



U.S. Department of Justice
Federal Bureau of Prisons

C H A N G E N O T I C E

OPI: CPD/CPB
NUMBER: 5140.42, CN-1
DATE: April 9, 2019

Transfer of Offenders To or From Foreign Countries

/s/

Approved: Hugh J. Hurwitz
Acting Director, Federal Bureau of Prisons

This Change Notice (CN) implements the following changes to Program Statement 5140.42, Transfer of Offenders To or From Foreign Countries, dated April 10, 2015.

The highlighted text was added to Section 3. (a):

Inmates may access the list of participating countries in the institution's law library **and on TRULINCS.**

This CN also removes France as a country requiring 12 months remaining to serve on the current sentence to be eligible. French inmates are now eligible with 6 months or more remaining on the current sentence. The text for Section 7. a. now reads as highlighted below:

- a. **Ineligible.** The Case Manager enters **ITXX INEL** if any of the following apply (**applicable country codes are inserted for the XX**):
 - **The inmate has less than 6 months remaining to be served at the time of request for transfer (Hong Kong and Thailand require 12 months).**

In addition, the following text in Section 10. (3) has been deleted and struck through in the policy.

~~In accordance with the Program Statement **Patient Care**, after arrival at the admission institution, staff arrange for the inmate to receive a complete physical examination, and advise the local USPO of the inmate's arrival.~~



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

OPI: CPD/CPB

NUMBER: 5140.42

DATE: April 10, 2015

RULES EFFECTIVE: August 6, 2015

Transfer of Offenders To or From Foreign Countries

/s/

Approved: Charles E. Samuels, Jr.
Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE

§ 527.40 Purpose and scope.

This subpart describes the Bureau of Prisons (Bureau) procedures regarding its role in the transfer of offenders to foreign countries and the transfer of American offenders back to the United States pursuant to 18 U.S.C. § 4100, et seq., and applicable transfer treaties and conventions.

28 CFR § 0.96b provides that:

“The Director of the Bureau of Prisons and officers of the Bureau of Prisons designated by him are authorized to receive custody of offenders and to transfer offenders to and from the United States of America under a treaty as referred to in Public Law 95-144; to make arrangements with the States and to receive offenders from the States for transfer to a foreign country; to act as an agent of the United States to receive the delivery from a foreign government of any person being transferred to the United States under such a treaty; to render to foreign countries and to receive from them certifications and reports required under a treaty; and to receive custody and carry out the sentence of imprisonment of such a transferred offender as required by that statute and any such treaty.”

Federal Regulations from 28 CFR are shown in this type.

Implementing instructions are shown in this type.

a. **Summary of Changes.** This revision of the Program Statement includes the following changes:

Policy Rescinded

P5140.40 Transfer of Offenders to or from Foreign Countries (08/04/11)

- Modifies Form BP-A0297, Transfer Inquiry, to include a list of possible ineligible criteria and requires a review and signature of the Unit Manager.
- Inmates with pending appeals or collateral attacks for the underlying criminal judgment or sentence may not apply for transfer.
- Provides clarification regarding dual citizenship, committed fines, and cases with detainers or pending charges.
- The Office of Enforcement Operations (OEO) will inform inmates who are not appropriate for Treaty Transfer by letter indicating the reasons for denial.

b. **Program Objectives.** Expected results of this program are:

- Inmates will be notified of the “Treaty Transfer Program” during the Admission and Orientation Program (A&O).
- Inmate transfers will be voluntary; the inmate must consent to the transfer; and both countries must approve transfer.
- Eligible inmates approved for transfer will be transferred to or from foreign countries under the treaty and the receiving country will be responsible for administering the transferred sentence in accordance with their laws.

c. **Pretrial/Holdover and Detainee Procedures.** Procedures in this Program Statement do not apply to pretrial inmates or Immigration and Customs Enforcement (ICE) detainees; the procedures do apply, however, to holdover inmates who otherwise meet the eligibility criteria.

d. **Institution Supplement.** None required. Should local facilities make any changes outside the required changes in the national policy or establish any additional local procedures to implement the national policy, the local Union may invoke to negotiate procedures or appropriate arrangements.

e. **Victim Witness Program (VWP).** When an application packet is received in the Central Office that involves a VWP case, Central Office staff will complete notification to the victim, advising him/her that the inmate has applied for a treaty transfer. When a VWP inmate is approved for transfer to another country, a second notification must be made per the release procedures in the Program Statement **Victim and Witness Notification**. However, in treaty

cases, advance notification of the physical transfer is ordinarily not provided to the victim; instead the notification is completed **on** the day of the treaty transfer.

f. **Walsh Act Civil Commitment of Sexually Dangerous Persons.** Staff must comply with established Bureau of Prisons Walsh Act procedures when an inmate requires review by the Certification Review Branch, Correctional Programs Division (CPD), Central Office. Inmates who require review are referred at the time the treaty packet is received in Central Office. The Central Office informs OEO of the decisions made by the Certification Review Panel.

