

The US/UK Extradition Treaty: requests by US

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Section Home Affairs Section

This note is part of a series of standard notes dealing with extradition issues. Others in this series describe extradition generally, how the European arrest warrant (EAW) was introduced, the EAW in practice, the history of the UK/US Extradition Treaty, and the case of Abu Hamza.

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¹ SN/HA/4168

² SN/HA/1703

³ SN/HA/4979

⁴ SN/HA/2204

⁵ SN/HA/2895

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1 New extradition arrangements (January 2004)

The US has, since January 2004, been included in a list, set out in an order made under the *Extradition Act 2003*, of "designated" countries which do not have to include prima facie evidence when making requests for a person's extradition from the UK. The history of these arrangements is set out in the Library Standard Note, the UK/US Extradition Treaty.⁶

In January 2009, in response to a written PQ by Paul Holmes, the Home Office provided the following breakdown of cases:⁷

63 persons have been extradited from the United Kingdom to the United States since 2003.

The offences for which those persons were sought are as follows:

	Number
Drugs	20
Fraud	18
Sexual offences	6
Murder	4

⁶ SN/HA/2204

HC Deb 27 January 2009 c287W

Theft	3
Money laundering	3
Child pornography	2
Satellite signal theft	2
Child abduction	1
Grievous bodily harm	1
Terrorism	1
Forgery	1
Obtaining property by deception	1

In July 2009, the BBC reported that:

Since 2004, 56 people have been sent from the UK to the US for trial, and 26 for US to UK. US courts have granted about 70% of UK extradition requests, while nearly 90% of US requests have been granted.⁸

2 Requests received under the new arrangements

In January 2005, Baroness Scotland said that, to date, the United Kingdom had received 37 extradition requests from the US that were being considered under the *Extradition Act 2003*. There had been four surrenders to the US under the new Act and one request had been withdrawn by the United States. The United Kingdom had made two requests to the United States since the introduction of the new legislation.⁹ In a written answer of 24 November 2008, the Home Office minister, Meg Hillier said that, up to September 2008, 55 people had been extradited from the UK to the US under the 2003 legislation, which came into force on 1 January 2004.¹⁰ in the same period 23 people had been extradited to the UK from the US.¹¹

Referring to concerns expressed about people being extradited to the US for white-collar crime rather than for other offences, such as those connected with terrorism, the Home Office minister, Andy Burnham, in letters to the press in December 2005, said that since 2001, 48 people had been extradited to the US, of whom 11 were extradited for fraud-related offences.¹²

2.1 Abu Hamza

Abu Hamza was arrested in May 2004 on an extradition request from the US, alleging 11 terrorism related charges. He was held in Belmarsh Prison, and a full extradition hearing was due to resume on 19 October 2004. However, he was charged with 16 offences in the UK, comprising 10 charges of soliciting to murder under s4 of the *Offences Against the Person Act 1861*, 4 charges of using threatening, abusive or insulting behaviour with intent to stir up racial hatred, one charge of having threatening, abusive or insulting audio and video recordings. and one charge under s 58 of the *Terrorism Act* of possessing a document which contained information "of a kind likely to be useful to a person committing or preparing an act of terrorism". The extradition case was then adjourned, pending resolution of the domestic charges.

BBC Online, "Hacker Loses Extradition Appeal", 31 July 2009 http://news.bbc.co.uk/1/hi/uk/8177561.stm

⁹ HL Deb 12 January 2005 c 252

¹⁰ HC Deb 8 March 2006 c1597WA

¹¹ HC Deb 24 November 2008 c822W

[&]quot;Extradition to the US for white-collar crime" – Independent 20 December 2005; "Use of extradition" – Guardian 21 December 2005

Abu Hamza's trial on 15 charges (of soliciting to murder, using threatening and abusive behaviour, possessing threatening, abusive or insulting recordings of sound and possession of documents or records containing information likely to be useful to a person committing or preparing an act of terrorism) began at the Old Bailey on 9 January 2006. On 7 February 2006 he was found guilty of 11 out of the 15 charges¹³ and was sentenced to seven years' imprisonment. A US Department of Justice official was quoted as saying that the US would resume extradition proceedings against Abu Hamza when British law allowed.

The application was renewed late in 2007, when Judge Timothy Workman found that extradition would be compatible with Abu Hamza's rights under the European Convention on Human Rights, saying that to hold Hamza, who suffers from diabetes, in such a regime [as a "supermax" prison]for an indefinite period could breach his human rights, but he added: "I am satisfied that the defendant would not be detained in these conditions indefinitely, that his ill health and physical disabilities would be considered and, at worst, he would only be accommodated in these conditions for a relatively short period of time. "Whilst I find these conditions offensive to my sense of propriety in dealing with prisoners, I cannot conclude that in the short term the incarceration in a "supermax" prison would be incompatible with his Article 3 rights."

The Home Secretary signed an order approving his extradition, on 7 February 2008, and his appeal to the High Court was dismissed in June. He was refused leave to appeal to the House of Lords but has appealed the European Court of Human Rights. On 4 August 2008, the Acting President of the Chamber to which the case has been allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of the United Kingdom, under Rule 39 of the Rules of Court, that the applicant should not be extradited to the United States until the Court has given due consideration to the matter. He

2.2 Enron fraud charges

Three former NatWest investment bankers – Giles Darby, David Bermingham and Gary Mulgrew – were extradited to the US in July 2006 in connection with Enron-related fraud charges. They were accused of advising Greenwich Natwest to sell a stake in a small Cayman Islands company for a fraction of its real market value to Andrew Fastow, the former chief financial officer of Enron. The three were each originally charged with seven counts of wire fraud – illegally gaining money through international banking systems. In October 2004 District Judge Nicholas Evans at Bow Street Magistrates' Court found that there was "a very real basis, on the facts alleged, for the case (against the three men) to be tried in Houston" and decided that their extradition should go ahead. On 24 May 2005, the Home Secretary announced his approval of the application, saying that he was satisfied that there was no consideration which would prevent him ordering the extradition to the US.

The three men appealed to the High Court against the decisions of the district judge and the Home Secretary. Arguing that if they were to face trial at all it should be in the UK, where their employer was based and where much of the conduct of which they were accused took place, the three men also applied for judicial review of the refusal of the Director of the Serious Fraud Office to institute a criminal investigation against them. On 21 February 2006

¹³"Charges Muslim cleric Hamza faced" – *BBC News* 7 February 2006 http://news.bbc.co.uk/1/hi/uk/4690078.stm

¹⁴ Abu Hamza jailed for seven years" – BBC News 7 February 2006 http://news.bbc.co.uk/1/hi/uk/4690224.stm

¹⁵ibid. and see "US eager to start extradition process" – *Times* 8 February 2006 http://www.timesonline.co.uk/article/0,,2-2030043,00.html

[&]quot;Abu Hamza loses extradition fight", 21 June 2008, *The Independent*

European Court of Human Rights Press Releas 569, 4 August 2008

the High Court dismissed both their appeals and their claims for judicial review, holding that where a criminal case was triable in either of two jurisdictions, there was no legislative provision requiring the decision-maker to decide the place of trial to protect a defendant's rights under the European Convention on Human Rights. The Court's judgment is summarised in the *Times Law Report* of the case:

LORD JUSTICE LAWS, giving the judgment of the court, said that the defendants were British citizens, resident in the United Kingdom, and employed in London by a division of the National Westminster Bank plc as part of a team responsible for a number of the bank's clients, including Enron Corporation in the United States.

In 2002 a federal grand jury sitting in Texas returned an indictment charging the defendants with wire fraud and aiding and abetting wire fraud.

