Courts and Tribunals Judiciary

IN THE WESTMINSTER MAGISTRATES' COURT

BEFORE

DISTRICT JUDGE (MC) SAM GOOZÉE
Appropriate Judge

The Government of the United States of America
(Requesting State)

V

Daniel Andreas San Diego
(Requested Person)

JUDGMENT

Background

1. This is an extradition request submitted by the Government of the United States of America, the Requesting State("RS") for the extradition of Daniel Andreas San Diego, the Requested Person (RP). The request is governed by the Provisions of Part 2 of the Extradition Act 2003 ("EA 2003"). The United States of America is a designated Part 2 country by virtue of the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003.

2. The return of the RP is sought to stand trial on a Superseding Indictment dated 3rd December 2024. The case concerns the detonation of three improvised explosive devices at two different companies based in California. The two companies, Chiron Corporation and Shaklee Corporation had a relationship with the research organisation Huntingdon Life Sciences which conducted animal testing. The companies were targeted because of this relationship. Chiron was a pharmaceutical company. Shaklee was a company which manufactured vitamins and supplements among other products and was a division of Japanese pharmaceutical company Yamanouchi Pharmaceutical Co.

3. In connection with the Chiron bombing:

Count 1 Damage and Destruction of Property by Means of Explosives – Title 18 US Code § 844(i) – on or about August 28, 2003 in the Northern District of California, did maliciously damage and destroy, by means of an explosive, a building and other real and personal property used in interstate and foreign commerce, and in an activity affecting interstate and foreign commerce. Maximum penalty 20 years imprisonment.

Count 2 Possession of unregistered firearm – Title 26 US Code § 5861(d) – on or about august 29, 2003 in the Northern District of California, knowingly received and possessed a firearm, namely destructive devices which were explosive and incendiary bombs and similar devices, not registered to him in the National Firearms Registration and Transfer Record. Maximum penalty 10 years imprisonment.

Count 3 Using or carrying an explosive during the commission of another felony (namely the offences charges in Counts One and Two) - Title 18 US Code § 844(h)(1) & (2). Each county carrying a mandatory penalty of 10 years imprisonment for a first conviction and mandatory penalty of 20 years imprisonment for a second or subsequent conviction, in addition to the underlying felonies.

4. In connection with the Shaklee bombings:

Count 4 Damage and Destruction of Property by Means of Explosives – Title 18 US Code § 844(i) – on or about September 26, 2003 in the Northern District of California, did maliciously damage and destroy, by means of an explosive, a building and other real and personal property used in interstate and foreign commerce, and in an activity affecting interstate and foreign commerce. Maximum penalty 20 years imprisonment.

Count 5 Possession of unregistered firearm – Title 26 US Code § 5861(d) – on or about September 26, 20023 in the Northern District of California, knowingly received and possessed a firearm, namely destructive devices which were explosive and incendiary bombs and similar devices, not registered to him in the National Firearms Registration and Transfer Record. Maximum penalty 10 years imprisonment.

Count 6 Using or carrying an explosive during the commission of another felony (namely the offences charges in Counts Four and Five) - Title 18 US Code § 844(h)(1) & (2). Each county carrying a mandatory penalty of 10 years imprisonment for a first conviction and mandatory penalty of

20 years imprisonment for a second or subsequent conviction, in addition to the underlying felonies.

5. The RP was arrested on 25th November 2024 pursuant to a provisional arrest warrant. When arrested the RP was using the name Danny Webb. The RP appeared before an appropriate judge at Westminster Magistrates' Court on the 26th November 2024. No issues were taken regarding s.74 EA 2003 . Consent was put and the RP refused and the proceedings adjourned for the full request. Initially the RP disputed identity but has subsequently accepted his identity as Daniel San Diego. The RP has been remanded in custody throughout the proceedings.

6. The full request is dated 19th December 2024 and following is submission to the UK authorities the Government's extradition requests was certified as valid by the Secretary of State under s.70 EA 2003 on 17th January 2025.

7. The full extradition hearing was listed before me on 8th and 9th September 2025 and then 8th December 2025. Closing submissions were heard on the 23rd December 2025.

8. Mr Summers KC and Ms Law represented the RP and Mr Smith KC and Mr Dos Santos represented the Government of the United States of America.

9. I reserved judgment until 6th February 2026.

The Request

10. The request is dated 19th December 2024.

11. The Secretary of State Designation means that:

    a) The RS needs to provide information and not sworn evidence for the purposes of s.71 EA 2003.
    b) The RS is excused from the need to provide evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him for the purposes of either s.84 or 86 EA 2003.

12. A certificate was issued certifying the request for the extradition of the RP under s.70 EA 2003 on behalf of the Secretary of State on 17th January 2025 confirming the request is valid and has been made in the approved way.

