

U.S. Extradition Challenges

5 Aug 2020 Joshua L. Ray.

Joshua Ray of Rahman Ravelli outlines the issues in a case that shows how British courts can be receptive to challenges to US extradition attempts

At an extradition hearing in Westminster Magistrates Court in July 2020, counsel for the US Department of Justice (DOJ) made major concessions in its effort to extradite Abraaj Group founder, Arif Naqvi, from the UK.

Naqvi stands accused of defrauding investors in Dubai-based Abraaj, once the largest buy-out firm in the Middle East. Federal prosecutors in the Southern District of New York unsealed fraud and racketeering charges against him last year. Since then, Naqvi has been living under house arrest at his London apartment on a £15M bond while fighting extradition.

Article 3 Arguments

In addition to a strenuous denial of the DOJ's allegations against him, Naqvi's extradition defence has focused on an argument under Article 3 of the European Convention on Human Rights, which prohibits "inhuman or degrading treatment or punishment." The basis of Naqvi's claim is that conditions at the prisons where he would be likely to be detained before trial in the US - Manhattan's Metropolitan Correctional Centre (MCC) and Brooklyn's Metropolitan Detention Centre (MDC) - are so draconian that they would violate his Article 3 rights.

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500

Fax +44 (0)1422 430 526
DX16001 HX1

The MCC and MDC, New York City's primary federal pre-trial facilities, are notoriously harsh places to serve time. Naqvi asserts that being sent there would contravene his human rights and create an unacceptably high risk of suicide. The MCC received widespread media attention last summer when disgraced financier Jeffrey Epstein killed himself there while awaiting trial on sex trafficking charges - despite being on supposed "suicide watch." A similar argument made by accused British hacker Lauri Love saw him succeed in avoiding his extradition to New York in February 2018 - one of the rare instances of a UK court rejecting an extradition request from US authorities.

To support his Article 3 argument, Naqvi's defence team submitted evidence of the risks posed by the two prisons to his mental health and physical safety. This included testimony from the MCC's former senior executive service warden; who stated that the jail was severely understaffed, overcrowded and infested with rats and mould.

DOJ Concessions

The strength of this evidence was apparently enough to cause the DOJ real concern that Naqvi's extradition would be denied. In a tactic designed to ease any concerns the magistrates may have about the conditions of Naqvi's pre-trial imprisonment should extradition be granted, the DOJ made two exceptional concessions. The DOJ submitted an undertaking that Naqvi would be granted bail pending trial in the US. It also assured the court that if bail was denied then Naqvi would not be held in either the MCC or MDC. Taken together, these concessions are unprecedented. But they are also of dubious enforceability.

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Regarding the commitment to grant bail, Naqvi's lawyers rightly pointed out that the DOJ lacks the ability to guarantee that bail is granted, as the decision is ultimately left to a judge's discretion under the Bail Reform Act. Although prosecutors' recommendations on bail are given significant weight, occasions where judges deny bail over a DOJ's request are not uncommon, as was noted by Naqvi's counsel. In other words, while the DOJ can control what it submits to the judge for consideration, it cannot completely control the judge's decision.

The powers of federal prosecutors are also limited – as are those of the judge - when it comes to determining where Naqvi would be held if he was denied bail. Both prosecutors and judges can make a recommendation as to where a defendant can be detained but the final decision lies with the Bureau of Prisons (BOP). Since the BOP, like the DOJ, answers to the Attorney General, it is possible that the prosecutors handling Naqvi's case could engineer an assured pre-trial destination for him. But it is unclear what recourse Naqvi (or the magistrates court) would have if he did nonetheless end up in the MCC or MDC. Moreover, detention in a facility further afield raises concerns about the degree of access Naqvi would have to his lawyers while preparing for trial.

The UK Court's Response

Given the unique nature of the DOJ's concessions in this case, Magistrate Judge Arbuthnot granted its lawyers two weeks to try to make its assurance that Naqvi would not be sent to the MCC or MDC more concrete. A full hearing on the issue is expected in September.

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B1 2JB
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Northern Office
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Regardless of the eventual outcome, Naqvi's lawyers' success in extracting a confirmation from the DOJ that they would not seek pre-trial detention is itself a huge success. The DOJ routinely opposes bail requests in cases like Naqvi's that involve lengthy potential prison terms and well-funded foreign defendants with the means to flee. This perhaps reflects a recognition by the US government that its prison system is in urgent need of reform, particularly given the unchecked coronavirus outbreaks at a number of federal facilities (which was an issue also raised by Naqvi).

Naqvi's case also shows increased receptivity by British courts to extradition challenges based on US prison conditions. For that reason, it remains a case to watch closely.

This article was also featured on Lexology.com.



Joshua L. Ray
Partner
joshua.ray@rahmanravelli.co.uk
+ 44 (0)203 947 1539

Josh is an English solicitor and US-qualified lawyer who defends companies and individuals in complex cross-border investigations, white collar crime prosecutions and civil regulatory actions. He also advises fintech, cryptocurrency and early-stage technology firms on compliance with anti-money laundering, sanctions and bribery regulations in the US and UK. Leveraging his experience working in senior roles at leading international law firms in New York and London, Josh leads Rahman Ravelli's US-facing business crime practice group.

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36 Whitefriars Street
London
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