The defendants' broad case had an overarching theme that they should not have to face trial in the United States, and if they were to be tried at all, it should be in England.

Under the 2003 Act neither court nor minister possessed any discretion to further the extradition process or not to do so.

If certain conditions were satisfied the court must send the case to the secretary of state; if not, it must not. If certain further conditions were satisfied, the secretary of state must order extradition; if not, he must not.

That was in contrast to the predecessor legislation which gave the secretary of state a general discretion whether or not to surrender the fugitive to the requesting state.

In respect of the claim for judicial review, the question was whether the Director of the Serious Fraud Office was required by section 1(3) of the 1987 Act to reach a conclusion as to place of trial, as the means of protecting the defendants' human rights under section 6(1) of the Human Rights Act 1998.

That question could only be answered in the affirmative if section 1(3) was construed so as to impose a positive obligation on the director to embark upon an investigation so that he might pre-empt the potential trial venue in favour of this jurisdiction, by proceeding to prosecute here, if it appeared that the Convention rights of a suspected person might be violated by trial elsewhere.

That would have been an entirely fanciful construction of section 1(3). The subsection's words conferred only a power to investigate and, further, it would usurp the role of the district judge.

In respect of the statutory appeals against the district judge's rulings, on its true construction, section 137(2)(a) of the 2003 Act did not require it to be shown that the whole of the conduct occurred in the United States, for the offences specified to be extradition offences within the meaning of that section.

Under its provisions the Home Secretary had no statutory discretion to refuse extradition. Moreover, the prosecutor was not required to establish a prima facie case on the evidence.

Where a proposed extradition was properly constituted according to the domestic law of the sending state and the relevant bilateral treaty, and its execution was resisted, a wholly exceptional case would have to be shown to justify a finding that the extradition would, on the particular facts, have been disproportionate to its legitimate aim.

The case against the defendants had substantial connections with the United States and was perfectly properly triable there. There was no sufficient basis upon which to

hold that the extradition request ought to have been refused on proportionality grounds.¹⁸

A petition by the three men and Ian Norris¹⁹ appealing to the House of Lords on a point of law was rejected on 23 June 2006²⁰

The case of the Nat West Three generated considerable controversy, particularly following reports that they could spend two years in prison in the United States awaiting trial. The Conservative home affairs spokesman expressed the view that the men should be tried in Britain²¹ and a group of leading members of the business community and politicians signed an open letter to the Home Secretary, John Reid asking him to halt the men's extradition. The letter appeared as a full page in the *Daily Telegraph*, ²² which is conducting a campaign entitled "Fair Trials for British Business" in which it is seeking to put pressure the Government to change the extradition treaty with the United States so that British business people are tried in the UK for offences committed in the UK. The newspaper also handed the Home Secretary an open letter signed by 7,400 readers, asking him to intervene in the case of the NatWest Three.²³ Additional information about the Daily Telegraph's campaign is available on the newspaper's website, which also contains links to reports of other cases involving requests by the US for the extradition of individuals charged with involvement in white-collar crime.²⁴

The three men were extradited to the US on 13 July 2006, and in November 2007 they each pleaded guilty to one of the seven counts against them. It was reported that the plea bargain included a sentence of 37 months, as against the maximum 35 years which they otherwise faced. It is understood that one condition of the NatWest Three's guilty plea was a promise that they could serve most of their sentence in a UK jail. They began their sentences in May 2008, and were transferred to British prisons in November. Trish Godman, who is the mother of Gary Mulgrew, and is deputy presiding officer of the Scottish Parliament, said that her son pleaded guilty to fraud charges with "deep reluctance", and that he had been bled financially dry by the case and coerced into a plea bargain. Concerns had also been raised that witnesses that the three wished to call in their defence were based in the UK and were not willing to travel to the US and could not be compelled to do so.

2.3 Babar Ahmad

Babar Ahmad was arrested by the Metropolitan Police in December 2003 but was released without charge. He made a complaint alleging that he had been assaulted. In September 2004, the CPS advised that no criminal charges should be preferred against any of the officers. Meanwhile, on 5 August 2004 he was again arrested. This followed a request by the US for his extradition. According to a press release dated 6 October from the United States Attorney's Office District of Connecticut:

Kevin J. O'Connor, United States Attorney for the District of Connecticut, announced that a federal grand jury ... today returned a four-count Indictment charging BABAR

¹⁸ "Extradition discretion is removed" – *Times Law Report* 24 February 2006

¹⁹ see below p.27

²⁰ "Refusal by Law Lords a setback for extradition campaigners" - Daily Telegraph 23 June 2006

²¹ "Prosecute NatWest Three in the UK, say Tories" – Telegraph 7 July 2006

²² "Letter to John Reid, Home Secretary" – Daily Telegraph 5 July 2006

²³ "Peers and MPs join fight for NatWest Three" – Daily Telegraph 12. July 2006

²⁴ http://www.telegraph.co.uk/money/main.jhtml?xml=/money/Factfiles/extradition/ffextradition.xml

[&]quot;NatWest Three start jail sentences in US", 10 May 2008, Daily Telegraph, "NatWest Three' transferred to British prison", 21 January 2009, The Times

²⁶ "NatWest banker 'coerced into plea bargain'", 30 November 2007, *The Times*

²⁷ "NatWest Three cry foul over witnesses", 12 August 2007, *The Times*

AHMAD, age 30 (D.O.B. 5/4/74) of Fountain Road, London, England, with the following offenses:

- Conspiracy to provide material support to terrorists, namely the Taliban, the Chechen Mujahideen, and related groups, an offense that carries a maximum possible penalty of life imprisonment;
- Providing material support to terrorists, an offense that carries a maximum possible penalty of life imprisonment;
- Conspiring to kill persons in a foreign country, an offense that carries a maximum possible penalty of life imprisonment; and
- Money Laundering, an offense that carries a maximum possible penalty of twenty years imprisonment....

The Indictment against AHMAD alleges, among other things, that from at least 1997 through and until August 2004, AHMAD provided and conspired to provide material support and resources to persons engaged in acts of terrorism in Afghanistan, Chechnya and elsewhere. The Indictment alleges that AHMAD provided – through the creation and use of various internet websites, email accounts, and other means – expert advice and assistance, communications equipment, military items, lodging, training, false documentation, transportation, funding, personnel and other support designed to assist the Chechen mujahideen, the Taliban and associated groups. The Indictment alleges that AHMAD sought to provide assistance to, and raise funds for, violent jihad in Afghanistan, Chechnya and other places.

"This Indictment alleges serious criminal conduct and promotion of terrorism, including the conspiracy to murder persons living abroad," U.S. Attorney O'Connor stated. "This Office will vigorously prosecute this case, and we will not rest until Mr. Ahmad is given a fair trial in a federal courtroom in Connecticut."

"This case is the result of the superior investigative efforts of many federal law enforcement agencies working together, and with our partners in the United Kingdom," U.S. Attorney O'Connor continued. "Everyone in law enforcement plays a role in fighting terrorism, and we in Connecticut are committed to fighting terror both in Connecticut and beyond our borders. In order to dismantle terrorist organizations, we must attack them at their roots, so it is critical that we uncover and sever the financing stream and communication that supports the terrorists' violent intentions."

"Today's Indictment is a significant development in our efforts to target those who are alleged to equip and bankroll terrorists via the internet. The charges are the result of roughly three years of investigative work by ICE agents in New Haven and at the ICE Cyber Crimes Center, in conjunction with our law enforcement partners at home and overseas," said Michael J. Garcia, the Department of Homeland Security Assistance Secretary for U.S. Immigration and Customs Enforcement.