2. **BACKGROUND**

In December 1977, Congress enacted legislation that authorized the United States to participate in international prisoner transfers and set the requirements of the transfer program. The United States entered into its first transfer treaty (with Mexico) in 1977, and since that time has entered into 11 additional bilateral transfer agreements and two multilateral transfer conventions. These international agreements give the United States transfer treaty relationships with almost 80 countries. The list of participating countries is available on the Correctional Programs Sallyport page. The general public may access the list of participating countries on the International Prisoner Treaty Unit (IPTU) website at: <http://www.justice.gov/criminal/o eo/iptu>.

The Bureau plays a critical role in the transfer program. Bureau staff are responsible for a number of tasks involved in transferring foreign national prisoners, including:

- Providing notice to foreign national prisoners about the existence of the transfer program and informing these inmates on how to apply for transfer.
- Determining if the prisoner requesting transfer satisfies the basic eligibility requirements.
- Providing and accepting executed Transfer Inquiry (BP-A0297) forms.
- Preparing application packets for eligible transfer candidates (including prisoners reapplying for transfer) and forwarding these packages to the Central Office for review.
- Responding to inquiries from Bureau and OEO concerning prisoners and transfer arrangements.
- Collecting and providing information about the foreign national prisoner and his/her sentence to the receiving country.
- Assisting with transportation and logistical arrangements for transferring foreign national prisoners and their escorts.
- Preparing and transmitting the appropriate VWP notices.

The Bureau also plays a significant role in the transfer of American prisoners from foreign countries to the United States, including:

- Making arrangements to retrieve American prisoners from the foreign country.
- Obtaining information about the prisoner.
- Accepting custody of the prisoner.
- Processing the prisoner.
- Designating the prisoner to an appropriate facility to serve his/her sentence once the United States Parole Commission has determined a release date, including any applicable period of supervised release.

An inmate's transfer is **voluntary** and must be approved by both the sentencing and receiving country. Legislation establishing the prisoner transfer program provided the following basic requirement for all transfers:

- A transfer treaty must exist between the United States and the offender's country.
- The offender must be a citizen or national of the country to which he is seeking transfer.
- The offender, the sentencing country, and the receiving country must all consent to the transfer,
- Dual criminality must exist (the convicted offense must also be recognized as a crime in the receiving country),
- The transferring offender must have his/her consent verified by a verifying officer at a consent verification hearing.
- Transfer cannot occur if an appeal or collateral attack is pending upon the conviction or sentence.

Note: Although the prisoner does not have a right to transfer, a prisoner who is a citizen or national from a country having a transfer relationship with the United States and who has satisfied the applicable statutory and treaty requirements does have the right to apply and to be considered for transfer.

State prisoners confined in Bureau facilities are also eligible for transfer. Thus, a state prisoner confined at a Bureau institution (state boarder), may be transferred to his/her country of citizenship if the state approves the transfer, both countries approve the transfer, and the prisoner consents at his/her consent verification hearing.

State prisoners in Bureau custody interested in this program are advised to direct their requests to the authorities in their state of sentencing. The state authorities process the request, make a transfer determination, and refer the application to OEO for its final determination.

3. DEFINITIONS

§ 527.41 Definitions.

For the purpose of this rule, the following definitions apply.

(a) **Treaty Nation.** A country with which the United States has a transfer treaty relationship either through a bilateral treaty or a multilateral transfer convention.

A list of nations that have a transfer treaty relationship with the United States is published on the Correctional Programs Sallyport page. Inmates may access the list of participating countries in the institution's law library and on TRULINCS. The general public may access the list on the IPTU website at: <http://www.justice.gov/criminal/oeo/iptu>.

Home Country. The country of which the inmate is a citizen or national.

Sending or Sentencing Country. The country that convicted and sentenced a citizen or national of another country and is agreeing to the offender's transfer to his/her home country to serve his/her sentence.

Receiving or Administering Country. The country accepting the return of its citizen or national and agreeing to administer the transferred sentence.

(b) **State Prisoner.** An inmate serving a sentence imposed in a court in one of the states of the United States, or in a territory or commonwealth of the United States.

(c) **Departure Institution.** The Bureau of Prisons institution to which an eligible inmate is finally transferred for return to the country of which the inmate is a citizen or national.

(d) **Admission Institution.** The Bureau of Prisons institution where a United States citizen or national-inmate is first received from a treaty nation.

§ 527.42 Limitations on transfer of offenders to foreign countries.

