Neutral Citation Number: [2025] EWHC 1985 (Admin)

Case No: AC-2023-LON-002337

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2025

Before:

THE HONOURABLE MR JUSTICE SWEETING

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Between:

Hargobind TAHILRAMANI (also known as Gobind Lal Tahil)	**Applicant**
- and –	
Government of the United States of America (USA)	**Respondent**

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Edward Fitzgerald KC and **Mary Westcott** (instructed by **Karen Todner Limited**) for the **Applicant**
Joel Smith KC and **Nicholas Hearn** (instructed by **Crown Prosecution Service (Extradition)**) for the **Respondent**

Hearing dates: 3-4 April 2025

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Approved Judgment

This judgment was handed down remotely at 10.00am on 29.07.2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE SWEETING

Mr Justice Sweeting:

Introduction

1. This is a rolled-up permission/appeal hearing, in relation to a decision of Senior District Judge Goldspring ("the SDJ"). The SDJ ordered the Applicant's case to be sent to the Secretary of State pursuant to section 87(3) of the Extradition Act 2003 ("the 2003 Act"). The Secretary of State then ordered the Applicant's extradition to the United States of America.

Acronyms and Short Forms

2. The following acronyms and short forms of reference appeared frequently in the documentary material and were used in the written and oral submissions:

   i) **BOP**: This stands for the Federal Bureau of Prisons. This agency operates the federal prison system in the United States. It is part of the US Department of Justice.

   ii) **CAR**: This refers to Criminal Alien Requirement facilities. These were privately operated federal prisons housing non-US citizens. The BOP described these segregated penal institutions as a way to facilitate border control by supporting the Immigration and Naturalization Service in the detention of aliens.

   iii) **FCI**: stands for Federal Correctional Institution. A Federal Correctional Institution is a type of United States federal correctional facility that holds inmates and is operated by the Bureau of Prisons.

   iv) **MCC**: This stands for Metropolitan Correctional Center; another detention facility. MCC San Diego featured in the evidence and submissions.

   v) **PREA**: This refers to the Prison Rape Elimination Act which is a federal law aimed at preventing, detecting, and responding to sexual abuse and sexual harassment in correctional facilities. "PREA audits" are conducted to assess compliance with its standards, which are subject to oversight by the Department of Justice.

   vi) **SHU**: This stands for Special Housing Unit. These are segregated housing units within correctional institutions where inmates are securely separated from the general inmate population to ensure safety, security, and orderly operation.

   vii) **SCI**: This refers to State Correctional Institutions; a type of detention facility.

   viii) **I-Unit**: The I-Unit is situated at the MCC San Diego, on the 9th floor and serves as an alternative to the SHU for certain inmates although it would not necessarily provide segregation from the general population in the same way as the SHU.

Factual Background to the alleged Offences and Extradition Request

3. The Applicant, Mr Hargobind Tahilramani (also known as Gobind Lal Tahil), an Indonesian national born on 31 October 1979, is sought for extradition by the

Government of the United States of America, a Category 2 territory under the Extradition Act 2003.

4. The charges against the Applicant stem from an investigation by the Federal Bureau of Investigation (FBI) and the US Attorney's Office for the Southern District of California. A grand jury sitting in the Southern District of California returned an indictment on 6 October 2020, charging the Applicant with multiple offences.

5. The indictment charges the Applicant with:

   i) *Count 1:* Conspiracy to commit wire fraud, contrary to Title 18, U.S. Code, §1349, carrying a maximum penalty of 20 years' imprisonment.

   ii) *Counts 2 & 3:* Wire fraud, contrary to Title 18, U.S. Code §1343, each carrying a maximum penalty of 20 years' imprisonment.

   iii) *Counts 4 to 8:* Aggravated identity theft, contrary to Title 18, U.S. Code §1343, each carrying a maximum penalty of 2 years' imprisonment.

6. Although not necessary for extradition under Part 2 of the 2003 Act, the extradition request details evidence linking the Applicant to the frauds. The alleged conduct for Counts 2 to 8 post-dates November 2016, a period during which the Applicant was in the UK on an expired visitor's visa and could not have left and re-entered.

7. The alleged offences involve a worldwide, fraudulent scheme that took place between 2013 and August 2020. The Applicant is alleged to be the "mastermind" of this scheme. The core of the fraud involved impersonating well-known entertainment industry executives and their representatives to induce over 300 victims to travel to Indonesia to participate in non-existent film projects.

8. Victims were persuaded to pay non-existent or exorbitant fees or expenses, with the promise of repayment. These monies were allegedly received by the Applicant himself and were never repaid. The victims were primarily US-based entertainment industry professionals.

9. The request details instances where the Applicant is alleged to have impersonated various individuals to deceive victims. In relation to Mr Greg Mandarano, for example, it is alleged that:

   i) The Applicant contacted Mr Mandarano by email, falsely representing himself as "Huilang Jing", an executive at the China Film Group.

   ii) Mr Mandarano and his writing partner were persuaded by the Applicant, still posing as "Huilang Jing", to travel to Indonesia to pitch a script at their own expense.

   iii) In Indonesia, Mr Mandarano was charged an excessive rate of $900 per day for a driver, approximately ten times the average cost in the country.

   iv) During a meeting in Jakarta, the Applicant then pretended to be "Anand Sippy", Vice President of Development of the China Film Group, and instructed Mr Mandarano to re-write his script.

v) Over a period of three months, Mr Mandarano and his partner made four trips to Indonesia, each lasting several weeks, operating under itineraries that allowed only three hours of sleep per night.

vi) The Applicant also pressured Mr Mandarano to "buy out" his writing partner.

10. In the case of Mr Casey Grey, who worked in the security industry, it is alleged that:

i) He was informed by a colleague about a supposed opportunity with Jean Pritzker. This opportunity was, in fact, non-existent, as Mr Grey's colleague had been deceived by the Applicant, who was impersonating Ms Pritzker.

ii) On 12 July 2017, the Applicant, while pretending to be Ms Pritzker, emailed Mr Grey (who was in America at the time). The email included a four-page "non-disclosure agreement" purportedly between Ms Pritzker and Mr Grey, conveying the impression that the Applicant was Ms Pritzker and could offer work to Mr Grey. This email forms part of the allegations for Counts 3 and 5, relating to wire fraud and aggravated identity theft.

iii) Mr Grey was offered a fictional job surveying film sets in Indonesia, with a promised daily payment of $5,000.

iv) Mr Grey travelled to Indonesia and, consistent with the wider fraudulent scheme, was persuaded to incur expenses from his own funds, including two upfront payments of $2,500. None of these expenses were reimbursed. To conceal the non-reimbursement, the Applicant provided Mr Grey with a forged wire transfer receipt, which a bank later confirmed to be a fabrication.

11. Further alleged fraudulent conduct includes two phone calls made by the Applicant on 23 August 2020 to Tony Nevada and Tom Ohmer. In these calls, the Applicant impersonated "Doug Limer" in an attempt to induce them to participate in a similar scheme, though these attempts were unsuccessful. These calls are directly linked to Counts 7 and 8, which allege aggravated identity theft.

12. The alleged conduct has gained significant public notoriety, with reports identifying the Applicant as the "Hollywood Con Queen" and references in podcasts, documentaries, and books.

The Extradition Proceedings

13. The Applicant was arrested on 26 November 2020, pursuant to a provisional arrest warrant issued at Westminster Magistrates' Court on 25 November 2020. He was produced before Westminster Magistrates' Court on 27 November 2020, where bail was denied. He has remained in custody at HMP Wandsworth since that time. The extradition request was issued on 11 January 2021 and certified by the Secretary of State on 21 January 2021.

14. The extradition hearing before the SDJ took place over several days between 21 and 29 September 2022, with final oral submissions heard on 1 February 2023. The SDJ heard a considerable amount of expert evidence called on behalf of the Applicant. He handed down a detailed 44-page judgment on 5 June 2023, sending the case to the Secretary of

State for a decision on surrender. The Secretary of State formally ordered the Applicant's extradition on 17 July 2023, notification being given on the following day.

15. The Applicant lodged an application for permission to appeal with the High Court on 31 July 2023. There were then a series of applications for extensions of time to file perfected grounds of appeal. A Legal Representation Order was made for King's Counsel. On 3 May 2024, Kerr J adjourned the application for permission to appeal to a "rolled-up hearing,". This hearing was initially listed for 12 and 13 November 2024 but was subsequently vacated.