U.S. Attorney O'Connor emphasized the investigation is continuing and stressed that the allegations of the indictment are only charges and not evidence of guilt. The defendant is entitled to a fair trial in which it is the Government's burden to prove guilt beyond a reasonable doubt.

According to a report of the first extradition hearing at Bow Street Magistrates' Court on 6 August 2004:

Rosemary Fernandes, for the United States Government, asked for Mr Ahmad to be remanded in custody.

The court was told of the details of the charges as a 31-page criminal complaint against him in America was revealed. Ms Fernandes said that Mr Ahmad, through US-

based websites and e-mails, asked people to support the cause of terrorism in Chechnya and Afghanistan by giving money and property, and supported Taleban fighters in Afghanistan.

He also told people how money could be hand delivered to Taleban officials, the court heard.

Mr Ahmad is facing extradition to the US to face four charges which allege that he used American-based websites and e-mail to raise money to support acts of terrorism in Chechnya and Afghanistan between 1998 and 2003. According to the arrest warrant in America, one of the websites described its purpose as to "propagate the call for jihad...and also, secondly, to raise some money for the brothers".

The affidavit said that the site instructed people to become trained in martial arts, firearms and join clubs that emphasise street-fighting, sword and knife-fighting and to research sniper training, landmine operations, mortars and combat.

Ms Fernandes said that Mr Ahmad also had e-mail links with the Chechen Mujahidin leader, "a US specially designated terrorist", suspected of planning the Moscow theatre hostage-taking in which 140 people died.

Another website instructed Pakistani nationals in the UK, US and Canada how to get travel documents to travel to Afghanistan to fight for the Taleban.

The court heard how, when Mr Ahmad was arrested in December by British antiterrorist police, he had strategic plans for a US navy battle group in the Gulf. Mr Ahmad was held for six days and released without charge.

American investigators said that they found a floppy disk at his parents' home in London containing the password-protected document about the battle group and a compact disc with audio tracks praising Osama bin Laden, according to the arrest warrant.

Ms Fernandes said that the documents "concerned the legitimate battle-group plans of a US naval battle group operating in the Straits of Hormuz in April 2001. "The document was seized by British police in December 2003. This document has been verified as genuine by US navy personnel.

"The document included the specific assignment of each ship, the battle group's planned movements on April 2001 and a drawing of the battle group's formation.

"In addition the document specifically noted that the battle group were tasked with enforcing sanctions against Iraq and also noted that the battle groups were tasked with conducting operations against al-Qaeda."

There was also a drawing of the group's formation and it described the battle group's "vulnerability" to a terrorist attack and provides specific examples on how the ships may be attacked, Ms Fernandes said.

. . .

Ms Fernandes said that Mr Ahmad had sold his house and only had limited furniture left and had told his employers that he was moving to the Middle East. She said that he could "slip" out of the country using false aliases if granted bail.²⁸

He was remanded in custody until August 13, when the judge rejected a US request that he should be handcuffed. Ahmad's counsel told the court that her client believed it was a politically motivated prosecution: he denied all the charges.²⁹ He stood as a candidate in the

²⁸ British suspect 'urged Muslims to aid terrorists', 7 August 2004, *The Times*

²⁹ "Judge refuses to handcuff terror suspect", 14August 2004, *The Guardian*

General Election and polled 685 votes. At his extradition hearing on 17 May 2005 the judge found that none of the statutory bars to extradition applied:

He said: 'This is a difficult and troubling case. The defendant is a British subject who is alleged to have committed offences which, if the evidence were available, could have been prosecuted in this country.

'Nevertheless the government of the United States are entitled to seek his extradition under the terms of the treaty and I'm satisfied, that the reasons that I have given, that none of the statutory bars apply. 'I am therefore sending this case to the Secretary of State for his decision as to whether the defendant should be extradited to the United States of America.'

He added he had 'no doubt' that the complex issues in the case would need to be examined by the High Court. $^{\rm 30}$

On 16 November 2005 the Home Office announced that the Home Secretary, Charles Clarke, had decided to authorise Babar Ahmad's extradition. His family said he would appeal to the High Court against the Home Secretary's decision.³¹

In a written answer of 29 November 2005 the Solicitor General, Mike O'Brien, said that at the time of making the decision not to prosecute Babar Ahmed, the Crown Prosecution Service had been aware of the nature of the evidence in the possession of the United States authorities.

Babar Ahmad appealed to the High Court against the judge's decision and the Home Secretary's decision to approve the US request for his extradition. Although the appeal was dismissed, and leave to appeal to the House of Lords was refused, an application to the European Court of Human Rights is pending.

Meanwhile, his case attracted further controversy because of the recording of his conversation with Sadiq Khan MP, in Belmarsh Prison.³² In March 2009, the Metropolitan Police admitted that Ahmad had been the victim of gratuitous violence when he was arrested in 2003, and agreed to pay damages of £60,000. His solicitor said:

Despite its resources and Mr Ahmad's full co-operation, the Metropolitan Police, supervised by the Independent Police Complaints Commission (IPCC), found his complaint of assault unsubstantiated and concluded that he had lied about most of his allegations. It fell to Mr Ahmad to bring civil proceedings to vindicate his account.

He felt that compensation alone would not achieve that objective. So, despite being offered, a few days before trial, £60,000 by the commissioner without any admission of liability, Mr Ahmad went ahead — and on the second day of the trial, the commissioner admitted the entirety of the assault allegations. He was completely vindicated.

Highly relevant evidence was lost or "mislaid" by the police and Mr Ahmad was told that the relevant officers were not subject to any other similar allegations of assault that could support the claim. It was only because of coincidental contact from other

 $^{^{30}}$ "Terror suspect loses first round of extradition battle",18 May 2005, Birmingham Post

³¹ "The battle to banish Babar Ahmad" – *BBC News* 16 November 2005 http://news.bbc.co.uk/2/hi/uk_news/4441680.stm

see "The Wilson Doctrine", Library Standard Note SN/HA/4258 at

http://pims.parliament.uk:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHER_PAPERS/STANDARD_NOTE/snha-04258.pdf

victims with this firm that he was able to rely on strong similar fact evidence. The papers have been referred to the Director of Public Prosecutions.³³

It was reported that the six officers involved in the assault had been subject to at least 77 complaints, and that mail sacks detailing at least 30 of the complaints had been lost, as had the officers' contemporaneous notebooks. The Metropolitan Police Commission has asked the Independent Police Complaints Commission to investigate why two of the officers refused to give evidence in the case; one officer is to face criminal proceedings.³⁴ Local journalist G McGregor wrote:

Five years ago Babar Ahmad told me he expected no prosecutions of police officers for his alleged beating in custody, and that justice would have to be pursued through the civil courts Broken glass was still strewn in his front yard from the dawn raid, and there was damage visible inside his home, including the prayer room.

Ahmad's civil victory can be read not only as an indictment of the Met but also of the IPCC, which twice - in 2006 and 2007 - declared there was not sufficient evidence to bring charges against the police officers involved. This was an incredible decision. The IPCC must have been shown, as I was, photographs of the injuries Ahmad sustained all over his body. They must have seen the medical report from a fellow of the Royal College of Surgeons which found "unequivocal evidence that he was subjected to a harrowing physical and psychological assault by police officers".³⁵

2.4 Ian Norris

lan Norris, former chief executive of Morgan Crucible, was arrested in September 2003, accused by the US Department of Justice of price fixing. He faces 7 counts of conspiracy to defraud and two of perverting the course of justice. The UK court found on 11 May 2005 that all the charges were extradition offences, and on 1 June that extradition would not be unjust or oppressive. Patience Wheatcroft, writing in *The Times*, said that Mr Norris was a frightened man.