13. The request includes all the required documents.

Evidence

14. I was provided with an agreed core hearing bundle:
    a) Defence Skeleton **Tab 1**
    b) USA Skeleton **Tab 2**
    c) Certificate pursuant to s. 70 Extradition Act 2003 **Tab 3**
    d) Extradition request **Tab 4**
    e) Report of defence expert David Patton (09.07.2025) **Tab 5**
    f) Report from defence experts Nicole English and Shannon Race **Tab 6**
    g) Statement of Grant W Fine **Tab 7**
    h) Report of Bridget Prince **Tab 8**
    i) Request for further information (09.07.2025) **Tab 9**
    j) Letter from Alexis James, Assistant US Attorney (Undated) **Tab 10**
    k) Letter from John Lopez, Deputy Chief Us Marshals Service **Tab 11**
    l) Letter from Timothy Rodriques, Senior Counsel, US Department of Justice Federal Bureau of Prisons **Tab 12**
    m) Letter from Alexis James, Assistant US Attorney (08.08.2025) **Tab 13**
    n) Reply from defence expert David Patten (26.08.2025) **Tab 14**
    o) Report of defence expert Joshua Dratel (26.08.2025) **Tab 15**
    p) Request for further information (08.09.2025) **Tab 16**
    q) Letter from Alexis James, Assistant US Attorney (07.09.2025) **Tab 17**
    r) Request for further information (29.09.2025) **Tab 18**
    s) Letter from Alexis James, Assistant US Attorney (17.10.2025) **Tab 19**
    t) Updated report from Joshua Dratel (25.11.2025) **Tab 19**
    u) Updated report from David Patton (01.12.2025) **Tab 20**

15. In addition to the Core Bundle I received numerous lever arch folders of supporting material lodged by the experts called by the RP:
    a) Volume 2 Support material for David Patton (325 pages);
    b) Volume 3 Supporting material for Joshua Dratel (534 pages);
    c) Volume 4 supporting material for Bridget prince (125 pages);
    d) Volume 5 Supporting material for Nicole English & Shannon Race (183 pages)
    e) Authorities bundle (877 pages)

16. I was also provided with the parties written submissions. I have considered all the documents in the core bundle and those in the supporting material which the parties took me to during the evidence and in their written and oral submissions.

17. At the full hearing I received live evidence from:
    - David Patton
    - Shannon Rice
    - Nicole English
    - Joshua Dratel

Issues

18. Mr Summers KC and Ms Law raise the following issues on behalf of the RP:

    a) Dual criminality – s. 78 Extradition 2003
    b) Extraneous considerations – s.81(b) Extradition act 2003
    c) Article 3 ECHR – s.87 Extradition Act 2003
    d) Article 6 ECHR – s. 87 Extradition Act 2003
    e) Abuse of Process – Tollman Abuse & Zakrzewski Abuse

19. The issues raised by the RP have a significant degree of cross over in terms of the evidence and submissions. In this judgment I am dealing with the issues chronologically as required by the Extradition Act 2003 and leaving any arguments of abuse as residual arguments after all other issues have been resolved and no other bar to extradition is available.

20. In this judgment, I intend to set out a summary of the evidence from the Requesting State. Thereafter a summary of the evidence relied on by the RP before any analysis and findings on the various issues. I make it clear that I do not intend to summarise all the evidence that has been provided to me but just the evidence which I consider relevant and probative to the challenges and issues I must determine.

21. I received very extensive and full written submissions from the parties as well as closing oral submissions. In due course I will summarise the key submissions made on behalf of the parties, but for reasons of brevity it is simply not possible to set out every argument or every nuance of every point advanced.

Summary of request:

22. The RP's extradition is requested for him to stand trial on an information alleging the 6 counts set out in paragraphs 3 and 4 above.

23. The conduct alleged against the RP is set out in the affidavit of Helen L Gilbert, Assistant US Attorney (AUSA) **[Tab 4 Core Bundle]**. The case concerns the detonation of three improvised explosive devices at two different companies based in California. The two companies, Chiron Corporation and Shaklee Corporation had a relationship with the research organisation Huntingdon Life Sciences which conducted animal testing. The companies were targeted because of this relationship.

Chiron was a pharmaceutical company. Shaklee was a company which manufactured vitamins and supplements among other products and was a division of Japanese pharmaceutical company Yamanouchi Pharmaceutical Co.

24. The first bombing, Chiron Headquarters. On 28th August 2003 at 0255hrs and then at 0359hrs, two IEDs were detonated at Chiron's Headquarters in Emeryville, California. There were employees on site at the time, but no one was hurt. Damage to property was caused.

25. The first explosion took place in Building X of the Headquarters. CCTV shows a person outside the building prior to the bombing, holding a bag. The second explosion took place at building 4 of the headquarters. Again, CCTV shows a person outside the building, prior to the bombing holding a bag.

26. The following day an animal rights group called the Animal Liberation Brigade, Revolutionary Cells, claimed responsibility for the bombing in an electronic message posted on the bulletin board of an animal rights magazine. The post read:

In the early hours of August 28th volunteers from Revolutionary Cells descended on the animal killing scum Chiron. We left them with a small surprise of 2 pipe bombs filled with ammonium nitrate slurry with redundant timers. This action came about because Chiron has continued their murderous connections with Huntingdon Life Sciences even though they have been exposed numerous times as some of the most egregious animal killers in the industry.