16. The Applicant has been represented by a succession of solicitors and counsel. He was initially represented by Hodge Jones and Allen Solicitors, with Ms Scott as junior counsel (later replaced by Ms Iveson) and Mr Ben Cooper KC as leading counsel. The Applicant subsequently dispensed with Hodge Jones and Allen. Sonn McMillan Walker then took over his representation through to the conclusion of the Magistrates' Court proceedings and obtained legal aid for the High Court appeal. That firm came off the record on 26 September 2023 due to a breakdown in the client-solicitor relationship, as the Applicant "no longer wishes to be represented by them".

17. ABV Solicitors then assumed his representation, with legal aid transferred on 17 November 2023. ABV Solicitors requested to come off the record on 4 November 2024, just before the substantive rolled up permission hearing was due to take place.

18. The Applicant is now represented by Karen Todner Ltd, solicitors, with legal aid granted on 11 November 2024. His current counsel are Mr Edward Fitzgerald KC and Ms Mary Westcott, neither of whom appeared before the SDJ. The Respondent observed that Mr Tahilramani is now on his "fourth set of solicitors, his fifth junior counsel and second leading counsel, all at public expense," suggesting these changes, particularly their timing, were an attempt to frustrate the proceedings.

The United States Prison System

19. Should the Applicant be extradited to the United States, it is likely that he would be detained pre-trial at the MCC San Diego. This facility primarily houses individuals awaiting trial or sentence within the Southern District of California. The United States Marshals Service is responsible for the placement of pre-trial detainees and, while other contract county jails may be utilised, MCC San Diego's proximity makes it the probable choice. It is "very unlikely" that the Applicant would be granted bail without access to substantial assets or financially secure sureties willing to guarantee his appearance.

20. If the Applicant is convicted and sentenced to a term of imprisonment, the precise facility cannot be definitively predicted, as decisions about an inmate's placement and transfers are matters for the BOP following sentence.

21. There is a significant likelihood that the Applicant would be placed in an SHU, at least initially, particularly given his earlier involvement in a hoax bomb threat to a U.S. Embassy. Moreover, individuals who are openly gay may be moved to SHUs for protective reasons or if they become victims of sexual predators.

22. If convicted, the Applicant faces a potential sentence of 7 to 10 years. The United States and Indonesia have no bilateral prisoner transfer agreement, so that the Applicant would serve his full sentence in the U.S.

23. The Applicant raises a concern regarding potential detention in a CAR prison. He argues that historically, there is a precedent for the imprisonment of aliens in substandard foreign-only prisons. Although Executive Order 14006 of President Biden, issued on 26 January 2021, aimed to eliminate the use of privately operated criminal detention facilities, this order was subsequently revoked by an Executive Order on 20 January 2025. It is said that this revocation gives rise to a "real risk that CAR prisons will now be reintroduced" and that the Applicant could be a candidate for detention in such a prison, characterising this as a "classic case of greater punishment for those who are foreign".

24. Should the Applicant be convicted and complete a prison sentence, he would likely be removed from the United States. During the removal process, he would typically be transferred from a criminal prison to an immigration detention centre, leading to an additional period of custody while awaiting deportation.

The Grounds of Appeal

25. The original perfected Grounds of Appeal, dated 18 September 2023, assert that the SDJ erred in concluding that:

    i) Extradition was not oppressive under section 91 of the of the 2003 Act (Ground 1); this involves consideration of:

        a) The Applicant's mental illness and risk of suicide.

        b) Whether the SDJ's findings on the Applicant being "not seriously unwell" and having a "low risk of suicide" were correct.

        c) The sufficiency of information regarding the conditions and regime of detention in the USA as it pertains to his health.

        d) The impact of the decision in Criminal Proceedings Against EDL (Case C-699/21) on the interpretation of section 91.

    ii) Extradition would be compatible with Article 3 of the European Convention on Human Rights ("ECHR"), specifically concerning prison conditions and the risk of the Applicant being subjected to inhuman and degrading treatment (Ground 2); This encompasses:

        a) The risk of sexual assault and the efficacy of protective measures.

        b) The Applicant's potential detention in a Special Housing Unit ("SHU") and whether such conditions would amount to inhumanity or inefficacy of protective measures.

    iii) Extradition would be compatible with the Applicant's rights under Article 14 ECHR and the treatment he would be subject to in the USA, particularly

concerning disproportionately severe conditions based on his sexual orientation (Ground 3).

26. In addition to these existing grounds, the Applicant seeks leave to amend the original Grounds of Appeal to add two new grounds, advanced pursuant to section 81(b) of the 2003 Act. By these proposed new grounds, the Applicant contends that there is a real risk of prejudice in relation to the conditions of his detention by reason of his foreign nationality, and by reason of his sexual orientation. These grounds overlap with the existing grounds in so far as they turn on conditions of detention and the impact of the Applicant's sexuality on the risks he may face in custody. Their addition is opposed by the Respondent.

27. The Applicant seeks to adduce additional material in support of these proposed new grounds, including Executive Orders of President Joe Biden and President Donald Trump, expert reports from Martin Sabelli and Samuel Weiss regarding the real risk of incarceration in CAR prisons, and an expert report from Emma Kaufman on "Segregation by Citizenship", as well as an article by Jade Wilson concerning the impact on LGBT+ individuals. It is submitted that the main body of evidence supporting these new grounds was already before the SDJ in the context of the existing ECHR challenges under Article 3 and Article 14. The Respondent's objections to the admissibility of the new grounds and evidence, are, principally, that they could and should have been raised before the SDJ and that section 81(b) does not cover "prejudice in relation to conditions of detention" but rather prejudice at trial or the fact of detention, not its quality. The Respondent nevertheless accepted that I should consider the new grounds and supporting material in the context of their potential impact on the issues raised and relied on by the Applicant before reaching a formal conclusion on their admission.

The Test on Appeal

28. In *Love v Government of the USA (DC)* [2018] EWHC 172 (Admin), [2018] 1WLR 2889 the court described the test to be applied on appeal:

> "25. The statutory appeal power in section 104(3) permits an appeal to be allowed only if the district judge ought to have decided a question before him differently and if, had he decided it as he ought to have done, he would have had to discharge the appellant. The words "ought to have decided a question . . . differently" (emphasis added) give a clear indication of the degree of error which has to be shown. The appeal must focus on error: what the judge ought to have decided differently, so as to mean that the appeal should be allowed. Extradition appeals are not re-hearings of evidence or mere repeats of submissions as to how factors should be weighed; courts normally have to respect the findings of fact made by the district judge, especially if he has heard oral evidence. The true focus is not on establishing a judicial review type of error, as a key to opening up a decision so that the appellate court can undertake the whole evaluation afresh. This can lead to a misplaced focus on omissions from judgments or on points not expressly dealt with in order to invite the court to start afresh, an approach which risks

> detracting from the proper appellate function. That is not what *Shaw's* case or *Belbin's* case was aiming at. Both cases intended to place firm limits on the scope for re-argument at the appellate hearing, while recognising that the appellate court is not obliged to find a judicial review type error before it can say that the judge's decision was wrong, and the appeal should be allowed.
>
> 26. The true approach is more simply expressed by requiring the appellate court to decide whether the decision of the district judge was wrong. What was said in the *Celinski* case and in *Re B (A Child)* are apposite, even if decided in the context of article 8. In effect, the test is the same here. The appellate court is entitled to stand back and say that a question ought to have been decided differently because the overall evaluation was wrong: crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed."

29. For the purpose of oral argument Mr Fitzgerald synthesised the existing and proposed grounds of appeal into four points which he addressed in the following order.

Compatibility with Article 3 of the European Convention on Human Rights (ECHR)

30. The Applicant contends that there is a high risk of assault, particularly sexual assault, and that any purported protective measures are likely to be ineffective or inhuman in their operation.

31. It is argued that the SDJ wrongly refused to admit new evidence concerning the high risk of sexual assault and the unreliability of PREA audits, upon which considerable reliance was placed by the SDJ. The Applicant asserts that there are specific risk factors in his case, including his status as a gay or non-heterosexual person, that render him particularly vulnerable to assault, pointing to a "massively disproportionate risk" of sexual violence.

