



Extradition to the United States

Considerations for Noncitizens extradited to the United States.

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This three-part series will cover the following topics:

1. The intersection of criminal and immigration systems in extradition to the United State;
2. Overview of the current status of 3rd country removals; and
3. The current status of US immigration detention conditions.

Part 1: How the Criminal and Immigration Systems Interact in Extradition Cases

When an immigrant is charged with a crime, they will generally need to face their criminal proceedings and the outcome of those proceedings before interacting with the immigration system. When extradited to the United States to face criminal proceedings, the foreign national should expect to be detained and detained in the jurisdiction where the charges are being brought.

What is an extradited foreign national's immigration status in the United States?

When a noncitizen is extradited to the United States, the Department of Justice Office of International Affairs will request the Department of Homeland Security ("DHS") to authorize a form of parole into the United States called Significant Public Benefit Parole to permit the foreign national's entry into the United States. An extradited foreign national will therefore be considered to have been "paroled" into the United States to face prosecution.

When would an extradited noncitizen likely encounter the immigration system?

Because a noncitizen's criminal proceedings need to conclude first, the timing of when an extradited noncitizen would interact with the immigration system could vary widely. For example, if the foreign national is acquitted, they could interact with the immigration

system relatively soon after their extradition to the United States. But if the person is convicted, the foreign national would need to complete their criminal sentence before they would face the immigration consequences for their crime. For a convicted noncitizen, it could therefore be several years, if not decades, before he or she would interact with immigration authorities.

Once the criminal proceedings have concluded, the noncitizen should be prepared to interact with immigration authorities. As noted above, an extradited noncitizen's immigration status would be "parolee" through the Significant Public Benefit Parole. This parole status terminates automatically upon one's departure from the United States or once the status expires. But DHS may also revoke the parole status once the purpose of the parole is accomplished. (See 8 CFR 212.5(e)). DHS is therefore likely to revoke parole status once the criminal proceedings have concluded. Once parole is revoked, DHS can initiate removal proceedings.

However, under Board of Immigration Appeals precedent, extradited noncitizens should be given a fair and reasonable opportunity to depart the United States voluntarily. *Matter of Badalamenti*, 19 I&N Dec. 623 (BIA 1988). Only if an extradited foreign national fails to depart can removal proceedings then be initiated against the foreign national as an applicant for admission.

Practice Tip: Request to Withdraw "Application for Admission"

If one's status as a parolee under the Significant Public Benefit Parole is revoked, the noncitizen's immigration status would likely be "applicant for admission." This is important because the noncitizen could advocate with Immigration and Customs Enforcement and Customs and Border Patrol to withdraw one's "application" for admission and offer to voluntarily return to their country of origin. A noncitizen could therefore avoid a removal order and the consequences that follow a removal order by successfully withdrawing their application for admission. But note that DHS has ultimate discretion to permit withdrawal of an application for admission.

How would an extradited noncitizen interact with the US immigration system?

For an extradited foreign national, under *Badalamenti*, the government should inform the noncitizen that they are afforded an opportunity to depart and will likely be expected to coordinate their departure from criminal custody. However, federal caselaw demonstrates that the U.S. government may still seek to initiate removal proceedings without affording the foreign national a "fair and reasonable" opportunity to depart. See e.g., *Gutierrez Perez v. Garland*, 2022 WL 16826725, at *2 (2d Cir. Nov. 9, 2022) (noting that DHS served the noncitizen with three separate NTAs, one in 2009 and two in 2019, the first two of which were terminated for failing to give the noncitizen a "reasonable opportunity to depart"); *Trabelsi v. Crawford*, 2024 WL 5497113, slip op. No. 1:24-cv-1509 (E.D. Va. Dec. 2, 2024) (extradited noncitizen who was found not guilty was issued an NTA charging him as inadmissible as an "arriving alien"). Furthermore, as recently as 2024, the U.S. government

argued in federal court that *Matter of Badalamenti* was no longer good law, but the district court did not decide that issue. *Trabelsi v. Crawford*, 2024 WL 5497113, slip op. No. 1:24-cv-1509 (E.D. Va. Dec. 2, 2024).

The extradited noncitizen will likely bear the burden of asserting their right under *Badalamenti* to be afforded an opportunity to leave the United States voluntarily. If the extradited noncitizen fails to depart after being given a reasonable opportunity to leave voluntarily, they can and likely will be placed in removal proceedings.

Typically, before a noncitizen is released from criminal custody, US immigration authorities will issue a detainer (order authorizing detention) to transfer the noncitizen from criminal custody to immigration custody. Use of a detainer requires coordination between immigration and law enforcement authorities. Alternatively, a noncitizen who has been convicted and is serving their sentence at a participating facility may be eligible for the Institutional Hearing and Removal Program (“IHRP”). The IHRP allows immigration authorities to initiate removal proceedings while a noncitizen is still in criminal detention. The government’s goal of the IHRP is to secure a potential removal order prior to the noncitizen’s release from criminal custody so that removal can be completed quickly upon release.

Would an extradited noncitizen have an opportunity to assert a fear-based claim?

Yes, once in immigration proceedings, a noncitizen who was extradited to the United States would have access to the same removal procedures as other noncitizens. During traditional removal proceedings brought under Section 240 of the Immigration and Nationality Act (“INA”), the immigrant would have to prove their admissibility and would also have an opportunity to assert a fear-based claim or apply for other forms of relief from deportation. Types of fear-based applications include Asylum, Withholding of Removal under the INA, and withholding or deferral of removal under the Convention Against Torture. If the noncitizen has been convicted of certain crimes, asylum and possibly even withholding of removal may be off the table. Both asylum and withholding of removal under the INA have certain criminal bars to those forms of relief.

If granted withholding of removal or protection under Convention Against Torture, the Immigration Judge issues a final order of removal, but the US government cannot remove that person to the country where the person fears persecution or torture.

It is possible that a noncitizen who was extradited to the United States and subsequently convicted could be subject to a form of removal called Administrative Removal, a form of removal proceedings that occurs without a hearing before an immigration judge. A noncitizen may be subject to Administrative Removal if they are not a lawful permanent resident of the United States and have been convicted of certain crimes. (See 8 CFR Section 238.1). Even if subject to Administrative Removal, the noncitizen will have 10 calendar days from receiving notice of being placed in Administrative Removal to raise a fear-based claim. If a noncitizen can prove that they have a reasonable fear of

persecution or torture, their case would be referred to an immigration judge to determine eligibility for Withholding of Removal under the INA or protection under the Convention Against Torture. Again, if an extradited noncitizen is placed into administrative removal proceedings, the noncitizen should assert their rights under *Badalamenti* to be afforded a fair and reasonable opportunity to voluntarily depart the United States following completion of their criminal sentence.

*Disclaimer: This information is presented for the purposes of general education and does not constitute legal advice. For advice about a specific case, please consult legal counsel.