

EXTRADITION

Extradition is neither a criminal nor a civil proceeding. In re Extradition of Jano, 6 FSM R. 12, 13 (App. 1993).

The FSM Attorney General's Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General's office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and the discretion of whether to extradite a citizen does not repose in the Attorney General's Office. In re Extradition of Jano, 6 FSM R. 12, 13-14 (App. 1993).

Certifications of extraditability are not final decisions of the trial court since the final decision-making authority rests with the Secretary of External Affairs. Therefore they are not appealable. In re Extradition of Jano, 6 FSM R. 23, 25 App. 1993).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Where the FSM statute governing extradition proceeding is silent on the appealability of extradition proceedings and where the statute has been borrowed from another jurisdiction where extradition proceedings are not appealable it is presumed that the meaning and application of the statute is as it was interpreted by the courts of the source. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Extradition is founded upon treaties between sovereign nations involving mutual agreements and commitments. There is no counterpart in Micronesia custom and tradition that is applicable. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Certification of extraditability is an adversarial proceeding. An advocate in an adversarial proceeding is expected to be zealous. In re Extradition of Jano, 6 FSM R. 26, 27 (App. 1993).

Extradition is not a criminal action although it involves a criminal accusation. The specific provisions of the international extradition statute apply rather than the general provisions of Title 12, chapter 2. In re Extradition of Jano, 6 FSM R. 62, 63 (App. 1993).

Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. In re Extradition of Jano, 6 FSM R. 62, 63 (App. 1993).

In an international extradition case, bail can be granted only if "special circumstances" are shown. Neither risk of flight nor the availability of a suitable custodian are primary considerations. Rather the primary consideration is the ability of the government to surrender the accused to the requesting government. In re Extradition of Jano, 6 FSM R. 62, 64 (App. 1993).

Judicial review of an extradition hearing is by petition for a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 93, 97 (App. 1993).

No Micronesian custom or tradition is applicable to extradition. In re Extradition of Jano, 6

FSM R. 93, 97 (App. 1993).

A person for whom extradition is sought must be brought before a justice that evidence of his criminality may be heard and considered so that he may be certified as extraditable. Such a person is entitled to notice of the hearing and an opportunity to be heard and to effective assistance of counsel. In re Extradition of Jano, 6 FSM R. 93, 99 (App. 1993).

A person whose extradition is sought can always contest identification. In re Extradition of Jano, 6 FSM R. 93, 100 (App. 1993).

A person whose extradition is sought may, at the extradition hearing, introduce evidence that explains the government's evidence of probable cause, but not evidence that contradicts it. In re Extradition of Jano, 6 FSM R. 93, 101 (App. 1993).

By the terms of the Compact and its subsidiary extradition agreement the term "Signatory Government" includes not only the national, but also the state governments of the two nations. Therefore state as well as national law may be used to determine if the offense for which extradition is sought satisfies the dual criminality test of whether it is criminal under the laws of both signatory governments. In re Extradition of Jano, 6 FSM R. 93, 102-03 (App. 1993).

Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. In re Extradition of Jano, 6 FSM R. 93, 103 (App. 1993).

The scope of a habeas corpus review of an extradition proceeding is 1) whether the judge had jurisdiction, 2) whether the court had jurisdiction over the extraditee, 3) whether there is an extradition agreement in force, 4) whether the crimes charged fall within the terms of the agreement, and 5) whether there was sufficient evidence to support a finding of extraditability. In re Extradition of Jano, 6 FSM R. 93, 104 (App. 1993).

An extradition hearing justice is required to make written findings for two reasons: 1) to meet the "rule of specialty" by which prosecution is limited to those offenses upon which extradition is granted, and 2) to reflect that the offenses for which extradition is granted is criminal in both the requesting and requested countries. In re Extradition of Jano, 6 FSM R. 93, 105 (App. 1993).

To satisfy the dual criminality test in extradition matters either national or state law may be used. An exact matching of the offense or elements is not required, but the acts charged must be criminal in both jurisdictions. In re Extradition of Jano, 6 FSM R. 93, 105 (App. 1993).