The transfer treaties and conventions, as well as 18 U.S.C. §§ 4100-4115, impose specific requirements that an inmate must satisfy in order to be returned to his or her country of citizenship or nationality.

An inmate may not be eligible for return to his/her country of citizenship for service of the sentence or commitment imposed in a United States court when:

- (a) The inmate is from a country with which the United States does not have a transfer treaty relationship. Staff are still required to inform these inmates of the program during Admission and Orientation (A&O), to discuss the program with the inmate during initial classification and subsequent program reviews, and to document on the Inmate Activity Record “**No current treaty exists between the United States and the foreign country.**”
- (b) The inmate has a pending appeal or collateral attack on the underlying criminal judgment or sentence. Once the appeal or collateral attack has been decided, the inmate is eligible to apply for transfer.
- (c) The inmate has been convicted of conduct that is not recognized as a criminal offense in the receiving country. OEO is responsible for making the determination.
- (d) The inmate is a Mexican citizen or national who is currently serving a sentence for committing an immigration offense, unless he/she is serving a sentence for multiple offenses and the immigration portion of the sentence has already been served.

Important Note: This limitation **only** applies to Mexican citizens or nationals and should not be applied to transfer applicants from other countries. Common immigration offenses that preclude transfer are violations of 8 U.S.C. §§ 1323, 1324, 1325, 1326, 1327, and 1328. OEO should be consulted with any questions.

- (e) The inmate is a Mexican national who has become a domiciliary of the United States. Domiciliary status is a complex determination and is made by OEO.
- (f) Although not requirements of the enabling transfer legislation or the transfer treaties, two additional situations could affect the eligibility of an inmate for transfer. Both situations are rare:
 - The inmate is in custody for civil contempt. The limitation applies to an inmate who is serving a criminal sentence either concurrent with, or suspended for, the duration for the civil contempt commitment. The inmate may be considered for transfer once the contempt commitment is purged, served, or otherwise terminated by judicial authority. For further information, see the Program Statement **Civil Contempt of Court Commitments**.
 - Inmates with an outstanding fine or unpaid restitution are eligible to apply for transfer. There is, however, a small class of transfer candidates who committed their offenses before

November 1, 1987, and have had “committed fines” imposed by the sentencing court. Such inmates are not eligible for transfer until the committed fine is paid, or until the court imposing the “committed fine” gives its permission for the inmate to proceed with his/her transfer request. The Warden may request permission from the court imposing the “committed fine” to proceed with the transfer process. **“Committed fines” are distinct from, and should not be confused with, fines courts have imposed in post-November 1, 1987 cases.**

4. NOTIFICATION OF BUREAU OF PRISONS INMATES

§ 527.43 Notification of inmates.

Foreign national inmates will be notified about the International Prisoner Transfer Program and the procedures to follow to apply for transfer as follows:

(a) Through information provided in the institution’s admission and orientation program; and

(b) Through individual notice given to an inmate who is a citizen or national of a treaty nation. The notice must:

(1) Reiterate the availability of the transfer program;

(2) Provide the inmate with an opportunity to inquire about transfer to the country of which the inmate is a citizen or national; and

(3) Inform the inmates of the procedures set forth in this part.

The treaty transfer process is initially addressed with the inmate during Admission and Orientation.

The inmate indicates on a Transfer Inquiry (BP-A0297) that he/she was advised of the opportunity to inquire about transfer, and whether he/she is, or is not, interested in being transferred. The process is documented in the Central File prior to or upon completion of the inmate’s Initial Classification and readdressed at each subsequent program review.

An eligible inmate may request or decline a treaty transfer at any time during his/her incarceration. 18 U.S.C. § 4107 (b)(4) states that once the inmate’s consent has been verified at a consent verification hearing, it is irrevocable.

5. TRANSFER OF BUREAU OF PRISONS INMATES TO OTHER COUNTRIES

§ 527.44 Request for transfer to country of which inmate is a citizen or national.

An inmate who is eligible for and desires to transfer to the country of which the inmate is a citizen or national for service of a sentence imposed in a United States Court must indicate the inmate's interest by completing and signing the appropriate form and giving it to Bureau staff for further processing.

The Transfer Inquiry (BP-A0297) is used to initiate the transfer process.

§ 527.45 Bureau determination on request for transfer.

The following is the process by which determinations are made on an inmate's request to be transferred to the country of which the inmate is a citizen or national to serve a sentence imposed in a United States Court.

(a) Warden's determination. Upon verifying that the inmate is eligible for transfer, the Warden forwards all relevant information, including a complete application package, to the Assistant Director, Correctional Programs Division, Central Office.

(b) Central Office and Department of Justice determination.

(1) The Assistant Director, Correctional Programs Division, reviews the submitted material and forwards the application package to the Department of Justice for review.