The embarrassed British Government is now trying to forget the anti-terrorism argument and claim that the changes in the law were merely a tidying-up exercise. That is not how it feels to Mr Norris. Having been in Bow Street last week, he is awaiting the court's decision on whether his extradition could be resisted under the Human Rights Act. In the meantime, he has already been deprived of plenty of liberty as well as peace of mind. Should he venture out of Britain, he is likely to find himself arrested, since the US authorities have alerted Interpol to the fact that he is "a fugitive from justice". This is because he did not board a plane to the US when the charges were first laid against him but preferred to stay in the UK, expecting that he would be able to rely on a hearing of the charges in this country.

His "fugitive" status explains why he is now so fearful: fugitives are rarely allowed the luxury of bail, hence the prospect of that year in an inhospitable jail while he awaited trial.

Corporate crime was for a long time taken far more seriously in the US than in the UK. While their cartel-busters were slamming offenders in jail, Britain remained perfectly sanguine about business rivals gathering in hotel rooms to connive over how to inflate prices. It was only with the Enterprise Act of 2002 that price fixing became a criminal offence, carrying a potential jail sentence. By then Mr Norris's company, Morgan

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³³ "Lawyer of the week; Fiona Murphy" 9 April 2009, *The Times*

[&]quot;Police officers in abuse case accused of 60 other assaults", 21 March 2009, the Guardian, "Met chief orders inquiry on beaten terror suspect", 19 March 2009, The Independent

³⁵ "Shame, suffering and Scotland Yard", 24 March 2009, *The Guardian*

Crucible, had broken the cartel habit it first acquired in 1936. For its price fixing on products such as the carbon brushes that go inside electric engines, Morgan Crucible was heavily fined in Europe, and in the US several of its employees did find themselves in jail. Mr Norris, who claims that he stopped the company's cartel behaviour when he was made chief executive, is accused of price fixing between 1986 and 2000, a period when it was not a criminal offence in the UK.³⁶

In September 2005 the Home Secretary, Charles Clarke, decided that Mr Norris should be extradited to the US. Mr Norris applied to the High Court for judicial review of the Home Secretary's decision on the grounds that the extradition arrangements between the US and the UK were lopsided because of the lack of reciprocity. On 24 February 2006 the High Court rejected his application.³⁷ On 5 April 2006 it was reported that the High Court had refused Mr Norris leave to appeal but certified a question of law which could form the basis of an appeal to the House of Lords, namely, whether the continued designation of the US as a qualifying territory for the purposes of the *Extradition Act 2003* was lawful.³⁸ On 23 June the House of Lords rejected the petition from Mr Norris and the NatWest Three.

Although the judicial review application failed, an appeal to the House of Lords under the Extradition Act 2003 was heard in January 2008.39 The appeal was successful in part.40 The Lords held that Mr Norris could not be extradited to the United States of America to stand trial on charges brought under US legislation which declared cartels to be illegal, to stand trial for price-fixing offences alleged to have been committed from 1989 to 2000 because during that period price-fixing agreements and cartels had not been illegal under English law, unless there were other aggravating features such as dishonesty or deception. But on the "subsidiary" counts, of alleged conspiracy to obstruct justice, witness tampering and causing a person to alter, destroy, mutilate or conceal an object with the intent to impair the object's availability for use in an official proceeding, their Lordships were satisfied that, if Mr Norris had done what he was alleged to have done, with the intention of obstructing an investigation being carried out into possible criminal conduct, in regard to price fixing in the carbon products industry, by the duly appointed body in the United Kingdom, he would have been guilty of offences of conspiring to obstruct justice or of obstructing justice, which could have attracted a prison sentence of 12 months. accordingly, those counts were extradition offences and the matter was remitted to a district judge to decide whether extradition would be compatible with rights under the Human Rights Act 1998. In July, Judge Nicholas Evans said that the obstruction allegations were in no way minor, they were distinct and substantial offences, of such gravity that, standing alone, they merited prosecution. Arguments that extradition would violate human rights law were also dismissed. The Home Secretary had 60 days to decide whether to authorise extradition.41

Mr Norris' appeal to the High Court was heard in February 2009. His counsel submitted that the Home Secretary had "erred in law" by authorising extradition on the subsidiary charge, and that US laws would allow the courts to take into account the price-fixing allegations, leaving Mr Norris the prospect of facing a stiffer sentence.⁴²

³⁶ "A white-collar Guantanamo", 20 May 2005, *The Times*

³⁷ "Retired executive loses US extradition appeal" – Guardian 24 February 2006

³⁸"Norris given ammunition for extradition appeal" – *Daily Telegraph* 5 April 2006

http://www.telegraph.co.uk/money/main.jhtml?xml=/money/2006/04/05/unorris.xml&sSheet=/money/2006/04/05/ixcitytop.html

from the decision of the Divisional Court, at [2006] EWHC 71 (Admin)

⁴⁰ Norris v US [2008] UKHL 16 http://www.publications.parliament.uk/pa/ld/ldjudgmt.htm

^{41 &}quot;Executive faces fresh fight over US extradition", 26 July 2008, Financial Times

⁴² "Norris in new fight to avoid extradition", 27 February 2009, *Daily Telegraph*

2.5 Gary McKinnon

Computer hacker Gary McKinnon was arrested in November 2002 in London. US prosecutors allege that he illegally accessed US army, navy, air force and space agency computers, causing massive disruption. They were reported to have accused him of "the biggest military hack of all time". He does not deny that he accessed the networks, but says that he was motivated by curiosity (about UFOs) and only managed to get into the networks because of lax security. It has been reported that he —

bumbled his way into supposedly secure networks by guessing that the password had not been changed from the default "password.⁴³

Despite his reference to UFOs, McKinnon is said to have left a message in US military systems saying: "US foreign policy is akin to government-sponsored terrorism these days ... It was not a mistake that there was a huge security stand-down on September 11 last year I am SOLO. I will continue to disrupt at the highest levels."

In May 2006 a district judge at Bow Street magistrates' court recommended his extradition and the then Home Secretary, John Reid, later signed an order for his extradition. An article about his case on the *BBC News* website said:

A Home Office spokesman said: "On 4 July the secretary of state signed an order for Mr McKinnon's extradition to the United States for charges connected with computer hacking.

"Mr McKinnon had exercised his right to submit representations against return but the secretary of state did not consider the issues raised availed Mr McKinnon.

"Mr McKinnon now has the opportunity, within 14 days, to appeal against the decisions of the district judge/secretary of state." 45

His appeal was dismissed, but he was granted leave to appeal to the House of Lords. His lawyers alleged:

that the US Government has abused the extradition process (1) by engaging in deliberate delay thereby enabling it to obtain the advantage of the provisions of the 2003 Act and category 2 status, and (2) by being motivated by a desire to expose Mr McKinnon to a very substantial period of imprisonment, way beyond any sentence which would be likely to be imposed upon him following conviction in this country for like offences. At the hearing, Mr Lawson sought and was permitted to argue abuse of process by reference to circumstances in which Mr McKinnon has declined a plea bargain and, as a result, has lost benefits which would have flowed from it, including support for repatriation so as to enable him to serve a sentence or part of a sentence in the United Kingdom.⁴⁶

His solicitor described a meeting with the American legal attaché at the US Embassy in London as follows:

Mr Gibson indicated that the US authorities regarded English sentencing as too lenient for the conduct alleged. Mr Gibson referred 'off the record' to a determination on the part of the New Jersey authorities to see Mr McKinnon 'fry' ... We were provided with a copy of the proposed Plea Agreement. The agreement, if

 $^{^{\}rm 43}$ "No-one is ready for this", 16 April 2009, *The Guardian*

[&]quot;Let's not creep into another misuse of legal powers", *The Herald Online*, http://www.theherald.co.uk/features/featuresopinon/display.var.2520817.0.Lets_not_creep_into_another_misuse_of_legal_powers.php

⁴⁵ "Go-ahead for hacker's extradition" – BBC News 6 July 2006

⁴⁶ [2007] EWHC 762

implemented, would have required Mr McKinnon to plead guilty to two counts on the indictments, to submit to a restitution order in respect of losses in the range of \$400,000 - \$1million and to waive his right to appeal against whatever sentence was imposed (the maximum being 15 years), although the prosecutors retained a right of appeal. In return the prosecutors would recommend to the court an 'offense level' of 21 points (translating, under the US points system for sentencing, to a sentence in the range of 37 – 46 months) and would not oppose Mr McKinnon being transferred to serve his sentence in the UK which, had it happened, would have resulted in his being subject to UK remission rules which are substantially more generous than the 15% allowance which may be made in the US."

