THE HIGH COURT

[2011 No. 344 EXT]

IN THE MATTER OF THE EXTRADITION ACTS 1965 to 2012

BETWEEN

THE ATTORNEY GENERAL

APPLICANT

-AND-

PATRICK LEE

RESPONDENT

JUDGMENT of Mr. Justice Edwards delivered on the 23rd day of March, 2015.

1. Introduction

1.1 In these proceedings the United States of America (hereinafter the United States of America or the United States or the U.S.A. or the U.S.) seeks the extradition of the respondent with a view to placing him on trial to answer an indictment charging 51 counts in total comprising 29 counts of Wire Fraud in violation of Title 18, United States Code §§ 1343 and 2; 6 counts of Unlawful Monetary Transaction in violation of Title 18, United States Code §§ 1957 and 2; and 16 counts of Aggravated Identity Theft in violation of Title 18, United States Code § 1028A.

2. Extradition between Ireland and the U.S.A.: Principal Legal Provisions

2.1 By virtue of the following measures the U.S.A. is a country to which Part II of the Extradition Act 1965, as amended (hereinafter the Act of 1965), applies.

2.2 On the 13th July, 1983, Ireland signed the Treaty on Extradition between the State and the U.S.A. at Washington D.C. (hereinafter the "Washington Treaty"). The Washington Treaty was later amended by the Agreement on Extradition between the United States of America and the European Union, entered into on the 25th of June 2003 (hereinafter "the EU – US Treaty").

2.3 S. 8 of the Act of 1965, as it applied at the material time, stated:

> "***8***.—(1) Where by any international agreement or convention to which the State is a party an arrangement (in this Act referred to as an extradition agreement) is made with another country for the surrender by each country to the other of persons wanted for prosecution or punishment or where the Government are satisfied that reciprocal facilities to that effect will be afforded by another country, the Government may by order apply this Part in relation to that country."

2.4 The Government by means of the Extradition Act 1965 (Application of Part II) Order, 2000 (S.I. 474 of 2000) made an order pursuant to s. 8(1) of the Act of 1965 applying Part II of that Act to the United States of America. Notice of the making of the said order was published in *An Iris Oifigiúil* on the 6th of February, 2001. Part 9 of S.I. 474 of 2000 was subsequently amended, in order to give effect to provisions of the EU – US Treaty, by the Extradition Act 1965 (Application of Part II) (Amendment) Order 2010 (S.I. 45 of 2010). Notice of the making of this said order was published in *An Iris Oifigiúil* on the 19th February, 2010.

2.5 Once Part II of the Act of 1965 applies there is a duty on the State to extradite by virtue of s. 9 of that Act, which is in the following terms:

> "***9***.—Where a country in relation to which this Part applies duly requests the surrender of a person who is being proceeded against in that country for an offence or who is wanted by that country for the carrying out of a sentence, that person shall, subject to and in accordance with the provisions of this Part, be surrendered to that country."

2.6 Section 10 of the Act of 1965, as amended by the Extradition (European Union Offences) Act 2001 (hereinafter the Act of 2001), deals with extraditable offences and in that regard sets out the requirements that must be met as to correspondence and minimum gravity. Subsection (1A) rather than subs. (1) applies in the case of "convention countries" i.e., countries designated as such by the Minister for Foreign Affairs under s. 4 and s. 10, respectively, of the Act of 2001. An s. 4 designation applies the Convention on simplified extradition between the member states of the European Union drawn up on the basis of Article K.3 of the Treaty of European Union, by Council Act done at Brussels on 10 March, 1995; and an s.10 designation applies the Convention relating to extradition between the member states of the European Union drawn up on the basis of the said Article K.3, by Council Act done at Brussels on 27th September, 1996. The United States of America was designated a convention country for the purposes of both conventions by the Extradition (European Union Conventions) Act 2001 (Section 4) Order 2001 (S.I. No 43 of 2010) and by the Extradition (European Union Conventions) Act 2001 (Section 10) Order 2001 (S.I. No 44 of 2010), respectively.

2.7 Accordingly, in so far as s. 10 of the Act of 1965 is relevant to the present case the Court is mainly concerned with subss. (1A), (3) and (4) which provide:

> "***10***.—(1) [Not relevant]
>
> (1A) Subject to subsection (2A), extradition to a requesting country that is a Convention country shall be granted only in respect of an offence that is punishable—
>
> (a) under the laws of that country, by imprisonment or detention for a maximum period of not less than one year or by a more severe penalty, and

(b) under the laws of the State, by imprisonment or detention for a maximum period of not less than 6 months or by a more severe penalty,

and for which, if there has been a conviction and sentence in the requesting country, imprisonment for a period of not less than 4 months or a more severe penalty has been imposed.

(2) [Not relevant]

(2A) [Not relevant]

(3) In this section 'an offence punishable under the laws of the State' means—

(a) an act that, if committed in the State on the day on which the request for extradition is made, would constitute an offence, or

(b) in the case of an offence under the law of a requesting country consisting of the commission of one or more acts including any act committed in the State (in this paragraph referred to as 'the act concerned'), such one or more acts, being acts that, if committed in the State on the day on which the act concerned was committed or alleged to have been committed would constitute an offence,

and cognate words shall be construed accordingly.

(4) In this section 'an offence punishable under the laws of the requesting country' means an offence punishable under the laws of the requesting country on—

(a) the day on which the offence was committed or is alleged to have been committed, and

(b) the day on which the request for extradition is made,

and cognate words shall be construed accordingly."

2.8 A request for a person's extradition is made to the Minister (for Justice and Equality – as he is currently entitled) in the first instance, and any such request must comply with the formalities prescribed in s. 23 of the Act of 1965 and be accompanied by the supporting documentation specified in s. 25(1) of that Act.

2.9 Section 23 of the Act of 1965 provides:

"***23***.—A request for the extradition of any person shall be made in writing and shall be communicated by—

(a) a diplomatic agent of the requesting country, accredited to the State, or

(b) any other means provided in the relevant extradition provisions."

2.10 Section 25(1) of the Act of 1965 provides:

"***25***.— (1) A request for extradition shall be supported by the following documents—

(a) the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or, as the case may be, of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting country;

(b) a statement of each offence for which extradition is requested specifying, as accurately as possible, the time and place of commission, its legal description and a reference to the relevant provisions of the law of the requesting country;

(c) a copy of the relevant enactments of the requesting country or, where this is not possible, a statement of the relevant law;

(d) as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality, and

(e) any other document required under the relevant extradition provisions."

2.11 Under s. 26(1)(a) of the Act of 1965 the Minister is required, upon receipt of a properly communicated request supported by the required documents, to certify having received the request. Section 26(1)(b) of the same Act (as amended by s. 7 of the Extradition (Amendment) Act 1994, and as further amended by s. 20 of the Extradition (European Union Conventions) Act 2001) then provides:

"***26***.—(1)(*b*) On production to a judge of the High Court of a certificate of the Minister under paragraph (*a*) stating that a request referred to in that paragraph has been made, the judge shall issue a warrant for the arrest of the person concerned unless a warrant for his arrest has been issued under section 27."

2.12 Where an arrest warrant has been duly issued pursuant to a request for extradition, the Act of 1965 provides, in s. 26(2) thereof, that it may be executed by any member of An Garda Síochána in any part of the State. Moreover, s. 26(5) requires that a person arrested under a warrant issued under s. 26(1)(b) shall be brought as soon as may be before a judge of the High Court.

2.13 This Court's function and duty in relation to a request for surrender received from a country to which Part II of the Act of 1965 applies is set out at s. 29(1) of that Act, as amended by s. 20 of the Extradition (European Union Conventions) Act 2001, which (to the extent relevant) is in the following terms:

"***29***—(1) Where a person is before the High Court under section 26 … and the Court is satisfied that—

(a) the extradition of that person has been duly requested, and

(b) this Part applies in relation to the requesting country, and

(c) extradition of the person claimed is not prohibited by this Part or by the relevant extradition provisions, and

(d) the documents required to support a request for extradition under section 25 have been produced,

the Court shall make an order committing that person to a prison (or, if he is not more than twenty-one years of age, to a remand institution) there to await the order of the Minister for his extradition."

3. The Request for Extradition in this Case

3.1 The evidence before the Court establishes that on the 15th August, 2011, a request was made in writing by the United States of America for the extradition of the respondent for the purpose of placing him on trial to answer an indictment charging 51 counts in total, comprising 29 counts of Wire Fraud in violation of Title 18, United States Code §§ 1343 and 2; 6 counts of Unlawful Monetary Transaction in violation of Title 18, United States Code §§ 1957 and 2; and 16 counts of Aggravated Identity Theft in violation of Title 18, United States Code § 1028A. The request was communicated to the Minister by the Embassy of the United States of America in Dublin. The Court is satisfied in the circumstances that it was duly communicated by a diplomatic agent of the requesting country, accredited to the State.

3.2 The Court has had produced to it a certificate of the Minister for Justice and Equality, dated the 21st April, 2012, in which he certifies that a request has been duly made by and on behalf of the United States of America, and received by him, for the extradition of the respondent. The Court is satisfied that the said certificate was made under, and is sufficient for the purposes of, under s. 26(1)(a) of the Act of 1965.

3.3 The evidence before the Court further establishes that the applicant then applied to the High Court pursuant to s. 26(1)(b) of the Act of 1965, as amended, seeking a warrant for the arrest of the respondent; that the said application was successful and that such a warrant was issued by me, Edwards J., on the 27th April, 2012.

3.4 The evidence further establishes that in execution of that warrant the respondent was subsequently arrested by Sgt. James Kirwan, a member of An Garda Síochána, at Naas Road, Dublin 22 on the 9th of May 2012. He was then brought before the High Court and was duly remanded from time to time, initially in custody, and later on bail, pending a s. 29 hearing in these proceedings, and he has duly appeared before the High Court and has answered his bail on all occasions on which he was required to do so.

3.5 Counsel for the respondent has informed the Court that no issue is taken as to the identity of the respondent.

3.6 The matter was before the Court for the purposes of an s. 29 hearing on the 19th February, 2014, the 21st February, 2014, the 12th March, 2014, the 13th March, 2014, and the 12th May, 2014, following which the Court reserved its judgment, which it now delivers.

4. Broad Outline of the Case against the Respondent

4.1 A *prècis* of the case against the respondent is set out in an affidavit sworn in support of the request for extradition with which the Court is presently concerned by Ms. Sandra S. Bower, Assistant United States Attorney for the District of Massachusetts on the 26th April, 2011. The said affidavit and its accompanying exhibits are receivable in evidence without further proof pursuant to s. 37(1) of the Act of 1965, the Court being satisfied that they have been signed by an officer of the requesting country and are certified under the signature of Lystra G. Blake, Associate Director of the Office of International Affair, Criminal Division, U.S. Department of Justice, Washington D.C. There is another affidavit, with accompanying exhibits, of the said Sandra Bower, described as her "second supplemental affidavit" and sworn on the 11th March, 2014. This affidavit and its exhibits are also authenticated, certified and sealed in a similar fashion.

4.2 Ms. Bower states the following at paragraphs 3 to 12 inclusive of her affidavit of the 26th April, 2011:

"3. In the course of my duties, I have become familiar with the charges and evidence in the case of United States v. Patrick Lee, Criminal No.1O-CR-10386-JLT (D. Mass.) These charges follow an investigation by the United States Secret Service and the United States Internal Revenue Service which revealed that, from in or about July 2005 continuing through in or about May 2007, the defendant, Patrick Lee ("Lee"), a dual citizen of Ireland and the United States, participated in a mortgage fraud scheme.

4. In summary, Lee and others bought multi-family properties in Massachusetts and converted them into condominiums; "straw buyers" (*i.e.*, individuals who take title to real estate and in whose name mortgage loans are secured for those purchases, but who have no intention to live in the properties or to repay the mortgage loans) were recruited to purchase the condominium units; and lenders issued mortgage loans based on false information about the straw buyers and the properties, including forged real estate appraisals prepared by Lee. After the transactions closed, Lee and his associates shared in the proceeds of the loans, the mortgages went unpaid and the properties were foreclosed. Lee received about $1 million in gross receipts for his participation in the scheme.

SUMMARY OF THE FACTS OF THE CASE

5. Investigators learned during the investigation that Lee and others bought multiple-family buildings in South Boston and Dorchester, Massachusetts, and converted them into condominiums. Other participants in the scheme recruited individuals to act as straw buyers to buy the condominium units as so-called "investment properties." The recruiters offered to pay the straw buyers in exchange for their personal information (*e.g.*, name, date of birth, Social Security Number, employment information) and agreement to sign the necessary documents. The promised payment was typically $5,000 - $10,000 at the closing and an additional $5,000- $ 10,000 when the property was resold. The recruiters also promised the straw buyers that they would not have to pay anything, including any down payment, mortgage payments, taxes, or maintenance expenses; that others would find tenants to rent the units; and that the tenants' rent payments would be collected and used to pay the mortgages until the units were resold. The straw buyers typically were assured that the "investment properties" would be resold in 6 to 12 months.