32. Evidence presented by Ms Abbate, in particular, raised concerns regarding the effectiveness of PREA audits, specifically that the MCC San Diego audit report was "dishonest or incompetent" and lacked sufficient detail and thoroughness. These concerns, it was said, are corroborated by letters from US Senators and other legislators highlighting the systemic unreliability of such audits.

Compatibility with Article 14 ECHR, read in conjunction with Article 3 ECHR

33. The Applicant submits that the SDJ misdirected himself as to the applicable law concerning the compatibility of extradition with Article 14 when read with Article 3.

34. The Applicant's case is that he would almost certainly face confinement alone in protective custody due to his sexual orientation and effeminate demeanour, which he contends engages Article 14. It is asserted that Article 14's application does not presuppose an actual breach of Article 3, but rather that the facts fall within the ambit of Convention provisions. The Applicant argues that this matter required separate consideration from the Article 3 assessment. The SDJ's conclusion, it is argued, was

that the Article 14 challenge failed solely on the basis of his findings on Article 3 protections and so was wrong in law.

Real Risk of More Severe Punishment due to Nationality in CAR Prisons under section 81(b) or on the basis of sexual orientation

35. The Applicant contends that the Court can now find a real risk of him being punished more severely as a foreigner in a privately operated CAR prison. This risk was said to arise from governmental prison policy and is supported by evidence adduced before the SDJ and fresh evidence concerning the revival of privatised prisons by Presidential edict.

36. The Applicant also alleges prejudice in his conditions of detention by reason of sexual orientation and the potential housing of the Applicant in an SHU for his protection, with the argument that such conditions would be disproportionately severe.

Section 91 of the Extradition Act 2003 – Mental Health and Suicide Risk

37. It is argued that the SDJ was wrong to find that extradition would not be oppressive given the Applicant's mental health and a substantial risk of suicide, which fall to be considered under section 91 of the 2003 Act.

38. I adopt this broad issues-based outline, in the order proposed by Mr Fitzgerald, in the remainder of this judgment.

Article 3

39. The Applicant's primary case under Article 3 ECHR is that extradition would not be compatible with his right not to be subjected to inhuman or degrading treatment due to the high risk of assault, particularly sexual assault, and the alleged inefficacy and inhumanity of any protective measures within the United States prison system. This contention formed a significant part of his original grounds of appeal and was elaborated upon in the various additional written and oral submissions before me.

40. Mr Fitzgerald submitted that the SDJ erred in concluding that the Applicant was not at risk of sexual assault, a risk known to be higher in the case of non-heterosexual prisoners. Thus, he argued the Applicant is at a heightened risk of prison violence and sexual assault in US federal custody due to his particular vulnerabilities, specifically his homosexuality, demonstrable effeminacy, and prior victimisation.

41. A central aspect of the Applicant's Article 3 argument is the challenge to the reliability of PREA audits, upon which the SDJ had relied. The Applicant contends that the SDJ's reliance on a PREA audit of MCC San Diego was "wholly unreasonable" given compelling general evidence about the inadequacy of such audits in other cases. Specifically, evidence from Ms Abbate and letters from Senators highlighting concerns about the accuracy and reliability of PREA audits and the BOPs failure to protect prisoners from sexual abuse. The Applicant further pointed to incidents at FCI Dublin, where favourable PREA audits were conducted despite notorious sexual abuse occurring there. He contended that the SDJ "wrongly discounted" Ms Abbate's criticisms of the PREA audit.

42. The Applicant's case acknowledges that, for his own safety, he might be detained in an SHU. However, he challenges the SDJ's findings regarding the compatibility of such detention with Article 3.

43. He argues that the SHU regime is "extremely restrictive" and its likely effects on him, given his particular personality traits and psychological difficulties, would be deleterious to his mental health, effectively amounting to solitary confinement. The Applicant submitted that the SDJ was wrong in his conclusions that solitary confinement in a single cell for protective reasons was highly unlikely and would not be inhuman in any event.

44. If he was not housed in a single cell, then he further argued that the SDJ was wrong to conclude that housing in a double cell in an SHU would be compatible with Article 3. For this proposition he relied on the evidence of Dr Grassian, a psychiatric expert, that double-celling could be "even worse" due to forced sharing of a small space for prolonged periods with no external stimulation, leading to potential interpersonal frustration and anger, which would "all the more clearly breach Article 3 ECHR".

45. The Applicant's mental condition, specifically his personality disorder and psychological difficulties, was also directly linked to the argument advanced by reference to SHU placement and its compatibility with Article 3 (Dr Grassian, Professor Forrester, and Professor Greenberg concurred that solitary confinement would have a deleterious effect on the Applicant and could lead to a risk of serious psychiatric injury).

46. The Applicant further raised concerns about foreign prisoners detained in CAR prisons, suggesting harsher conditions for US citizen prisoners. While linked to the proposed new grounds under section 81(b) and Article 14, this evidence was also initially relevant to Article 3 and was considered by the SDJ in this context.

47. It was common ground before the SDJ that sexual assaults occur within the US prison estate. The Applicant relied on statistical material, notably from the National Inmate Survey (NIS) conducted by the Bureau of Justice Statistics ("BJS"). The purpose of the NIS is to gather data on the prevalence of sexual victimisation in prisons. It draws upon large, randomised samples of adult prison populations, and its methodology includes statistical adjustments for non-response to enhance its rigour. The BJS utilises the data collected from these surveys to compile reports on various topics, including the experiences of Lesbian, Gay, Bisexual, Transgender, and Queer ("LGBT+") individuals within the prison system. The survey relies on self-reported information without subsequent verification.

48. The NIS results suggest a significant underreporting of sexual abuse incidents by prison administrators. For example, the NIS-3, covering 2011-2012, estimated 80,600 victims of sexual abuse in 2012, while facility administrators reported only 10,047 incidents in the same period, implying administrators reported approximately 12.5% of inmate-reported allegations. The BJS has estimated that 200,000 prison inmates are sexually abused annually in the US. This underreporting is attributed to factors such as fear of retaliation, stigma, a "code of silence," and staff scepticism or premature dismissal of claims. Only a small percentage of allegations are substantiated (approximately 2.6% in Federal prisons in 2018), with the low substantiation rates arising not from false allegations but as a result, it is said, of systemic issues such as a lack of clear policies, insufficient investigators, poor evidence collection, and inadequate coordination. A key

statistical point advanced by the Applicant is the disproportionate risk to LGBT+ prisoners. Evidence from the BJS indicates that a gay or bisexual man or woman is at least 10 times more likely to be sexually victimised by another incarcerated person, and 2.6 times more likely to be victimised by staff, compared to heterosexual individuals. This is acknowledged to be a "high-risk group for being the victims of violence and harassment". The SDJ accepted that a higher risk to such a defendant was "obvious".

49. The SDJ considered the prevalence of sexual assaults, finding that "the level of sexual violence reported within the US and UK prison estates is broadly speaking equivalent, or the UK prison estate appears (statistically) to be worse". He concluded that the level of sexual violence in the US prison estate is not "endemically unusual" and has a lower level of reported abuse than the UK. While the Applicant criticises this comparison as flawed due to US underreporting, the SDJ was entitled to weigh the evidence as presented to him and draw contextual comparisons based on the data available. He specifically noted that Professor Hamilton conceded in cross-examination that sexual violence was not a "peculiarly American problem" and existed in other Western jurisdictions. This concession, though subject to the argument as to underreporting, informed the SDJ's view on the comparative prevalence of abuse within prison systems and was based upon the evidence.

50. In assessing the risk that the Applicant would in fact face against this background, the SDJ evaluated the evidence from the Applicant's expert witnesses, including Professor Hamilton, Ms Abbate, Ms Hill, and Mr Zoukis. The SDJ found their evidence to contain "non-specific, general assertions".

51. He concluded that Mr Gregory Houska's evidence was inadmissible as he was not an expert on prisons, lacking the necessary qualifications or experience. He had not been inside a US prison for six years (save for a family visit) and his knowledge of MCC San Diego was based on tours from the late 1990s and 2005.

52. Mr Christopher Zoukis's evidence was given "very little weight" by the SDJ, who found him not to be an expert and to have failed the impartiality requirements that attach to expert evidence. Mr Zoukis accepted in cross-examination that examples he provided to undermine the effectiveness of the PREA system were "wholly irrelevant" and that he "regretted" including them.