(2) The Department of Justice notifies the inmate of the determinations made.

(1) **Initial Application.** The initial Application Packet must contain the following documents and be forwarded to the Assistant Administrator, Correctional Programs Branch, within 60 calendar days of the inmate's initial request:

- Memorandum signed by the Warden with the inmate's name, register number, country of citizenship, Financial Responsibility Program status, and medical/mental health issues, when applicable.
- Transfer Inquiry (BP-A0297).

- Authorization to Release Confidential Information (BP-A0301).
- U.S. Case Summary (BP-A0964).
- Pre/Post-sentence Investigation Report(s) (for current offense(s)).
- FBI Fingerprint Card with current photograph of inmate attached.
- Current sentence computation.
- Current Visiting and Contact List, and emergency contact information.
- Certified Judgment(s) in a Criminal Case (JCC) (include amended orders for current offense(s)).
- Proof of citizenship or nationality (copy of birth certificate or valid passport) *if available*.
Note: Although individual countries may require a copy of a birth certificate before approving a transfer, the referral to Central Office should not be delayed due to the absence of a birth certificate. It is ultimately the responsibility of the home country to confirm the transfer applicant is a citizen or national.
- Canadian Application (CSC/SCC 0308E and 0614E), if applicable. Canadian application forms are located on the Sallyport Forms Directory, and on the Correctional Programs Sallyport page. The general public can access the Canadian website at: <http://www.csc-scc.gc.ca/text/frmlrs/index-eng.shtml>.

Unit team will place a **copy of the packet** in **section 2** of the **Inmate Central File**.

During the initial application process, unit team advise the inmate to contact the nearest consular office to inform them of his/her desire to be considered for treaty transfer. Foreign officials normally have documents for the inmate to complete and return to the local consulate so that the consular office can begin verification of citizenship or nationality and facilitate the processing of the inmate's application with the United States as well as the home country.

Foreign officials may request to visit the inmate at the institution. See 28 C.F.R. §540.45.

(2) **Reapplication Process.** An inmate who has been denied transfer to his/her country of citizenship by the United States may normally reapply for transfer two years from the date of denial. The denial date is defined as the date on the OEO denial letter. This date is annotated in SENTRY. Exceptions exist if temporary conditions preventing transfers have been satisfied (e.g., pending appeal was resolved, inmate who was needed to testify has done so, financial obligation has been satisfied). In such cases, the inmate is eligible to seek reconsideration of the earlier denial before the end of the two-year waiting period.

An inmate who was approved for transfer by the United States but denied treaty transfer to his/her country of citizenship or nationality **by the treaty nation (foreign country)** may **not** reapply through the Bureau and must address the denial directly with the treaty nation, since the United States has already approved the transfer.

A complete application packet is not required for reapplication cases, as OEO maintains the original materials. However, institution staff submit the following documents to the Assistant Administrator, Correctional Programs Branch, within 60 calendar days of the inmate's reapplication:

- Memorandum indicating the date the inmate was previously denied and that the inmate wishes to reapply for transfer. The memorandum includes any **new** pertinent information not previously included in the initial case summary – disciplinary action, medical/mental health issues, sentence changes, Financial Responsibility Program (FRP) information, family location, updated Emergency Contact Person (relationship and location), etc. Signature authority is delegated to the Unit Manager.
- New Transfer Inquiry (BP-A0297).
- Current Visiting and Phone List, and emergency contact information.
- Any new or amended sentencing documents.
- An OEO reapplication questionnaire completed by the inmate.
- Progress report if available.

The application packet is forwarded to OEO within 10 working days of receipt in Central Office.

Applications for treaty transfer require investigation and processing by OEO. The process, which includes obtaining information and recommendations from various agencies, contacting and receiving approval from the treaty nation, and arranging, scheduling, and conducting a consent verification hearing, can be extensive and may take up to 12 months to complete, depending on the responsiveness of the foreign government. Institution staff may contact the Correctional Programs Branch for a status report (but should not contact OEO, unless advised to do so by Central Office staff).

If the Department of Justice determines that transfer is not appropriate and denies it, OEO notifies the inmate and the treaty nation by letter, which is copied to the Assistant Director (AD) for CPD. OEO provides the reasons for denial in a letter sent to the inmate and his/her home country. The letter informs the inmate of the right to reapply for transfer in two years if, at the time of the letter, at least two years remain on the sentence. The letter also directs the inmate that if there is a substantial change in his/her circumstances, he/she may apply for reconsideration. To ensure the inmate understands the reapplication process, institution staff will inform the inmate of OEO's process on reapplication (see above).

Consular officials may interview the inmate before a determination by DOJ; once the transfer has been approved by DOJ, consular officers may request to meet with the inmate to gather

information for the home country's consideration of the request or to prepare for the transfer, including required travel documents.

