charged
	Time, place and circumstance of crime(s)
	State where person believed to be & consistent throughout app
	Written description of person (preferred not required)
	Individual named as State/County agent
	Statement that justice requires the return & proceeding not instituted to enforce private claim
	Statement if present in demanding state at time of commission of crime(s) & fled from State
	Certification from Prosecutor
	Labeledfugitive ornon-fugitive/accused
	ATTACHMENTS - MUST INCLUDE THE FOLLOWING:
	Four certified copies of the charging document:
	 a. complaint signed before a judge;
	 information and affidavit;
	c. indictment; or
	d. judgment of conviction.
	Warrant "issued thereupon"
	Probable cause affidavit/police report if complaint or information
	Verify fugitive status (if in Demanding State at time of crime)
	Confirm all a.k.a. in Requisition/Application in supporting
	documents
	Confirm all physical identifiers in application (if applicable)
	Fingerprint and/or photograph. If not generated by Nevada, need affidavit that individual i custody is wanted person.
	Copy of violated criminal statute(s)

Paperwork 55

- Formal Requisition:
 - Signed by Demanding State Governor
 - Secretary of State authenticates
 - Specifies **fugitivity**:
 - Fugitive OR
 - Non-fugitive/accused
- Demanding State sends Requisition, Application for Requisition and supporting paperwork to Asylum State
 NAEO Manual, App. A-2 number of packets packets

Part 3 – Asylum State Issues Governor's Warrant and Holds Hearings

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Paperwork

- Asylum State Extradition Officer and legal counsel review Demanding State's Application for Requisition and Requisition
 - Ensure compliance with **Asylum State** UCEA Statute
 - Ensure compliance with **Asylum State** special requirements

Extradition Staff	2 nd Review DAG	APPLICATION - MUST INCLUDE THE FOLLOWING:
		Name of the person charged
	 	Crime(s) charged
		Time, place and circumstance of crime(s) (not mandatory)
	1	State where person believed to be & consistent throughout app.
		Written description of person (if no prints/photo attached)
		Individual named as State/County agent
		Statement that justice requires return & proceeding not to enforce private claim
		Statement if present in demanding state at time of commission of crime(s) & fled from the State
		Certification from Prosecutor
		Labeled fugitive or non-fugitive/accused
	ATTACH	MENTS – MUST INCLUDE THE FOLLOWING:
		Review Requisition - name(s), charges, attached documents,
		named agent, fugitive/non-fugitive, both states
		Certified copies of the charging document:
	I	 a. complaint signed before a judge;
	I	 information with affidavit;
	I	c. indictment; OR
		d. judgment of conviction.
		Warrant "issued thereupon"
		Probable cause affidavit/police report if complaint or information
		Verify fugitive status (in Demanding State at time of crime)
		Confirm all a.k.a. in Requisition & Application in supporting documents
		Confirm all physical identifiers in application (if applicable)
		Fingerprint and/or photograph. If not generated by Demanding State, need affidavit that individual in custody is wanted person.
	 	Copy of violated criminal statute(s) (not mandatory).
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Governor's Hearing Only a few states Maryland South Carolina Non-fugitive cases only Informal hearing to persuade Governor not to extradite Request for hearing made in writing by counsel Fugitive cases – Not apply because extradition of fugitive is mandatory

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Issuance And Service Of Governor's Warrant

- Once approved, Asylum State Extradition Officer prepares Governor's Warrant for Asylum State Governor to sign
 - Do Governor's Warrants expire?
 NAEO App. A-6
- Governor's Warrant served on wanted person by local law enforcement with copy of Application for Requisition and Requisition (need redaction?)
- If person not currently in custody, must be taken into custody once served with Governor's Warrant

 No bail • If local charges: · Complete local charges before extraditing Governor's Warrant held in abeyance/lodged as a detainer? • NAEO Manual, App. A-7 Asylum State Governor discretion to immediately extradite to Demanding State • If local charges in multiple Asylum State jurisdictions, Governor's Warrant must follow wherever wanted person located 61 · Doran* hearing in Asylum State wanted person informed by Asylum State court: • Demand made for surrender by **Demanding State** · Crime(s) charged in Demanding State Hearing/ Arraignment • Right to counsel – appointed vs. retained? · May test legality of extradition with petition for writ of habeas corpus Do you waive extradition? NAEO Manual, App. A-11 • *Michigan v. Doran, 439 U.S. 282 (1978) 62 · Person can waive extradition (must be in writing in most states) · Asylum State court issues order granting extradition Waiver of Asylum State court sets deadline for Demanding State to transport person Asylum State notifies Demanding State that person available for transport

Person transported to Demanding State

Person Refuses To Waive	Person may file state habeas petition challenging extradition Asylum State court should only consider: Whether extradition papers in order Whether person substantially charged with crime(s) in Demanding	
	State • Whether person is individual sought • If person is properly labeled fugitive or non-fugitive in paperwork	
ļ		
	 Asylum State prosecutor defends extradition Governor's Warrant prima facie evidence that all extradition requirements met 	
State Habeas Proceedings	 Once prima facie showing made, wanted person has burden by clear and convincing evidence Documentation Charging document/warrant Affidavits Photographs/fingerprints 	
	· If writ denied, person may appeal	
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	Asylum State court issues order granting extradition	
f Court Denies Petition	Asylum State court sets deadline for Demanding State to transport person .	
eddon	Asylum State notifies Demanding State that person is available for transport	
	• Person transported to Demanding State	

Demanding State – Next Steps	Bail set by Demanding State court Credit for time served in Asylum State challenging Extradition – dependent on state law Credit for all time spent in Asylum State OR Credit for all time spent in Asylum State unless had local charges OR No credit for time spent in Asylum State OR No credit for time spent in Asylum State OR No credit for escapee, probation/parole violators	
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Summa	ary	
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	• 90 day (?) timeframe to serve Governor's	
	Warrant • Demanding State Governor issues	
	Requisition • Asylum State Governor issues	
Extradition Summary	Governor's Warrant Can extradite for misdemeanors and	
	gross misdemeanors • Pre-signed waiver only if accepted by Asylum State court	
	Asylum State court No bail once waive or served with Governor's Warrant	
	GOVERNOL S WALLAND	

* Revised NAEO Waiver

* Summary of Extradition

Additional Materials
USB/NAEO
Website

* Workflow Chart

* Workflow Chart

* Nevada Checklists

* Asylum State

* Asylum State

* Demanding State

* Demanding State P&P

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CONSULAR NOTIFICATION

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Convention U.S. Dept.

of State

Vienna Convention – When foreign national arrested AND/OR when one extradited, <u>you</u> must provide consular notification warnings, act on those warnings, and record actions in case file

Consular Notification – U.S. Dept. Of State, Bureau Of Consular Affairs – https://travel.state.gov/content/travel/en/consularnotification.html

Mandatory/ Not Mandatory Notification Country Mandatory Inform person they may communicate with consulate If the ask for notification, notify nearest consulate without delay Record request and your actions Allow consulate access to arrestee if requested Not mandatory Inform person they may communicate with consulate without delay Record request and your actions Allow consulate access to arrestee if requested