53. The SDJ approached Ms Maureen Baird with "real concerns over the veracity of her evidence". She had not been inside MCC San Diego since 2009 and relied on contact with only two former colleagues, neither of whom still worked at the facility. She was unaware of a multi-million-dollar overhaul of the prison in 2017/18 and the existence of the I-Unit.

54. He decided that Ms Hill's statistical analysis was inadmissible as being beyond her expertise.

55. While the Applicant presented evidence of alleged failures of PREA audits at FCI Dublin and CFCC Coleman (where the concerns were of abuse of female prisoners by staff), and noted Congressional concerns about their accuracy, the SDJ was required to make an evaluative judgment as to how this evidence was to be weighed against the specific audit information available for MCC San Diego.

56. The SDJ placed reliance on the recent (April 2021) and comprehensive PREA audit of MCC San Diego, from which he said he "drew significant comfort". This audit confirmed that "proper and robust systems are in place for the prevention and detection of sexual assault" and that the prison was "100% compliant with PREA regulations". He considered this "up to date and cogent evidence of the steps taken, in accordance with the law, to minimise sexual assaults in Prisons in the US". The Respondent referred to a number of further recent PREA audits for various facilities which consistently showed "Meet Standard" for PREA compliance. They detail procedures for inmate education, risk screening, reporting mechanisms, and investigation which the SDJ accepted, represent "practice" rather than merely "policy".

57. The SDJ rejected Ms Abbate's opinion on the adequacy of the MCC San Diego audit, questioning her objectivity and suitability for providing expert evidence given her willingness to express opinions without acknowledging whether she had raised her concerns with Mr Coudriet, the auditor, prior to finalising her conclusions. The SDJ considered Ms Abbate's criticism that the auditor only spent three days on site when conducting the audit to be "bordering on partisan" and insufficient to undermine the audit. Her assertion that the PREA audit report was "dishonest or incompetent," led the SDJ to question her objectivity. The SDJ concluded that he could not agree "...with her ultimate opinion that Mr Coudriet's report was 'valueless'".

58. His finding that Ms Abbate's criticisms did not sufficiently undermine the reliability of the MCC San Diego audit, particularly given his assessment of her objectivity, was a determination of fact based on evidence. In relation to protective measures for vulnerable prisoners, including LGBT+ individuals, the SDJ found that the US has "a range of procedures in place which are appropriate to protect vulnerable prisoners," notably housing in SHUs or Integration Units. He concluded that these measures would provide a "reasonable level of protection from sexual violence".

59. The Applicant contends that reliance on SHUs as a protective measure does not meet Article 3 concerns because they are themselves "extremely restrictive" and could lead to deleterious mental health effects, potentially amounting to solitary confinement incompatible with Article 3. However, the SDJ's findings and conclusions were to the opposite effect. He concluded that detention in an SHU does not amount to "solitary confinement" and that inmates are held in the "least restrictive setting necessary" with access to prison staff and facilities.

60. He summarised the Applicant's case in relation to SHU's observing that it appeared to involve a Catch 22 argument [282-283]:

> "a. Firstly, he should not be housed in general population for his own safety.
>
> b. Secondly, he should not be housed in protective custody as this would amount to "solitary confinement" and breach his article 3 rights.
>
> c. Thirdly, he should not be housed in protective custody with a cell mate (i.e., not in solitary confinement) because this would also breach his article 3 rights."

61. Statistical evidence presented indicated that only 0.289% of federal inmates were held in SHUs for protective custody reasons as of December 2021. Furthermore, Professor Hamilton herself accepted that the SHU regime described by the Respondent was "similar to that adopted in many Western prisons throughout the world and was in principle a sensible approach". The conflicting evidence regarding the 9th floor I-Unit at MCC San Diego, with some indicating it housed general population rather than vulnerable prisoners, was a matter for the SDJ to weigh in his assessment. His conclusion, that these units would also serve the purpose of providing reasonable protection, was a finding he was entitled to make on the evidence before him.

62. Whilst Mr Fitzgerald highlighted the pervasive nature of sexual violence in US prisons, significant underreporting, and the particular vulnerability of LGBT+ individuals, the SDJ was plainly aware of and took it into account this background. He made findings on witness credibility, such as that concerning Ms Abbate and Mr Zoukis, which fall squarely within his remit as the trial judge. His reliance on the positive PREA audit for MCC San Diego, despite the Applicant's broader criticisms of the system, was a permissible exercise of evaluative judgment on the evidence, given that he had assessed the specific audit in question.

63. Article 3 ECHR provides an absolute prohibition against torture, inhuman or degrading treatment or punishment, making no provision for exceptions or derogations. This absolute character underscores its fundamental importance. In the context of extradition, it is unlawful to extradite an individual to a requesting state where there is a real risk of them being treated in a manner which is prohibited by Article 3 (see *R (Ullah) v Special Immigration Adjudicator* [2004] 2 AC 323).

64. The threshold for the minimum level of severity required to engage Article 3 is relative. The ill-treatment must go "beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment" (see *Elashmawy v Court of Bresica, Italy* [2025] EWHC 28 (Admin)). Generalised evidence of human rights violations is insufficient; it must be demonstrated that the individual requested person is specifically at real risk.

65. The requesting state may adduce evidence to rebut a claim that Article 3 standards would be breached and show that no real risk exists. While there is a presumption that ECHR signatory states will comply with human rights standards, including Article 3, a similar presumption applies to trusted extradition partners such as the USA. At [240-243] of his judgment the SDJ observed:

> "240. The starting point when looking at the prison conditions in the US is framed by some fundamentals about the USA and how the law is to be applied in those circumstances.
>
> 241. The United States is a mature democracy, with an internationally recognised commitment to the rule of law, it is a signatory of the Universal Declaration on Human Rights, the US is a trusted UK extradition partner to which the UK courts regularly surrender requested persons and an individual surrendered to the United States enjoys the protection of the US constitution and the ability to litigate any alleged infringements of that constitution within the US legal system.

> 242. A consequence of these fundamental matters is that, despite the frequency with which UK courts are asked to consider conditions within the United States prison system, it is very rare for the UK to refuse surrender to the United States based on concerns relating to prison conditions.
>
> 243. As much is evident from even a cursory look at some of the most recent occasions upon which UK courts have found that surrender to the US would be compatible with an individual's Convention rights."

66. Where the alleged ill-treatment stems from non-state agents, such as fellow prisoners, the governing test is "whether the state can provide reasonable protection against such violence" (*R (Bagdanavicius) v Secretary of State for the Home Department* [2005] 2 AC 668 and *Lord Advocate v Dean* [2017] UKSC 44). This necessitates consideration of both the objective risk of violence to the requested person and the extent to which the authorities in the receiving state will implement protective measures.

67. It is settled law that Article 3 does not impose a requirement for a guarantee of absolute safety. The state's responsibility under Article 3 is engaged if it fails to provide reasonable protection.

68. The SDJ concluded that extradition would not be incompatible with Article 3 concerning prison conditions and the risk of the Applicant being subjected to inhuman and degrading treatment. This conclusion was based on a thorough assessment of the evidence, which he considered in detail.

69. In relation to the risk of sexual violence, the SDJ found, on the basis of the evidence referred to above, that sexual assaults do occur in US prisons, much as they do in the UK prison estate. While acknowledging a degree of under-reporting, the SDJ considered the reported level of sexual violence in US and UK prisons to be broadly equivalent, or even lower in the US estate. The SDJ also noted that the problem of sexual violence in prison is not peculiar to the United States [245]:

> "245. The RP submits that because there is evidence of sexual assault within the US prison estate, or because incarceration in certain conditions is considered detrimental to the health of those with pre-existing mental health conditions, this amounts to a bar to extradition, that is flawed and illogical thinking, it is obvious that all prisons in all parts of the world suffer from degrees of sexual assault and / violence and health conditions may well impact negatively on health but that is not the test or the jurisprudence laid down by the authorities. The approach of the ECtHR is illustrative of this."

70. The SDJ was satisfied that the US has a range of procedures in place that are appropriate to protect vulnerable prisoners. These measures include the possibility of housing vulnerable inmates in the I-Unit at MCC San Diego, or if necessary, in an SHU. The SDJ also noted that in other BOP facilities, housing is available in Integration Units. He found that inmates have proper avenues to express concerns about vulnerability, and these concerns are taken seriously within the BOP estate.