The court said:

We make no secret of the fact that we view with a degree of distaste the way in which the American authorities are alleged to have approached the plea bargain negotiations. Viewed from the perspective of an English court the notion that a prosecutor may seek to induce a plea of guilty on the basis that substantial benefits will be withdrawn if one is not forthcoming is anathema. We refer in particular to the providing and withdrawal of support towards repatriation. However, we have to deal with this case as it now is. Mr McKinnon did not accept the plea bargain. If he has a defence, he was right to stand firm. If he does not, he may yet live to regret his decision. We are quite sure that he will receive a fair trial in the American courts and that, if there were to be an error in the trial process or in relation to sentencing, he would have appropriate protection through the appellate process.

But -

Whilst we are prepared to accept that evidence of conduct on the part of the prosecuting or judicial authorities in a requesting state may amount to the abuse of extradition proceedings, we do not consider that it does so in the present case. We do not consider that we should allow our cultural reservations about this style of plea bargaining to stand in the way of extradition.⁴⁷

According to a report in *the Observer*, a file containing details of the early meetings with the US prosecutors, at which the offers were apparently made, has gone missing from the office of McKinnon's solicitor, and a laptop holding details of the same meetings was stolen from the car of one of his barristers. McKinnon believes his phone has been bugged and claims to have been followed.⁴⁸

On 30 July 2008, the House of Lords dismissed his appeal. In a judgment with which the other Lords agreed, Lord Brown of Eaton-under-Heywood described the lower court's comments about US plea bargaining as "somewhat fastidious". McKinnon lodged an application with the European Court of Human Rights and (unsuccessfully) sought interim measures to prevent his extradition to the United States while the Court considered his application. His solicitor said that McKinnon was devastated by the decision, he had recently been diagnosed with Asperger's syndrome and would ask for the case to be tried in this country. She said:

The offences for which our client's extradition is sought were committed on British soil and we maintain that any prosecution ought to be carried out by the appropriate British authorities...[he] now faces the prospect of prosecution and imprisonment thousands of miles away from his family in a country in which he has never set foot.⁵¹

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⁴⁷ McKinnon v USA [2007] EWHC 762 (Admin) paras 54 - 60

⁴⁸ "The Briton facing 60 years in US prison after hacking into Pentagon: On the eve of a Lords' ruling over US demands for his extradition, the computer hacker Gary McKinnon fears that the Americans plan to haul him before a military tribunal as a 'terrorist'", 27 July 2008, *The Observer*

⁴⁹ McKinnon v US [2008] UKHL 59

⁵⁰http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=mckinnon&sessionid=1 3234386&skin=hudoc-pr-en

⁵¹ Hacker loses extradition appeal, 28 August 2008, BBC News

His solicitor wrote to the Home Secretary asking for an intervention, to obtain an assurance from the US government that McKinnon should, if extradited, be returned to the UK immediately on sentence, a practice which is apparently standard for both the Israeli and Dutch governments. Writing in *The Guardian*, Duncan Campbell commented:

This is more than just depressing news for McKinnon, a genial soul who is guilty of having an insatiable curiosity and a mischievous nature but certainly not of threatening the security of the US, as its prosecuting authorities have speciously suggested. It is also depressing news for people who believe that the courts of this country have a duty to protect their citizens' rights.

By a remarkable coincidence, McKinnon 's case is back in the news at the same time as that of Binyam Mohamed, the British citizen currently held in Guantanamo Bay, where he was taken in 2004 after, he claims, having been tortured in Morocco and Afghanistan into making confessions. Over the past 10 days, the high court in London has been hearing evidence about the secrecy that has surrounded the rendition of Mohamed, the suggestion that he was tortured by having his penis cut with a razorblade and the fact that the US authorities have been unwilling to surrender the details of his confinement to the lawyers who are attempting to defend him, when he is eventually granted a trial, more than six years after he was arrested...

When the law lords brushed aside McKinnon 's appeal to them recently, they declared that "the difference between the American system and our own is not perhaps so stark as the appellant's argument suggests". But they delivered their judgment before the high court heard about the disturbing behaviour of the US prosecutorial process in the case of Mohamed...

The home secretary, Jacqui Smith, has now been invited to initiate a prosecution here which would remove the necessity for McKinnon to be deported to the US. This must be the sanest solution.

In the Mohamed case this week, the US state department warned the UK of "serious and lasting damage to the US-UK intelligence-sharing relationship" if details of his interrogation and incarceration were disclosed to his lawyers. It is time to assert the rights of citizens to enjoy a fair trial, free from bogus security innuendo, and maybe for the Home Office to warn of the potential "serious and lasting damage" to the relationship by the US's pursuit of a harmless hacker...

What a wonderful opportunity Jacqui Smith now has to argue McKinnon 's case to stand trial here and to show that, in any relationship, it takes two to tango, whatever tune the military band may be playing. 52

The Crown Prosecution Service considered a request from McKinnon's lawyers in which they had said that their client would plead guilty to an offence under the *Misuse of Computers Act.* ⁵³ However, in February, the CPS announced its decision not to prosecute, saying:

We identified nine occasions where Mr McKinnon has admitted to activity which would amount to an offence under Section 2 of the Computer Misuse Act (unauthorised access with intent). Although there is sufficient evidence to prosecute Mr McKinnon for these offences, the evidence we have does not come near to reflecting the criminality that is alleged by the American authorities.⁵⁴

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⁵² "Our citizens, their law: It is time to assert the rights of British people to enjoy a fair trial, free from bogus security innuendo"

⁵³ See e.g. "British prosecution could save hacker from extradition to US",12 January 2009, the Guardian

⁵⁴ "CPS decision on Gary McKinnon case"

On 23 January 2009, the High Court granted permission to apply for judicial review of the Home Secretary's decision to extradite him. His lawyers had told the court that if he were removed from his family and sent to the US, his recently diagnosed condition was likely to give rise to psychosis or suicide: the condition had not been taken into consideration by then Home Secretary Jacqui Smith last October when she made the order. The hearing was listed for 9 June. The Home Secretary agreed to postpone Mr McKinnon's extradition until the DPP had given his response to the case. ⁵⁵

Writing in the *Daily Telegraph* on 27 January 2009, the Mayor of London, Boris Johnson said:

To listen to the ravings of the US military, you would think that Mr McKinnon is a threat to national security on a par with Osama bin Laden. According to the Americans, this mild-mannered computer programmer has done more damage to their war-fighting capabilities than all the orange-pyjama-clad suspects of Guantanamo combined.