6. After the straw buyers agreed to participate, Lee and others engaged certain mortgage brokers, some of whom were

knowing participants in the scheme, to prepare mortgage loan applications that contained false information, including that the borrower intended to occupy the property as his/her primary residence when in fact the straw buyer, who often had never seen the property, had no intention of living there. Other false representations in connection with the loans concerned, for instance, the borrower's residence, employment, income, and/or assets.

7. Lee prepared the appraisals for the properties. Although Lee had incorporated a business, Northeast Value Consultants, Inc., purportedly to both appraise and acquire real estate, he was not a fully licensed appraiser under Massachusetts law. Because Lee was only a trainee appraiser, he was not authorized to sign any appraisals without the accompanying signature of a licensed supervisory appraiser. Lee, however, prepared the appraisals alone, without the assistance of a supervisory appraiser. Then, instead of signing his own name (either with or without an accompanying signature from a supervisory appraiser), on each appraisal Lee forged the signature of a fully licensed appraiser named Brian O'Donnell ("O'Donnell") and prepared the appraisals as if they had come from O'Donnell's business, Old Mill Appraisals. He did so without O'Donnell's knowledge or permission.

8. Each appraisal prepared by Lee on which he forged O'Donnell's signature contained false and misleading information. For example, each appraisal contained representations that the appraiser's analysis, opinions, and conclusions were unbiased, and that the appraiser had no present or prospective interest in the property and no present or prospective personal interest or bias with respect to any of the participants in the transaction. This statement was false in each appraisal because each one concerned a property for which the buyer or seller was either Lee himself or one of his family members.

9. The mortgage lenders who reviewed the forged appraisals and other loan application documents containing false and misleading information relied on that information in agreeing to issue mortgage loans.

10. Lee and others then arranged with certain attorneys, some of whom were knowing participants in the scheme, to conduct the closings. John Nelson ("Nelson"), Lee's co-defendant, served as the closing attorney on transactions knowing that the buyer was falsely representing that he/she intended to occupy multiple properties as his/her primary residence. Lee and others also arranged for the preparation of other closing documents that contained false information, such as occupancy affidavits in which a straw buyer would represent that he/she intended to occupy the property as his/her primary residence, and closing documents that omitted certain payments to be made from the mortgage loan proceeds and/or falsely indicated that the buyer would make a payment at the closing.

11. After the duped lenders sent the mortgage proceeds to the closing attorneys by wire transfer, in some cases the attorneys paid a portion of the loan proceeds to Lee or to others at Lee's direction.

12. All of the properties in the indictment fell into foreclosure after the mortgages went unpaid, and the lenders lost substantial sums of money."

4.3 On the 12th November, 2010, a federal grand jury sitting in Boston, Massachusetts returned an indictment against the respondent and one John Nelson charging 55 criminal offences against the laws of the United States, and filed this indictment in the United States District Court for the District of Massachusetts. A copy of this indictment is exhibited marked "A" in the affidavit of Ms. Bower sworn on the 26th April, 2011. The respondent was charged with 51 of the 55 counts on the indictment.

4.4 The indictment runs to 88 paragraphs and it is unnecessary for the purposes of this judgment to recite it in full. Rather, its contents may be summarised and illustrated by reference to a specimen count taken from each of the four categories of offences charged.

4.5 The indictment commences with a 75 paragraph summary of the core allegations of fact, titled GENERAL ALLEGATIONS. It then continues with the specific allegations constituting counts 1 to 10 inclusive. These counts are preferred against the respondent alone, and are pleaded in the following way:

"COUNTS 1 THROUGH 10

(Wire Fraud - 18 U.S.C. § 1343)

76. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 75 of this Indictment and further charges that:

77. On or about the following dates, in the District of Massachusetts and elsewhere,

(1) PATRICK LEE

defendant herein, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property from the following mortgage lenders by means of material false and fraudulent pretenses, representations, and promises, did cause writings, signs, signals, pictures and sounds to be transmitted by means of wire communication in interstate commerce for the purpose of executing such scheme and artifice, to wit, wire transfers of the proceeds of fraudulently obtained mortgage loans, as follows:

Count	*Date*	*Property*	*Wire Transfer*	*Amount*
1	3/14/06	650 E. Sixth St # 1 South Boston, MA	Wire Transfer from the account of Fremount Investment & Loan at Capital Source Bank, in Brea, California, to the Conveyancing Account of Attorney Louis Bertucci at Sovereign Bank in Wyomissing, Pennsylvania	$529,323.20

[Data provided in similar tabular format for counts 2 – 10 inclusive – this Court's note]

All in violation of Title 18, United States Code, Sections 1343 and 2"

4.6 The indictment then deals with counts 11 to 14 inclusive, which are Wire Fraud counts preferred against John Nelson alone. This Court is not concerned with these counts.

4.7 The next section of the indictment deals with counts 15 to 33 inclusive, and these are preferred jointly against the respondent and John Nelson, and are pleaded in the following way:

"COUNTS 15 THROUGH 33

(Wire Fraud - 18 U.S.C. § 1343)

80. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 75 of this Indictment and further charges that:

81. On or about the following dates, in the District of Massachusetts and elsewhere,

(1) PATRICK LEE and

(2) JOHN NELSON

defendants herein, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property from the following mortgage lenders by means of material false and fraudulent pretenses, representations, and promises, did cause writings, signs, signals, pictures and sounds to be transmitted by means of wire communication in interstate commerce for the purpose of executing such scheme and artifice, to wit, wire transfers of the proceeds of fraudulently obtained mortgage loans, as follows:

Count	***Date***	***Property***	***Wire Transfer***	***Amount***
15	10/31/06	80 Draper St., # 2 Dorchester, MA	Wire Transfer from the account of First Franklin at National City Bank in Indianapolis, Indiana, to the Conveyancing Account of Nelson & Roach at Eastern Bank in Boston, Massachusetts.	$305,065.58
[Data provided in similar tabular format for counts 16 – 33 inclusive – this Court's note]				

All in violation of Title 18, United States Code, Sections 1343 and 2"

4.8 The next section of the indictment deals with counts 34 to 39 inclusive, and these are preferred jointly against the respondent and John Nelson, and are pleaded in the following way:

"COUNTS 34 THROUGH 39

(Unlawful Monetary Transaction - 18 U.S.C. § 1957)

82. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 75 of this Indictment and further charges that:

83. On or about the following dates, in the District of Massachusetts and elsewhere,

(1) PATRICK LEE and

(2) JOHN NELSON

defendants herein, did knowingly engage and attempt to engage in a monetary transaction by, through, and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than $10,000, the particulars of which are described below, and which was derived from a specified unlawful activity, that is, wire fraud, in violation of 18 U.S.C. § 1343:

Count	***Date***	***Property***	***Wire Transfer***	***Amount***
34	6/61/06	110 Norton St., # 1 and # 2 Dorchester, MA	Wire Transfer from Nelson & Roach Conveyancing Account at Eastern Bank, in Boston, Massachusetts, to an account in the name of D.J.'s wife.	$120,000.00

[Data provided in similar tabular format for counts 35 – 39 inclusive – this Court's note]

All in violation of Title 18, United States Code, Sections 1957 and 2"

4.9 The next section of the indictment deals with counts 40 to 55 inclusive, and these are preferred against the respondent alone, and are pleaded in the following way:

"COUNTS 40 THROUGH 55

(Aggravated Identity Theft - 18 U.S.C. § 1028A)

84. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 75 of this Indictment and further charges that:

85. On or about the following dates, in the District of Massachusetts and elsewhere,

(1) PATRICK LEE

defendant herein, did knowingly possess and use, without lawful authority, a means of identification of another person, that is, Massachusetts real estate appraiser licence number, and business name of B.T.O., for appraisals of properties in South Boston and Dorchester as identified below, during and in relation to the execution, and attempted execution, of a scheme to commit wire fraud, in violation of 18 U.S.C. § 1343:

Count	***Date***	***Property***
40	6/61/06	650 E. Sixth Street # 1, South Boston, MA
[Data provided in similar tabular format for counts 41 – 55 inclusive – this Court's note]		

All in violation of Title 18, United States Code, Sections 1028A(a)(1) and 1028A(c)(5)"

4.10 Finally, in paragraphs 86 to 88 inclusive the indictment pleads consequential property forfeiture claims under 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1) & 28 U.S.C. § 2461(c) that will arise upon the respondent's conviction of any offence in violation of 18 U.S.C § 1343 (*i.e.*, any of the wire frauds counts), and upon the respondent's conviction of any offence in violation of 18 U.S.C § 1957 (*i.e.*, any of the unlawful monetary transaction counts).

4.11 The affidavit of Sandra Bowers sworn on the 26th April, 2011, also exhibits an authenticated copy of the domestic U.S. arrest warrant, marked "B"; a copy of the relevant provisions of the United States Code, marked "C" and "D" respectively; and provides a detailed description of the requested person accompanied by a photograph of that person, marked "E".

4.12 The Court is satisfied from a perusal of all of this material that the requirements of s. 25(1) of the Act of 1965 have been met in terms of the provision of specified documents in support of the request for extradition in this case.

5. The Points of Objection

5.1. The respondent filed a twelve point Notice of Objection to his extradition. However, it was indicated in the course of the hearing that he no longer wished to rely upon Point of Objection No. 5 as pleaded therein. Accordingly, the respondent now relies on the following points of objection:

"1. The surrender of the Respondent to the United States would contravene his Constitutional rights as enshrined in and as protected by Bunreacht Na hÉireann and such surrender would contravene his rights under the European Convention on Human Rights and the European Convention on Human Rights Act 2003.

2. Without prejudice to the generality of the foregoing the surrender of the Respondent would contravene his right to liberty and his right to bodily integrity and/or would expose him to cruel and inhumane treatment and conditions.

3. The sentencing regime in the United States of America and the potential sentence to which the Respondent will be exposed if surrendered there is such that if the Respondent is extradited there will be a breach of his fundamental rights.

4. The use of plea-bargaining in the United States against the back-drop of the large sentences imposed after a trial there is such that there is a virtual compulsion to plead guilty even though innocent and thus persons such as the Respondent may be unfairly imprisoned.

5. [No longer relied upon.]

6. Without prejudice to the foregoing, the affidavit of Sandra Bower which purports to ground the extradition request against the Respondent herein is incorrect and untrue in material respects such that the affidavit should be disregarded in its entirety.

7. The Respondent did not perpetrate any fraud or any wire fraud and the allegations as contained in the warrant are incorrect and untrue such that his surrender should not be ordered.

8. The United States has perpetrated covert acts of rendition, has transported arms and armed personnel through Shannon airport and has carried out officially sanctioned acts of torture including "water-boarding" in relation to detainees and on that basis is not a country to which extradition should be ordered.

9. Without prejudice to the foregoing some of the allegations in the extradition request the subject matter of the within

proceedings refer to alleged offences committed whilst the Respondent was present and residing in Ireland and as such it is alleged the acts were committed inside the territory requested State, Ireland.

10. The surrender of the Respondent would contravene the rule of specialty.

11. The offences alleged against the Respondent are not "corresponding offences"

5.2. In addition, and with the leave of the Court, the respondent was permitted to argue ground No. 9 on an expanded basis. Namely, that all of the offences the subject matter of the request, are not extraditable offences in that the territoriality bar created by s. 15 of the Act of 1965 as originally enacted applies to all of the offences in this case, and not just to those covered by ground No. 9 as originally pleaded, *i.e.,* those committed when the respondent was outside of the requesting state.

5.3. In summary, the objections raised may be grouped as follows:

- Fundamental rights based objections – grounds 1, 2 3, 4, & 8.
- An objection based on alleged insufficiency of evidence – ground 6.
- An objection based upon the territoriality created by s.15 of the Act of 1965 – ground 9 as expanded.
- An objection based upon the rule of specialty – ground 10.
- An objection based upon alleged non-correspondence – ground 11.

6. The Fundamental Rights Based Objections

6.1. The evidence adduced by the respondent in support of the fundamental rights based objections is that contained in his own affidavit sworn on the 28th September, 2012; that contained in his supplemental affidavit sworn on the 16th December, 2012; that contained in the affidavit of Brenda Ellis sworn on the 16th December, 2012; that contained in the affidavit of Jack T. Donson sworn on the 13th December, 2012; that contained in the respondent's further supplemental affidavit sworn on the 6th September, 2013; and that contained in the affidavit of Edward Horgan sworn on the 27th September, 2013, together with the exhibits to those various affidavits. The Court has read and considered all of this evidence.

6.2. The objections raised under this heading may be grouped as follows:

- The contention that the track record of the United States of America in disrespecting human rights and disrespecting its treaty commitments to Ireland and other countries, is such that the normal presumption that the requesting state will respect the fundamental rights of an extraditee is rebutted.
- The contention that conditions of detention in U.S. Federal Prisons are such as to create reasonable grounds for believing that there is a real risk that the respondent's right to bodily integrity and his right not to be subjected to torture or to inhumane and degrading treatment or punishment will be breached in the event that he is extradited.
- The contention that the United States of America operates a coercive plea bargaining system that disrespects the presumption of innocence, and that actively and aggressively seeks to discourage defendants from exercising their right to go to trial.
- The contention that the respondent, if extradited, may face indeterminate and excessive pre-trial detention.

