

# Guide to Judiciary Policy

Vol. 7: Defender Services

Pt. B: International Prisoner Transfer Proceedings

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### § 110 Purpose

Part B of Volume 7 sets forth regulations promulgated by the Director of the Administrative Office of the U.S. Courts (AO) under [18 U.S.C. § 4109\(a\)\(2\)](#) for the appointment and compensation of counsel in international prisoner transfer proceedings. Part B also provides information and guidance on the appointment and compensation of guardians ad litem in international prisoner transfer proceedings.

### § 120 International Prisoner Transfer Program

- (a) The International Prisoner Transfer Program began in 1977, when the United States negotiated the first in a series of treaties that permit the transfer of prisoners from the countries in which they have been convicted and incarcerated to their home countries. **See:** [18 U.S.C. §§ 4100-4115](#). More than 70 countries and nationalities are now parties to either bilateral or multilateral prisoner transfer treaties with the United States.
- (b) Prisoner transfers under the various treaties are available to United States citizens incarcerated abroad as well as to foreign nationals incarcerated within the United States.
- (c) Although most inmates who are transferred out of the United States under these treaties are federal prisoners, all 50 states, Puerto Rico, and the Northern Mariana Islands have legislation authorizing them to participate in the International Prisoner Transfer Program.

- (d) Prisoner transfer treaties are negotiated principally by the United States Department of State. However, the program itself is administered by the United States Department of Justice (DOJ), Criminal Division, International Prisoner Transfer Unit.
- (e) For more information on the program and participating countries, **see:** [DOJ Office of Enforcement Operations website](#).

## § 130 Consent Verification Hearings

- (a) United States citizens incarcerated abroad and foreign nationals incarcerated within the United States must obtain approval for a transfer from both the DOJ and the government of the foreign country in which the prisoner is currently incarcerated or to which the prisoner wishes to transfer.
- (b) Once the prisoner has obtained the necessary approvals, a consent verification hearing is scheduled. This hearing is mandated by [18 U.S.C. § 4108\(a\)](#). The purpose of the hearing is to verify that the individual consents to a transfer to his or her home country to complete a sentence of incarceration voluntarily, and with full knowledge of the consequences of the transfer.
- (c) The consent verification hearing is held in the country in which the sentence was imposed and is conducted by a U.S. magistrate judge or by a citizen specifically designated by a judge of the United States as defined by [28 U.S.C. § 451](#). **See:** [18 U.S.C. § 4108\(a\)](#).
- (d) If at the time of the transfer, the offender is under 18 years of age or deemed by the U.S. magistrate judge to be incompetent, consent to the transfer must be given by a parent, guardian, guardian ad litem, or by an appropriate court of the sentencing country. **See:** [18 U.S.C. § 4100\(b\)](#).
- (e) Additional guidance on the procedures for consent verification hearings in international prisoner transfer cases may be obtained from the AO's Judicial Services Office, 202-502-1800.

## § 140 Statutes and Authority

- Transfer to or from foreign countries ([18 U.S.C. §§ 4100-4115](#))
- Right to counsel, appointment of counsel ([18 U.S.C. § 4109](#))
- Transfers from the United States to a foreign country ([18 U.S.C. § 4107](#))
- Transfers to the United States from a foreign country ([18 U.S.C. § 4108](#))
- Jurisdiction of proceedings relating to transferred offenders ([18 U.S.C. § 3244](#))

- Prisoner transfer treaties apply to U.S. military personnel ([10 U.S.C. § 955](#))
- International Prisoner Transfer Program ([7 Foreign Affairs Manual 480](#))

## **§ 150 Further Guidance**

Inquiries concerning the appointment of counsel in international prisoner transfer proceedings should be directed to the Legal and Policy Division of the AO's Defender Services Office, at 202-502-3030, [dso\\_lpd@ao.uscourts.gov](mailto:dso_lpd@ao.uscourts.gov), or by mail to:

Chief, Defender Services Office  
ATTN: Prisoner Transfer Treaty Matters  
Administrative Office of the U.S. Courts  
One Columbus Circle, NE  
Washington, DC 20544  
202-502-3030

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## Ch. 2: Appointment of Counsel and Guardians Ad Litem

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### § 210 Appointment of Counsel

- (a) United States citizens incarcerated abroad and foreign nationals incarcerated within the United States who seek an international prisoner transfer have the right to the advice of counsel. Additionally, an offender who is financially unable to obtain an attorney has the right to the appointment of counsel in proceedings to verify consent to transfer. **See:** [18 U.S.C. § 4109\(a\)](#). Appointed counsel must advise and assist offenders prior to and during the proceedings.
- (b) Offenders who seek a transfer have the right to the advice of counsel in proceedings before the United States Parole Commission, and in an appeal from a determination by this Commission. **See:** [18 U.S.C. §§ 4106A](#) and [4109\(c\)](#). Financially eligible offenders are entitled to the appointment of counsel for such proceedings, under [18 U.S.C. § 3006A](#).

### § 220 Appointment of Guardians Ad Litem

The appointment and compensation of guardians ad litem in prisoner transfer cases are provided for in [18 U.S.C. § 4100\(b\)](#) and [§ 4109\(b\)](#).

- (a) Guardians ad litem may be appointed to act on behalf of financially eligible minor or incompetent offenders in proceedings to verify their consent to transfer to or from the United States. **See:** [18 U.S.C. § 4100\(b\)](#).
- (b) Appointment of a guardian ad litem is independent of the appointment of counsel under [18 U.S.C. § 4109](#).