71. In relation to the adequacy of protective measures, the SDJ expressly found that it could not sensibly be argued that SHUs or the I-Unit would fail to provide the Applicant with a reasonable level of protection from sexual violence, as this would be the very purpose of housing him in an SHU. The SDJ thus concluded that, "whatever the level of risk," there were undoubtedly measures in place to provide a reasonable level of protection, thereby rejecting the Applicant's case on non-state agent inter-prisoner violence. This conclusion was squarely within the governing test in cases of mistreatment by non-state agents and open to the SDJ on the evidence.

72. In relation to SHUs, the SDJ found that detention within an SHU does not amount to "solitary confinement". Inmates in SHUs are housed "in the least restrictive setting necessary to ensure [their] safety," either alone or with another inmate, with those housed alone having "periodic contact with other inmates". They participate in recreation enclosures that accommodate multiple inmates at once. The SDJ concluded that SHU detention is for a legitimate purpose (protection), is in the least restrictive regime necessary, would be subject to weekly reviews, and provides adequate living space and lighting, regular contact with staff and other prisoners in the SHU. Such conditions were similar to Article 3 compliant regimes adopted in many Western prisons. Detention in an SHU was not arbitrary, subject to review, and did not involve complete sensory deprivation. This accords with established case law that removal from association for security, disciplinary, or protective reasons does not in itself amount to inhuman or degrading treatment, provided specific conditions are met regarding the stringency, duration, objective, and effects on the person concerned.

73. In *R (AB) v Justice Secretary* [2022] AC 487, the Supreme Court held that:

> "43 The application of article 3 in relation to what can broadly be described as removal from association or solitary confinement has been considered by the European court in a substantial number of cases. The court has repeatedly held that removal from association is not in itself inhuman or degrading. In *Van der Ven v The Netherlands* (2003) 38 EHRR 46, para 51, it stated, under reference to earlier decisions: "the removal from association with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or degrading punishment."

74. To the extent that the applicant sought to establish that he had specific mental health problems which militated against the use of protective measures such as the SHU this was also considered and taken into account by the SDJ.

75. In assessing the Applicant's mental health, the SDJ considered the evidence provided by various psychiatric witnesses. Only one of the four doctors, Professor Forrester, diagnosed the Applicant with a depressive disorder, and even Professor Forrester considered this to be of a moderate level.

76. The SDJ was sceptical about the extent to which the Applicant's self-reporting to psychiatric experts could be relied upon. This scepticism was shared by some of the psychiatric experts; Dr Picchioni noted the Applicant's "tendency to exaggerate and lie," as did Professor Greenberg. Professor Forrester "would not be drawn on the issue" of the Applicant's self-reporting. The SDJ concluded that "any conclusions based on

self-reporting should – for obvious reasons – be carefully drawn". Dr Picchioni's assessment, which the SDJ favoured, also noted the Applicant's unreliability. The Applicant himself admitted to lying to achieve his objectives. When asked at the outset of cross-examination, "Do you lie to get what you want?", the Applicant replied, "Yes". The SDJ noted, "it is hard not to frame my assessment of my assessment of his evidence through that prism". He found, not surprisingly perhaps, that the Applicant was "dishonest and manipulative".

77. The SDJ noted that the Applicant had managed in an Indonesian prison and subsequently in a Victorian Category B prison in the UK without any significant negative impact on his mental health which did not suggest that the Applicant was 'unsuitable for prison life'. Consequently, the SDJ found no basis to conclude that extradition would be unjust or oppressive due to the Applicant's mental state.

78. He referred to Dr Picchioni's evidence [171]:

> "When asked about the possibility Mr Tahilramani might need to be housed away from other inmate for his own protection, Dr Picchioni said "we are discussing a man who has spent two years at HMP Wandsworth, sometimes sharing a cell, sometimes not. A man who has a job off the wing, and on the wing, meets inmates, has experienced prejudice and bigotry. He has remained on normal location; he has not ended up on the vulnerable prisoner wing. He has demonstrated more resilience than might be expected just based on the diagnosis, he has strengths as well as weaknesses and an ability to navigate a course."

79. Furthermore, the Applicant had no significant history of self-harm or suicide attempts and was assessed as 'not significantly unwell' (see further below in relation to section 91).

80. Notwithstanding the evidence presented by the Applicant regarding systemic issues of sexual abuse and the criticisms levelled against the PREA auditing process, the SDJ's judgment reflects a careful assessment of the statistical data and the expert evidence. He was entitled, as the primary arbiter of fact, to make findings on the credibility and weight of the expert witnesses, such as Ms Abbate, Mr Zoukis, and Ms Baird, whose evidence he treated with caution. The SDJ's reliance on the specific, recent PREA audit for MCC San Diego, as "cogent evidence" of robust protective systems, was a permissible exercise of his evaluative judgment, particularly given his critical assessment of attempts to undermine its reliability. His conclusions that the US authorities would be able to offer a "reasonable level of protection" to the Applicant, "whatever the level of risk," and that protective measures such as SHUs would not, in themselves, constitute inhuman or degrading treatment, were findings he was entitled to make on the evidence before him. The test remains whether the state can provide "reasonable protection" and does not require "a guarantee of safety".

81. The Applicant argued that the SDJ erred in law by refusing to admit further evidence, particularly material said to undermine the reliability of PREA audits. The SDJ's judgment deals with the application expressly [204-207]:

> "204. During the Extradition Hearing the Court invited Ms Abbate to provide an example of a PREA audit report which she considered to be adequate. Ms Abbate has provided such an example and I have admitted and considered that because it was at the courts request.
>
> 205. However, Ms Abbate has also provided a letter (which she referred to in evidence) from Senators Brian Schatz and John Cornyn to the Director of the BOP requesting a review of recent PREA audit findings considering ongoing reports of sexual abuse of inmates, dated 3 June 2022 ('the June 2022 Congress Letter'.
>
> 206. In addition a further 1300 pages of "Further Evidence Bundle" were also served, they seem to be irrelevant and served late. It is not in the interests of justice for the defendant to serve, after the closing of evidence, substantial bodies of evidence which do not realistically go to any issue. This includes, for example, open- source material dating back to 2016 concerning an individual prison in Illinois, which has not been the subject of any evidence or argument, nor was such evidence anticipated by the Court of the US Government.
>
> 207. The service of this volume of material fails to identify with precision relevant evidence that is germane to the issues at this stage of the proceedings. It risks court being dragged into satellite litigation. The evidence fails to comply with either the CPR overall or Rule 50's special objective in extradition and fails to identify with particularity what issue it relates and is NOT admitted."

82. The SDJ's decision to refuse the admission of the further evidence was, in my view, entirely proper and consistent with the principles governing the management of evidence in extradition proceedings for the reasons he gave. There is nothing to suggest that the SDJ's exercise of discretion in this regard was erroneous or outside the wide ambit of deference to be accorded to a trial judge in relation to a decision of this type.

Article 14

83. The Applicant's third ground of appeal and the second issue identified by Mr Fitzgerald is that the SDJ erred in finding that extradition would be compatible with Article 14 ECHR, read in conjunction with Article 3 ECHR. It is submitted that the SDJ misdirected himself as to the applicable law at [296] where he said:

> "296. Considering the cases referred to above the conclusions on the protections and safeguards under the Article 3 ECHR challenge I am bound to find that the Article 14 ECHR challenge fails also."

84. For myself I doubt that this paragraph bears the weight of the argument that the Applicant seeks to erect upon it. In the preceding paragraph the SDJ refers explicitly to

the argument that the SHU would be a disproportionate means of protecting him and that he would be treated differently to prisoners who are not gay. At [296] the SDJ was referring back to the extensive consideration he had given to the Article 3 arguments and, necessarily, to the question of whether the use of the SHU was disproportionate or discriminatory. The SDJ's reference to authorities in relation to Article 14 [65-70] also indicates that he was well aware of the principles which the Applicant now says he ignored.

85. The essence of the Applicant's argument under Article 14 was that he would face differential treatment, and indeed worse conditions of detention, in the United States prison system due to his sexual orientation and effeminate demeanour. This, he asserted, would necessitate his confinement in protective custody, such as an SHU and that this was the only way to protect a homosexual prisoner from sexual violence; that is to say by subjecting them to isolation in an SHU; itself a disproportionate response to the risk.