§ 527.46 Transfer procedures.

(a) Treaty nation determination. If the Department of Justice approves the transfer request, the treaty nation will be asked if it consents to the transfer of its citizen or national. The inmate will be informed of the determination made by the treaty nation.

If the Department of Justice determines that transfer is appropriate and grants the transfer, OEO notifies the treaty nation and the inmate by letter, which is copied to the AD for CPD. If the treaty nation denies the transfer, OEO notifies the AD for CPD and the inmate. The institution ensures the inmate is promptly notified of the treaty country's decision. If the treaty country approves the transfer, OEO makes arrangements for a consent verification hearing. This information is sent to the inmate's attorney, usually a Federal Public Defender. If the inmate verifies his/her consent at this hearing, OEO sends a final approval letter to the treaty nation and instructs it to contact the Bureau to make arrangements for escorts to retrieve the inmate. For security reasons, the inmate is not given the details, including the date of the transfer.

(b) Transfer to departure institution. The Bureau and the Department of Justice will arrange for the inmate to be transferred to an appropriate departure institution.

To facilitate transfer, the sending Warden ensures the inmate's personal property meets the requirements of the Program Statement **Prisoner Transportation Manual**.

(c) Consent verification hearing. If the treaty nation consents to the transfer, the United States will arrange a consent verification hearing for the prisoner as required by 18 U.S.C. §§ 4107, 4108. This hearing is held before a U.S. Magistrate Judge or other judicial officer as specified in sections 4107 and 4108. The Bureau must ensure that the prisoner is available and present at the consent verification hearing.

When requested, the Warden allows counsel to interview the inmate before the hearing.

OEO, with the Administrative Office of the U.S. Courts (AOUSC), makes arrangements for the consent verification hearing. These include scheduling a U.S. Magistrate Judge to conduct the hearing and, if the inmate has not retained counsel, arranging for a Federal public defender to

represent him/her. Counsel may arrange with the Warden to interview the inmate before the hearing. OEO also works with the United States Attorney's Office to obtain a writ to move the prisoner for the hearing, and with the Bureau regarding the actual movement.

When the hearing has been completed, the Judge notifies OEO and forwards the executed consent form. The Warden requires written confirmation once proceedings are completed and the judge has documented the inmate's voluntary consent or that the inmate refused to give his/her consent to the transfer.

(d) Transfer to departure institution and foreign retrieval of inmate. If the foreign national prisoner gives consent to transfer at the consent verification hearing, the Department of Justice will notify the treaty transfer nation.

Following the verification hearing, the Bureau arranges for delivery of the inmate to the authorities of the inmate's country of nationality.

The AD for CPD advises the Warden of the arrangements. The Warden arranges for the inmate to be transported to the airport and transferred to the custody of the foreign authorities.

Staff designated by the Warden ensure the following documents accompany each inmate:

- Proof of citizenship/nationality (**if available**).
- Appropriate travel documents (current passport or documents prepared by the foreign consulate).
- A current statement of actual time served up to the date of transfer.
- The amount of Good Conduct Time earned up to the date of transfer.
- An up-to-date statement of any remission credits (see the Program Statement **Sentence Computation Manual/Old Law/Pre-CCCA 1984**) for additional information on remission credits).
- If available, an up-to-date medical report and a week's supply of essential medications.
- Any disciplinary report or other information that would be helpful to the foreign country in determining where to incarcerate the inmate and any precautions that may be necessary.

6. TRANSFER OF STATE PRISONERS TO OTHER COUNTRIES

§ 527.47 Transfer of state prisoners to other countries.

The Bureau of Prisons may assume custody of a state prisoner who has been approved for transfer to a treaty nation for the purpose of facilitating the transfer to the treaty nation. Once the state prisoner has consented to the transfer at the

consent verification hearing, the Bureau assumes custody of the prisoner. The state is not required to contract for the placement of the prisoner in federal custody, nor to reimburse the United States for the cost of confinement (as would ordinarily be required by 18 U.S.C. § 5003).

When a state inmate applies for transfer, is found eligible, and the state approves the transfer, the state submits the inmate's case to OEO to determine if the United States and the treaty nation agree to the transfer. If OEO and the treaty nation approve, OEO arranges for the consent verification hearing (see p. 11, Section (c), Consent Verification Hearing) in the state where the prisoner is confined. Once the state inmate consents to be transferred, the judge ordinarily orders him/her to be placed in Federal custody so that travel arrangements can be established.

The U.S. Marshals Service ordinarily assumes custody of the state inmate (and any documentation) directly after the consent verification hearing, for transport to the designated departure institution. However, if assurance is not received from the treaty nation that they will retrieve the state inmate, he/she remains in state custody until a tentative transfer date is established. State prisoners already in Bureau custody (state boarders) are transferred to a departure institution once travel arrangements have been set with the treaty nation.