The Complaint based on the Requesting State's

Human Rights and Treaty Compliance Record

6.3. In so far as the objection is based on the suggestion that the normal presumption that the requesting state will respect the fundamental rights of an extraditee is rebutted on account of that state's human rights record, and record with regard to breaching treaty commitments, the Court has no hesitation in rejecting it.

6.4. Reliance is placed on supposed evidence of extraordinary rendition of prisoners through Shannon Airport (and Diego Garcia is also briefly mentioned) for the purposes of their torture and interrogation in other countries; supposed evidence of illegal transportation of arms and munitions through Shannon Airport, the alleged torture of prisoners in Guantanemo Bay and elsewhere, and the admitted practice of the water boarding of certain detainees suspected of terrorist offences. The evidence relied upon, however, consists entirely of the opinions, and unsubstantiated assertions, of the respondent himself, and commentators such as former Commandant Horgan. Although numerous newspaper and magazine articles and website pages were exhibited, none of them provide any solid evidence of extraordinary rendition to other countries, or illegal transportation of arms and munitions through Shannon Airport.

6.5. While the alleged treatment and methods of interrogation, including the admitted practice of waterboarding, of prisoners suspected of terrorist offences in U.S. detention centres such as Guantanemo Bay, undeniably represents an ongoing controversy, it has to be understood in its context. Namely, that there is an ongoing (so-called) "war on terror" that is invoked by the requesting state in justification of the much criticised conditions of detention and methods of interrogation that may be applied in the case of a small number of persons in a particular class, that is to say suspected terrorists. If there is a problem with respecting the human rights of terrorist suspects, and the Court considers it unnecessary to express any view on that, all available evidence suggests that it is confined to the small class of individuals who are suspected of terrorist offences, and that it is neither endemic, nor is it a systemic problem, in the non-terrorist context. The reality of the present case is that the respondent is wanted for various offences involving deception and/or fraud, and he is not a suspected terrorist. Accordingly, there is absolutely no reason to believe that the requesting state would resort to extraordinary measures of detention or interrogation in his case. In the Court's view, the presumption that the requesting state will respect his fundamental rights in the event that he is extradited is not rebutted on account of that state's alleged human rights record, or its alleged record in disrespecting international treaties.

The Complaint based on Prison Conditions

6.6. The Court has carefully considered the evidence adduced in support of the complaint based upon prison conditions. In *Attorney General v O'Gara* [2012] IEHC 179, (Unreported, High Court, 1st may 2012), this Court confirmed that the applicable principles are those set forth by the Supreme Court in *Minister for Justice, Equality and Law Reform v Rettinger* [2010] 3 I.R. 783 suitably adapted to the extradition context. In seeking to apply Rettinger in *Attorney General v O'Gara*, this Court attempted to distil a series of core principles from the various individual judgments in that case. In *Attorney General v O'Gara*, I summarised, at para. 10.4, the core principles as follows:

> "It seems to me that, in so far as they must apply to the present case, they can, with appropriate modifications, be expressed as follows:
>
> • By virtue of the absolute nature of the obligation imposed by Article 3 of the European Convention on Human Rights and Fundamental Freedoms. which provides that *'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'*. the objectives of the [Washington Treaty] cannot be invoked to defeat an established real risk of ill-treatment contrary to Article 3. (See analagous remarks of Fennelly J. at p.813 in *Rettinger* re the objectives of the system of surrender pursuant to the Council Framework Decision on the European Arrest Warrant);
>
> • The subject matter of the court's enquiry 'is the level of danger to which the person is exposed.' (per Fennelly J. at p.814 in *Rettinger*);
>
> • It is not necessary to prove that the person will probably suffer inhuman or degrading treatment. It is enough to establish that there is a '*real risk*' (per Fennelly J. at p.814 in *Rettinger*) 'in a rigorous examination.' (per Denham J. at p.801 in *Rettinger*). However, the mere possibility of ill treatment is not sufficient to establish an applicant's case. (per Denham J. at p.801 in *Rettinger*);
>
> • A court should consider all the material before it, and if necessary material obtained of its own motion. (per Denham J. at p.800 in *Rettinger*);
>
> • Although a respondent bears no legal burden of proof as such, a respondent nonetheless bears an evidential burden of adducing cogent 'evidence capable of proving that there are substantial grounds for believing that if he (or she) were returned to the requesting country he, or she, would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention.' (per Denham J. at p.800 in *Rettinger*);
>
> • 'It is open to a requesting State to dispel any doubts by evidence. This does not mean that the burden has shifted. Thus, if there is information from an applicant as to conditions in the prisons of a requesting State with no replying information, a court may have sufficient evidence to find that there are substantial grounds for believing that if the applicant were returned to the requesting state he would be exposed to a real risk of being subjected to treatment contrary to article 3 of the Convention. On the other hand, the requesting State may present evidence which would, or would not, dispel the view of the court.' (per Denham J. at p.801 in *Rettinger*);
>
> • 'The court should examine the foreseeable consequences of sending a person to the requesting State.' (per Denham J. at p.801 in *Rettinger*). In other words the Court must be forward looking in its approach;
>
> • 'The court may attach importance to reports of independent international human rights organisations.' (per Denham J. at p.801 in *Rettinger*)"

6.7. The main evidence proffered by the respondent in relation to prison conditions is that contained in the affidavit of Mr. Donson, a retired Correctional Treatment Specialist with the U.S. Federal Bureau of Prisons, and who describes himself as a "prison consultant". His expertise was not challenged by the applicant.

6.8. The first part of Mr. Donson's affidavit (paras. 2 to 11 inclusive) outlines that there was, as of the date of his affidavit, a significant overcrowding problem in the U.S. prison system, and sets forth his opinions as to why that was the case. He indicated that a majority of federal prisons operate at well over their rated capacity, and describes witnessing instances of multiple occupancy (up to three persons) of cells designed for single occupants. He further expresses the view that "conditions in such locations are inhumane and degrading". He further discusses other negative consequences of overcrowding, such as reduced staff to inmate ratios, increased assaults, health issues such as M.R.S.A. outbreaks, restrictions on visiting, access to medical staff, telephone and institutional programs, and inadequate mental health staffing.

6.9. Mr. Donson then moves on in the next part of his affidavit (paras. 12 to 16 inclusive) to opine concerning the conditions in which the respondent can expect to be detained in the event of his extradition, both in terms of pre-trial detention and imprisonment, in the event that he is convicted and sentenced to imprisonment. In that regard Mr. Donson has deposed to the following:

> "12. If the Respondent Mr. Patrick Lee is extradited to the United States I believe it is inevitable he will be imprisoned pending trial because of he has Irish citizenship and it is alleged and sworn that he fled from the U.S. A disturbing aspect regarding the incarceration of Mr. Lee would be his facility placement. The Bureau of Prisons classification policy allows for a greater security "Management Variable" for inmates they feel are a flight risk. The fact he is fighting extradition and his status as a citizen of Ireland all play in the thought process of the designation officials when they are considering classification and facility placement. In addition to management variables, the BOP classification system also has what are known as "Public Safety Factors". There is the potential for the "Alien" public safety factor to be assigned to Mr. Lee. White Collar offenders are ordinarily placed in minimum security Federal prison Camps. The application of a management variable or public safety factor overrides the security point system and mandates placement in a secure Federal Correctional Institution (FCI). Secure institutions have a more career criminally oriented offenders so he would be exposed to a harsher environment in such a facility and exposed to greater dangers. The incidents of fights, assaults and gang activity are far more prevalent in secure facilities than in a minimum, camp environment and in addition to overcrowding and unsanitary conditions I believe Mr. Lee will also have to endure the foregoing.
>
> 13. Another significant difficulty for Mr. Lee in facility placement is the potential for designation to a private contract. Nearly half of all immigrants detained by federal officials are held in facilities run by private prison companies. The Associated Press (AP) has indicated that over the past decade, private prison companies have spent over forty-five

million US dollars on campaign donations and lobbyists to push legislation at the State and Federal levels. Private prisons have also been found guilty of abuses ranging from understaffing facilities to bribing judges to sentence offenders to disproportionately long terms in privately-owned correctional facilities. In May of this year a correctional officer was killed and 19 others injured in a prison riot at a federal contract facility for immigrants in Adams County, Mississippi. According to the Associated Press, more than two dozen officers were held hostage in the long standoff that started during a gang fight. It should be noted the Federal Bureau of prisons told the AP that the facility hold "Low Security" inmates. A contract facility placement would be a possibility for Mr. Lee. A recent report found a Georgia prison run by Corrections Corporation of America (CCA) charges $5 a minute for phone calls while paying inmates just a dollar a day for menial labor. CCA is one of the Federal government's largest contract customers.

14. Another troubling aspect of the U.S. correctional system for Mr. Lee in the event of a conviction is the real prospect of a custodial remand subsequent to sentencing and as a result a placement in an Administrative holding facility, like MCC New York. Administrative holding facilities are high security, extremely restrictive and have minimal program opportunities. Visiting hours with family are also limited and the food is prepared outside the unit and moved on food carts for reheating in microwave ovens. The overall conditions in administrative units cater to the high security offender, and are psychologically stressful and intimidating for the non-violent, white collar non-violent offender.

15. Another example of the inattention to human rights issues in the prison system is evidenced in the Prison Elimination Rape Act (PREA). Although this legislation was passed in 2003, it was not until May 16th, 2012, that the U.S. Department of Justice released the National Standards to prevent, detect and respond to prison rape. It was only recently implemented in the Bureau of Prisons. Earlier this year, The Federal Bureau of Prisons Director, Charles Samuels issued a notice to all Federal inmates over the electronic messaging system. In his own word he indicated, *"another area of concern to me is sexual assault"*. This inmate notice also reflects upon additional facility concerns such as weapons possession and suicide. I beg to refer to a true copy of the press-release upon which marked with the letters "***JD-3***" I have signed my name prior to the swearing hereof.

16. Arising from my knowledge and experience of the U.S. Correctional system I have and I hereby express serious concerns for the safety, health and welfare of Patrick Lee if he is required to spend time in custody in the U.S. either before or after trial. I don't believe the conditions to which he will be exposed will be either safe or humane."

6.10. This evidence is responded to in an affidavit of Herman Quay, Deputy Regional Director of the U.S. Federal Bureau of Prisons (BOP) for the Northeast Region, with responsibility for overseeing nineteen institutions across seven states including Masachusetts, sworn on the 24th July, 2013. Mr Quay states therein:

5. The BOP's mission is to safely, humanely, and securely house sentenced inmates for the duration of their sentence. To ensure that these goals are met, the BOP has promulgated policies which govern the day to day activity of its officers and employees, as well as the inmates entrusted to its care. To ensure compliance with these program statements, the BOP has implemented rigorous internal auditing mechanisms, and has instituted a third-party review and accreditation process through the American Correctional Association (ACA), a third-party accreditation organization. In addition, inmates who are displeased with aspects of their confinement have several methods by which they may seek redress, including from the judicial system.

6. The BOP takes seriously its responsibility to the inmates in its custody, and works to ensure that staffing and institutional population levels balance the security interests of the institution with the safety and well-being of the inmate. To that end, the BOP regularly invites auditors into its institutions in order to gain accreditation by the ACA. In addition, each facility that the BOP operates or contracts with is required to maintain ACA accreditation. As part of the accreditation process, the ACA examines all aspects of the federal prison system, including staffing levels, capacity concerns, housing assignments, and the provision of healthcare. In conjunction with the BOP's third-party review efforts, the BOP regularly engages in rigorous internal program review.

7. When an inmate is sentenced to a term of incarceration, he/she is remanded to the custody of the Attorney General and delivered by the United States Marshals Service (USMS) into the care of the BOP. Prior to the inmate's arrival, the BOP's Designation and Sentence Computation Center (DSCC) reviews the inmate's Judgment and Commitment Order, including the inmate's Presentence Report, and makes a determination as to where the inmate will be housed. Because this determination is only made after the inmate has been sentenced, it is impossible to predict where Mr. Lee will be housed, if convicted in the United States. Officials at the DSCC make this determination after considering multiple factors, including: education level, substance abuse history, medical and mental health needs, prior criminal history, and the nature of the current criminal offense. In addition, institution staffing and population levels are considered to ensure appropriate placement. The designating officials will consider any security concerns specific to Mr. Lee, including his prior offense conduct, prior history, and potential for flight, and will ensure that he is placed in an institution where he can be housed safely and securely. The BOP's philosophy is to assign each inmate the lowest possible security level. Should Mr. Lee be designated to a facility run by a private contractor, he would be entitled to the same constitutional protections he is afforded at a BOP facility. The BOP imposes stringent oversight requirements on its contractors. As stated, the BOP requires that the contract facilities achieve the same ACA accreditation that all BOP facilities must maintain.

8. BOP population levels are the direct result of judicial orders committing defendants to the custody of the Attorney General, and are thus outside the BOP's control. The BOP's housing and population management determinations are made in accordance with applicable law and are evaluated by auditors for the ACA as part of the accreditation process. In my experience, the BOP has occasionally needed to house three individuals in a cell, as opposed to the normal two to a cell, due to the number of inmates committed to serve a sentence. This is done on a limited and temporary basis, and is closely monitored to ensure it is discontinued as soon as possible.

