

**Treaty Transfers of U.S. Bureau of Prisons Inmates
and N.C. Department of Corrections Inmates
To Their Native Countries Prior to Completing the Sentences Imposed**

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On a number of occasions, I have been contacted by prisoners or by the families of prisoners who are not United States citizens but who have already been convicted of some crime and who are serving a term of imprisonment. The most common question has been whether or not I can do something to get that inmate out of prison and deported to his native country prior to serving the entire sentence imposed on him.

United States Bureau of Prisons

If the convicted person is serving a sentence in the United States Bureau of Prisons as a result of a conviction in federal court, there is a possibility that he can be deported prior to serving the entire sentence imposed upon him. The governments of the United States of America and many foreign nations have entered into treaties that allow the transfer of some Bureau of Prisons inmates back to their native country prior to serving their complete sentence. Among the Spanish-speaking countries who have joined that treaty are Bolivia, Chile, Mexico, Nicaragua, Panama, Peru, Spain, and Venezuela.

Federal legislation has now codified the treaty transfer program at 18 United States Code 4100, *et seq.*, and rules and regulations for implementing the program have been set forth at 28 Code of Federal Regulations 0.96b. The criteria for transfer differ slightly among nations, but I will illustrate the general requirements by listing herein the specific factors set out in the treaty between the United States and Mexico.

To qualify under that treaty, a prisoner must meet all of the following criteria: (1) be a citizen of Mexico; (2) be convicted and sentenced for a violation of the laws of the United States or one of the states thereof; (3) have no appeals or post-conviction proceedings pending; (4) have at least six months remaining to be served on his sentence; (5) have no detainers pending that would require him to be tried in the future on another charge in the United States or one of the states thereof; (6) have a determinate sentence (a set term of imprisonment); and (7) not be convicted of a violation of the United States immigration laws, including but not limited to (a) alien smuggling or (b) illegal re-entry into the United States after an order of deportation. Certain violent criminals will not be transferred even if they otherwise meet all of the criteria, because the approval of both nations must precede a transfer, and that approval will be withheld on policy grounds.

It is important for anyone considering requesting deportation by means of a treaty transfer to understand that such a transfer will not result in his release from incarceration upon arrival

back in his native country. The terms of the treaty require the receiving nation to incarcerate that person in one of the federal prisons of his native country. But even so, there are several advantages to such incarceration for inmates.

First, such an inmate will be incarcerated closer to his family, who can then visit him and supply him with foods, clothing, and moral support without having to travel great distances for those visits. Second, he will be housed in a prison where the staff and most inmates speak his native language and he can therefore have his medical, educational, recreational, and occupational needs, among others, addressed by staff who speak his native language and who can understand his requests. Third, his family needs and emergency concerns can be addressed by staff who speak his native language and understand his native social mores and customs.

Fourth, in many countries, such an inmate can enjoy conjugal visits with his wife when she visits him in prison. There are no conjugal visits among inmates and spouses in the United States Bureau of Prisons. Fifth, many countries allow work release so that an inmate can leave the prison for part of each day and go to work so as to earn a living and provide financial support for his wife and children. In the United States Bureau of Prisons, there is no such thing as work release. Again using Mexico as an example, I have been informed by Mexican attorneys that their federal prisons provide for a very liberal work release policy.

All federal sentences are determinate sentences, and therefore qualify for the transfer program under the provisions of the treaty between the United States and Mexico.

North Carolina Department of Corrections

For prisoners being held in the North Carolina Department of Corrections as a result of a conviction in state court, the answer is more complicated. North Carolina is one of 41 states which have now joined the treaty transfer program. For citizens of most nations which have joined the treaty transfer program, they are eligible for return by means of the treaty transfer program. However, citizens of Mexico and Canada are not eligible for the program because those two countries have provisions in their treaties that require that the sentence must be a determinate sentence. While there are only a handful of Canadian citizens in the North Carolina Department of Corrections, Mexican citizens make up the vast majority of the foreign citizens who are incarcerated here, numbering an estimated 3,000+ inmates out of a total population, as of May 20, 2005, of almost 37,000.

The North Carolina General Assembly joined the treaty by passing N.C. General Statute 148-122, which states in full: “[i]f a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which the offenders are citizens or nationals, the Governor may, on behalf of the State and subject to the terms of the treaty, authorize the Secretary of Correction to consent to the transfer or exchange of offenders and take any other action necessary to initiate the participation of the State in the treaty.”

However, in North Carolina, the sentencing laws for most offenses require an indeterminate sentence, an example of which would be stated as “not less than ten years, and not more than twelve years.” Therefore, no North Carolina sentence is a determinate sentence as set forth in the explicit terms of the treaties with Mexico and Canada, and our state inmates therefore cannot be considered for treaty transfer to those nations. But for citizens of 62 other nations, plus 14 additional United Kingdom territories, if they are in prison in North Carolina, they are eligible for the treaty transfer program.

There are two ways that this problem could be fixed. First, Mexico could drop its requirement, put in the treaty at its request, that only prisoners with determinate sentences can be considered for the program. Second, the North Carolina General Assembly could make a simple change to this state’s sentencing laws, permitting the Secretary of the Department of Corrections, or his designated representative, to convert our indeterminate sentences to determinate sentences if an otherwise eligible prisoner requests a treaty transfer. With an estimated total of 4,000 foreign citizens incarcerated in North Carolina at this time, each being held at a cost of approximately \$24,000 per year, the North Carolina General Assembly should take the initiative and change our sentencing laws. If that change were made, and if all eligible inmates subsequently requested a treaty transfer, the savings to the State of North Carolina would be approximately \$72,000,000 per year. In these times of state budget crises and constant implementation of cost-cutting measures, surely that is a meritorious issue for consideration.

If the families of any Mexican citizens who are confined in North Carolina prisons would pressure their government for a change in the treaty as mentioned herein, I have no doubt that the United States Government would agree to that change. And if the North Carolina General Assembly would make a simple change to the sentencing laws as mentioned herein, that would allow all of our foreign inmates to become eligible to participate in the treaty transfer program. If any such changes are made, I will report that news immediately in this column.

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