In preparation for the arrival of the state inmate, the Correctional Programs Division completes the Security/Designation Data in SENTRY. When the inmate arrives at the departure institution, the Warden follows the procedures on p. 12, Section (d), Transfer to Departure Institution and Foreign Retrieval of Inmate.

Correctional Systems staff enter "Treaty Transfer" as the release method for a state prisoner in a Bureau institution en route to the treaty nation. The treaty nation is listed as the release address.

7. SENTRY APPLICATIONS

Case Management Activity (CMA) assignments have been created for treaty transfer cases to enable staff to more effectively monitor their cases:

- CMA assignments are applied in conjunction with SENTRY country codes.
- Country codes and assignments are available on the Correctional Programs Sallyport page.
- Inmates eligible for treaty transfer consideration must have a CMA assignment (Interest, No Interest, or Ineligible) entered in SENTRY before or upon completion of Initial Classification.
- Institution staff do not remove the CMA assignments entered by Central Office (see assignments below).

The CMA assignments described below use Canada (CA) as an example:

| GROUP CODE | ASSIGNMENT | DESCRIPTION |
|--------------------------------------|------------|-------------------------|
| Entered by Institution Staff: | | |
| TICA | ITTCA INEL | ITTCA INELIGIBLE |
| TTCA | ITTCA INT | ITTCA INT IN TRTY TRANS |
| TNCA | ITTCA NO I | ITTCA NO INT TRTY TRANS |

Entered by Central Office:

| | | |
|------|------------|-------------------------------|
| TACA | ITTCA PEND | ITTCA US APPROVED, PENDING FC |
| TACA | ITTCA APPR | ITTCA US/FC APPROVED, CVH CMP |
| TDCA | ITTCA US D | ITTCA US DENIED TRTY TRANS |
| TDCA | ITTCA FC D | ITTCA FC DENIED TRTY TRANS |

a. **Ineligible.** The Case Manager enters **ITTX INEL** if any of the following apply (**applicable country codes are inserted for the XX**):

- The inmate has less than six months of the current sentence remaining to be served at the time of request for transfer (Hong Kong and Thailand require 12 months).

Note: The Council of Europe (COE) Convention and the Treaty with Hong Kong provides that these rules may be waived if exceptional circumstances exist. Exceptional circumstances are very rare and usually arise if the inmate is suffering from a life-threatening illness and there is a strong possibility he/she may die before completing the sentence. If you believe an exceptional circumstance exists, contact the Correctional Programs Branch, Central Office.

- The inmate has any pending proceedings, appeals, or collateral attacks on the underlying conviction or sentence. The judgment on the current conviction of sentence must be final.
- **MEXICO:** The inmate is serving a life or indeterminate sentence; or is serving a sentence(s) exclusively for Immigration Law Violations (SENTRY IIS Offense Codes 170, 171, 172, 173), unless the immigration offense is totally absorbed by another current sentence, the **time served** to date is equal to or greater than the sentence imposed for the immigration offense, and the immigration offense is not to be served consecutive to the sentences on the other offenses.

- **CANADA, FRANCE, MARSHALL ISLANDS, MEXICO, MICRONESIA, PALAU, PANAMA, PERU, THAILAND, and TURKEY:** Committed for a **purely** military offense (i.e., desertion).
- **BOLIVIA:** Convicted of an ordinary criminal offense in a court martial or a **purely** military offense (i.e., desertion).
- **BOLIVIA, MARSHALL ISLANDS, MICRONESIA, PALAU, PANAMA, PERU, and TURKEY:** Sentenced to the death penalty.

Note: Inmates who have committed a military offense can apply for treaty transfer if the treaty nation is a signatory to the COE Convention. However, restrictions may apply if the bilateral treaty is also applicable, as noted above, and the involved country chooses to proceed under the bilateral treaty instead of the COE Convention.

b. **Interested in Treaty Transfer.** The Case Manager enters “**ITTX INT**” (**applicable country codes are inserted for the XX**) if the inmate is eligible and is applying for a treaty transfer. The inmate must sign the Transfer Inquiry (BP-A0297) indicating an interest.

An inmate with **dual** citizenship/nationality is eligible to apply to any treaty nation of which he/she is a citizen/national. His/her citizenship code in SENTRY should reflect the country to which he/she is applying.

The institution completes application packets for interested inmates. In addition, the inmate should be advised to write to the applicable embassy or consulate in the United States to request treaty transfer, initiate the verification of citizenship/nationality, and expedite the transfer application process.

c. **No Interest in Treaty Transfer.** The Case Manager enters “**ITTX NO I**” if the inmate is eligible but is not interested in treaty transfer. The inmate must sign the Transfer Inquiry (BP-A0297) indicating no interest.