9. The BOP is committed to ensuring the safety of its employees and inmates, monitoring and adjusting its staff-inmate ratios as appropriate. All BOP employees have comprehensive training requirements. Without discussing specific security arrangements, the BOP relies on its exhaustive training requirements and the sound correctional judgment of its Correctional Services staff to ensure that BOP staff are assigned to the appropriate posts to ensure their own safety as well as the safety and security of the institution. In order to detect and prevent emergency situations from arising while inmates are housed in a non-general population unit, such as a Special Housing Unit, BOP requires that staff conduct rounds so that each cell is checked twice per hour on a twenty-four hour basis.

10. The BOP fully understands its constitutional obligation to provide adequate health care to its inmate population. At

the designation phase, inmates are assigned one of four Care Levels to ensure that they are matched with the institution best situated to meet their individual medical needs. The BOP has a variety of medically-oriented facilities, including six Medical Referral Centers (MRC) which are capable of providing inpatient care to seriously ill inmates. MRCs are accredited by the Joint Commission on Accreditation for Health Care Organization (JCAHO), which sets the medical, surgical, and psychiatric standards for hospitals nationwide. Each BOP institution typically employs a physician and several mid-level providers, who usually are able to address the medical needs of most inmates. Should Mr. Lee have medical concerns that the BOP is not able to handle, the BOP would provide him with access to local medical providers and specialists, as necessary.

11. BOP has a comprehensive approach to infectious disease management, which includes "testing, appropriate treatment, prevention, education, and infection control measures." Instances of infectious disease such as Methicillin Resistant Staphylococcus Aureus (MRSA) are routinely treated in a manner consistent with guidelines developed by the Centers for Disease Control and Prevention (CDC), and in accordance with any Clinical Practice Guidelines instituted by the BOP's Medical Director.

12. With respect to mental health treatment, inmates are screened upon arrival, and are connected with mental health professionals who provide them with care consistent with the above-mentioned policies. Psychological and psychiatric services are available, as deemed appropriate, to each inmate in the BOP's custody.

13. The BOP has also implemented a Suicide Prevention Protocol. This protocol ensures that BOP staff work cooperatively to identify and manage suicidal inmates in a timely and responsible fashion. To that end, staff receive significant suicide prevention training so that suicidal inmates may be identified, referred for appropriate care, and prevented from doing harm to themselves or others. Each institution has established Suicide Watch procedures, whereby an inmate may be relocated to an area in the institution where staff are better able to monitor, access, and protect the suicidal inmate.

14. The Prison Rape Elimination Act (PREA) is an example of the BOP working with the United States Congress to ensure that sexually predatory behavior is eliminated from the federal prison system. The BOP has a long maintained policy which addresses sexually predatory behavior, and is finalizing the implementation of PREA's requirements for BOP staff, although many of the suggested reforms are already in policy.

15. Should an inmate wish to challenge any condition of his/her confinement, he/she has multiple avenues of review available. The BOP has an administrative process by which the inmate may address an issue with the Warden of his/her facility, the Director of his/her Region, and the Director of the BOP. Furthermore, the inmate may contact the Office of the Inspector General within the Department of Justice. Finally, to ensure that the BOP is complying with federal law including the United States Constitution, the inmate may file a lawsuit in Federal Court."

6.11. The Court considers that there has been appropriate engagement by the authorities in the requesting state with the concerns expressed on behalf of the respondent, and it is reassured by the responses received. As to the overcrowding issue, in particular, overcrowding is a common feature of many prison systems including our own. It is regrettable where it occurs, but while always uncomfortable for those prisoners affected by it, and sub-optimal, it will not necessarily be inhumane or degrading. It depends on the circumstances of the case, including the degree to which there is overcrowding, the duration of it, the amount of out of cell activity permitted, other conditions in the prison or detention centre and so on. Mr Herman acknowledges that three persons are sometimes accommodated in two person cells but states that this is done on a limited and temporary basis and is closely monitored to ensure it is discontinued as soon as possible. The Court is reassured by this, and its concerns are allayed.

6.12. The Court does not consider that the evidence adduced by the respondent, when viewed in light of the responses received from the requesting state, is of sufficient cogency to establish that there are reasonable grounds for believing that the respondent is at real risk of being subjected to prison conditions, or a regime of incarceration, amounting to torture or inhumane or degrading treatment or punishment.

The Complaint Based on Coercive Plea Bargaining

6.13. This complaint is primarily articulated in the affidavit of Brenda Ellis filed on behalf of the respondent. In it, Ms Ellis who describes herself as "a sentencing consultant in the United States", deposes to the following:

"2. The United States federal criminal court system actively and aggressively discourages defendants from exercising their constitutional right to go to trial at every turn. As a result, 95% of all federal felony cases are resolved through the plea bargaining process. Time limits can be placed on plea bargain offers and if the offer is rescinded when the allotted time has elapsed, a defendant may receive then a less favorable offer presented as a punishment for not meeting the prosecution's timetable.

3. From the initial phase of prosecution, prosecutors are given wide berth to negotiate plea deals and pressure begins on defendants to bend to this path. The federal criminal justice system is set up to compensate people who take a plea by granting a substantially lower sentencing score for cooperation. Defendants who opt to go to trial and lose receive harsher sentences than those who plead to the same offenses. The reward of a more lenient sentence is most significant enticement to encourage the acceptance of the plea offer."

6.14. The matter is also referred to in paragraph 17 of the affidavit of Mr. Donson, where he states:

"In relation to facing trial I believe another disturbing aspect of the American judicial system is the high percentage of plea agreements. It is estimated that over 90 % of convictions in the United States result from plea agreements. A 2012 Study by the Pew Center on the States reflects pleas bargains in Florida make up 98% of case dispositions. The study entitled "Time Served (The High Cost, Low Return of Longer Prison Terms)" cites one of the major reasons for pleas bargains is the proliferation of longer sentences which gives prosecutors greater leverage to negotiate. Therefore, there is a compulsion for the innocent to plead guilty out of fear of the United States draconian sentencing guidelines. Over many years in the prison system, I have witnessed several offenders decline short plea bargain offers only to receive lengthy sentences after unsuccessfully exercising their right to a trial. I beg to refer to a true copy of the study upon which marked with the letters "***JD-4***" I have signed my name prior to the swearing hereof."

6.15. The plea bargaining complaint is responded to in the affidavit of Ms. Christine Wichers sworn on the 24th April, 2013, as follows:

"18. Every defendant charged with a federal crime in the United States has a constitutional right to a trial before a jury of his/her peers. If Mr. Lee is extradited, he will have the opportunity at his initial court appearance to plead not guilty, thereby invoking his right to a trial, or plead guilty. If he pleads not guilty, he may change his plea at any time thereafter.

19. Ms. Ellis states in her affidavit that ""the United States federal criminal court system actively and aggressively discourages defendants from exercising their constitutional rights to go to trial at every turn."" Ms. Ellis does not offer any facts in support of her opinion. As stated above, every defendant charged with a federal crime has the constitutional right to a trial before a jury of his/her peers. Many defendants, once apprised of the evidence against them, opt to forego their right to trial and plead guilty. The decision to give up the right to trial and enter a guilty plea can only be made by the defendant, and only after consultation with counsel. Before accepting a defendant's guilty plea, a judge is required to ask the defendant sufficient questions to assure the judge that the defendant's decision to waive his/her right to a trial and plead guilty is made knowingly, intelligently, and voluntarily. If the defendant refuses to admit his/her guilt, or if the judge is not satisfied that the defendant's decision is knowing, intelligent, and voluntary, the law requires the judge to reject the guilty plea.

20. Ms. Ellis's suggestion that the prosecution can guarantee that a defendant will receive a more lenient sentence if he/she pleads guilty is incorrect. Deciding the sentence rests with the trial judge, not the prosecution.

21. Ms. Ellis states: "The [U.S.] federal criminal justice system is set up to compensate people who take a plea by granting a substantially lower sentencing score for cooperation." Under the U.S. Sentencing Guidelines, a convicted defendant is assigned an "offense level" of between 1 and 43 points depending on his crime and certain aggravating or mitigating circumstances, which includes a reduction of between 2 and 3 points if he/she accepts responsibility for his/her crime (*i.e.*, if he/she pleads guilty). The offense level, combined with the defendant's criminal history, determines the recommended sentence range under the Guidelines. A sentencing judge must consider the Guidelines, but is not required to follow them. In addition to considering the Guidelines, the sentencing judge must consider seven other factors, which are set forth in Title 18 of the United States Code, Section 3553(a), a copy of which is attached as Exhibit 2. The prosecutor and the defendant can agree on a recommended sentence, but the sentencing judge is free to reject that recommendation. As stated above, the sentencing decision rests solely with the judge, who has wide discretion in deciding a defendant's sentence, irrespective of whether the defendant has pled guilty or been convicted after a trial."

6.16. The Court is not disposed to uphold the complaint based upon alleged coercive plea bargaining. While we do not countenance plea bargaining in Ireland, the Court recognises that it is a legitimate procedure that is a feature of many criminal justice systems worldwide. In *Minister for Justice, Equality and Law Reform v Brennan* [2007] 3 I.R. 732, Murray C.J., made the following points at paras. 38 to 40:

"38 … I am not aware of any authority for the principle that the extradition or surrender of a person to a foreign country would contravene the Constitution simply because their legal system and system of trial differed from ours as envisaged by the Constitution.

39 The manner, procedure and mechanisms according to which fundamental rights are protected in different countries will vary according to national laws and constitutional traditions. The checks and balances in national systems may vary even though they may have the same objective, such as ensuring a fair trial. There may be few, if any, legal systems which wholly comply with the precise exigencies of our Constitution with regard to these matters. Not all for example will provide a right to trial by jury in exactly the same circumstances as our Constitution does in respect of a trial for a non-minor offence. Rules of evidence may differ. The fact that a person would be tried before a judge and jury in this country for a particular offence could not in my view, be a basis for refusing to make an order for surrender solely on the grounds that in the requesting state he or she would not be tried before a jury. The exceptions which we have to the jury requirement, as in trials before the Special Criminal Court, acknowledges that a fair trial can take place without a jury even though it is constitutionally guaranteed for most trials in this country.

40 That is not by any means to say that a court, in considering an application for surrender, has no jurisdiction to consider the circumstances where it is established that surrender would lead to a denial of fundamental or human rights. There may well be egregious circumstances, such as a clearly established and fundamental defect in the system of justice of a requesting state, where a refusal of an application for surrender may be necessary to protect such rights. It would not be appropriate in this case to examine further possible or hypothetical situations where this might arise. The sole matter which I wish to make clear here is that the mere fact that a trial or sentence may take place in a requesting state according to procedures or principles which differ from those which apply, even if constitutionally guaranteed, in relation to a criminal trial in this country does not of itself mean that an application for surrender should be refused … ."

6.17. I have considered the evidence on this issue and I consider that the mere fact that the United States operates a plea bargaining system that is not allowed in the Irish criminal justice system, is neither here nor there. The respondent is fully legally advised, at present, and will continue to be in the event that he is extradited. He has been fully advised as to the U.S. plea bargaining system. He is fully aware that if he is innocent, as he claims to be, he is entitled to plead not guilty notwithstanding any offer made to him in the context of plea bargaining, and to have the case against him tested at trial. The Court considers that there is no basis for any concern that he will be coerced into pleading guilty in circumstances where he is innocent. In the Court's judgment, he will be able to approach any offer made in a plea bargaining context from an informed position. There is no inherent unfairness in any of that, and nothing that breaches his fundamental rights. The Court is not satisfied that the system of plea bargaining that exists in the United States constitutes so egregious a defect in their criminal justice system as to create a concern that the respondent will be deprived of the right to contest his innocence at trial, or to receive a fair trial, such as might justify this Court in refusing to extradite him.

The Complaint Concerning Pre-trial Detention

6.18. The concern that the respondent may be denied bail and held in pre-trial detention was first articulated by the respondent himself in his affidavit sworn on the 28th September, 2012. The essence of his complaint at that stage was that there was a strong likelihood, as a result the incorrect sworn assertion that he had fled from the United States, that he would be denied bail and face pre-trail detention. Additional concerns were then advanced in the affidavit of Ms. Brenda Ellis. In her affidavit, Ms. Ellis opines that:

"4. Should Mr. Lee be returned to the United States for legal proceedings via extradition in respect of the Federal case to which the indictment relates, his chances of getting bond during the pre-trial and trial process are nil. A defendant who has never been in trouble before and who faces this range of charges would be eligible for and receive bond. But an

extradited defendant is viewed by a different standard which puts Patrick Lee at a disadvantage. Pre-trial incarceration will make it difficult for Patrick Lee to assist in his own defense. Legal material contained on DVD, CD or flash drives will not be accessible because computers aren't available to inmates.

5. Patrick Lee will be housed at a county facility which could be as far as 30 to 60 miles from downtown Boston, Massachusetts. The conditions in county jails are sub-par in comparison to federal facilities, there will be no programming to participate in and visitation is limited to nuclear family members and his legal team. It's highly likely that he will not have access to the outside during his pre-trial incarceration.