27. The detail of the bombing contained an accurate description of the makeup of the IEDs which had not been made public at the time.

28. The second bombing at Shaklee Headquarters took place on 26th September 2003. At 0322hrs an IED was detonated at a Shaklee facility in Pleasanton CA. The explosion damaged a door but no individuals were harmed. However, the IED was strapped with nails which would have caused serious injuries if any person had been nearby when it was detonated. Earlier that night, at 0220hrs the RP had been stopped by a traffic officer a short distance from the site of the bombing.

29. On 30th September 2003 the same Animal Liberation Brigade claimed responsibility for the bombing, again by way of posting on the same animal rights magazine.

On the night of September 25th volunteers from the revolutionary Cells attacked a subsidiary of a notorious HLS client, Yamanouchi. We left an approximately 10lb ammonium nitrate bomb strapped with nails outside of Shaklee Inc, who's CEO is both the CEO Shaklee and Yamanouchi Consumer Inc. We gave all the customers the change, the choice, to withdraw their business from HLS. Now you all will have to reap who you have sown. All customers and their families are considered legitimate targets.

30. Details of the makeup of the device was accurate. Again, this information was not in the public domain.

31. The RP had been stopped by a traffic officer close to the location of the Shaklee bombing around an hour before it took place. On 8th October 2003 the RP's home address was searched. A copy of "Bite Back" magazine was recovered. This is the same magazine to which Animal Liberation Brigade had posted claiming responsibility for the attacks. The magazine included an article about breaking into Huntingdon Life Sciences. Pamphlets, books and clothing were recovered which indicated an interest in animal rights. These included *The Firefighters Handbook* which had the RP's fingerprints on and *Science of Revolutionary War.*

32. On 9th October 2003 the RP's vehicle was searched. Ingredients for the creation of the IEDs were recovered including copper coil, black PVC pipes, methylethylketone (MEK) , acetone, TATP and wire stripper. The RP's fingerprints were found on some of the MEK containers and on the acetone container.

33. Analysis of this material and the IEDs at the bombing sites led to the conclusion that the three bombs were made with consistent material, save for the addition of nails at the Shaklee bombing. The material was consistent with the equipment found in the RP's car. Crimp marks recovered from all three bomb sites matched the wire strippers taken from the RP's car. Copper wire found at the IED site was consistent with the copper tubing in RP's car.

34. The prosecution against the RP began on October 7, 2003 when he was charged by criminal complaint. On July 22, 2004 a grand jury sitting in the Northern District of California returned an indictment. On December 3, 2024 a grand jury sitting in the Northern District of California returned a Superseding Indictment charging the RP with the offences set out in paragraph 3 and 4 above, the subject of the request.

Summary of further information provided by United States of America

Letter from Alexis James, Assistant US Attorney (AUSA), US Department of Justice [Tab 10]

35. This explains that in October 7, 2003 the AG Office filed a complaint and the United State District Court for the Northern District of California issued a warrant for the RP's arrest. Initially the Grand Jury returned an indictment against the RP on four counts: two counts of Damage and Destruction of Property by Means of Explosives in violation of Title 18 US Code § 844(i) one for each corporate bombing. [*This is the same as Count 1 and 4 on the Superseding Indictment – my note].* There were also two counts of Possession of a Destructive Device During and in Relation to a Crime of Violence Title 18 US Code § 924(c), one count for each bombing.

36. AUSA James explains that the law regarding crimes of violence for the purpose of Title 18 US Code § 924(c) changed substantially between 2004 and by the time the RP was arrested in the UK. Therefore the prosecutor presented a Superseding Indictment to the Grand Jury, dismissing the two counts contrary to Title 18 US Code § 924(c) and adding two counts of Using or Carrying of Fire or Explosives in a Felony in violation of Title 18 US Code § 844 (h) *[Counts 3 and 6 of the Superseding Indictment- my note]* and two counts of Possession of an unregistered Firearm in violation of Title 26 US Code § 5861(d) *[Counts 2 & 5 of the Superseding Indictment – my note].*

37. AUSA James explains that the RP will be able to raise all issues at various stages of the US proceedings. AUSA James also confirms the RP is not being prosecuted for his political speech or views. Following his initial appearance in a federal court the RP will have an opportunity to file motions in the US District Court on any issues relating to the Superseding Indictment.

38. In relation to alleged indictment stacking, to unfairly increase the RPs penalties for the alleged crimes, AUSA James confirms the RP will have *"the right and will have the opportunity to challenge the form and substance of the Superseding Indictment before the District Court".* However AUSA James states that prosecutors are free to supersede with additional changes or enhancements without violating a defendant's rights or *"creating a presumption of vindictiveness".*

39. AUSA James confirms that if the RP is convicted of or pleaded guilty to each count on the indictment, he has a mandatory minimum sentence of 35 years of imprisonment. These are serious crimes and a serious penalty has been set by US Congress. However, it is not certain he will face such a penalty. It depends on a number of factors including whether it is a guilty plea and it is possible a jury will not convict him on all charges. Also, defendants can chose to enter into voluntary agreements with the prosecution to plead guilty to one or fewer charges on the indictment.