86. Article 14 ECHR provides for the enjoyment of Convention rights without discrimination on various grounds, including sexual orientation. It is well-established that Article 14 has no independent existence; it has effect solely in relation to the rights and freedoms safeguarded by other substantive provisions of the Convention. However, for Article 14 to become applicable, it is sufficient that the facts of a case fall within the ambit of another substantive provision, even if a breach of that provision is not ultimately established. As the European Court of Human Rights stated in *X v Turkey* (App. No. 24626/09, 27 May 2013):

> "Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them". This principle was reiterated in *Carson and others v United Kingdom* (2010) 51 EHRR 13, which noted that Article 14 "applies also to those additional rights, falling within the general scope of any article of the Convention, for which the state has voluntarily decided to provide"."

87. The Respondent submitted that the Applicant must show a "flagrant denial" of his Article 14 rights to establish a bar to extradition (a test which Mr Fitzgerald accepted on reflection, although not in initial submissions). In *R (Ullah) v Special Adjudicator* [2004] AC 323, Lord Bingham of Cornhill, in discussing reliance on articles other than Article 3 in an expulsion case, stated that "successful reliance demands presentation of a very strong case," requiring a "flagrant denial or gross violation of the relevant right". Lord Steyn further noted that "where other articles may become engaged, a high threshold test will always have to be satisfied. It will be necessary to establish at least a real risk of a flagrant violation of the very essence of the right". Lord Carswell, agreeing with this approach, cited the Immigration Appeal Tribunal's criterion in *Devaseelan v Secretary of State for the Home Department* [2003] Imm AR 1, that the right in question would be "completely denied or nullified in the destination country".

88. Applying these principles, Mr Smith submitted that the Applicant would not face detention in an SHU or other protective unit because he is homosexual. Rather, any such placement would be due to his vulnerability to inter-prisoner violence, a risk that

could apply to any inmate regardless of sexual orientation. He argued, and I agree, that the relevant question is whether a vulnerable homosexual inmate would be treated differently to a vulnerable heterosexual inmate. On the evidence, the answer to that question was plainly 'no'.

89. Any differential treatment, if it were to occur, would, in any event, be in pursuit of a legitimate aim, namely, preventing the risk of inter-prisoner violence. It would be inconsistent for the Applicant to assert his vulnerability while simultaneously claiming that protective measures taken in response to that vulnerability constitute discrimination. The SDJ had found that the US prison estate offers a reasonable level of protection, including housing in an I-Unit or SHU, and that these measures were not unusual and would provide reasonable protection from sexual violence.

90. The Applicant's argument that isolation in an SHU is a disproportionate response therefore loses much of its force in circumstances where such measures are a recognised and, on the SDJ's findings, reasonable means of protecting vulnerable prisoners. The SDJ expressly rejected the contention that detention in an SHU would be inhuman or degrading, finding that the risk of the Applicant being held alone in an SHU for a significant period was "vanishingly small" and that, even if he were, the necessary protections would be available.

91. It follows, in my view, that the differential treatment claimed by the Applicant, even if established, would relate to protective measures taken due to vulnerability, and not as a result of a discriminatory intent or practice based on his sexual orientation. Such measures, as assessed by the SDJ, are not inhuman or degrading and serve a legitimate purpose withing the US penal system.

92. As Mr Smith pointed out in argument there is a dearth of authority in relation to the application of Article 14 in the context of extradition explained by the fact that the 2003 Act contains express provisions at section 81 relating to prejudice by reason of nationality or sexuality. In its submissions for the hearing before the SDJ the Respondent observed:

> "The Requested Person does not cite any examples of extradition being held to amount to a breach of article 14 of the ECHR. The lack of such authorities can be explained by the fact that the Extradition Act 2003 contains within it a specific bar to extradition that allows the court to consider challenges of this kind...
>
> This court frequently considers submissions that an individual will be "punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions". If the court has determined that extradition is not barred by reason of extraneous considerations. there is no basis upon which the court could then find that extradition amounts to a breach of article 14 of the ECHR. Accordingly, reference to article 14 in the present case is otiose and the court ought to consider whether the Requested Person's submission engages section 81(b) of the 2003 Act."

More Severe Punishment by reason of Nationality or Sexual Orientation?

93. The Applicant's proposed new grounds of appeal are both brought under section 81(b) of the 2003 Act. This provides:

> "81. Extraneous considerations
>
> A person's extradition to a category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that— …
>
> (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions."

94. The threshold for establishing a section 81(b) risk is no higher than a 'reasonable chance' or 'serious possibility' of such prejudice, as stated by Lord Diplock in *R v Governor of Pentonville Prison Ex p. Fernandez* [1971] 1 WLR 987, the burden being on the applicant to establish that such prejudice exists. The Applicant argues that there is now clear evidence of a risk of discrimination amounting to prejudice on the grounds of his foreign nationality in the context of a privatised CAR-type prison.

95. The Respondent contends that the drafting of section 81(b) is clear and requires that a requested person would be "prejudiced at his trial" or "detained, or restricted in his personal liberty", by reason of one of the characteristics listed.

96. In *Ozbek v Turkey* [2014] EWHC 3469 (Admin) the Divisional Court said [15]:

> "15. The wording of section 81(b) means that a bar to extradition only occurs if, on return, the person might be subject to mistreatment by reason of the extraneous circumstances specified: race, religion, nationality, gender, sexual orientation and political opinions. That mistreatment must occur in one of four ways set out in the subsection, namely, prejudice at trial, punishment, detention, and restriction of personal liberty. These four ways are alternatives. The only context in which prejudice is relevant relates to the person's trial, not to any punishment, detention or restriction in personal liberty to which the person might be subject (see *Zadvornovs v Riga City Suburb Court, Latvia* [2011] EWHC 1257 (Admin), paragraph 5, per Collins J). In my view "detention" refers to the fact of detention by reason of the extraneous circumstances listed, not to its quality."

97. Mr Smith argued that in accordance with these observations in *Ozbek*, section 81(b) does not cover prejudice in relation to conditions of detention and, to the extent it covers punishment or detention, is confined to the fact of punishment and not its quality.

98. Both parties sought to rely on the observations of Fordham J. in *Prusianu v Romania* [2023] 1 W.L.R. 495, at [27] in relation to the equivalent provision at section 13(b) of the 2003 Act:

> "I do not think section 13(b) is as restricted as Mr Ball contends. However, in light of my conclusions on his third line of resistance, nothing turns on this. I accept that section 13(b) "prejudice" is "at trial". I accept that the focus is on the "fact" and not the "quality" of punishment, detention or restriction of liberty. I accept that the relevant discriminatory act would need to be that of a requesting state authority. And I cannot see in TCA article 601(1)(h)—or its predecessor recital (12)—such clarity as could drive any expanded "conforming interpretation". I agree with Mr Ball that "restriction of liberty" could be solitary confinement in the serving of a custodial setting. But I cannot accept that such solitary confinement would necessarily need to be imposed by a sentencing judge at a trial. The context in which Collins J in *Zadvornovs* spoke of section 13(b) as focusing on the "criminal process" was in rejecting arguments based on "general" restrictions on the way in which non-citizens "can conduct their lives in Latvia" (see para 4), which he said applied "quite independently of" and were "unaffected by" the "criminal process" (see para 5). Suppose there is an instrument or law, policy or practice—which could have come into force before or after the trial process —which means that all sentenced prisoners of a particular "race" will now serve their sentences in solitary confinement. Or suppose there is an instrument which means sentenced prisoners of a particular "political opinion" are excluded from automatic early release. These could be implemented by courts who supervise sentence. These measures are not part of the trial or sentencing. But nor would I regard them as "wholly" independent of, or "unaffected" by, the criminal process. I think they would fit within the ordinary and natural meaning of section 13(b), and I do not think authority would preclude that conclusion. But whether any of this would matter in the present case depends on what I make of the third line of resistance: the evidential basis…"

99. The Applicant submits that the decision in *Ozbek* is inconsistent with the two Divisional Court decisions in *Lodhi v Governor of Brixton Prison* [2002] EWHC 2029 (Admin) and *Lodhi v Secretary of State for the Home Department* [2010] EWHC 567 (Admin). The Respondent contends that the decisions in *Lodhi*, which were under the precursor Act, were based upon concessions made by the parties in those cases and are not persuasive; hence *Ozbek* should be followed.

