

Basics of International Extradition

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Every now and then, someone asks me about international extradition. Usually it's about Roman Polanski or some other bigwig charged in New York or California, but once in a while there's a North Carolina connection, like "if Brad Cooper had fled to Canada, could he have been extradited back to stand trial?" Plus, it's just a cool topic. So I thought I'd do a post about how it works, with the caveat right up front that this is on the fringes of my expertise.

"International extradition is the formal process by which a person found in one country is surrendered to another country for trial or punishment. The process is regulated by treaty and conducted between the Federal Government of the United States and the government of a foreign country." [United States Attorneys' Manual § 9-15.000](#). Generally, extradition is possible only if the United States and the foreign country in question have an extradition treaty; a list of extradition treaties is available [here](#). We have treaties with Canada and Mexico, and with most other nations that you could name in the next ten seconds; a list of nations with which we don't have a treaty can be viewed [here](#). Of some relevance in connection with the ongoing DSK case, the United States *does* have an extradition treaty with France . . . but it appears to exempt most French nationals, as discussed in [this article](#).

Extradition is available only for certain offenses, though which offenses are extraditable depends on the country in question: "Extradition is generally limited to crimes identified in the treaty. Early treaties often recite a list of the specific extraditable crimes. . . . While many existing U.S. extradition treaties continue to list specific extraditable offenses, the more recent ones feature a dual criminality approach, and simply make all felonies extraditable." Congressional Research Service, [Extradition to and From the United States: Overview of the Law and Recent Treaties](#) (Mar. 17, 2010). Sometimes questions arise regarding whether a particular crime (for example, PWISD cocaine) falls within a class of crimes set forth in a treaty (for example, "drug trafficking offenses"), and those questions can be difficult.

Anyhow, when a prosecutor believes that he or she is prosecuting an extraditable offense and wants to extradite a defendant from a foreign country, he or she should begin by contacting the Department of Justice's Office of International Affairs. According to the Office's [website](#), it "coordinates the extradition or other legal rendition of international fugitives and all international evidence gathering." The Office will assess the propriety of requesting extradition. If it sees fit, it will assist the prosecutor in preparing the required documents, and will then transmit the materials to the State Department with a recommendation that the foreign country be asked to extradite the person in question. "The Department of State will send the extradition documents and the translation to the American Embassy in the foreign country, which will present them under cover of a diplomatic note formally requesting extradition to the appropriate agency of the foreign government, usually the foreign ministry." United States Attorneys' Manual § 9-15.300. The relevant section of the State Department's *Foreign Affairs Manual* is [here](#).

There aren't many substantive defenses to a proper extradition request, but there are a number of procedural hoops to jump through, with the exact procedures depending on the foreign country in question. Once the suspect has been determined to be extraditable -- or has waived his right to contest extradition -- the United States Marshals' Service retrieves the suspect and brings him to court. United States Attorneys' Manual § 9-15.300.

A good short overview of extradition is available [here](#). A more detailed analysis by the Congressional Research Service is [here](#). A guide to defending extradition requests is [here](#). If any readers are extradition experts, feel free to chime in.