6. The length of Patrick Lee will have to spend in pre-trial incarceration is unknown. Factors such as the judge's calendar, the number of pre-trial motions and possible appeals and prosecutors' trial schedule will all affect the length of his stay.

7. All federal prisoners receive a security ranking when they enter the system. If Patrick Lee is extradited, the security ranking will be higher because of this fact. Unfortunately, Patrick Lee's proven good behavior with bond under the Irish system will not be considered. But inaccurate allegations concerning his actions will be considered and could result in more restrictive placement within the prison system."

6.19. This complaint is responded to in the affidavit of Christine Wichers sworn on the 24th April, 2013, and in an affidavit of Kevin Neal, Supervisory Deputy U.S. Marshall, sworn on the 18th April, 2013 and exhibited within Ms Wichers' said affidavit. Ms Wichers has deposed (at paras. 22 to 25 of her said affidavit):

"22. Ms. Ellis states that the amount of time Mr. Lee will spend in pretrial detention is unknown. If Mr. Lee is extradited, it will be his right, under the Speedy Trial Act, to have his trial begin within 70 days after he appears in court and pleads not guilty. See 18 U.S.C. § 3161(c)(1) (copy attached hereto as Exhibit 3). He may waive this right for any number of reasons, including to give his lawyers more time to prepare for trial.

23. Ms. Ellis states that "[p]re-trial incarceration will make it difficult for Patrick Lee to assist in his own defense." Detention may make it less convenient for Mr. Lee to assist his counsel in preparing his trial defense; however, it would not present any obstacle that could not be readily overcome in preparing for trial. Every year thousands of criminal defendants who are in pretrial custody in the United States assist their attorneys in preparing their defense.

24. Ms. Ellis states that, if Mr. Lee is detained before trial, he will be housed "at a county facility which could be as far as 30 to 60 miles from downtown Boston, Massachusetts. The conditions in county jails are sub-par in comparison to federal facilities, there will be no programming to participate in and visitation is limited to nuclear family members and [Mr. Lee's] legal team." In response to these allegations, please see the accompanying Declaration of Kevin Neal, Supervisory Deputy U.S. Marshal, attached hereto as Exhibit 4. Mr. Neal's declaration addresses conditions, including alleged overcrowding, at the three correctional facilities where Mr. Lee is most likely to be detained pending trial if pretrial detention is ordered. Mr. Neal also addresses the general availability of medical care at the three facilities. Mr. Lee has asserted: "I have a number of health complications which I intend to further particularise ...." Lee Affidavit (Sept. 28, 2012), Tf 11. Because Mr. Lee has not identified his specific medical conditions, the United States currently is unable to provide the court with information addressing Mr. Lee's specific medical needs.

25. Finally, Ms. Ellis states that all federal prisoners receive "security rankings" "when they enter the system." As explained in paragraph 7 of Mr. Neal's affidavit, the United States Marshals Service, which is responsible for federal pretrial detainees, does not use security rankings. Security rankings are used by the federal Bureau of Prisons ("BOP"), which is responsible tor post-conviction custody. For an explanation of security rankings used by the BOP, see the affidavit of Herman Quay attached hereto as Exhibit 5."

6.20. In his said affidavit, Mr Neal states:

"5. If Mr. Lee were extradited to the United States, his pre-trial process would be the same as for any other person in the U.S. charged with a federal crime. Specifically, he would have an initial appearance before a federal judicial officer where he would have the right to plead guilty or not guilty, and he would be entitled to a detention hearing where a federal judicial officer would determine whether Mr. Lee should be held in pre-trial custody.

6. If Mr. Lee were detained and remanded to the USMS, the USMS would determine which pre-trial facility in which to house Mr. Lee. As the USMS does not operate detention facilities, USMS detainees are housed at any of the approximately 2,000 jails nationally to which the USMS has access by way of an intergovernmental agreement ("IGA") or a contract. The USMS considers a myriad of factors in determining in which facility to house a USMS prisoner. If Mr. Lee were remanded to USMS custody within the U.S. District of Massachusetts, it is likely he would be housed in one of the following three facilities: (a) Plymouth County Correctional Facility ("PCCF"); (b) Donald W. Wyatt Detention Facility ("Wyatt"); or (c) the Essex County Correctional Facility ("ECCF"). Information concerning these three facilities is set forth below.

7. It is my understanding that a sentencing consultant hired by Mr. Lee, Ms. Brenda Ellis, has signed an affidavit stating in part that "[a]ll federal prisoners receive a security ranking when they enter the system." The USMS does not use "security rankings" for pre-trial detainees and does not classify detainees. Each jail classifies prisoners within its custody once the detainee is admitted.

Plymouth County Correctional Facility ("PCCF")

8. The USMS has an Intergovernmental Agreement ("IGA") with the PCCF for the purpose of detaining persons charged with or convicted of violations of federal law, persons held as material witnesses, and federal parole violators. The PCCF is located at 26 Long Pond Road, Plymouth, Massachusetts, approximately 41 miles from the federal courthouse in Boston.

9. True and correct printouts from the PCCF website are attached hereto as Exhibit A.

10. The facility has a maximum capacity of approximately 1,500 beds. On April 9, 2013, I contacted the PCCF and verified that their current population on that date was 1,222. In the three years that I have been the SDUSM responsible for

selecting the appropriate jail facility for USMS pre-trial detainees in the District of Massachusetts, I have not been aware of any overcrowding issues at the PCCF.

11. Pursuant to the IGA, the PCCF is required to provide USMS detainees "with the full range of medical care inside the detention facility," without additional costs to the USMS. This care includes medical, dental, and mental health care. Prisoners routinely receive care for chronic conditions within the jail. All outside medical care must be pre-approved by the USMS. In the event of an emergency, the PCCF must proceed immediately with medical treatment. Additionally, the PCCF is required to have an adequate infectious disease program.

12. The PCCF houses prisoners in one of three areas: General Population, Protective Custody, or Administrative Segregation (for individuals who have committed disciplinary infractions).

13. The USMS inspects the PCCF annually for the purpose of monitoring and overview to determine whether the facility meets basic and/or primary criteria related to conditions of confinement for purposes of determining suitability for use. The inspection process includes review of areas such as, among other things, the average detainee population and staffing information; security; use of force; hygiene and sanitation; the availability of medical care; the availability of suicide prevention; ongoing complaints/litigation; the availability of religious practices; legal access; and visitation. The PCCF was inspected in 2012 and found compliant in all areas of review.

Donald W. Wyatt Detention Facility ("Wyatt")

14. Wyatt is located at 950 High Street, Central Falls, Rhode Island approximately 45 miles from federal courthouse in Boston.

15. True and correct printouts from Wyatt's website are attached hereto as Exhibit B.

16. The facility has a maximum capacity of 771 beds. Based on a call to the facility on April 9, 2013, the facility housed 640 prisoners on that date. During my tenure as an SDUSM in the District of Massachusetts, I have not known there to be overcrowding at Wyatt.

17. Male detainees at Wyatt reside in one of several units: General Population, Protective Custody, Segregation, and Transitional Housing.

18. Every detainee at Wyatt is classified and assigned housing based upon Wyatt's correctional experience in determining appropriate housing.

19. Pursuant to an IGA between Wyatt and the USMS, Wyatt is required to provide USMS detainees with the full range of medical care, including dental care, mental health care, pharmaceuticals, and record keeping, as necessary to meet the essential standards of the National Commission of Correctional Health Care's Standards for Health Services of Jails. Prisoners routinely receive care for chronic conditions within Wyatt. All outside medical care must be pre-approved by the USMS. In the event of an emergency, Wyatt must proceed immediately with medical treatment. Additionally, Wyatt is required to have an adequate infectious disease program.

20. In December 2012, an inspection team representing the Department of Justice's Office of the Federal Detention Trustee (which is now a subordinate agency within the USMS) conducted a "Quality Assurance Review" at Wyatt. A Quality Assurance Review is based upon the Federal Performance-Based Detention Standards. Those standards, in turn, are based on the American Correctional Association Standards, and are designed for use in reviewing non-federal facilities that house federal detainees to ensure these facilities are safe, humane, and protect detainees' statutory and constitutional rights. Wyatt's rating following the 2012 Quality Assurance Review was Excellent.

Essex County Correctional Facility ("ECCF")

21. The ECCF is located at 20 Manning Avenue, Middleton, Massachusetts, approximately 21 miles from the federal courthouse in Boston.

22. A true and correct printout from the ECCF's's website is attached hereto as Exhibit C.

23. The ECCF has a maximum capacity of approximately 1,300 beds. Based on a call to the facility on April 9, 2013, the facility housed 1,167 prisoners as of that date.

24. Prisoners at the facility are housed in one of three units: General Population, Protective Custody, or Segregation.

25. The USMS inspects the ECCF annually for the purpose of monitoring and overview to determine whether the facility meets basic and/or primary criteria related to conditions of confinement for purposes of determining suitability for use. The inspection process includes review of areas such as, among other things, the average detainee population and staffing information; security; use of force; hygiene and sanitation; the availability of medical care; the availability of suicide prevention; ongoing complaints/litigation; the availability of religious practices; legal access; and visitation. The ECCF was inspected in 2012 and found compliant in all areas of review."

6.21. The Court has considered the evidence on both sides on this issue. It is clear that, in the event that he is extradited, the respondent will have an entitlement to apply for bail. While various deponents on the respondent's side have expressed pessimism with respect to his prospects of securing bail, the point is made by Ms Bower in her second supplemental affidavit sworn on the 11th March, 2014, that the respondent's brother, Michael Lee, who was also charged with, and indeed ultimately pleaded guilty to, similar mortgage fraud related offences, was successful in obtaining bail notwithstanding the fact that he was an Irish citizen with conditional resident alien status. The Court is satisfied that the fact that there was an acknowledged error in the papers supporting the respondent's extradition request, asserting that he fled the United States on a certain date, when in fact he was inbound to the United States on the date in question (see part 7 of this judgment, where this issue is considered in greater detail), will not adversely

affect any bail application he might make . The error is plainly acknowledged, and is thoroughly documented such that the respondent's lawyers will have no difficulty in apprising any court considering a bail application of the true position.

6.22. In addition, the Court is satisfied on the basis of Mr. Neal's affidavit that in the event that the respondent is denied bail there are no goods grounds for believing that he will be detained in circumstances where his fundamental rights would not be respected. The description of the regime and conditions of pre-trial detention in the possible institutions to which the respondent might be sent is significantly reassuring and allays any concerns that the Court had arising out assertions made by deponents on behalf of the respondent. The Court considers that the respondent has failed to adduce evidence of sufficient cogency to satisfy it that there are reasonable grounds for believing that, if the respondent is extradited, he will face a real risk of breach of his rights to liberty, and/or to bodily integrity, and/or not to be subjected to torture or inhuman and degrading treatment or punishment, and/or to a fair trial.

6.23. The Court is not therefore disposed to uphold the complaint based upon anticipated pre-trial detention.

Overall Conclusion re the Objections based on Fundamental Rights

6.24. In circumstances where the Court does not consider that the respondent has sustained any of the numerous subsidiary complaints that he makes under the broad heading of an objecting to his extradition because of anticipated or potential breaches of his fundamental rights, whether guaranteed under the Constitution or under the European Convention on Human Rights, the Court is not disposed to uphold such any such objection or objections.

7. The Objection Based on Alleged Insufficiency of Evidence

7.1. This objection is premised upon a contention that this Court should disregard entirely the affidavits of Sandra Bower which ground the extradition request, because Ms Bower is demonstrably incorrect in one matter that she has stated. The respondent contends that in the circumstances her evidence should be disregarded in its entirety.

7.2. In para. 33 of her affidavit sworn on the 26th April, 2011, Ms. Bowers deposed to the following:

> "Lee fled the United States on June 24, 2007, immediately after being approached by the Massachusetts State Police regarding an auto insurance scam in which he was a suspect. U.S. Customs and Border Protection has no record of Lee reentering the United States."

7.3. The respondent joined issue with this assertion in an affidavit sworn by him on the 28th September, 2012. At para. 6 of his said affidavit he contends:

> "I say the affidavit of Sandra Bower which purports to ground the extradition request against me is demonstrably incorrect and untrue in a material respect and I believe that affidavit should be disregarded in its entirety. I refer in particular to the untrue and damaging contention that I "fled" from the United States on June 24th 2007 and my wife fled later. I was not approached about an auto scam. In support of our pre-planned move to Ireland I beg to refer to true copies of email communications with relevant parties"

The respondent exhibited, with the said affidavit, e-mail communications with Aer Lingus indicating that as far back as February, 2007 he had purchased a return ticket from Dublin to Boston, departing on the 24th June, 2007, and returning on the 27th of June 2007, and further indicating that the said ticket was in fact used.

7.4. In an earlier affidavit filed in connection with his application to this Court for bail, the respondent had again disputed that he had fled the United States or that he had been stopped in connection with an auto scam. He suggested that the U.S. authorities had failed to mention that his brother, Michael Lee, had been convicted for assuming his (the respondent's) identity and obtaining a driver's licence in his name, thereby implying that they had got the wrong man.