100. It does not appear to me that in *Prusianu* Fordham J was doubting the logic of *Ozbek* or stating that prejudicial bias extends beyond the fact of punishment; indeed, he expressed himself to be following *Ozbek*. He intended to illustrate, I think, that the boundary of the application of the approach in *Ozbek* might not be at the door of the sentencing court. He gave examples of measures, which might be introduced, imposing distinct punishments on prisoners with a relevant characteristic. That is quite distinct from segregating prisoners, for example, on the basis of gender or by reference to other policies for the management of the prison population.

101. I accept that the Applicant's submission might nevertheless be made out in principle if the purpose or effect of CAR prisons (rather than the bare fact of their existence and use) was to impose a distinct form of punishment on foreign nationals which was harsher than that imposed upon citizens of the requesting state in equivalent circumstances. It seems to me to be likely that if such an argument were advanced simply by reference to the conditions in CAR prisons (rather than, for example, by reference to differences in the calculation of time served in, or release from, the CAR prison estate) then it would be necessary to show Article 3 breaches in any event.

102. Whilst it is true that the SDJ observed that CAR prisons were, at the time of judgment, in the process of being closed and that it was entirely possible that all of the CAR prisons would have ceased operation by the time of any potential trial in 2023 that was not the entirety of the basis for his rejection of the arguments advanced by the Applicant on the topic. He plainly considered that the Applicant had fallen well short of establishing that he would be subject to harsher conditions.

103. Mr Weiss's evidence on the issue (adduced by the Applicant), proved to be substantially limited in its scope and currency. Mr Weiss accepted under cross-examination that:

    i) His evidence was confined to "general trends", and he could not state with certainty the specific conditions the Applicant would encounter.

    ii) The conditions he cited were derived from reports concerning the period between 2009 and 2014, so that they were significantly outdated by 2023.

    iii) There were only ten CAR prisons across the United States, and these facilities were in the process of being closed.

    iv) Mr Weiss, strikingly, had no knowledge of how many of these ten CAR prisons remained operational.

104. The proposed reliance on Mr Sabelli's report is similarly unavailing and adds little, if anything, to the Applicant's case. Mr Sabelli's expert credentials are, as the Respondent submits, dubious. It is not clear that he has ever visited a CAR prison. He possessed no information in relation to the number of operational CAR prisons, merely stating this was "unclear", nor did he know the number of prisoners placed in them or the criteria for such placement. His "report" on conditions amounted to a mere two paragraphs. One paragraph noted 15 deaths over a 15-year period (2003-2018) in the Eloy Federal Contract Facility but failed to provide any context for these deaths or explain their relevance to the Applicant suffering prejudice by reason of his nationality or sexuality. The other paragraph merely cited a 2014 report on five CAR prisons, a document already relied upon by Mr Weiss, thus adding no new substantive information. Mr Sabelli has been the subject of prior judicial criticism for providing opinions beyond his expertise and relying on outdated or unsubstantiated material.

105. The "expert report" of Ms Emma Kaufman (identified in the Applicant's solicitor's witness statement as such) dating to 2019 is, in fact, an article published by "Chicago Unbound" for the University of Chicago Law School. I note that Ms Kaufman has not been instructed to provide a report in these proceedings, nor does the document contain an expert declaration. In short, it is not an expert report commissioned for this case. Even if it were to be considered as evidence, I observe that this article was cited and

footnoted in Mr Weiss's report, which was presented before the SDJ. It is not "new" evidence and was plainly available at the earlier hearing.

106. The article by Ms Jade Wilson, entitled "How Trump could impact US LGBTQ+ asylum rules" appears to be a screenshot from the internet, published on a website called "Context". Significantly, no background information on Ms Wilson is provided, and her credentials remain unknown. Furthermore, its subject matter relates to asylum procedures, which have not been raised in any ground of appeal in these proceedings. The updated grounds of appeal do not refer to this article, nor does the application to rely on new material identify its relevance to the issues before me. In my judgment, this material is not relevant to the section 81(b) grounds advanced by the Applicant concerning conditions in CAR prisons or prejudice based on nationality or sexuality in the context of detention.

107. The Applicant's argument in relation to sexuality appears, again, to concern the potential for him to be housed, for his own protection, in an SHU. This argument fails for the same reasons as previously set out under Article 3 and Article 14. If the Applicant were to be housed in an SHU, it would be for his own protection. He will not be prejudiced at his trial, nor punished or detained, by reason of his sexuality. Articulating this argument under section 81(b) does not alter its fundamental nature or bring it within the statutory bar.

108. In my judgment, even if the new material is taken into account; there is no reliable, up-to-date, or cogent evidence of the CAR regime, its eligibility criteria, or the prevailing conditions within such facilities, still less any credible basis to suggest that the Applicant is likely to be exposed to them. The SDJ had the benefit of hearing expert evidence and making findings on the factual matrix. I conclude that the SDJ was justified in deciding that the factual premise in relation to prejudice within CAR prisons was not established. The evidence relied upon was, demonstrably weak, outdated, and speculative.

109. For fresh evidence to be admissible on appeal, it must generally satisfy the criteria established in *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin), [2009] 4 All ER 324. That test requires the evidence to be both unavailable at the extradition hearing and decisive.

110. Whilst the Executive Order of President Trump is new, in the sense that it postdates the decision appealed, I conclude that none of the documents tendered as fresh evidence meet the necessary criteria for their admission. The Kaufman article was available at first instance, whilst Ms Wilson's article and Mr Sabelli's report, for the reasons set out above would not have led to a different conclusion. The application to adduce fresh evidence is therefore refused.

111. The new grounds are being advanced at a late stage in proceedings that have spanned over four years. The Applicant has had the benefit of a succession of highly experienced legal teams, including leading and junior counsel who were "specialist extradition practitioners". None of them sought to raise the proposed grounds of appeal at any earlier stage.

112. As the Respondent observes the Applicant previously chose to present his case through the prism of Article 14 ECHR, despite the Respondent pointing out that any

discrimination issue could, if meritorious, be pleaded pursuant to section 81. This suggests that a conscious decision was made as to the grounds to pursue.

113. As Swift J stated in *Hamasalih v Italy EWHC* [2025] EWHC 593, when considering an application to amend grounds and adduce fresh evidence, in circumstances where an applicant:

> "was represented by experienced solicitors and counsel and informed decisions were made by the Applicant and his lawyers as to the matters that should be pursued at the extradition hearing. The present application is an attempt to reverse those decisions. That will rarely, if ever, be a course that should be permitted".

114. In *Khan v United States of America* [2010] EWHC 1127 (Admin), Griffith Williams J observed that the parties "cannot return to court to advance arguments they could have put forward at first instance but chose not to do so".

115. Whilst I acknowledge that there has been a change of counsel, little explanation has been provided as to why these proposed grounds of appeal were not pursued before the SDJ. Notwithstanding that I have considered the substantive arguments to which they give rise. I refuse the application to advance them at this stage.

Mental Health and the Suicide Risk

116. Section 91 of the EA 20023 provides:

> "Physical or mental condition
>
> (1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
>
> (2) The condition is that the physical or mental condition of the person in respect of whom the Part 1 warrant is issued is such that it would be unjust or oppressive to extradite him.
>
> (3) The judge must— (a) order the person's discharge, or (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied."

117. Evidence concerning the Applicant's suicide risk was presented by several expert witnesses. Professor Forrester, who diagnosed the Applicant with a depressive disorder, considered it to be of a moderate level currently. His view was that a custodial environment such as that described in the expert reports would likely cause depressive symptoms to develop or worsen, leading to a significant and high risk of self-harm and suicide.

118. Dr Grassian expressed concerns that the Applicant's mental health might deteriorate due to the regime in a US prison, particularly if held in an SHU. His opinion of a "heightened risk of suicide" was contingent on a prolonged period in solitary confinement. Dr Grassian considered that solitary confinement would have a

deleterious effect on the Applicant and that the conditions in an SHU as described to him would lead to a risk of suicide that the Applicant would not have the capacity to resist. In his oral evidence, Dr Grassian stated that the Applicant was "doing well" at HMP Wandsworth and would have no concerns about him being held in a comparable regime.