40. In relating to any alleged stacking of the indictment , the plain terms of the statutory provisions, as enacted by US Congress state that the charging structure of the Superseding Indictment is appropriate. The charges under Title 18 US Code § 844 (h) provides additional penalties while committing additional felonies.

41. In relation to alleged double jeopardy and multiplicitous claims made in the defence expert evidence that the Superseding Indictment charging the RP with separate counts under Title 18 US Code § 844 (i) and Title 18 US Code § 844 (h) *[Counts 1 & 3 and 4 & 6 on the superseding indictment – my note]* is violative of the Fifth Amendment's Double Jeopardy Clause, AUSA James disagrees. If there is a double jeopardy concern, the RP will have an opportunity to raise this with the District Court and any appellate court. AUSA James states there are opposing authorities before

the District Court. While the Seventh Circuit Court of Appeal has held that Title 18 US Code § 844 (i) and Title 18 US Code § 844 (h) are multiplicitous, at least two other Circuit Courts of Appeal have held to the contrary. Whether the Ninth Circuit Court of Appeal would hold the counts are multiplicitous is not at all clear. Federal Circuit Courts of Appeals are not binding on one another.

AUSA James confirms that the Superseding Indictment returned by the grand jury charges the RP for his conduct, namely two separate bombings using three IEDs. The RP is not being prosecuted for his speech or political views.

Letter from John Lopez, Deputy Chief US Marshals Service (USMS) , dated 8th August 2025. [Tab 11 Core Bundle]

42. Mr Jopez provides information concerning which facilities the RP will be placed during pre-trial detention. He confirms the USMS considers many factors in determining which facility to house a prisoner while in pretrial status. He confirms that the RP will be housed at one of four detention facilities: Alameda County Santa Rita Jail; Martinex Detention Facility; West County Detention Facility and Sam Francisco County Jail. He confirms non-Federal detention facilities used by USMA are maintained through intergovernmental agency agreements so they must comply with federal detention standards. Such standards are intended to protect prisoner's rights to safety, respect and decency. If standards are not met USMS requests that facilities address deficient standards. And USMS can terminate agency agreement and the facility would not be used for federal prisoners. All facilities undergo an annual detention facility review. All the facilities have been inspected through 2024 – 25. Prisoners can lodge grievances and report safety issues or concerns. Inmates may request to be placed in protective custody if the inmate has legitimate safety concerns about being housed in general population.

Letter from Timothy Rodrigues, Senior Counsel, US Department of Justice, Federal Bureau of Prisons (BOP). [Tab 12 Core bundle]

43. This letter address conditions the RP will encounter if sentenced to a term of incarceration with BOP. Firstly, Mr Rodrigues confirms the RP will be housed in *"safe, humane and lawful conditions".*

44. Mr Rodrigues is an attorney with BOP with experience spanning both institutional operations and national policy work including working on site at two facilities. He explains that BOP does not know at this time where the RP will be housed following conviction and sentencing. Initial designation requests for newly sentenced inmates are referred to BOPs Designation and Sentence Computation Centre (DSCC). They will receive the judgment, presentence reports, sentencing court recommendations to place an inmate at a specific institution, geographic area or specialised programmes. BOP makes every effort to comply with sentencing recommendations.

The DSCC will assess whether to apply a Public Safety Factor (PSF) for additional security measures to be employed to ensure safety and protection of the public. This can result in a designation to a higher or lower security level institution.

45. BOP facilities are classified by security level: minimum, low, medium, high ad administrative. Any suggestion that the RP will be classified as high security and placed in a USP is speculative. He confirms that the RP's designation to ADX Florence is extremely unlikely. ADX Florence is BOP's only administrative maximum security facility. It houses inmates who pose the most security risks. It is not dictated by offence type alone but through multi-tiered assessment processes including risk of violence within prison; confirmed threats to institutional or national security. Escape history, disruption of prison operations.

46. Suggestion that terrorism related charges automatically result in placement at ADX or a high security USP is inaccurate. Mr Rodrigues states that the RP is not charged with a terrorism offence but rather destruction of property by explosives. Such offenders are not automatically placed in high security institutions or the ADX. Terrorism related offenders can be housed in medium and low security facilities.

47. The RP has no history of institutional violence or escape attempts or that he would pose the type of extreme risk that would trigger ADX consideration. *"based on his current profile, his status as a non-leader/ organiser of others in criminal activity and absent future egregious criminal misconduct while in custody, Mr San Diego would not meet the criteria for designation to DX Florence".*

48. Mr Rodrigues also confirms that the RP is unlikely to be placed in a Communication Management Unit (CMU). These are highly regulated general population units designed to monitor and restrict external communications for inmates who have demonstrated heightened risk of using those communications to engage in unlawful or dangerous activity. They are not isolation or solitary confinement. Communication is subject to enhanced monitoring. CMU placements after sentencing generally reserved for inmates who present a demonstratable and ongoing risk of using unmonitored communications to facilitate criminal activity. The RP has no known history of communication abuse or in custody misconduct.

