

30 November 2004

Dear

JUSTICE calls on MPs to oppose unfair extradition arrangements with US

I am writing to you on behalf of JUSTICE, the all-party human rights and law reform organisation, to express our concern at the current extradition arrangements between the UK and the US and to urge you to support EDM 179, tabled on 25th November.

Our concerns are:

- The UK government is allowing the US to enjoy benefits of the Extradition Treaty even though the US has yet to ratify the Treaty;
- Unlike the 1957 European Convention on Extradition, the Extradition Act 2003 allows UK citizens and residents to be extradited to the US in respect of crimes alleged to have been committed substantially in the UK;
- The Treaty does not require the US to show a *prima facie* case for its extradition requests to the UK, even though UK requests to the US must show 'probable cause'.

I have attached a briefing note which explains our concerns in greater detail. For these reasons, I would urge you to support the attached EDM. Please do not hesitate to contact me should you have any questions concerning this letter or our briefing.

Yours sincerely



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**JUSTICE BRIEFING NOTE ON UK-US EXTRADITION ARRANGEMENTS EDM 179,
25 NOVEMBER 2004**

What are the current extradition arrangements between the US and Britain?

The US-UK Treaty was signed in March 2003 but has yet to be ratified by the US Senate. Despite this, the Treaty is already effective in the UK due to a statutory instrument under the Extradition Act 2003.¹ This allows the US to benefit from the Treaty *without ever having ratified it*. Moreover, the prospects of US ratification appear slim in light of intense lobbying pressure against ratification from the American Civil Liberties Union and the Irish-American community (See e.g. 'ACLU Opposes British-American Extradition Treaty; Says Measure Removes Crucial Due Process Protections', 19 December 2003).

We believe it is wrong for the British government to allow the US government to enjoy the benefit of a treaty that it has not ratified. All decisions on extradition to the US should be deferred until the Treaty has either been fully ratified by both sides or renegotiated.

The Extradition Act 2003 does not contain the same level of protection for those resident in the UK as the 1957 European Convention on Extradition

The definition of 'extraditable offences' in section 137 of the 2003 Extradition Act allows those resident in the UK to be extradited for offences which are alleged to take place *substantially within the UK*. This means that a UK citizen (and those ordinarily resident in the UK) could spend long periods of pre-trial custody in the US, or subject to the conditions of US bail, even though most of the alleged criminal activity took place here in the UK.

By contrast, Article 7.1 of the 1957 European Convention on Extradition states that an extradition request can be refused where the offence in question is regarded as having been committed 'in whole or in part in its territory or in a place treated as its territory'. Similar protections have been included in the European arrest warrant.

JUSTICE therefore urges MPs to support an amendment to the Extradition Act 2003 along the lines of Article 7.1 of the European Convention on Extradition, allowing a District Judge to refuse extradition if the alleged offence has taken place in whole or in part in the UK. The amendment should state that a person should *not* be extradited *unless* the requesting state can show affirmatively that it would be in the interests of justice that he should be tried in its state. Where extradition is refused on these grounds, a prosecution should be brought in the UK, thereby ensuring that justice is not avoided, and would be facilitated by the UK-US Mutual Legal Assistance Treaty.

The US-UK Extradition Treaty does not require the US to demonstrate a prima facie case

Under the Treaty, the US is no longer required to demonstrate evidence of a prima facie case in its extradition requests. By contrast, the UK must still demonstrate 'probable cause' in its requests for extradition from the United States. We believe this unequal arrangement exposes UK citizens and residents to a significant risk of miscarriages of justice, triggered by unfounded and arbitrary extradition requests. Three recent, high-profile cases of US extradition requests based on shaky evidence - Lotfi Raissi, Kashamu and Derek Bond - reveal the dangers involved.

¹ Designation of Part 2 Territories Order 2003, SI 2003/3334.

Lotfi Raissi, an Algerian pilot suspected by the US of training the terrorists in the September 11th attacks, was arrested in the UK on a provisional warrant and detained for five months in HMP Belmarsh. He was finally discharged when the US video and telephone 'evidence' turned out to be no more than a webcam video of him with his cousin. Under the new treaty, he would have been extradited.

In *R v Governor of Brixton Prison ex parte Kashamu* [2001] EWHC Admin 980, the court cited 'the unfairness of the proceedings resulting from the non-disclosure of crucial evidence' by the US authorities as its reason for quashing the order for his committal. Correspondence shown to the court revealed that the non-disclosure was a deliberate decision by US prosecutors on the basis that the Extradition Treaty did not require such disclosures to be made.

Derek Bond was a British national arrested and detained in South Africa for 3 weeks in South Africa in February 2003 pursuant to a US extradition request, which was in fact based on a mistaken identity.

The UK government has justified the Treaty's lack of reciprocity on the grounds that the US Constitution would not permit extradition to the UK based on a lower evidential requirement. In the absence of equivalent safeguards in the UK, those residing in the UK will therefore receive inferior protection to their US counterparts.

In JUSTICE's view, the UK statutory instrument allowing extradition requests from the US should be revoked and replaced with a new Order that requires the US to produce *prima facie* evidence.