7.5. The assertion that had been made by Ms. Bower that the respondent had left the United States on the 24th June, 2007, was later acknowledged by the requesting state to have been incorrect, and the record was corrected in the following circumstances.

7.6. Ms. Christine Wichers, an Assistant United States Attorney for the District of Massachusetts, deposed in an affidavit sworn on the 24th of April 2013 for the purposes of these proceedings that:

> "8. The United States' earlier assertion that Mr Lee left the United States on June 24, 2007, was in error. …Mr Lee entered the United States on June 24, 2007 and left the United States on June 27, 2007. U.S. Customs and Border Protection records show that, for the period 2005 – 2008, Mr Lee left and re-entered the United States on the following dates:

Patrick Lee left the U.S.	***Patrick Lee re-entered the U.S.***
April 8, 2005	April 15, 2005
April 7, 2006	April 14, 2006
June 27, 2006	July 4, 2006
September 29, 2006	October 6, 2006
February 21, 2007	March 3, 2007
March 29, 2007	June 24, 2007
June 27, 2007	No re-entry through 2008

7.7. In addition, Ms. Bowers herself re-addressed the issue in a Second Supplemental Affidavit sworn by her on the 11th of March 2014. She stated:

2. The purpose of this affidavit is to further address the assertion at paragraph 33 in my original affidavit signed on April 26, 2011, that Mr. Lee "fled the United States on June 24, 2007, immediately after being approached by the Massachusetts State Police regarding an auto insurance scam in which he was a suspect."

3. As noted in paragraph 8 of Christine Wichers' affidavit signed on April 24, 2013, and in paragraph 7 of Wichers' affidavit signed on January 27, 2014, my earlier assertion that Mr. Lee left the United States on June 24, 2007 was in error. I do not specifically recall how the mistake concerning the June 24, 2007 date was made. I have reviewed my files and I note that as early as May 2009, personnel with the U.S. Secret Service advised me that based on a review of a record in TECS [a central law enforcement database], Mr. Lee had left the United States en route to Dublin, Ireland on June 24, 2007. TECS was described in U.S. Customs and Border Protection Chief Michael Manning's affidavit, dated January 27, 2014, which accompanied Wichers' January 27, 2014 affidavit. It appears that the U.S. Secret Service personnel read the record incorrectly as a June 24, 2007 departure from the United States for Dublin, rather than a June 24, 2007 arrival in the United States from Dublin. The border crossing records, which were included in Wichers' April 24, 2013 affidavit and Chief Manning's January 27, 2014 affidavit, and which are set forth again below, show that Mr. Lee re-entered the United States on June 24, 2007, and departed the United States on June 27, 2007. The records show that he did not re-enter lawfully through 2008.

Patrick Lee left the U.S.	Patrick Lee re-entered the U.S.
April 8, 2005	April 15, 2005
April 7, 2006	April 14, 2006
June 27, 2006	July 4, 2006
September 29, 2006	October 6, 2006
February 21, 2007	March 3, 2007
March 29, 2007	June 24, 2007
June 27, 2007	No re-entry through 2008

4. Mr. Lee denies fleeing the United States and denies being approached by law enforcement about an auto insurance scam. Specifically, Mr. Lee states that the assertions in my original affidavit in support of extradition that he "fled the United States" were false, and in his documents to the Irish court he states "I was not approached about an auto scam." There is contrary evidence. I have attached a Massachusetts State Police report hereto as Exhibit 1. In summary, the report states that:

> 'Law enforcement, along with an agent with the National Insurance Crime Bureau, (hereafter referred to collectively as "investigators") visited Mr. Lee's Easton, Massachusetts, home on March 29, 2007, in an effort to locate a 2000 Ford Expedition (Eddie Bauer edition) which Mr. Lee's brother, Darren, had owned and had reported stolen in 2005, and for which Darren Lee had received more than $15,000 in insurance proceeds. At that time, investigators observed what they believed to be the stolen 2000 Ford Expedition, as it was an Eddie Bauer edition, in the Lees' driveway; however, it bore a license plate identifying it as a 1997 Ford Expedition XLT registered to Patrick Lee and his business. Mr. Lee was not home and Mrs. Lydia Lee refused to permit the investigators to further inspect the vehicle, telling them to speak with her husband who would be home later. When an investigator returned later on March 29, 2007, the Ford Expedition (Eddie Bauer edition) which had been parked in the driveway earlier that day was no longer there. Mr. and Mrs. Lee arrived at the residence while the investigator was still present and Mr. Lee told the investigator that a worker was using the Expedition and it would be back at the residence the next day and the investigator could look at it then.
>
> However, when investigators returned to the Lee residence the next day -- March 30, 2007 -- investigators observed that a different Ford Expedition was in the driveway bearing the same license plate which had, on March 29, 2007, been on the Eddie Bauer Ford Expedition. Darren Lee was present and advised investigators that Patrick Lee was not home. (The border crossing records set forth above show that Patrick Lee left the United States on March 29, 2007, and did not return until June 24, 2007. This is corroborated by Patrick Lee's United States passport which bears the stamp of Shannon Airport (Ireland) dated March 30, 2007 on page 13. A copy of Mr. Lee's passport is attached as **Exhibit 2**.)
>
> In December 2007, investigators learned that a Massachusetts woman purportedly bought the 1997 Ford Expedition previously registered to Patrick Lee and his business. However, further investigation revealed that the vehicle actually purchased by the woman was the 2000 Eddie Bauer Ford Expedition reported stolen by Darren Lee. The investigation revealed that the federal certification label for the 1997 Ford Expedition owned by Lee had been attached to the 2000 Eddie Bauer Ford Expedition reported stolen by Darren Lee.'

4. What the Massachusetts State Police Report makes clear is that Mr. Lee did leave the United States immediately after being approached by law enforcement concerning the stolen motor vehicle. Mr. Lee spoke to law enforcement on March 29, 2007. Border crossing records show that he left the United States on March 29, 2007 - the same day - and his U.S. passport confirms his arrival at Shannon Airport on March 30, 2007.

5. Mr. Lee argues that the United States has failed to mention that another brother, Michael Lee, has been convicted for "assuming [Patrick Lee's] identity" and obtaining a driver's license in Patrick Lee's name. He notes, correctly, that Michael Lee and other individuals have been charged with similar mortgage fraud-related offenses. Indeed, Michael Lee was charged in United States v. Michael Lee, 09-CR-10050-GAO, which I also prosecuted. Michael Lee pleaded guilty, and was sentenced and imprisoned for those offenses. It is my understanding that Michael Lee has been released from prison and has returned to Ireland.

6. To the extent that Patrick Lee is suggesting that it was Michael Lee who actually committed the offenses for which Patrick Lee is charged and for which the United States seeks extradition that will be rebutted by the testimony and documentary evidence to be presented at his trial, should Patrick Lee be extradited. Among other things, photocopies of

> Patrick Lee's Massachusetts driver's license, bearing his photograph, are present in the closing files for at least one unit for each property address which form the basis of the charges against him. The photo of Patrick Lee submitted with the extradition request is the photograph from the Massachusetts Registry of Motor Vehicles which appears on the driver's license.
>
> 7. Mr. Lee claims that he and his wife made firm plans to return to Ireland by February 2007 at the latest, and has produced supporting emails. As the United States has stated previously, if Mr. Lee is extradited, he will have the opportunity to present this argument and any supporting evidence at a detention hearing. The purpose of a detention hearing is for a federal judicial officer to determine whether a person charged with a federal crime should be detained before trial, or whether instead he may be released on his own recognizance or upon payment of bail. I note that his brother, Michael Lee, described above, was initially released on $50,000 bond with conditions after his arrest on the mortgage fraud charges. That was so even though Michael Lee was an Irish citizen with conditional resident alien status in the United States."

7.8. In reply to this the respondent has re-iterated in a further affidavit sworn by him on the 12th May, 2014, that he did not flee the United States and he contends that "a secret service agent purportedly misreading my travel details does not excuse what I regard as a blatantly incorrect assertion". He further contends that "[a]s I have previously asserted I believe this false assertion fundamentally undermines the credibility of the request from the U.S." Finally, the respondent accepts that his movements in and out of the United States in 2006 were as is now indicated.

7.9 This Court has given careful consideration to the evidence adduced before it concerning the undoubtedly erroneous assertion made by Ms. Bower that the respondent fled the United States on the 24th of June 2007. The Court considers that the error has been adequately explained. Moreover it disagrees profoundly with the contention advanced by the respondent that the error in question fundamentally undermines the credibility of the extradition request. In this Court's view, it does nothing of the sort. The Court is satisfied that the error was a genuine one, and that it did not involve any bad faith, or any attempt to abuse either the process of this Court, or that of the courts of the requesting state. It was a regrettable error as to a factual detail but hardly a critical one in terms of the issues that this Court has to decide. It is an untenable proposition that because of a single error as to a non-critical detail, the entirety of the evidence offered by the deponent in question should be rejected as unreliable and not credible. The Court accepts that sometimes errors occur even in the most assiduously and conscientiously assembled paperwork. As long as the error was acknowledged once discovered, which it has been; and explained, which it has been; and providing it has no sinister connotations, which it has not; the Court considers that it carries no implications for the reliability or credibility of other evidence given by Ms. Bowers in support of the extradition request. Neither does the error carry any implications for the reliability or credibility of other deponents who have also provided sworn evidence in support of the extradition request.

7.10. In the circumstances, the Court is not disposed to uphold this ground of objection.

8. The Objection Based the Territoriality Bar Created by s.15 of the Act of 1965.
8.1. Section 15 of the Act of 1965 in its original form provided:

> "**15**.—Extradition shall not be granted where the offence for which it is requested is regarded under the law of the State as having been committed in the State."

8.2. It is clear that s. 15 of the Act of 1965, as originally enacted, provided that if an offence was capable of being prosecuted in Ireland because it was regarded under the law of the State as having been committed in the State, that was a total bar to extradition. It mattered not whether the Director of Public Prosecutions (the D.P.P.) had considered, or had not considered, possible prosecution in this jurisdiction, or whether the D.P.P. wished, or did not wish, to prosecute in this jurisdiction. Once an offence was regarded under the law of the state as having been committed in the State, extradition was absolutely barred. To correctly characterise it, the original s. 15 of the Act of 1965, created a "territoriality bar".

8.3. It bears mentioning *en passant* that a new s. 15 of the Act of 1965 has recently been substituted by s. 27 of the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012. The effect of the new s. 15 is to remove the absolute territoriality bar that had previously existed and to substitute for it a modified provision that, in effect, gives the D.P.P a right of first refusal on prosecution where the offences are regarded as having been committed in the state and the offender is also wanted for prosecution for the same offences in another state, which has requested, or it is anticipated may request, that person's extradition.

8.4. However, as the Act of 2012 only came into effect on the 24th July, 2012, and the relevant date for the purposes of determining the appropriate extradition legislation applicable to these proceedings is the date of the extradition request, *i.e.*, the 5th August, 2011, the new s. 15 does not apply. Rather, the Court is solely concerned with s. 15 as originally enacted, and the parties are in agreement on that.

8.5. The territoriality objection as originally formulated by the respondent was advanced on the basis that some of the alleged offences in the extradition request are said to have been committed whilst the respondent was present and residing in Ireland and as such it is alleged that the acts were committed inside the territory of the requested State, namely Ireland. As noted already, the territoriality objection has now been expanded to potentially embrace all of the offences that are the subject matter of the extradition request.

8.6. In making his expanded s. 15 objection, the respondent contends that the question of whether the territoriality bar applies in his case requires a consideration of whether or not he may be alleged to have committed the said alleged offences under Irish law (as opposed to necessarily committing the same in the State). Put another way, he appears to be contending that offences in respect of which Ireland claims extraterritorial jurisdiction qualify as offences regarded under the law of the State as having been committed in the State. Further, he says that in determining whether or not the respondent may be alleged to have committed an offence under Irish law, this must be considered by reference to the date of upon which the request for his extradition was made, rather than by reference to the date upon which the alleged offences were committed.

8.7. The significance of the latter contention is that, if he is correct in respect of the former, the Court would be required to consider whether the offences alleged to have been committed by him in the United States in 2006-2007 give rise to offences in respect of which Ireland claimed extraterritorial jurisdiction, on the date on which the request was made (*i.e.* the 5th August, 2011).

8.8. The respondent makes the case that active participation in a criminal conspiracy lies at the heart of the allegations that are the subject matter of the extradition request, and that the underlying facts therefore disclose offences contrary to ss. 71, 71A and 72 of

the Criminal Justice Act 2006 (hereinafter the Act of 2006), as amended by the Criminal Justice (Amendment) Act 2009 (hereinafter the Act of 2009) (effective as of the 22nd July, 2009), and/or s. 7 of the Criminal Justice (Money Laundering and Terrorist Offences) Act 2010 (hereinafter the Act of 2010) (commenced 15th July 2010), all of which are prosecutable in Ireland even if committed in the United State of America, because Ireland now asserts extra-territorial jurisdiction in respect of such offences, and did so on the 5th August, 2011.