49. Mr Rodrigues also explains Special Housing Units are not equivalent to solitary confinement. They are found in virtually every low, medium and high security federal prison. They serve a multitude of administrative and disciplinary functions, housing inmates under investigation; pending transfer; in need of protective custody or serving disciplinary sanctions. They are not equivalent to solitary confinement. SHU placements are continually evaluated to ensure placement necessary and proportionate.

50. The BOP has partnered with the National Institute of Justice to launch a joint initiative critically examining the use of restrictive housing in federal facilities. SHU placement has continually declined in last decade

51. In terms of funding and operational capacity, Mr Rodrigues confirms that in 2025 Congress appointed an unprecedented $5 billion in supplemental funding for BOP to be allocated over the next 5 years in addition to their $9 billion operating budget. The population is operating below a population high of 220,000 in 2023 with a steady population of 155,000.

52. In terms of violence in USPs and Protective Custody, Mr Rogriges explains serious inmate-on-inmate violence occurs at a rate of 3 incidents per 5000 inmates and less serious assault at a rate of 25 per 5000 inmates. A USP inmate has a 1.1% likelihood of involvement in an assault. Inmates requiring additional protections are not automatically placed in SHUs, they may be housed in alternative secure housing options.

53. Finally, under current law of convicted of federal crimes the RP will be detained in a BOP facility. There is no legal authority or BOP practice that would allow BOP to transfer a US citizen to *Centra de Confinamiento del Terrorismo* (CECOT) in El Salvadore or any foreign prison facility to serve a federal sentence.

Letters from Alexis James, Assistant US Attorney (AUSA), US Department of Justice dated 7th September 2025 [Tab 16 & 17 Core Bundle]

54. This letter responds to suggestions that members of the current executive branch of the US Government will act inappropriately to the detriment of the RP in connection with his bombing of two pharmaceutical testing companies over 20 years ago. There is no information that any politician has named or identified the RP or his 20 year old case to be targeted for any alleged inappropriate “political” treatment and neither is it part of the Administration’s political objectives. The RP was charged by a grand jury originally in 2004, long before the current Administration. The charges were Superseded in 2024 before the current Administration came into office. The charges cannot be said to be the result of any alleged political interference. Two separate grand juries have already heard evidence and approved the operative indictments prior to the current Administration. The grand jury by design is an important safeguard on the power of a prosecutor because the decision to charge is controlled by the independent grand jury, not the prosecutor.

55. If extradited the RP will be provided with the full rights owed to all criminal defendants in the federal system. The US Constitution provides the overall framework for his right to counsel, right to confront witnesses, right to trial before an independent judge and jury. The right to file pre-trial motions, to dismiss the indictment if he wishes to challenge instances of illegal or inappropriate conduct of his investigation or prosecution. Guilt or innocence will be decided by a jury. Sentence will be imposed

by a judge within the boundaries of maximum and minimum sentences set by US Congress.

56. AUSA James states *"I can state my office will carry out its duties in the remaining steps in the prosecution of Mr San Diego vigorously as per the usual course. However, it will do so within the bounds of the laws passed by our Congress, the Federal Rules of Criminal Procedure and Evidence, the prevailing body of criminal law, rulings of the courts in this case and the rules of professional and ethical conduct that apply to all attorneys".*

57. If convicted the RP will have full rights of appeal in the appellate court and in the US Supreme Court.

58. If convicted and following sentence the RP may seek a pardon or clemency from the President at the time.

59. The location and conditions of confinement of the RP if convicted will be determined under federal law by the BOP.

Letter on behalf of Alexis James, Assistant US Attorney (AUSA), US Department of Justice dated October 17 2025 [Tab 19 Core bundle]

60. In this letter it explained that the role of the Attorney General to oversee the work of the Department of Justice. Issuing memoranda is a common method used by Attorney General to communicate their supervision and direction to the employees and attorneys within the Department of Justice. Attorneys General issue memoranda across administrations. Their role is to "*supervise all litigation to which the United States, an agency, or officer thereof is a party, and shall direct all United States Attorneys, assistant United States attorneys…in discharge of their respective duties".*

61. A memo was issued on February 5th *2025 "General Policy Regarding Charging, Plea Negotiations and Sentencing"* which repeats existing Department Policy in the Justice Manual which was revised in June 2023. The memo directs that Department of Justice prosecutors should make sentencing recommendations based on an individualised assessment of the nature and circumstances of the offence and the history and characteristics of the defendant.

Evidence relied on by the Requested Person

Report of David Patton dated 9th June 2005, 26th August 2025 and 1st December 2025.

62. I received oral evidence from David Patton and he adopted all his reports.

63. Mr Patton is a defence attorney and was asked to provide a report on the penalties the RP would likely face if extradited to the United States.

64. In summary he concludes that if extradited, the RP faces a minimum of 35 years and a maximum sentence of 90 years in prison. A federal judge will have no discretion below the 35 years. The RP would have to serve at least 85% of the time to which he is sentenced.