Where a court has dismissed a criminal case for lack of jurisdiction over the crimes for which the defendant was charged, the dismissal does not act as a discharge so as to preclude extradition on the charge. "Discharge" requires both personal and subject matter jurisdiction. In re Extradition of Jano, 6 FSM R. 93, 107-08 (App. 1993).

Where the extradition agreement specifically requires that the requesting government's statute of limitations be used to determine extraditability, a general provision cannot be read to apply the statute of limitations of the requested government. In re Extradition of Jano, 6 FSM R. 93, 108 (App. 1993).

Extradition is neither a criminal nor a civil proceeding. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 372 (Yap 2005).

Extradition treaties are to be liberally construed to effect their purpose of surrender of the persons sought to be tried for their alleged crimes. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 372 (Yap 2005).

An extradition hearing's purpose is not to hold a trial on the merits to determine guilt or innocence, but to determine whether probable cause exists to believe that the person whose surrender is sought has committed the crime for which extradition is requested. The probable cause standard applicable in extradition proceedings is described as sufficient evidence to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

A person whose extradition is sought may, at the extradition hearing, introduce evidence that explains the government's evidence of probable cause, but not evidence that contradicts it. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

Depositions, warrants or other papers may be admitted into evidence in an extradition case if properly authenticated and the FSM Rules of Evidence by their terms do not apply to extradition proceedings. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

Facts and circumstances detailed in the documents admitted into evidence can constitute probable cause to believe that persons sought to be extradited committed the crime alleged therein. When the documents come with indicia of reliability, including the certifications of authenticity, the court may properly consider this evidence in making the probable cause determination for extradition. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

For extradition, dual, or double, criminality is a requirement, which means that the offense for which extradition is sought must be criminal in both the requesting and requested countries. A precise matching of the crime or its elements is not required, but the acts charged must be criminal in both jurisdictions. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

When the offense alleged in the U.S. indictment is false use of a passport, and when, in the FSM, a person commits the crime of tampering with public records under 11 F.S.M.C. 529 if he makes, presents, or uses any record, document, or thing knowing it to be false, and with the purpose that it be taken as a genuine part of information or records that are received or kept by a public servant or required to be kept by anyone for the government's information, and under 11 F.S.M.C. 524, a person commits the crime of falsification if, with purpose to mislead a public servant in performing his or her official function, he or she submits or invites reliance on any writing which he or she knows to be forged, altered, or otherwise lacking in authenticity, these two FSM statutes proscribe the conduct charged, and the requirement of dual criminality is satisfied. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373-74 (Yap 2005).

The "rule of specialty" means that the court must find that the prosecution is limited to the offense upon which extradition is granted. Specifically, the "principle of specialty" limits prosecution in the requesting country to those extraditable offenses established by the facts on which extradition has been granted by the asylum country. Under this principle, the inquiry does not end merely because the accused is found extraditable on one charge. A determination must be made as to whether each specific charge forms the basis for extradition, as the defendant may be prosecuted only on extraditable charges. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 374 (Yap 2005).

If, on a hearing to determine extraditability the judge deems the evidence sufficient to sustain the charge under the treaty provisions, the judge shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of Foreign Affairs that a warrant may issue upon the requisition of the proper authorities of the foreign government, for the person's surrender according to the treaty's stipulations; and the judge shall issue his warrant for the commitment of the person to be extradited to the proper jail, there to remain until surrender is made. But when no witnesses testified at the hearing, there is no testimony to be transcribed and submitted to the Secretary of Foreign Affairs and counsel for the FSM summarized the papers it filed and when the necessary papers were admitted into evidence and are part of the record, the court will make the certification of sufficient evidence to sustain the charges, but will make no certification of testimony, and when the persons charged are already under house arrest and under FSM Immigration personnel's custody and supervision, no warrant will issue. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 374 (Yap 2005).

In extradition cases, the receiving court, under the rules of speciality and double criminality, lacks personal jurisdiction over the defendant for crimes other than the crimes for which the defendant was extradited. FSM v. Siega, 21 FSM R. 291, 297 n.4 (Chk. 2017).