## § 230 Determining Financial Eligibility

- (a) An offender is “financially eligible” for the appointment of counsel or a guardian ad litem within the meaning of [18 U.S.C. § 4109](#) if his or her net financial resources and income are insufficient to enable the offender to obtain qualified counsel, or to provide for the compensation and travel expenses of a guardian ad litem.
  - (1) In determining whether such insufficiency exists, consideration must be given to the cost of providing the offender and his or her dependents with the necessities of life.
  - (2) The determination of eligibility must be made without regard to the financial ability of the offender’s family unless the family indicates willingness and financial ability to retain counsel or to provide a guardian ad litem promptly.
  - (3) Any doubts as to an offender’s eligibility must be resolved in his or her favor.
- (b) The determination of whether an offender is eligible for appointment of counsel or a guardian ad litem is a function to be performed by the U.S. magistrate judge. Offenders will normally provide information regarding their financial status on [Form CJA 23 \(Financial Affidavit\)](#). Completed forms should be provided to the designated court. Although the court may obtain additional information, whenever practicable, fact-finding should be done prior to the offender’s appearance at the consent verification hearing.
- (c) For a more detailed explanation of determining financial eligibility under the Criminal Justice Act (CJA), **see:** [Guide, Vol. 7A, § 210.40](#).

## § 240 Procedures for Appointments

### § 240.10 Transfers from the United States

- (a) Appointment of counsel and guardians ad litem in connection with transfer proceedings **from** the United States **to** a foreign country under [18 U.S.C. § 4107](#) are made in accordance with the CJA, [18 U.S.C. § 3006A](#), and the *Guide to Judiciary Policy*. **See:** [18 U.S.C. § 4109\(a\)\(1\)](#).
- (b) The eVoucher system should be used for the appointment and compensation of counsel and guardians ad litem in International Prisoner Transfer Proceedings **from** the United States **to** a foreign country. Such appointments should use [Form CJA 20](#) and are to be considered an

appointment in a misdemeanor case for purposes of compensation under the CJA.

## **§ 240.20 Transfers to the United States**

The Director of the Administrative Office of the U.S. Courts (AO) has delegated authority to the Chief for the AO's Defender Services Office (DSO) to designate counsel and guardians ad litem for appointment in international prisoner transfer proceedings **from** a foreign country **to** the United States. **See:** [18 U.S.C. § 4108](#) and [§ 4109\(a\)\(2\)](#).

For questions about the appointment of counsel in international prisoner transfer proceedings **from** a foreign country **to** the United States, contact the Legal and Policy Division Duty Day Attorney in the AO's Defender Services Office, at 202-502-3030 or by email at [dso\\_lpd@ao.uscourts.gov](mailto:dso_lpd@ao.uscourts.gov).

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## Ch. 3: Compensation and Reimbursement of Expenses

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[§ 320 Private Panel Attorneys and Guardians Ad Litem](#)

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### § 310 Federal Public and Community Defenders

- (a) Federal public and community defenders appointed to provide representation in international prisoner transfer proceedings under [18 U.S.C. § 4109\(a\)\(2\) and \(b\)](#) must obtain travel authorizations from the Chief of the Defender Services Office (DSO) of the Administrative Office of the U.S. Courts (AO).
- (b) Before travel, an itinerary including dates and an estimated cost of the trip must be provided to DSO by email to [DSO\\_LPD@ao.uscourts.gov](mailto:DSO_LPD@ao.uscourts.gov).
- (c) Travel obligations and vouchers will be processed as follows.
  - (1) For federal public defender organization (FPDO) travelers participating in prisoner transfers, DSO will obligate centrally held funds to support the cost of the trip. FPDO travelers will submit travel vouchers through their FPDO for reimbursement. When processing the travel voucher, FPDO administrative staff will reference the obligation created by DSO.
  - (2) Community defender organization (CDO) travelers participating in prisoner transfers will be reimbursed from their CDO using the CDO's grant funds. Should the CDO require supplemental funding to support the prisoner transfer representation, the organization's Administrative Officer should contact their assigned DSO Budget Analyst. Within 60 days of the completion of travel, the CDO will email a copy of the travel voucher with supporting documentation to the DSO Travel Inbox ([DSO\\_travel@uscourts.gov](mailto:DSO_travel@uscourts.gov)).
- (d) The AO will initiate action to obtain reimbursement of expenses from the U.S. Department of State. **See:** [18 U.S.C. § 4109\(a\)\(2\)](#).

## § 320 Private Panel Attorneys and Guardians Ad Litem

- (a) Private attorneys and guardians ad litem appointed to provide representation in international prisoner transfer proceedings under [18 U.S.C. § 4107](#) are compensated in accordance with the Criminal Justice Act (CJA), [18 U.S.C. § 3006A](#), and the *Guide to Judiciary Policy*. **See:** [18 U.S.C. § 4109\(a\)\(1\)](#).
- (b) Appointed counsel and guardians ad litem must submit the appropriate CJA forms through the eVoucher system to receive compensation and reimbursement of expenses. The CJA forms, together with instructions for their use, are posted on the [public judiciary website](#).
- (c) An appointment in an international prisoner transfer proceeding is considered an appointment in a misdemeanor case for purposes of compensation under the CJA. **See:** [18 U.S.C. § 4109\(a\)\(1\)](#).