



United States Marshals Service POLICY DIRECTIVES

PRISONER OPERATIONS

9.13 WRITS OF HABEAS CORPUS AND SPECIAL PRODUCTION

- A. Writs for Federal Prisoners in USMS Custody:** In 1981, the OGC for the Department of Justice issued a ruling on the transfer of Federal prisoners to the physical custody of a state or local agency for production in a state or local court pursuant to a writ of habeas corpus ad prosequendum or ad testificandum. This ruling concluded that jurisdiction is not waived when the Government produces or arranges the production of a Federal prisoner in state court. The ruling also concluded a Federal prisoner transferred to state custody for a state court appearance who escapes or attempts to escape is considered to have escaped from Federal Custody within the meaning of [18 U.S.C. § 751](#). Any individual who rescues or attempts to rescue shall be charged under [18 U.S.C. § 752](#), [18 U.S.C. § 753](#), or [18 U.S.C. § 1072](#).
- B. Transfer of Custody or Refusal of Writ:**
- 1. General:** Federal prisoners in USMS custody may lawfully be transferred to the custody of a state or local government pursuant to a state writ of ad prosequendum (See [28 U.S.C. § 2241](#)).
 - 2. Limitations:** The transfer of federal prisoners under the provisions of this section are intended to expedite local prosecutions at reduced costs to local, state and federal agencies. It applies only to the transfer of prisoners to state or local officials within or near the USMS district where the prisoner is being held. Requests for transfers of prisoners to other states may be submitted to the Assistant Director, POD, Office of Legal Counsel, and the local Assistant United States Attorney, for consideration.
 - 3. Federal Prisoners in State Civil Cases:** If provided with a properly executed court order, the USM may honor requests for producing federal prisoners in state civil cases. A prisoner plaintiff is responsible for the cost of his or her production. If the prisoner is indigent, the USM will seek to have the state court provide the cost of production from any monetary awards issued to the prisoner from the action. The plaintiff or defendant in a civil action seeking the production of a federal prisoner as a witness is responsible for the cost of production (See [28 U.S.C. § 2254](#)).
 - 4. Discretion in Honoring Writs:** The USM is not required to honor a request for a federal prisoner in his or her custody pursuant to a state or local writ. Generally, the writ is not honored until the completion of the prisoner's sentencing. In honoring a state or local writ, the USM will exercise discretion when a prisoner is a protected witness, has medical problems, or is a high security risk. In these cases, he or she will contact the Assistant Director, POD, for further guidance.
 - 5. Reimbursement of Costs:** State governments are responsible for all costs and expenses incurred when a federal prisoner must be produced by USMs in state courts under a writ of habeas corpus and subsequently returned to the designated facility by the USMS. The USM producing a federal prisoner in state courts is responsible for ensuring the USMS is fully reimbursed for the deputies' salaries, mileage, per diem, or other expenses incurred.

C. Procedures:

1. The local official will determine in writing from the United States Attorney's office whether the prisoner for whom the writ of habeas corpus is issued is scheduled to appear in United States District Court on the day(s) his or her presence is required in local court. Requesting officials will not seek temporary transfer of custody on such days.
2. A certified copy of the local court writ (with the seal of the court) directed to the USM must be received at the district office. The USM or his or her designee will verify the authenticity of the writ by telephoning the clerk of the court who issued the writ.
3. The official or attorney from the requesting local agency will direct his or her request to the USM in the district having custody of the prisoner. All requests will be made by letter and include the following information:
 - a. The prisoner's name and sufficient numeric identifiers.
 - b. A statement indicating the need for appearance, including the charges against the prisoner.
 - c. The name of the court where the prisoner is to appear.
 - d. The name and phone number of the requesting agency with the responsibility for transporting the prisoner.
 - e. The projected date of return.
4. A statement will be in the writ of habeas corpus from the issuing court that the requesting agency will provide for the safekeeping, secure custody, and care of the prisoner at no cost to the federal government and that they will assume full responsibility for custody.
5. A statement will be in the writ of habeas corpus the prisoner will be returned promptly to USMS custody upon the conclusion of the appearance for which the writ was issued or upon the demand of the USM.
6. The USM will contact the United States Attorney's office by telephone or in person to advise them of the writ and to determine whether there are any reasons for not honoring the writ.
7. When a writ of habeas corpus is issued for a prisoner who has not been sentenced and the request is supported in writing by the United States Attorney, the USM or his or her designee will seek written concurrence from the federal trial judge before honoring the writ. A record of the concurrence of the court will be maintained in the prisoner file.
8. The USM or his or her designee will contact the local law enforcement agency that has responsibility for transporting the prisoner to determine the exact date and time for transfer of custody.
9. The USM will notify the sheriff or detention facility administrator housing the federal prisoner that a writ of habeas corpus has been issued. The local sheriff or jail administrator will be provided with a copy of the writ and the date and time the transfer of custody will take place.

D. Federal Prisoners Committed to the BOP:

1. The BOP has the authority, in accordance with BOP Policy Statement 5875.3 dated June 1981, entitled "Transfer of Inmates to State Agents for Production on State Writs", to release sentenced federal prisoners to a state agency pursuant to a state writ of habeas corpus or the Interstate Agreement on Detainers.
2. USMS districts will not produce any federal prisoner held in BOP custody sought by states under the Interstate Agreement on Detainers.
3. For processing instructions and requirements, state and local prosecuting attorneys are to be referred to a BOP regional office or institution holding custody of the prisoner sought. Any special requirements or extraordinary cases should be referred to Assistant Director, POD for resolution.

E. Federal Writs for State Prisoners:

1. **State Prisoners in Federal Criminal Cases:** The USM will transport, maintain custody, and produce a state prisoner in a federal criminal action. Note that the provisions of the Interstate Agreement on Detainers ([18 U.S.C. Appendix](#)) may require a 30 day waiting period and transfer approval of the governor of the state.
2. **State Prisoners in Federal Civil Cases:** The custodian of the prisoner is responsible for transporting and producing state or local prisoners in a federal civil case. The federal court order should be directed to the state or local authority that has custody of the prisoner. USMs are to maintain necessary levels of courtroom security for the prisoner(s) only when specifically requested by the federal judge hearing the case. When local authorities maintain custody of the prisoner, the USM shall make provisions for the use of holding cells by local authorities.

F. Federal Prisoners Testifying on Behalf of Private Litigants:

1. **Responsibility for Costs of Prisoner Movements in Support of Private Litigants:** All expenses associated with the production of a federal prisoner in a United States Court on behalf of a private litigant (including testifying for a defendant in a criminal case) will be paid by the litigant. Prior written approval for transfer of sentenced prisoners must be obtained from BOP by the litigant's attorney.
2. **Advance Deposit for Prisoner Movement Costs:** The USM in the district where the writ originated will require, in advance, a sufficient deposit from the litigant to cover all expenses incident to the production and return of the prisoner.

G. United States Attorney Requests for Production: The United States Attorney may direct that prisoners in USMS custody be produced through the issuance of form USA-475.