8.9. The applicant's position is that neither the Act of 2006, nor the Act of 2009, nor the Act of 2010, is relevant to a consideration of s. 15 of the Act of 1965. The applicant suggests that the respondent's submissions are based on a fundamental misunderstanding of the ambit of s. 15 of the Act of 1965 and ignores the distinction between it and s. 10 of the same Act, and indeed conflates both provisions in several respects. The applicant suggests that the effect of the respondent's submissions is that one must consider whether the alleged actions of the respondent in 2006-2007 give rise to criminal offences in 2009-2011, and that, if so, extradition is prohibited despite the fact that Article 15.5 of the Constitution prohibits retrospective penal legislation. In the applicant's submission that cannot be so.

8.10. In this Court's view s. 15 of the Act of 1965 has to be viewed and interpreted in context, and in particular with regard to the scheme of the Act of 1965.

8.11. The starting point is s. 9 of the Act of 1965 (*infra* para 2.5) which sets out the obligation to extradite. The offences in respect of which extradition may be ordered are then set out in s. 10(1A) of the Act of 1965, as amended by the Act of 2001 (*infra* para 2.7). Importantly, the expression *"an offence that is punishable under the laws of the State"* which appears therein (and elsewhere in s. 10) is defined in s. 10(3), and pursuant to that subsection means *"an act that, if committed in the State on the day on which the request for extradition is made, would constitute an offence"*. However, the applicability of this definition applies is qualified by the words *"[i]n this section"* which appear at the very start of s. 10(3).

8.12. It is clear beyond peradventure that to the extent that this court is required to consider correspondence and minimum gravity, it is required by virtue of s. 10 to engage in a hypothesis and must determine if the offending conduct would, if committed in the State on the 5th August, 2011, constitute an offence or offences in the State attracting a potential punishment, or in respect of which an actual punishment was imposed, above the minima specified. However, there is nothing in s. 10, or elsewhere in the Act of 1965, to suggest that the relevant date for purposes of considering issues other than correspondence or minimum gravity is the date on which the extradition request is made. It seems clear that the s. 10 definition of *"an offence that is punishable under the laws of the State"* is intended to apply only in the Court's consideration of correspondence and minimum gravity, and not more widely. There is no ambiguity in this Court's view. The language used is clear, and does not imply an absurd result.

8.13. In particular, there is nothing in s. 10 or elsewhere in the Act of 1965 to suggest that the definition of an *"an offence that is punishable under the laws of the State"* set forth in s. 10(3) was intended by the legislature to have any application in the interpretation of s. 15 of the Act of 1965. Unlike in s. 10 of the Act of 1965, the concept of *"offence"* for the purposes of s. 15 is not statutorily defined. However, as already alluded to, s. 15 is concerned with is what has been termed "a territoriality bar" to extradition, where the offence (for which extradition is requested) has been *"committed in the State"*. Again the language appears clear. The section ostensibly applies to offences regarded under the law of the State as having been committed **in the State** (this Court's emphasis) *i.e.*, offences committed within the actual territory of the State or places deemed under Irish law to be the territory of the State, such as on a ship or aircraft registered in Ireland, or on the property of an Irish embassy or diplomatic mission abroad. It does not say that it applies more widely to offences committed anywhere in respect of which the State claims extraterritorial jurisdiction.

8.14. The Court finds support for its view when Article 7 of the European Convention on Extradition 1957 (hereinafter the 1957 Convention), which provides the basis for the legislative enactment of s. 15 of the Act of 1965, is examined. The Court is satisfied that it is both permissible and appropriate for it to have regard to Article 7 of the 1957 Convention and indeed the Explanatory Memorandum accompanying it. There is abundant precedent for doing so. In *Aamand v Smithwick* [1995] 1 I.L.R.M. 61, the Supreme Court considered the terms of Article 7 of the 1957 Convention in seeking to interpret s. 10 of the Act of 1965, in the context of an application under Article 40 of the Constitution. Similarly, in the somewhat earlier case of *Bourke v Attorney General* [1972] 1 I.R. 36, the Supreme Court again considered Article 3 of the 1957 Convention in aid of interpreting s. 50 of the Act of 1965. Yet again in *Minister for Justice v. Bailey* [2012] 4 I.R. 1, the Supreme Court in seeking to interpret s. 44 of the European Arrest Warrant Act 2003 considered the *travaux préparatoires* to Council Framework Decision 2002/584/J.H.A. 13th June 2002 on the European arrest warrant and the surrender procedures between Member States, O.J. L190/1 18.7.2002, as well as Article 7 of the 1957 Convention and the Explanatory Memorandum thereto.

8.15. Article 7 of the 1957 Convention provides:-

> *"1. The requested Party may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory.*
>
> *2. When the offence for which extradition is requested has been committed outside the territory of the requested Party, extradition may only be refused if the law of the requested Party does not allow prosecution for the same category of offence when committed outside the latter Party's territory or does not allow extradition for the offence concerned."*

8.16. The Explanatory Report to the 1957 Convention states the following with respect to Article 7 of that Convention:-

> ***"Article 7 (Place of commission)***
>
> *Paragraph 1 permits a Party to refuse extradition for an act committed in whole or in part within its territory or in a place considered as its territory. Under this paragraph it is for the requested Party to determine in accordance with its law whether the act was committed in whole or in part within its territory or in a place considered as its territory. Thus, for examples, offences committed on a ship or aircraft of the nationality of the requested Party may be considered as offences committed on territory of that Party.*
>
> *Paragraph 2 was inserted in order to take into account the law of countries which do not allow extradition for an offence committed outside the territory of the requesting Party. This paragraph provides that extradition must be granted if the offence has been committed outside the territory of the requesting Party unless the laws of the requested Party do not authorise prosecution for an offence of the same kind committed outside its territory, or do not authorise extradition for the offence which is the subject of its request.*

Under the terms of Article 26, a reservation may be made in respect of this paragraph, making it subject to reciprocity."

(The Court's emphasis)

8.17. Ireland has not entered any reservation under Article 26 of the 1957 Convention.

8.18. It is clear to this Court that when Article 7 of the 1957 Convention is considered in aid of the interpretation of s. 15, which is in any event quite clear in its terms, that section is concerned with a territoriality exception or bar to extradition *i.e*. that extradition shall not be granted where "*the offence*" (in terms of the offending conduct constituting the offence) is committed in the State, or in a place regarded under the law of the State as being within the territory of the State.

8.19. However, that is not the same thing as saying that in any case where Ireland asserts extraterritorial jurisdiction s. 15 is engaged. That is simply not so because Ireland does not assert extraterritorial jurisdiction solely, or even mainly, on the basis that offences committed abroad are regarded under the law of the State as having been committed within the territory of the State. In particular, it does not do so in the case of the extra-territorial jurisdiction asserted in respect of offences contrary to sections 71, 71A and 72 of the Act of 2006, as amended by the Act of 2009 and/or s. 7 of the Act of 2010, (assuming just for the purposes of the argument that they are capable of being relied upon by the respondent).

8.20. This Court has further concluded that the respondent cannot in fact seek to rely on 71, 71A and 72 of the Act of 2006, as amended by the Act of 2009 and/or s. 7 of the Act of 2010, because neither the Act of 2009, nor the Act of 2010, had been enacted when the offending conduct that now constitutes the offences the subject matter of the present extradition request was committed. As the applicant has pointed out, there is a constitutional prohibition on the retrospective penalisation of conduct. While thirty of the fifty one alleged offences, i.e., counts 6-10, 15-23, 29-33, 38-39, 43-49 and 54-55, were committed after the 1st August, 2006, the date on which the Act of 2006 came into force, s. 71 and s. 72 of that Act, as originally enacted, were much more restrictive in their scope than they were post the amendments effected by the Act of 2009. In addition, s. 71A of the Act of 2006 was only inserted by the Act of 2009.

8.21. An examination of s. 71 and s. 72 respectively of the Act of 2006 as they were originally enacted is instructive.

8.22. Section 71 of the Act of 2006, as originally enacted, provided:-

> **"Offence of conspiracy**
> 71.— (1) Subject to subsections (2) and (3), a person who conspires, whether in the State or elsewhere, with one or more persons to do an act –
>
> (a) in the State that constitutes a serious offence, or
>
> (b) in a place outside the State that constitutes a serious offence under the law of that place and which would, if done in the State, constitute a serious offence
>
> is guilty of an offence irrespective of whether such act actually takes place or not.
>
> (2) Subsection (1) applies to a conspiracy committed outside the State if -
>
> (a) ...
>
> (b) ...
>
> (c) ...
>
> (d) the conspiracy is committed by an Irish citizen ....
>
> (3) Subsection (1) shall also apply to a conspiracy committed outside the State in circumstances other than those referred to in subsection (2), but in that case the [DPP] may not take, or consent to the taking of, proceedings for an offence under subsection (1) except in accordance with section 74(3).
>
> (4) ...
>
> (5) ..."

8.23. Clearly s. 71 of the Act of 2006 as originally enacted, *inter alia*, asserts extra-territorial jurisdiction and thereby criminalises certain actions that are committed "*outside the State*" in specified circumstances. This is to be contrasted with s. 15 of the Act of 1965, which is concerned with an offence that is regarded under the law of the State as having been "*committed in the State*" *i.e*. where the State is the place of the commission of the offence and hence the territorial exception. Insofar as s. 71 of the 2006 Act, as originally enacted, criminalises certain actions that are committed outside the State, that does not mean that the actions are regarded under the law of the State as having been committed in the State: it merely makes such extra-territorial actions on the part of an accused an extra-territorial criminal offence in the State.

8.24. The foregoing analysis is supported by section 74(1) of the 2006 Act (as originally enacted) insofar it provides:-

> "Proceedings for an offence under section 71 or 72 ... **in relation to an act committed outside the State** may be taken in any place in the State and the offence **may for all incidental purposes be treated as having been committed in that place.**" (This Court's emphasis.)

8.25. Section 72 of the Act of 2006, as originally enacted, provides (to the extent that it is relevant):-

> **"Organised Crime**

72.— (1) A person who for the purpose of enhancing the ability of a criminal organisation to commit or facilitate –

(a) … [not relevant], or

(b) in a place outside the State, a serious offence under the law of that place where the act constituting the offence would, if done in the State, constitute a serious offence,

knowingly **by act** –

(i) … [not relevant], and

(ii) in a case to which paragraph (b) applies, **done in the State** ... participates in or contributes to any activity of the organisation is guilty of an offence. (This Court's emphasis)

8.26. The import of this provision is entirely clear. The only basis upon which a person might be exposed to prosecution for enhancing the ability of a criminal organisation to commit or facilitate the commission of a serious offence outside the State is if s/he does an act in the State that participates in or contributes to any activity of that organisation. In terms of the allegations against the respondent, all of the actions are alleged to have been committed in the U.S.A.

8.27. In the case of eight of the alleged offences, the evidence supports the respondent's contention that he was outside of the United States at the time that the offending conduct took place. Five of those offences concerned "wire fraud", two of them concerned "unlawful monetary transactions" and one concerned "aggravated identity theft". However, there is no evidence that the respondent was in fact in the State on the date of any or all of those offences. Equally, there is no evidence of the respondent actually having done anything in the State, or elsewhere, on the date of any or all of those offences in furtherance of any alleged offence in the United States of America, nor indeed is there any allegation that he may have done so. The appellant has submitted, and the Court accepts, that the situation just described mirrors in many pertinent respects that which obtained in *Attorney General v Pocevicius* [2013] IEHC 229. I said in that case:

> "Turning then to the objection based upon s. 15 of the Act of 1965, I have previously expressed the view *obiter dictum* in a case of *Minister for Justice and Equality v. Connolly* [2012] IEHC 575 (Unreported, High Court, Edwards J., 6th December, 2012) that s. 20 of the Misuse of Drugs Act 1977 is both territorial and extra territorial in its application. While it is extra territorial in that it allows a person to be tried in Ireland for aiding, abetting, counselling or inducing the commission in a place outside the state of an offence punishable under a corresponding law in force in that place, it is territorial in as much as the act constituting that aiding, abetting, counselling or inducing must be an act done within the territory of Ireland. While the respondent has sought to suggest in his affidavit that he may have been in Ireland on the 25th September, 2008, the act or conduct alleged against him is possession (in the sense of exercising control) of drugs in Stavanger on that date. Whether or not Mr. Pocevicius was in Norway or in Ireland, or in both places, on the date in question is not determinative of whether the offence to which the extradition request relates could be tried in Ireland. In order for the offence to be triable in Ireland it would have to be established that some act or conduct amounting to aiding, abetting, counselling or inducing the commission of the drugs offence charged against him in Norway was committed by the respondent while he was in Ireland. There is, however, nothing in the evidence capable of establishing as a matter of probability that any act or conduct of that sort was committed in Ireland. At most there is a suggestion, which is still being examined, that Mr. Pocevicius may have been in Ireland on the date in question. The evidence, such as it is, does not establish that anything specific was done in Ireland to exercise control over drugs imported, or to be imported, into Norway on that date. Accordingly, the Court is not satisfied that the offence in question is regarded under the law of Ireland as having been committed in this state."

