

tody of civilian law enforcement authorities of the United States for removal to the United States for judicial proceedings in relation to conduct referred to in such subsection unless such person has had charges brought against him or her under chapter 47 of title 10 for such conduct.

(Added Pub. L. 106-523, §2(a), Nov. 22, 2000, 114 Stat. 2489.)

**§ 3263. Delivery to authorities of foreign countries**

(a) Any person designated and authorized under section 3262(a) may deliver a person described in section 3261(a) to the appropriate authorities of a foreign country in which such person is alleged to have violated section 3261(a) if—

- (1) appropriate authorities of that country request the delivery of the person to such country for trial for such conduct as an offense under the laws of that country; and
- (2) the delivery of such person to that country is authorized by a treaty or other international agreement to which the United States is a party.

(b) The Secretary of Defense, in consultation with the Secretary of State, shall determine which officials of a foreign country constitute appropriate authorities for purposes of this section.

(Added Pub. L. 106-523, §2(a), Nov. 22, 2000, 114 Stat. 2489.)

**§ 3264. Limitation on removal**

(a) Except as provided in subsection (b), and except for a person delivered to authorities of a foreign country under section 3263, a person arrested for or charged with a violation of section 3261(a) shall not be removed—

- (1) to the United States; or
- (2) to any foreign country other than a country in which such person is believed to have violated section 3261(a).

(b) The limitation in subsection (a) does not apply if—

- (1) a Federal magistrate judge orders the person to be removed to the United States to be present at a detention hearing held pursuant to section 3142(f);
- (2) a Federal magistrate judge orders the detention of the person before trial pursuant to section 3142(e), in which case the person shall be promptly removed to the United States for purposes of such detention;
- (3) the person is entitled to, and does not waive, a preliminary examination under the Federal Rules of Criminal Procedure, in which case the person shall be removed to the United States in time for such examination;
- (4) a Federal magistrate judge otherwise orders the person to be removed to the United States; or
- (5) the Secretary of Defense determines that military necessity requires that the limitations in subsection (a) be waived, in which case the person shall be removed to the nearest United States military installation outside the United States adequate to detain the per-

son and to facilitate the initial appearance described in section 3265(a).

(Added Pub. L. 106-523, §2(a), Nov. 22, 2000, 114 Stat. 2489.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (b)(3), are set out in the Appendix to this title.

**§ 3265. Initial proceedings**

(a)(1) In the case of any person arrested for or charged with a violation of section 3261(a) who is not delivered to authorities of a foreign country under section 3263, the initial appearance of that person under the Federal Rules of Criminal Procedure—

- (A) shall be conducted by a Federal magistrate judge; and
- (B) may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

(2) In conducting the initial appearance, the Federal magistrate judge shall also determine whether there is probable cause to believe that an offense under section 3261(a) was committed and that the person committed it.

(3) If the Federal magistrate judge determines that probable cause exists that the person committed an offense under section 3261(a), and if no motion is made seeking the person's detention before trial, the Federal magistrate judge shall also determine at the initial appearance the conditions of the person's release before trial under chapter 207 of this title.

(b) In the case of any person described in subsection (a), any detention hearing of that person under section 3142(f)—

- (1) shall be conducted by a Federal magistrate judge; and
- (2) at the request of the person, may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

(c)(1) If any initial proceeding under this section with respect to any such person is conducted while the person is outside the United States, and the person is entitled to have counsel appointed for purposes of such proceeding, the Federal magistrate judge may appoint as such counsel for purposes of such hearing a qualified military counsel.

(2) For purposes of this subsection, the term "qualified military counsel" means a judge advocate made available by the Secretary of Defense for purposes of such proceedings, who—

- (A) is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and
- (B) is certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(Added Pub. L. 106-523, §2(a), Nov. 22, 2000, 114 Stat. 2490.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a)(1), are set out in the Appendix to this title.