Treaty consideration for eligible inmates is addressed at subsequent program reviews and documented on the program review form.

d. **Approved for Treaty Transfer.** Correctional Programs Branch, Central Office, enters “**ITTX PEND**” upon receiving written notification from OEO that the inmate has been approved for treaty transfer by the U.S., but a decision is still pending from the foreign country (FC).

Correctional Programs Branch, Central Office, enters “**ITTX APPR**” upon receiving written notification from OEO that the inmate has been approved for treaty transfer by both the U.S. and the foreign country and has consented to transfer at his/her consent verification hearing.

e. **Denied Treaty Transfer.** Correctional Programs Branch, Central Office, enters “**ITTX US D**” upon receiving written notification from OEO that the inmate has been denied treaty transfer by the U.S.

Correctional Programs Branch, Central Office, enters “**ITTX FC D**” upon receiving written notification from OEO that the inmate has been denied treaty transfer by the foreign country.

8. **DETAINERS/PENDING CHARGES**

Detainers or pending charges **do not** preclude an inmate from applying for treaty transfer. However, the inmate should be advised to resolve any detainer or pending charge before applying for treaty transfer consideration, as he/she may be considered unsuitable until the detainer is removed or the pending charge is resolved.

Detainers lodged by Immigration and Customs Enforcement (ICE) have no impact on the eligibility of a prisoner applying for transfer/

9. **CASES ON APPEAL OR COLLATERAL ATTACK**

OEO cannot approve a transfer if the inmate has a pending appeal or a collateral attack on his/her conviction or sentence. **The judgment must be final.** The applicant should not apply for transfer until the appeal process or collateral attack has concluded.

Note: An appeal challenges the decisions made in the same case. A collateral attack is a motion filed pursuant to 28 U.S.C. § 2255, which challenges some aspect of a former judgment due to an allegation of injustice or unconstitutional treatment.

If an inmate advises his/her case manager that he/she has a pending appeal or collateral attack, the case manager advises him/her that a transfer cannot be approved until a final judgment is received. The status of the pending appeal or collateral attack is addressed during scheduled program reviews. The inmate should be advised that he/she can notify staff of the Court’s decision or any changes to the appeal or attack before program reviews. Once a final judgment has been issued, staff submit the following to the Assistant Administrator, Correctional Programs Branch:

- A memorandum indicating the inmate's case is no longer on appeal or has a collateral attack pending.
- Documentation from the court showing the appeal or attack was dismissed, withdrawn, resolved, etc.
- An updated BP-A0297, Transfer Inquiry.
- Application or reapplication packet.

10. TRANSFER OF AMERICAN NATIONAL PRISONERS FROM FOREIGN COUNTRIES

§ 527.48 Transfer of American national prisoners from foreign countries.

The Bureau of Prisons is responsible for:

(a) Sending escorts to foreign countries to retrieve American national prisoners who have been approved for transfer to the United States and who have had their consent verified at the consent verification hearing specified in 18 U.S.C. § 4108; and

(b) Making logistical arrangements for the transfer and coordinating with the United States Parole Commission for proceedings to determine how the sentence will be administered.

(1) Transfer Approval and Logistical Arrangements. OEO notifies CPD when it has approved transfer of an American citizen back to the United States to serve the sentence imposed by the treaty nation. CPD notifies the admitting institution.

CPD, with the assistance of OEO, coordinates all arrangements for an inmate's transfer to the United States.

The AD for CPD directs specific staff in writing (who preferably speak the language of the treaty nation) to escort the offender from the transporting country to the admission institution. The directive cites 28 CFR § 0.96b as the authority to escort the offender.

Before the transfer, CPD receives information, including pertinent medical history, on each transferring American inmate, a copy of the inmate's criminal record, and a list of any outstanding warrants lodged against him/her, either through the National Crime Information Center (NCIC) or the FBI. This information is used to complete form BP-A0337, Inmate Load and Security Designation.

The U.S. Embassy or Consulate provides citizenship papers or travel documents for the inmate. Staff escorting the inmate **must have those papers** available **upon entry** into the United States.

(2) Accepting Custody of American Nationals in Foreign Country and Return to the United States. Staff ensure that the following documentation is available before accepting custody of American inmates from a foreign authority:

- A certified copy of the sentence handed down by an appropriate, competent judicial authority of the transferring country and any modifications thereof.
- A statement (and a copy translated into English from the language of the country of origin if other than English), duly authenticated, detailing the offense for which the offender was convicted, the duration of the sentence, and the length of time already served. Credits to which the offender is entitled should be included – work done, good behavior, pretrial confinement, etc.
- Citizenship papers necessary for the inmate to enter the United States.