65. Mr Pattons says that under the current leadership of current Attorney-General Pam Bondi, a policy has been issued "*Policy Regarding Charging, Plea Negotiations and Sentencing" dated 5th February 2025* which requires all prosecutors to "*charge and pursue the most serious, readily provable offences".* The policy defines the most serious offences as *"those with the most significant mandatory minimum sentences…and the most substantial recommendations under the Sentencing Guidelines ".* Moreover, Mr Patton says the Administration has shown a particular interest in severely punishing terror related offences.

66. Mr Patton says that prosecutors in the RP's case appear to be taking every measure to ensure a severe, mandatory sentence.

> *When the initial charges against Mr San Diego were filed in 2004, they included offences with mandatory sentences that have since been greatly reduced by Congress and the United States Supreme Court. Rather than abide by those policy and legal changes, prosecutors upon Mr San Diego's arrest in 2024, fashioned amendments to the indictment to include different charges that once again impose decades of mandatory imprisonment". [Page 86 core bundle].*

67. In addition, Mr Patton states that the current Administration has shown a willingness to engage in extrajudicial processes to inflict even greater punishment on disfavoured individuals by sending dozens of non-citizens to foreign countries like El-Salvadore to subject them to notorious brutal prison conditions. Mr Patton suggest *"Given the nature of the charges against Mr San Diego and the publicity surrounding them, he would seem to be a likely candidate for such treatment".*

68. Mr Patton explains that in relation to the original indictment on 2004, there were four counts on the indictment. In relation to each bombing, the counts include alleged damage and destruction of property by means of explosives in violation of Title 18 US Code § 844(i) and alleged possession of a destructive device during and in relation to a "crime of violence", in violation of Title 18 US Code § 924(c). The

predicate offence being the offence under Title 18 US Code § 844(i). The offence under Title 18 US Code § 844(i) carries a mandatory minimum of 5 years and a statutory maximum of 20 years. The charge under Title 18 US Code § 924 (c) carried a mandatory minimum sentence of 30 years. The second offences would have been treated as a subsequent offence to the first bombing offence and it would have carried a mandatory life sentence. The statute confirmed that the penalties for the two bombings must been served consecutively. Accordingly if convicted on all counts in the original indictment, the RP would have faced a mandatory minimum sentence of life plus thirty years and a statutory maximum sentence of life plus 70 years.

69. Mr Patton described the charges and the maximum cumulative penalties as epitomising "charge stacking". This is where prosecutors join multiple counts of a crime against a single defendant. The criminal procedure permits the joinder of overlapping or duplicating offences, therefore "stacking" multiple charges arising from the same conduct and increasing a defendant's sentencing exposure.

70. Mr Patten explains that in 2018, Congress addressed the "stacking problem" in the First Steps Act 2018. It eliminated the provision requiring stacking of mandatory minimum sentences for multiple convictions under Title 18 US Code § 924 (c).

71. In addition, in 2019, the Supreme Court decide in *United v. Davis* narrowed the definition of crime of violence as used in Title 18 US Code § 924 (c) and a violation of Title 18 US Code § 844(i) no longer qualified as a predicate crime of violence for a violation of 924(c). This overall would have reduced the sentencing range 97 – 121 months.

72. Mr Patten then explains that the Superseding Indictment reflects an effort to circumvent what was remedied by the First Steps Act and the case of *Davis.* The Superseding Indictment removed the charges brought under § 924 (c) and replaced them with alleged violations of Title 18 US Code § 844(h) - Using or carrying an explosive during the commission of another felony. Mr Patten states they share a similar structure and penalty scheme with identical consequences for second or subsequent convictions. Mr Patten states that §844(h) deploys the same mandatory stacking provisions that the First Steps Act outlawed in relation to § 924 (c). It carries a mandatory 10 year penalty for a first conviction and a mandatory penalty of 20 years for a second or subsequent conviction, including instances where a defendant is convicted of two separate bombing incidents in the same case. Mandatory penalties must run consecutively. Thus, the two charges combined account for a mandatory minimum sentence of 30 years consecutive to all other charges. In addition, the Superseding Indictment added two new charges, for possession of unregistered firearm (which included explosives). In violation of Title 26 US Code § 5861(d). This carries a sentence of up to 10 years. There is no mandatory minimum, and penalties may be imposed consecutively or concurrently. Mr Patten said these charges were available when the first indictment was brought. Mr Patten says this is clear evidence this results in stacking charges against RP, by other means. It reinstates the

sentencing discretion of the judge by requiring a mandatory minimum sentence of 35 years and if convicted of all charges in the superseding indictment the RP faces a mandatory minimum of 35 years and a maximum of 90 years. Mr Patten sets out his sentence calculation in some detail in his first report.

73. In oral evidence Mr Patten says that there were only two possible conclusions. The prosecution want to impose a life sentence and they do not want the judge to impose any lesser sentence. Secondly, the indictment will provide leverage to coerce a plea bargain.

74. In addition, because the FBI has categorised the RP as a domestic terrorists in the FBIs Director's statement of FBIs most wanted terrorists , in an FBI Press Release in 2024, Mr Patten states that the prosecutors will also argue for a terrorism enhancement which significantly increases a defendant's potential sentence because it requires and upward adjustment, which is mandatory, if the government prove that the bombings were calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct. The application of the enhancement would result in a severe increase in sentence.