And how? He is a hacker ...In their continuing rage at this electronic lèse-majesté, the Americans want us to send him over there to face trial, and the possibility of a 70-year jail sentence. It is a comment on American bullying and British spinelessness that this farce is continuing, because Gary McKinnon is not and never has been any kind of threat to American security ...Gary McKinnon wasn't even a proper hacker. He did something called "blank password scanning", and because these military computers were so dumb as to lack proper passwords, he was able to roam around their intestines in search of evidence of little green men. He was so innocent and un-furtive in his investigations that he left his own email address, and messages such as "Your security is crap"....

It is brutal, mad and wrong even to consider sending this man to America for trial... How can the British government be so protoplasmic, so pathetic, so heedless of the wellbeing of its own people, as to sign the warrant for his extradition? What kind of priorities do we have these days? We treat a harmless UFO-believer as an international terrorist, and are willing to send him to prison in America, and as for real terrorists - people who bombed and maimed innocent civilians in this country - we seem willing to give their families £12,000 each, on the grounds that they are all "victims" of the troubles in Northern Ireland.

The British Government is obviously too feeble to help Mr McKinnon , and even though the courts last week granted him another review, it is plain that the matter will simply drag preposterously and expensively on...It is time for Barack Obama to show the new leadership the world has been crying out for. It is time for the Commander-in-Chief to tell the US military to stop being so utterly wet, dry their eyes, and invest in some passwords that are slightly more difficult to crack. ⁵⁶

72 Members have signed Janet Dean's EDM:

That this House notes the likely extradition to the United States of Mr Gary McKinnon, a man recently diagnosed with Asperger's syndrome, on charges of computer misuse; further notes that the diagnosis of Asperger's syndrome was made subsequent to the judgments of the Magistrates' Court, Divisional Court and the House of Lords; regrets that this new evidence has not been taken into account; calls for Mr McKinnon's diagnosis to be considered in any legal proceedings relating to his extradition; and supports the National Autistic Society's campaign for Mr McKinnon's Asperger's syndrome to be considered.⁵⁷

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⁵⁵ "<u>Hacker wins court review decision</u>", 23 January 2009, BBC News

[&]quot;Gary believes in little green men - but it doesn't make him a terrorist Americans who want a harmless hacker extradited from Britain must be from a different planet, says Boris Johnson", 27 January 2009, *Daily Telegraph*http://edmi.parliament.uk/EDMbyMember.aspx?MID=2914&SESSION=899

Lord Carlile, the independent reviewer of anti-terror laws, has written to the Home Secretary in his personal capacity, suggesting that McKinnon's condition makes a very strong case for any prosecution to take place in the UK, and that the argument that transfer to the US could infringe European human rights laws was "plain and strong".58

A debate on the US-UK Extradition Treaty was held on 15 July 2009 and the question posed "that this House expresses its very great concern that the Extradition Act 2003 is being undermined by a series of high profile cases that are jeopardising confidence in the extradition system; and calls on the Government to hold immediately a review of the Act with a view to reforming it at the earliest opportunity to deal with the issues of public concern."

Garry McKinnon's case was referenced by a number of Members. In particular, Keith Vaz, the Chairman of the Home Affairs Select Committee, argued that:

I greatly admire the Home Secretary, who appeared before the Select Committee yesterday. When I put it to him that he had the power to intervene and halt Mr. McKinnon's extradition, he said that he had no power to do that. I think that he has that power and that, if he sought a different set of legal advisers, they would tell him that. Surely the Home Secretary can exercise discretion in the public interest. Mr. McKinnon, who has already admitted to committing an offence, should be tried in this country. I urge, even at this late stage, the Home Secretary or the Attorney-General to write to the Director of Public Prosecutions and ask that that happens. That is the sensible, pragmatic way in which to deal with the situation, and I hope that the Government will take that course of action. 59

In contrast, the Home Secretary, Alan Johnson, stated that:

Once the court is satisfied that there are no grounds that bar extradition, the case comes to the Home Office and the Home Secretary. The Home Secretary is then legally obliged to order that person's extradition, except in three specific circumstances set out in law: where it is possible that the person who is to be extradited could be sentenced to death if convicted; where there are inadequate arrangements in place in that country to prevent someone's being also charged with an offence that was committed prior to extradition and not included in the request that led to their extradition; and where the person who is to be extradited was previously extradited to the UK from another country and that country has not consented to any further extradition. If none of these circumstances apply, the Home Secretary must order extradition.⁶⁰

Following the debate, the House divided on the question as follows: Ayes 236, Noes 290. Accordingly, the motion was defeated.

On 31 July 2009, the High Court refused McKinnon's application for judicial review. In a 41page ruling, the judges said extradition was "a lawful and proportionate response to his offending". 61 The judges upheld the refusal by Keir Starmer, the Director of Public Prosecutions, to sanction a trial in Britain and also ruled that the former Home Secretary Jacqui Smith had taken into account McKinnon's Asperger's syndrome condition when

(http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090715/debtext/90715-0013.htm#09071559000573)

⁵⁸ "Terror watchdog Lord Carlile joins clamour for accused hacker to be tried in UK instead of US", 23 February 2009, The Guardian

⁵⁹ HC Deb 15 July 2009, c353-4

⁶⁰ HC Deb 15 July 2009, c334

BBC Online, Hacker Loses Extradition Appeal, 31 July 2009 http://news.bbc.co.uk/1/hi/uk/8177561.stm

considering the US extradition request. Following the judgment, McKinnon's solicitor was quoted as saying "Alan Johnson still has the power to act. We have 28 days to review the judgment and we will continue to explore every legal avenue until we achieve a just and proper result." 62

2.6 Haroon Rashid Aswat

The US authorities have accused Mr Aswat, who is a British citizen, of conspiracy to provide material support for terrorism in the US between 1999 and 2000, claiming that he and another man helped to set up a camp in Bly, Oregon, to train people to "fight jihad" in Afghanistan. Another man, 38-year-old James Ujaama, pleaded guilty to involvement in a plot in April 2003 and was sentenced to two years in jail in the US after agreeing to help the authorities. Mr Aswat, who denies any involvement with terrorism, was deported to the UK from Zambia in August 2005 after he was arrested and held in prison in Lusaka. On 5 January 2006 a district judge at Bow Street Magistrates' Court ruled that Mr Aswat could be extradited to the US. An appeal by Mr Aswat and Baber Ahmad was dismissed in November 2006. Leave to appeal to the House of Lords was refused, but an application to the European Court on Human Rights is pending.

The Home Office minister, Andy Burnham, made the following comments about Mr Aswat's case in a written answer to a question from Mr Meacher on 18 January 2006:

Mr. Meacher: To ask the Secretary of State for the Home Department when he expects to reach a decision on whether to extradite Haroon Rashid Aswat to the US; what the considerations are on which his decision will be based; and whether Mr. Aswat has been questioned regarding any information he might have about the London bombings of 7 and 21 July 2005.

Andy Burnham: Under the terms of the Extradition Act 2003 ("The 2003 Act"), this case was sent by a District Judge to the Secretary of State, on 5 January 2006, for the latter's decision as to whether Mr. Aswat is to be extradited. Under section 93 of the 2003 Act, Mr. Aswat has six weeks, starting with 5 January 2006, within which to make representations against his extradition. The Secretary of State will make his decision as soon as possible after that time has passed. The exact date is likely to depend upon the time needed for due consideration of any representations that may be received.