119. Professor Greenberg considered that if extradited, "there would be a substantial risk of completed suicide" and recognised that conditions of detention could further increase this risk. He noted that the Applicant was prone to exaggeration and embellishment. In January 2022, Professor Greenberg felt that the Applicant had a histrionic personality disorder and that his risk of suicide was low at that time and under those circumstances. However, he also posited that if extradition were to proceed, the Applicant's mental state would likely deteriorate, exacerbating features of his personality disorder and potentially worsening depressive symptoms, leading to a likely loss of capacity to resist an impulse to commit suicide. Professor Greenberg accepted that the BOP responses regarding mental health treatment and suicide prevention measures sounded "pretty reasonable". He also noted the Applicant was "very clear he would not kill himself in a violent way" but would stop eating.

120. Dr Picchioni assessed the Applicant and found that he presented a low clinical risk of suicide. He noted the Applicant's unreliability as a narrator and his adjustment to prison environments in Indonesia and London. Dr Picchioni considered the Applicant had a limited history of impulsiveness in relation to self-harm. He acknowledged that the Applicant's ability to resist an impulse to commit suicide would reduce "to some degree" and probably temporarily upon arrival in the US. Dr Picchioni accepted that there would be an increase in suicide risk in solitary confinement, with the degree of increase heavily influenced by the actual conditions and the availability of distractions. He also noted that the Applicant had stated that he had never engaged in self-harm or suicidal behaviour and felt such behaviour was "wrong".

121. A clinical and forensic psychologist, Dr Hayley Blackwood, who did not assess the Applicant directly but reviewed the other expert reports, pointed out that people with personality disorders are often at increased risk of suicide. She also agreed that the Applicant "evidences a number of mental illness-related suicide risks" aside from his personality disorder, including a depressive disorder. Dr Blackwood confirmed that inmates in BOP facilities receive a psychological assessment within 24 hours of arrival, which includes a consideration of suicide risk.

122. The SDJ made specific findings on the issue of the Applicant's mental health and suicide risk. The SDJ noted that only Professor Forrester diagnosed a depressive disorder, and even he considered it moderate. The SDJ had concerns about the reliability of the Applicant's self-reporting, echoing the views of Dr Picchioni and Professor Greenberg. The SDJ gave weight to the fact that the Applicant had managed in Indonesian prison and in a UK Category B prison without incident and had no significant history of self-harm or suicide attempts, concluding he was "not significantly unwell". The SDJ favoured Dr Picchioni's assessment that the Applicant posed a low clinical risk of suicide and had adjusted to previous periods of incarceration. The SDJ concluded that the only basis on which the Applicant indicated he would consider ending his life was by withdrawing food, which Professor Forrester agreed would be a "capacious decision", implying the Applicant would have the

capacity to resist such an act. The SDJ further reasoned that such a "slow burn" approach would allow prison staff ample time to intervene.

123. In considering whether extradition would be unjust or oppressive under section 91 of the 2003 Act due to a suicide risk, the SDJ referred to and was guided by the principles established in *Turner v Government of the USA* [2012] EWHC 2426 (Admin) and further considered in *Modi v India* [2022] EWHC 2829 (Admin) at [115-117]:

> "115. In the light of the submissions we received, it is necessary to address the interplay between *Turner* propositions (3), (5) and (6) as well as Mr Fitzgerald's attack on proposition (4).
>
> 116. There will be cases where the requested person's medical condition is not severe enough, and the risk of suicide not high enough, to engage section 91 at all. In our view, the clause "whatever steps are taken" in propositions (3) and (5) are really addressing opposite sides of the coin. If the risk is too low, the meaning and effect of proposition (3) is that it is unnecessary to consider the adequacy of the preventative arrangements referred to under proposition (6) because the requested person's case has already failed. In this context, therefore, "whatever steps are taken" in proposition (3) may be understood to mean, "ignoring any steps taken". The primary submission of Ms Malcolm was, on our understanding, that the present case falls into this category. On the other hand, proposition (5) recognises that there may also be cases where the risk of suicide is so great that, whatever steps may be taken, they will not reduce the risk to an acceptable level. Examples of cases falling into this category are *Jansons* and, subject to the qualification we make below, *Fletcher v Government of India* [2021] EWHC 610 (Admin).
>
> 117. Between these two poles there will be cases where the risk of suicide may be moderate or even high – too high to be discounted, but not so high that nothing can be done to address it that will render the risk acceptable. By risk of suicide we mean the risk that, in the absence of preventative measures, an attempt at suicide will be made and succeed. In such circumstances, the proposition (5) issue (level of risk) must be considered in conjunction with proposition (6) (steps taken to ameliorate the risk and reduce it to an acceptable level). In practice, most cases will fall into this category, which explains the emphasis in *Wolkowicz* on proposition (6). This reflects the practical realities including the fact that even in relatively weak cases it will be appropriate, out of an abundance of caution, to have regard to the system in the relevant prison."

124. Thus, these principles require the court to form an overall judgment, apply a high threshold for finding oppression, assess the link between the mental condition and the risk of suicide, and consider whether the mental condition removes the capacity to resist the impulse to commit suicide. Importantly, the court must also consider whether there are appropriate arrangements in place in the receiving state to manage the person's

mental condition and the risk of suicide. The SDJ explicitly considered the suicide prevention programmes in the US, the availability of psychological assessment, and concluded that "the practice is in line with the policy". The SDJ also noted the better statistical record of the US prison estate in suicide prevention compared to the UK.

125. The Applicant argued that it is necessary to reconsider how risk must be assessed in the light of the CJEU's approach in *EDL* [2023] 4 WLR 57 which extended protection to those at real risk of "a serious, rapid, and irreversible decline" in health or a significant reduction in life expectancy, not just completed suicide. Following withdrawal from the European Union English courts may have regard to decisions of the CJEU but are not bound by them. More significantly perhaps the "unjust or oppressive" test in section 91 was not intended to reflect the European Framework Decision on the European Arrest Warrant, which *EDL* construes.

126. A Divisional Court has already ruled that section 91 should not be interpreted by reference to the Framework Directive and that "parliament intended its own test" for section 91, which is not referable to the Framework Decision or CJEU decisions (see *Prancs v Latvia* [2006] EWHC 2573 (Admin) and *Dewani v Government of the Republic of South Africa* [2012] EWHC 842 (Admin)).

127. The SDJ found that the Applicant was not seriously unwell and that there was no risk of a serious or permanent deterioration in his mental state. Any risk identified was likely to be temporary upon initial detention in the US. The SDJ was also provided with information on the conditions of detention and medical facilities in the US. Therefore, based on the SDJ's findings of fact, the threshold for triggering the *EDL* approach, requiring further information from the US authorities, was not met. The SDJ considered the expert evidence presented by both sides, including the risk of suicide and the measures in place to prevent it, and concluded that no oppression would arise.

128. The approach to seeking assurances in extradition cases has also been clarified in recent jurisprudence. As the Divisional Court observed in *USA v Assange* [2021] EWHC 3313, it is not correct to suggest that a requesting state must offer contingent assurances to cover every possible combination of outcomes, particularly when primary arguments against extradition fail. The Court observed [43] that "an assurance may be unnecessary depending on factual and evaluative findings made by the judge".

129. Applying these principles to the present matter, the SDJ's detailed factual and evaluative findings, in my view, negated the necessity for further specific assurances. The SDJ had already determined that the Applicant was not seriously unwell, that the US prison system had adequate and robust mechanisms for suicide prevention and care, and that protective custody in an SHU would provide a reasonable level of protection without being inhuman or degrading.

130. Based on the evidence presented by the various experts and the detailed findings made by the SDJ, I am of the view that the SDJ dealt with the matter of the Applicant's suicide risk appropriately. The SDJ considered the opinions of all the psychiatric witnesses, weighed their evidence, and provided clear reasons for favouring the assessment of Dr Picchioni. The SDJ took into account the Applicant's past behaviour, his presentation during the proceedings, and the evidence regarding mental health care and suicide prevention measures in the US prison system. The SDJ correctly applied the relevant domestic legal principles concerning suicide risk in extradition cases and made findings

of fact that did not necessitate the application of the broader *EDL* test. The SDJ's judgment demonstrates a careful and thorough consideration of the evidence relevant to the Applicant's mental health and the risk of suicide.

131. I conclude that the SDJ's decision that there was no bar to extradition under section 91 was properly open to him.

Conclusions

132. The SDJ was entitled to conclude on the evidence that the Applicant is not at real risk of being detained in contravention of Article 3 ECHR or in contravention of Article 14 ECHR and that it would not be oppressive due to his physical or mental condition to extradite him. The SDJ's conclusions were not wrong. I refuse permission to appeal.

END