75. Mr Patten also states that the Superseding Indictment raises other legal issues. The Fifth Amendment of the US Constitution provides that no person may "*be subject for the same offence to be twice put in jeopardy of life or limb".* As the Superseding Indictment alleges as to each bombing, three crimes based on same underlying facts, seeking multiple punishments for the same conduct, one or more of the charges will be susceptible to challenge under Double Jeopardy Clause.

76. Under the Double Jeopardy Clause the government may not charge a single offence in several counts and a court may not impose multiple punishments for the same act. Despite this the Supreme Court has held that Congress may assign multiple punishments for the same underlying criminal conduct. However, Mr Patten states that the Superseding Indictment Counts 3 & 6, using an explosion to commit a felony or carried an explosion to commit a felony. The two alternative predicate felonies for this offence being the arson offences (§ 844 (i)) charges in Counts 1 and 4 and being in possession of an unregistered firearm (inc explosives) (§ 5861(d) in Counts 2 and 5.

77. In para 8.1.2 of his report **[page 104 of the Core Bundle]** Mr Patten explains that the US Court of Appeal Seventh Circuit and US Court of Appeals for the Fifth Circuit have rules that § 844(i) as a predicate felony for § 844 (h) is a double jeopardy violation. Mr Patten does explain that relevant to the RP's case, the Court of Appeal Ninth Circuit in which the Northern District of California sits has not addressed the issue but he opines that *"Given that every federal Court of Appeals to decide the issue has consistently ruled that the use of § 844(i) as a predicate for § 844(h) violates the Double Jeopady rule, I am on the firm view that the Ninth Circuit would hold the same and that any suggestion to the contrary would be wrong. I believe the issue to*

be beyond legitimate dispute". In his report and in oral evidence I was referred to these cases and authorities in great detail but for reasons which I have set out later in the judgment (in particular paragraphs 213 – 221) , I do not consider it necessary to set these out.

78. In relation to §5861 (d) as a predicate for § 844(h) there is scant case law on whether these violates double jeopardy, however Mr Patten states that it makes them vulnerable to challenge. He describes it a "creative pleading" used to inflict possible unauthorised multiple punishments.

79. Mr Patten also gave evidence about the impact of the Trump Administration on the RP's sentence and treatment. Mr Patten's opinion is that the historically strong independence of the Attorney-General has been eroded by the Trump administration, installing former personal lawyers into positions of powers, such as Attorney General Pam Bondi. He refers to the Memorandum "*Policy Regarding Charging, Plea Negotiations and Sentencing" dated 5th February 2025* ["Boni Memo"]. The charging directive being that *"in the absence of unusual facts, prosecutors should charge and pursue the most serious, readily provable offence. The most serious offences are those punishable by death, or those with the most significant mandatory minimum sentences…and the most substantial recommendations under the sentencing guidelines".* Mr Pattens states that the impact of the memo is plain, that prosecutors must maintain and pursue all charges against the RP, including charges requiring 35 year minimum sentences.

80. Mr Patten also expressed opinion that the Trump Administration has implemented *"unthinkable practices"* that could impact on the RP, such as sending non US citizens to the maximum security prison in El Salvadore (CECOT) and that Mr Trump has repeatedly suggested he would seek to send US citizens to CECOT. This is because the RP is a high profile criminal defendant, first domestic terrorist placed on the FBIs Most Wanted List. It would therefore be fair to expect the Department of Justice under the Trump Administration to pay particular interest to his case to expect the AG to take steps to ensure the RP is subjected to extreme punishment to bolster the administration's political agenda.

81. Mr Patten concurs with Mr Dratel's conclusions on the *"unprecedented"* and persistent nature of the Trump Administration interference with the operation of criminal prosecutions and treatments of defendants in the BOP estate. He also agrees that the DOJ has forfeited the *"presumption of regularity"* that prosecutors have historically enjoyed. He went as far as suggesting that AUSA Alexis James, could acquiesce to interference internally or if they resisted likely they would be forced out of the DOJ.

82. In terms of the "presumption of regularity" being displaced Mr Patten referred to various comments made by US judges and other source material presented by Mr Dratel.

83. It is his view that the RP would qualify as a disfavoured defendant, the kind of case the administration has shown a willingness to exploit for political aims. The RP is a newsworthy defendant, and his case falls within the narrative of "radical leftwing terrorist" and precisely the kind of prosecution the Administration would take an interest in, although in oral evidence Mr Patten seemed to temper this opinion by saying "I think" animal rights activism would be included in the Administration's description of left wing terrorists. *"DOJ Officials will ensure that prosecutors use their considerable leverage to prevent valid legal challenges to the Indictment, seek the most severe sentence possible and impose the harshest possible conditions for any term of imprisonment" [page 284] .*

84. Under cross examination, Mr Patten was in my assessment evasive on occasions and was very reluctant to concede issues that did not fit the narrative of the RP's case. This gave an impression of being partisan and pointed away from being objective expert opinion. Mr Patten conceded in relation to the Superseding Indictment and the charges under § 844(i) there was no controversy over those counts but maintained his position with regard to the other counts and when pushed on whether issues of double jeopardy are properly arguable and whether the indictment is proper and consistent with statute he simply disagreed. He did concede there is less authority on the charge under § 5861. He accepted that in terms of sentencing, for there to be a terrorism enhancement that would have to be proved by the state to the preponderance of evidence, in an open hearing before a judge, where the RP would be able to challenge any evidence. He accepted the RP would have the right of appeal against conviction and sentence and Mr Patten agreed there was no issue with the Court of Appeal's independence and impartiality. He also accepted that issues with regard to whether double jeopardy applied would be a matter for the 9th Circuit Court.