While the case remains before the Secretary of State for decision, I cannot comment upon it. In all cases heard under part two of the 2003 Act the law requires the Secretary of State to decide whether he is prohibited from ordering a person's extradition under any of the following sections of the 2003 Act: (a) section 94 (death penalty); (b) section 95 (speciality); or (c) s.96 (earlier extradition to the UK from another territory). The full text of the 2003 Act may be obtained from HMSO (Her Majesty's Stationary Office) or found at:

http://www.opsi.gov.uk/acts/acts2003/20030041.htm

As to whether Mr. Aswat has been questioned, regarding any information he might have about the London bombings of 7 July 2005 and the failed bombings of 21 July 2005, it is not appropriate to comment on ongoing investigations. ⁶⁶

2.7 Alex Stone

Alex Stone was extradited to the US under the arrangements introduced by the *Extradition Act 2003*. He has since returned to Britain after the original charges against him were dropped. The Sunday Times described his experience case as follows:

⁶² "Hacker Gary McKinnon loses appeal against extradition to US", 31 July 2009, *The Guardian*

⁶³ "Briton facing extradition to US" – BBC News 5 January 2006

⁶⁴ ibid.

⁶⁵ Babar Ahmad and Haroon Rashid Aswat v US Government [2006] EWHC 2927 (Admin)

⁶⁶ HC Debates 18 January 2006 c1424WA

When Alex Stone logged onto a chatroom for the blind three years ago, he little realised he was unleashing a chain of events that would see him extradited to America in handcuffs and shackles on a maximum security private jet.

Stone, 34, has just returned from the US, having spent more than six months in jail on remand before an assault charge against him was dropped. Worryingly, he was extradited under laws set up to deal with terrorists that mean America can in effect remove a UK citizen from British soil "on demand" without having to prove there is a valid case.

... The problems began when Stone, who has been blind from birth, met 20-year-old Alma — from the incongruously named Liberty, Missouri — on www.blindkiss.com in 2003, which proclaims it "explodes the notion that being blind is some kind of living death".

... Stone decided to move to America to be with Alma. Two weeks after he arrived, however, her 14-month-old child was taken to hospital and found to have suffered broken bones. "It transpired that the family and the local police decided that it must have been me who had done it." He was advised by his American lawyer to return to Britain, because he had not been arrested or charged with a crime. Naively, perhaps, Stone, who has no previous convictions, hoped this would be the end of his matter. Estranged from Alma, who would not speak to him, and nursing a broken heart, he tried to fit back into his old life as a computer programmer, contacting a British lawyer as a precaution.

"I knew that I had not harmed the child, and I imagined that in order to be extradited somewhere, there had to be some burden of proof," he says. But in November 2004 he was horrified to discover that British police were looking for him. He turned himself in and was extradited under the new laws after three hearings at Bow Street magistrates' court. "There appeared to be no defence to extradition and no evidence at all was presented," he says. "I had thought that would be a requirement. When I realised what was happening, I was really, really scared."

In April 2005 Stone found himself transferred by the Gatwick extradition squad onto a jet with three other British subjects, also being removed and guarded by American marshals, some of the 12 suspects who have been extradited to the US since the law change. Another 31 American requests are being processed.

Having been transferred across America and kept in various "holding cells", Stone ended up in jail in Missouri. There he was kept alone in a cell for 23 hours a day, unable to communicate with the outside world except in a monthly telephone call home and frighteningly isolated because of his disability.

...Eventually the family secured bail for Stone and he lived in a motel from the end of 2005. He describes the "huge relief" of walking into the fresh air for the first time in more than six months. "Just feeling the air on my face, being able to walk more than eight paces ahead after all that time in a 6 x 8ft cell, it was heaven."

The other monumental relief for the family was the emergence of evidence indicating that Stone could not have injured his girlfriend's child. Expert witnesses on both sides had already asserted that the injuries predated his arrival in America. At the end of last year another child in the family, with whom Stone had had no contact, was found to have suffered similar injuries. The child's grandmother decided she would testify on Stone's behalf.

Stone was subsequently asked by prosecutors to take a polygraph test, which he passed. He was presented with the option of pleading guilty to the minor offence of leaving the country during a police investigation, in exchange for the assault charge — which carried a penalty of 10-30 years' imprisonment — being dropped.

Stone's lawyer, Michael Caplan QC, at Kingsley Napley, said the manner in which he was treated was most irregular. "No longer do the American authorities have to

provide prima facie evidence for extradition, but what is also of concern is what happened to Alex Stone when he was returned to the US," he says.

"By proceeding with this other offence, for which he was not extradited, the Americans may well have been in breach of the 'specialty arrangement' under the extradition treaty, which is there to protect people when they are extradited." ⁶⁷

2.8 Brian and Kerry-Ann Howes

Brian and Kerry-Ann Howes, who live in Scotland, were arrested in January 2007 at the behest of the US Drugs Enforcement Agency, spent nine months in custody and are now on bail. Scots Justice Secretary Kenny MacAskill signed an extradition order in May 2008 following a reference from Edinburgh Sheriff Court.

The couple are accused of knowingly supplying chemicals through their internet supplies company for use in the manufacture of the synthetic drug crystal meth. According to newspaper reports:

- The chemicals concerned are red phosphorus and iodine crystals, understood to be legal in the UK but strictly controlled in the US;
- The couple would be extradited to Maricopa County Jail, which has been described as a cockroach infested prison of rows of tents in the desert, where prisoners work in chain gangs, eight hours a day for six days a week, in heat up to 130 degrees;
- They face up to 98 years in prison if found guilty;
- Mrs Howes is pregnant, and fears the baby will be born behind bars in Arizona and lost to the American social care system;
- She has been diagnosed with chronic post-traumatic stress disorder following the police raid on their premises;
- They have been told that, if their appeal against extradition fails, their two youngest daughters will be put up for adoption;
- They were released on bail after Mr Howes spent 30 days on hunger strike as a result of which his speech has been affected and he may have suffered brain damage.

2.9 Jeffrey Tesler and Wojciech Chodan

According to the US Justice Department, Jeffrey Tesler (a solicitor) and Wojciech Chodan were indicted in February 2009, accused of conspiracy to violate the Foreign Corrupt Practices Act and 10 counts of violating the act. 68

The case against Tesler is outlined in a 29-page indictment issued by the US department of justice, published in full online by the Guardian. He is accused of spending a decade, between 1994 and 2004, conspiring to break America's foreign corrupt practices act, in a case which has already led to one of the largest corruption fines ever levied against a US corporation and which overshadowed the Bush-era vice-presidency of Dick Cheney. ⁶⁹

 $^{^{\}rm 67}$ "Snatched by the American Courts",19 March 2006, Times online

[&]quot;Pair accused of Nigeria bribes", 6 March 2009, *Telegraph*; "Solicitor arrested over alleged Nigeria bribery", 6 March 2009, *Independent*; "The Tottenham lawyer, the £100m Nigerian bribe – and Dick Cheney", 7 March 2009, *Independent*

⁶⁹ "US seeks to extradite Briton in Nigerian bribery case: Solicitor accused of being \$180m 'bagman' Move is part of worldwide inquiry into \$6bn gas plant", 8 May 2009, *Guardian*

Tesler is due to appear at Horseferry Road magistrates court in London on 8 May 2009. According to a Guardian report, at Chodan's home in the Somerset village of Nunney, neighbours said he had been away for a fortnight, and legal sources say that UK prosecutors are willing to hand over Tesler and Chodan.

3 Requests initiated before 2004

3.1 Giles Carlyle-Clarke

It had been suggested that there was an agreement between the UK and US authorities to speed up outstanding applications under extradition arrangements that pre-dated the implementation of the Extradition Act 2003.

The case of Giles Carlyle-Clarke was one which was still outstanding when the new arrangements took effect. He was provisionally arrested in January 1998 and (when the court found that a prima facie case had been made against him) was committed to await the Home Secretary's decision, in January 1999. An order for extradition was signed on behalf of the Home Secretary in July 2002. A judicial review application was rejected in November 2004.