8.28. It is clear that in respect of the eight offences in question, the respondent is alleged to have committed those offences on the basis that he was party to a joint enterprise, and that acts committed by another party, or parties, to the said joint enterprise, and who were within the jurisdiction of the requesting state on the relevant date or dates, are being attributed to the respondent. It is perfectly lawful and legitimate for the requesting state to seek to do so, and it does not amount to a contention that those acts were committed in Ireland.

8.29. The Court agrees with the submission of the applicant that there is no evidence whatsoever to suggest that the respondent committed offences in the State, or for that matter performed acts in the State in furtherance of offences committed outside the State, such as could possibly engage the territoriality bar provided for in s. 15 of the Act of 1965.

8.30. In the circumstances, the Court is also not disposed to uphold this ground of objection.

9. The Objection Based Upon The Rule Of Specialty

9.1. The respondent contends that because the indictment preferred against him indicates that if he is convicted of an offence or offences of wire fraud or unlawful monetary transaction, or both, he will be liable to suffer forfeiture of any property, real or personal, that constitutes, or is derived from, proceeds traceable to the commission of the offence(s), this Court should conclude that the requesting state does not intend to respect the rule of specialty.

9.2. The Court is satisfied that this ground of objection is utterly misconceived. The fact that the respondent may face forfeiture of property on the basis indicated does not mean that the respondent will be charged or tried with any offences additional to those to which the present indictment relates. The possible forfeitures referred to in the indictment are not punishments for separate offences. Rather, they are consequential orders that will follow in the event of the respondent being convicted of an offence or offences of wire fraud and/or unlawful monetary transactions charged on the existing indictment. Moreover, any such forfeitures will be in addition to, and are not an alternative to, any custodial or other penalty to which the respondent may be sentenced in the event that he is convicted.

9.3. In circumstances where the Court is satisfied that there is no evidence of an intention by the requesting state to disrespect the rule of specialty the Court is not disposed to uphold this objection.

10. The Objection Based Upon Correspondence

10.1. The Court has already identified, in part 4 of this judgment, the offending conduct that forms the basis of the charges of wire fraud, unlawful monetary transaction and aggravated identity theft, respectively. In considering the issue of correspondence it is necessary in each instance to consider that offending conduct and, in accordance with the approach commended by the Supreme Court in *Attorney General v Dyer* [2004] 1 I.R. 40, to determine whether that conduct, regardless of the name given to it in the

requesting state, in its entirety or near-entirety, would constitute an offence which, if committed in this State, could be said to be a corresponding offence of the required gravity.

10.2. The applicant submits that for the purposes of correspondence the relevant date is the date of the extradition request, *i.e.*, the 5th August, 2011, and accordingly any consideration of Irish law for the purposes of the correspondence issue will be concerned with Irish law as of that date. The Court agrees. That it is so is clear from the terms of s.10 of the Act of 1965 as amended.

The Wire Fraud Offences

10.3. The applicant has submitted that that correspondence may be established with the wire fraud offences by reference to a variety of candidate offences in the State, which she has designated No. I to IV, respectively. She submits that this may be considered by the actual payment of monies out, the agreement to grant a mortgage in respect of each property and theft of the monies that were paid out.

10.4. The applicant has proffered as candidate offence No. I, the offence in Irish law of causing loss by deception contrary to s. 6 of the Criminal Justice (Theft and Fraud Offences) Act 2001, (hereinafter the Theft and Fraud Offences Act of 2001). Her second candidate offence, *i.e.*, No. II, is the offence in Irish law of obtaining services by deception contrary to s. 7 of the Theft and Fraud Offences Act of 2001. Her third candidate offence, *i.e.*, No. III, is the offence in Irish law of theft, contrary to s. 4 of the Theft and Fraud Offences Act of 2001. The fourth and final candidate offence is the offence in Irish law of participating in or contributing to certain activities, contrary to s. 72 of the Act of 2006, as substituted by s. 6 of the Act of 2009.

10.5. It was further submitted that, if the offending conduct was committed in the State, the respondent could be prosecuted in respect of the candidate offences I to IV on the basis of joint enterprise pursuant to common law and on the basis of being directly complicit in the crime. The Court is asked to note that it is not necessary that another principal in the joint enterprise be convicted of that offence or even identified.

10.6. It was contended in the alternative that the respondent could be prosecuted on the basis of secondary participation (notwithstanding having been indicted as a principal offender) pursuant to s. 7(1) of the Criminal Law Act 1997, which provides:-

> "Any person who aids, abets, counsels or procures the commission of an indictable offence shall be liable to be indicted, tried and punished as a principal offender."

10.7. With respect to establishing liability on the basis of secondary participation, counsel for the applicant points out that it is only necessary for the prosecution to prove that the principal offence has been committed with respect to aiding or abetting. It is not, however, necessary that any individual be convicted for or even apprehended on suspicion of the principal offence. All that is necessary is that the jury be satisfied that the principal offence was committed where the offence is prosecuted on the basis of aiding or abetting.

10.8. While the respondent has raised a correspondence objection, he has not sought to argue that the candidate offences, or any of them, are inappropriate on any substantive basis. The Court has given detailed consideration to the ingredients of each of the candidate offences, which are helpfully set out in the written submissions filed on behalf of the applicant, and to the offending conduct as described in the extradition request. Having done so it is satisfied that correspondence can indeed be established with each of those offences. However, it is only necessary for the purposes of the proceedings to find correspondence with one candidate offence, and in the Court's view the candidate offence that most closely corresponds is No. I, *i.e.*, the offence of causing loss by deception contrary to section 6 of the Theft and Fraud Offences Act of 2001.

The Unlawful Monetary Transaction Offences

10.9. The applicant has submitted that correspondence may be established with the unlawful monetary transaction offences by reference to a variety of candidate offences in the State, which she has again designated I to IV, respectively, for the purposes of the exercise the Court is engaged in. Once again, it is contended that, in respect of each offence in this category, correspondence may be established with candidate offences I to IV either solely, or on the basis of joint enterprise, or indeed on the basis of secondary participation pursuant to s. 7 of the Criminal Law Act 1997.

10.10. The applicant has proffered as candidate offence No. I, the offence in Irish law of making gain by deception contrary to s. 6 of the Theft and Fraud Offences Act of 2001. Her second candidate offence, *i.e.*, No. II, is the offence in Irish law of theft, contrary to s. 4 of the Theft and Fraud Offences Act of 2001. Her third candidate offence, *i.e.*, No III, is the offence in Irish Law of money laundering contrary to s. 7 (1) of the Act of 2010. The fourth and final candidate offence is again the offence in Irish law of participating in or contributing to certain activities, contrary to s. 72 of the Act of 2006, as substituted by s. 6 of the Act of 2009.

10.11. Again, the Court has given detailed consideration to the ingredients of each of the candidate offences, which are helpfully set out in the written submissions filed on behalf of the applicant, and to the offending conduct as described in the extradition request. Having done so, and in circumstances where the respondent has raised a correspondence objection, but has not sought to argue that the candidate offences, or any of them, are inappropriate on any substantive basis, the Court is satisfied that correspondence can indeed be established with each of the candidate offences. However, as it is only necessary for the purposes of the proceedings to find correspondence with one candidate offence, the candidate offence that most closely corresponds in the Court's view is No. III, *i.e.*, the offence in Irish Law of money laundering contrary to s. 7(1) of the Act of 2010.

The Aggravated Identity Theft Offences

10.12. The applicant has submitted that correspondence may be established with the aggravated identity theft offences by reference to a variety of candidate offences in the State, which, in this instance, she has designated No. I to V, respectively, for the purposes of the exercise the Court is presently engaged in. Once again, it is contended that in respect of each offence in this category, correspondence may be established with candidate offences No. I to V either solely, or on the basis of joint enterprise, or indeed on the basis of secondary participation, pursuant to s. 7 of the Criminal Law Act, 1997.

10.13. In this instance, the applicant has proffered as candidate offence No. I the offence in Irish law of forgery, contrary to s. 25 of the Theft and Fraud Offences Act of 2001. Her second candidate offence, *i.e.*, No. II, is the offence in Irish law of using a false

instrument, contrary to s. 26 of the Theft and Fraud Offences Act of 2001. Her third candidate offence, *i.e.*, No. III, is the offence in Irish Law of having custody or control of a false instrument with intent, contrary to s. 29(1) of the Theft and Fraud Offences Act of 2001. The fourth candidate offence *i.e.*, No. IV, is the offence in Irish law of having custody or control of a false instrument without lawful excuse, contrary to s. 29(2) of the Theft and Fraud Offences Act of 2001. The fifth and final candidate offence *i.e.*, No. V, is again the offence in Irish law of participating in or contributing to certain activities, contrary to s. 72 of the Act of 2006, as substituted by s. 6 of the Act of 2009.

10.14. Yet again, the Court has given detailed consideration to the ingredients of each of the candidate offences, which are helpfully set out in the written submissions filed on behalf of the applicant, and to the offending conduct as described in the extradition request. Having done so, and in circumstances where the respondent has raised a correspondence objection, but has not sought to argue that the candidate offences, or any of them, are inappropriate on any substantive basis, the Court is satisfied that correspondence can indeed be established with each of the candidate offences. However, as it is only necessary for the purposes of the proceedings to find correspondence with one candidate offence, the candidate offence that most closely corresponds in the Court's view is No. I., *i.e.*, the offence in Irish law of forgery, contrary to s.25 of the Theft and Fraud Offences Act of 2001.

11. Minimum Gravity

11.1. What is required to be established in terms of minimum gravity is set forth in s.10(1A) of the Act of 1965, as inserted by the Act of 2001 (*infra* para 2.7). The Court must be satisfied that in respect of each offence for which the respondent is sought to be extradited, the offence in question is punishable –

> "(a) under the laws of that country [i.e., the requesting state], by imprisonment or detention for a maximum period of not less than one year or by a more severe penalty, and
>
> (b) under the laws of the State, by imprisonment or detention for a maximum period of not less than six months or by a more severe penalty,"

11.2. The 29 counts of Wire Fraud in violation of Title 18, United States Code §§ 1343 and 2 carry, in each instance, a basic maximum potential penalty of imprisonment for up to twenty years; or, if the violation affects a financial institution, of imprisonment for up to thirty years. Clearly, the one year threshold specified in s.10(1A)(a) is met.

11.3. In the case of the 29 counts of Wire Fraud in violation of Title 18, United States Code §§ 1343 and 2, this Court has found correspondence with the offence in Irish law of causing loss by deception contrary to section 6 of the Theft and Fraud Offences Act of 2001. The offence of causing loss by deception contrary to section 6 of the Theft and Fraud Offences Act of 2001, carries a maximum potential penalty of up to five years imprisonment. In those circumstances, the six month threshold specified in s. 10(1A)(b) is met.

11.4. The 6 counts of Unlawful Monetary Transaction in violation of Title 18, United States Code §§ 1957 and 2 carry, in each instance, a basic maximum potential penalty of imprisonment for up to ten years. The one year threshold specified in s. 10(1A)(a) is therefore comfortably met.

11.5. In the case of the 6 counts of Unlawful Monetary Transaction in violation of Title 18, United States Code §§ 1957 and 2, this Court has found correspondence with the offence in Irish law of money laundering contrary to s. 7(1) of the Act of 2010. The offence of money laundering contrary to s. 7(1) of the Act of 2010 carries a maximum potential penalty of up to fourteen years imprisonment. In those circumstances the six month threshold specified in s. 10(1A)(b) is met.

11.6. The 16 counts of Aggravated Identity Theft in violation of Title 18, United States Code § 1028A, carry, in each instance, a basic maximum potential penalty of imprisonment for up to two years. The one year threshold specified in s. 10(1A)(a) is therefore met

11.7. In the case of the 16 counts of Aggravated Identity Theft in violation of Title 18, United States Code § 1028A., this Court has found correspondence with the offence in Irish law of forgery, contrary to s. 25 of the Theft and Fraud Offences Act of 2001. The offence of forgery, contrary to s. 25 of the Theft and Fraud Offences Act of 2001 carries a maximum potential penalty of up to ten years imprisonment. In those circumstances the six month threshold specified in s. 10(1A)(b) is met.

11.8. In the circumstances, the Court is satisfied that the offences to which the extradition request relates meet minimum gravity requirements.

12. Conclusions.

12.1. The Court is not disposed to uphold any of the objections raised by the respondent to his extradition.

12.2. The Court is satisfied that the extradition of the respondent has been duly requested.

12.3. The court is further satisfied that Part II of the Act of 1965 applies to the requesting country.

12.4. The Court is further satisfied that extradition of the respondent is not prohibited under Part II of the Act of 1965, or by the relevant extradition provisions within the meaning of the Act of 1965.

12.5. The Court is further satisfied that the documents required to support a request for extradition under s.25 of the Act of 1965 have been produced.

12.6. In the circumstances, the Court is required to make an Order in accordance with s. 29 of the Act of 1965, committing the respondent to a prison there to await the Order of the Minister for Justice, and it will do so, but without prejudice to the respondent's entitlement in accordance with s. 29(5) of the Act of 1965, to file an appeal on a point of law before the Court of Appeal, or in the alternative to apply to the Supreme Court for leave to appeal to that Court on a similar basis, and his further right to seek to be admitted to bail in the context of any such appeal.