

JUSTICE BRIEFING NOTE ON UK-US EXTRADITION ARRANGEMENTS, 5 MAY 2006

We believe that:

- **The US should substantiate an extradition request with evidence providing a prima facie case that the person committed the crime alleged**

The latest US-UK Extradition Treaty was signed in March 2003 but has yet to be ratified by the US Senate. The Treaty provides that the US does not have to produce evidence against a person in a UK court in order to extradite them to the United States. Although the treaty is not yet in force as a matter of international law, this provision has been given effect due to a statutory instrument under the Extradition Act 2003.¹

We believe that this arrangement exposes UK citizens and residents to a significant risk of wrongful extradition. The obligation to provide a prima facie case is not an onerous one for a requesting government; in some cases, we believe, one or two witness statements could suffice. It is, however, an important safeguard to allow our courts to examine whether the request is manifestly ill-founded. The case of Lotfi Raissi provides a telling example: Senior District Judge Workman, who refused the extradition, told the Home Affairs Select Committee last November that:

*'Raissi...was a defendant the United States required in relation to issues surrounding the bombing of the Twin Towers. In essence, the offences for which he appeared before me were nothing to do with that other than that he had failed to provide information which led to an allegation that he had misled the authorities to obtain a pilot's licence. In fact, having heard the evidence, I established that was not the case, but he was required by the United States at that time in relation to terrorist offences.'*²

When asked by Nick Herbert MP 'Is it not the point that under the new Treaty a prima facie case would not have to be made and you would not have been able to refuse that extradition?' the District Judge replied:

*'There were two charges, one of which I could have refused because that was purely on the basis of legal argument. The second charge, which related to an alleged deception in failing to notify a knee injury to the doctor, I think you are right, that that would have been difficult to have done anything other than to extradite.'*³

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

² Home Affairs Select Committee: UK-US Extradition Treaty, Oral Evidence given by Senior District Judge Tim Workman, 22 November 2005, in answer to Q28.

³ *Ibid.*, Q33.

- **If a crime is alleged to have been partly committed in the UK, the court should be free to block the extradition where trial in the US is not in the interests of justice**

Section 137 of the Extradition Act 2003 allows UK citizens and residents to be extradited for offences that are alleged to have taken place substantially within the UK. This means that a UK citizen or resident 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. This can apply even where the UK authorities considered prosecution against someone but declined to prosecute – either because they believed the evidence against the person was insufficient or because they decided that prosecution was not in the public interest.

By contrast, Article 7.1 of the 1957 European Convention on Extradition, which governs at an international level our extradition relations with a number of Council of Europe states, provides that an extradition request can be refused where the UK considers that it was committed ‘in whole or in part in its territory or in a place treated as its territory’. Similar provisions have been included in the EU Framework Decision on the European Arrest Warrant.

The failure to include such provision in the Extradition Act is of particular concern with regard to the US because of the expansive interpretation of jurisdiction there in relation to some crimes. In some cases a single email passing through an ISP in the United States, or the publication of a company’s annual reports to a single shareholder in the US, can trigger jurisdiction.

A person can be removed from their family by extradition and detained abroad – perhaps for years – awaiting trial. We therefore believe that proper safeguards should be in place so that this is only done in cases where extradition is justified and appropriate. In particular, we believe that where a crime is alleged to have been partly committed in the UK, the court should be able to determine whether it would be in the interests of justice for the person to be tried in the USA.

We therefore urge MPs to:

- Support EDM 241
- Support amendment of the Extradition Act 2003 to provide that:
 - the US should produce evidence amounting to a prima facie case against someone in order to extradite them from the UK
 - the court should be able to block an extradition to the US where the crime allegedly took place partly in the UK, and where it would not be in the interests of justice for the person to be tried in the USA.