Mr Carlyle-Clarke's MP, Robert Walter, spoke about Mr Carlyle-Clarke's case in an adjournment debate on 24 March 2005.70 The allegations against Mr Carlyle-Clarke related to drug offences between 1983 and 1988. He denied the charges and said that extradition would be unjust and oppressive. His lawyers made a submission to the Home Office claiming that new evidence showed that the US authorities had misled the Home Office. The US authorities had claimed that they did not know where he was until the end of the 1990s. The new evidence showed that they had known his identity in 1988 and his address in 1989. They had had a photograph of him since 1988, not 1995 as they had asserted.⁷¹

On July 11 2006 it was reported that, following the dismissal by the High Court of his application for judicial review and a writ of habeas corpus, and the rejection of his case by the European Court of Human Rights, Mr Carlyle-Clarke would be extradited to the USA on 12 July 2006.⁷² He pleaded guilty to conspiracy to possess cannabis with intent to distribute and, in February 2007, a court in Mobile, Alabama sentenced him to three years' imprisonment.

3.2 Khalid al-Fawwaz, Adel Abdel Bary and Ibrahim Eidarous

Khalid al- Fawwaz was arrested in the United Kingdom on 27 September 1998 and a request made by the United States government for his extradition. He and Ibrahim Eidarous, and third appellant, Abdel Bary, Egyptian nationals who had been granted asylum in the United Kingdom were likewise before the United States District Court for the Southern District of New York with what in the United Kingdom would have been a conspiracy to murder. Orders were made for their extradition, and their appeals (on jurisdictional grounds) were ultimately dismissed by the House of Lords. 73 Eidarus died of leukaemia in 2008.

In 2005 the Times reported that it had -

asked why, despite a House of Lords ruling sanctioning extradition in December 2001, Mr Fawwaz remained in Britain.

⁷⁰ HC Debates 24 March 2005 c1095-1102

⁷¹ *ibid*. c1095

⁷² "Aristo faces 25 years on a chain gang" – Western Daily Press 11 July 2006

⁷³ Al-Fawwaz, Re [2001] UKHL 69 (17th December, 2001)

The Home Office refused to divulge details of the legal discussions over Mr Fawwaz 's surrender, claiming that they could prejudice a trial in the US and damage Anglo-American relations. But officials said that Mr Fawwaz was given the opportunity to submit to the Home Secretary arguments against his surrender to the US.

His lawyers provided "voluminous representations" covering a range of issues that "ran to 87 pages and were followed up by 681 pages of supporting documentation".

Home Office lawyers raised several questions with the US Government, which took until last year to reply with a 33-page document.

Mr Fawwaz's lawyers delivered a new batch of paperwork a year ago requiring a further response from the US, which did not arrive until this year.

Irving Jones, of the Home Office extradition unit, wrote: "We should perhaps stress here that the purpose was not to engage in endless dialogue but rather to satisfy the interests of fairness that the courts expect to be met in the decisionmaking process."

In his response to The Times, the official could barely disguise his frustration that the process had become so protracted. Mr Jones wrote: "We asked that any final representations be received by not later than May 14 in order that this important case might be considered in the round and brought to a conclusion. On three occasions since then, however, Mr Fawwaz 's solicitors have asked for more time to complete their representations...The overall process has taken longer than was ever expected."

In May 2009, the *Daily Telegraph* reported that Fawwaz, who allegedly acted as Osama bin Laden's public relations representative in London, and Bary, had launched a new appeal in the High Court, likely to prolong the case for several more years: the attempt to have them extradited had provoked derision across the Atlantic.⁷⁴

3.3 Stanley and Beatrice Tollman

Mr and Mrs Tollman are South African citizens who hold US passports and are resident in the UK. In March 2003 the US Government requested their extradition, under the old arrangements, on charges of fraud and tax evasion. Those requests were withdrawn and new requests were made under the provisions of the *Extradition Act 2003*. The Administrative Court held that:

- although Baroness Scotland had told the House of Lords, during the passage of the 2003 Act, that no existing cases would be transferred to the new arrangements, and that all cases already in the system when the new Act came into force would continue to be dealt with under the 1989 procedures; and
- it was clear that the United States Government had decided to withdraw the first requests, not because it had decided not to proceed with their attempts to extradite Mr and Mrs Tollman under the 1989 Act, but because they had concluded that this could be more satisfactorily achieved under the 2003 Act;

those facts did not amount to an abuse of process. The court said that if Mr and Mrs Tollman were to demonstrate an arguable case of abuse of process they needed to demonstrate that

[&]quot;Taxpayers' £575,000 legal bill for terrorist suspects legal fight 10-year legal battle", 7 May 2009, Daily Telegraph

there were grounds for suspecting that the present proceedings were being pursued for some improper motive, or were otherwise abusive.

When the cases returned to the District Judge, Timothy Workman, he found that it would be unjust and oppressive to extradite them because of the time which had passed since the alleged offences, and because of Mrs Tollman's state of health.

In his decision, the judge noted Mr Tollman 's brother - whose evidence "may well have assisted the defence greatly" - had died several years ago, as had Derek Evans, an accountant who worked for Mr Tollman and his Travel Group. The judge also heard evidence about the likely destruction of some bank records, while Simmons & Simmons, acting for Mr Tollman, said several other possible defence witnesses had proved untraceable.

The judge also took into account the "reprehensible" behaviour of the US prosecuting attorney - finding he had lied at one point in an affidavit and talked of making Mr Tollman 's life "as miserable as possible" .75

During an appeal to the Administrative Court, the court heard that the United States Government had attempted to extradite the Tollmans' nephew from Canada. The Canadian court found that there had been an abuse of process. There had been a trail of e-mails and notes between US and Canadian authorities, making it clear that they had Alun Jones QC, representing the US government, said: "The United States does have a view about procuring people to its own shores which is not shared. If you kidnap a person outside the United States and you bring him there, the court has no jurisdiction to refuse. It goes back to bounty hunting days in the 1860s." The court upheld the judge's finding relating to Mrs Tollman, but found that extradition of Mr Tollman would not be oppressive on the ground of the time elapsed since the alleged offence. His case was sent back for the judge to determine whether the oppression to Mr Tollman through the endangerment of his wife's health would of itself be sufficient to maintain his decision to discharge. The US was apparently to appeal against the part of the judgment which went against them."

When the case returned again to District Judge Workman, he again discharged Mr Tollman, saying that only Mr Tollman could provide the care which his wife needed:

The High Court have concluded there will be no injustice in returning Mr Tollman to the United States of America and the sole issue, which has been returned to me, is where there will be oppression to Mr Tollman if Mrs Tollman's health was endangered were he to be extradited to the USA.

I have concluded that arrangements proposed by the prosecuting attorney for New York are not open to Mrs Tollman by virtue of the gravity of her illness and because of the legal advice she has been offered to the risk of future prosecution.⁷⁸

However, the *New York Times* later reported that the US and Mr Tollman have done a deal under which

- Mr Tollman pleaded guilty (by video link from London) to tax fraud, for which he was sentenced to one day's probation
- He agreed to pay a large sum by way of restitution
- All other charges against him and Mrs Tollman were dropped.

⁷⁵ "Businessman wins battle against US extradition". 29 June 2007. Financial Times

⁷⁶ "US believes it can kidnap wanted Britons", 3 December 2007, *Daily Telegraph*

⁷⁷ "Partial victory for US in Tollman extradition", 7 February 2008, *The Times*

⁷⁸ "Red Carnation executive escapes extradition to care for sick wife", 9 April 2008, Caterersearch

⁷⁹ "Hotel executive to pay \$105 million in fraud case", 21 November 2008, Dealbook, *New York Times*