Although it is OEO's responsibility to arrange for the consent verification hearing before a United States Magistrate Judge in the foreign country, Bureau escorts must ensure that the inmate has given his/her consent at the hearing before escorting him/her back to the United States.

The Bureau escorts sign the documents necessary to receive the inmate.

The inmate and his/her property are processed through ICE at the United States border or another appropriate entry site.

(3) Arrival at the Bureau Admission Institution/Notifications to the United States Probation Office (USPO) and United States Parole Commission (USPC). The admission institution retains case management responsibilities for the inmate until he/she is transferred to a Bureau institution for service of sentence. When the admission institution is unable to accept the inmate (for example, a female inmate escorted to a male institution), the Warden makes housing arrangements with a nearby jail.

The official version of the offense is placed in the Inmate Central File (if a translated copy has not been provided, a bilingual staff member or reliable translation service usually arranged by OEO prepares one).

~~In accordance with the Program Statement **Patient Care**, after arrival at the admission institution, staff arrange for the inmate to receive a complete physical examination, and advise the local USPO of the inmate's arrival.~~

Designation and Sentence Computation Center (DSCC) staff prepare a sentence computation for the prisoner, in most instances before his/her arrival in the United States. If, upon computation of sentence, it is revealed the inmate is within six months of release, institution staff send a **prompt** notification to the USPC via mail, email, or fax, depending on the time remaining, advising of the impending release date. If, upon computation of the sentence, staff determine an inmate is entitled to immediate release via mandatory release or expiration of sentence with credits applied, release procedures are implemented, but only after requesting and receiving a medical clearance, an NCIC report, and the results of an FBI fingerprint check. Medical clearance is obtained from the Health Services Administrator. The USPO is notified by phone in advance of the inmate's release and provided with all information regarding the inmate. A post-sentence report need not be requested.

In cases not involving a release within six months, staff request a U.S. Probation Officer be assigned to prepare a Post-Sentence Report (PSR). To assist the USPO, institution staff forward copies of all available information on the inmate for preparation of the PSR. During this process, the local USPO ordinarily interviews the inmate and completes United States Probation form 1A, as well as the Authorization to Release Confidential Information (BP-A0301).

The USPC is notified by CPD of the inmate's arrival date, designated institution, and projected release date.

Inmates returning from treaty countries are, by law, immediately eligible for parole if they committed their offense before November 1, 1987. Inmates who committed their foreign offense on or after November 1, 1987, must receive a hearing before the USPC within 180 days of entry into the United States, or as soon as practicable, per 18 U.S.C. § 4106A and 28 CFR§ 2.68.

The USPC is permitted to determine a release date, and a period and conditions of supervised release, without an in-person parole hearing.

The Case Management Coordinator (CMC) will ensure that a determination is made regarding whether to retain the inmate for the initial hearing before the USPC. If the admission institution is deemed inappropriate, the CMC will request the DSCC to designate an appropriate institution for the hearing.

11. BIENNIAL REPORT REQUIRED

Treaty nations may request follow-up information concerning U.S. citizens returned to the United States; the United States sometimes requests treaty nations to provide similar information about foreign nationals it has transferred.

The Office of Information Systems (OIS), Central Office, provides OEO and the Assistant Administrator, Correctional Programs Branch, a report as of June 30 and December 31 of each year that identifies returned U.S. citizens remaining in Bureau custody or released within the reporting period. It groups inmates by nation and contains:

a. Identification Data

Name.
Register Number.
FBI Number.
Facility.

b. Sentence Data

Date Committed (to Bureau).
How Committed.
Offense Code.
Foreign Sentence.
Supervision Term.

c. Release Status Data (if applicable)

Sentence Began.
Release Date.
Release Method.

12. AGENCY ACA ACCREDITATION PROVISIONS

None.

REFERENCES

Program Statements

P1490.06 Victim and Witness Notification Program (5/23/02)
P5100.08 Inmate Security Designation and Custody Classification (9/12/06)
P5140.38 Civil Contempt of Court Commitments (7/1/04)
P5290.14 Admission and Orientation Program (4/3/03)
P5500.11 Correctional Services Manual (8/29/14)
P5540.06 Prisoner Transportation Manual (4/20/00)

P5800.15 Correctional Systems Manual (1/1/09)
P5880.30 Sentence Computation Manual/Old Law/Pre-CCCA 1984 (9/8/99)
P6031.04 Patient Care (6/13/14)

BOP Forms

BP-A0297 Transfer Inquiry
BP-A0301 Authorization to Release Confidential Information
BP-A0337 Inmate Load and Security Designation
BP-A0964 U.S. Case Summary

Records Retention Requirements

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) system on Sallyport.