85. Mr Patten accepted the problematic counts on the indictment were Counts 3 & 6 which required an underlying felony. He accepted there were two possible underlying felonies. Mr Patten also accepted that in determining whether counts fell foul of double jeopardy had to look at Congressional intent. If Congress intended separate punishment, he accepted the issue stops there. He accepted the 9th Circuit had never determined the issue There have been no cases with any analysis on 9th Circuit. Decisions of the 5th Circuit would not bind the 9th Circuit which is dealing with RP's case. When challenged that these are arguments which the Courts of Appeal have acknowledged are valid arguments, Mr Patten replied that he would not go as far as saying they have acknowledged as valid, just that they exist. He accepted that AUSA James disagrees with his views on double jeopardy and eventually conceded it can be litigated on 9th Circuit. In essence conceding arguments were very much up in the air, but when in re-examination specifically asked whether ADA James is advocating a proper and tenable argument as a matter of US law, Mr Patten said that it was not proper and tenable argument, despite the concessions he had made under cross-examination. I found this undermined his credibility.

86. He accepted there was no impediment to the RP raising arguments in the 9th Circuit. He also conceded that if the indictment was lawful, any mandatory minimum sentences had been set by Congress through a democratic process and it was not therefore improper for the State to seek a greater sentence.

87. In relation to plea bargaining, he accepted that plea bargaining is recognised within the Federal Rules on Criminal procedure and accepted that a trial court judge must ensure any plea is entered freely and voluntarily.

88. He accepted there was currently no evidence of any interference with the RP's case by the current Presidential administration and that charges had been laid free of any political interest. He accepted no evidence of political motivation with the Superseding Indictment and no evidence of political interference with the extradition request. His concern however was with the future. He believes there was a high likelihood of political interference, stronger than just "may".

89. Mr Patten denied in cross examination that he was making any claim of a vindictive prosecution against the RP. In relation to the assurance given in AUSA Alexis James affidavits Mr Patten said he did not doubt her good faith. He had no reason to doubt her good faith but *"the word of the DOJ cannot be trusted without more…I do not know of anything that can be trusted".*

90. In relation to interference with BOP, he accepted he had no basis to say the RP will be placed at ADX or in a CMU. However, political pressure could result in a vindictive allocation to a harsher regime. He accepted there was no policy or draft legislation in place that would result in the RP being deported to a foreign prison.

91. In relation to the judiciary, he accepted he did not doubt the independence of federal judges. He concedes that he could not give any example of where a judge has been influenced by the administration but *"I worry about it".*

Report of Joshua Dratel dated 26th August 2025 and 25th November 2025 [Tab 15 & 20 Core Bundle]

92. I received oral evidence from Joshua Dratel and he adopted both his reports. He also produced a bundle of publicly available material.

93. Like Mr Patten, Mr Dratel is an criminal defence attorney practicing in New York State.

94. His report deals with political interference by the current US Administration in the federal courts and criminal prosecutions together with the place and conditions of confinement for sentenced federal defendants in the US federal prison system.

95. He describes the risk of political interference and targeting in the RP's case as "not speculative".

96. He states that the integrity of the US federal criminal legal system has been compromised by:

    a) Direct political interference to achieve political objectives.
    b) Pardons and commutations issued by President Trump, principally to those charged and convicted of crimes committed at the Us Capitol on January 6th 2021.
    c) DOJ's purge on personnel.
    d) Targeting of political adversaries and political dissidents for opposing administration's policies.
    e) Attacks on judges to thwart and defy decisions adverse to the administration
    f) Attacks on lawyers and law firms who have participated in litigation against President Trump.
    g) Threats to enhance punishment of particular defendants by aggravating their conditions of confinement without penal justification.

97. In terms of a campaign of political interference is the US Federal and State criminal justice system, Mr Dratel refers to the Memorandum issued on February 5, 2025 by US Attorney General Pam Bondi *"Policy Regarding Charging, Plea Negotiations and Sentencing".* Mr Dratel highlights that the report requires prosecutors *to "charge the most serious, readily provable offences. The most serious offences are those punishable by death, or those with the most significant mandatory minimum sentences".* The memo also requires that if any decision is taken which varies from these core principles it must be approved by US Attorney and Assistant Attorney General and reasons documented. Mr Patten says this is a marked shift in DOJ policy containing local autonomy of attorneys. He goes on to give examples of cases in which he believes political interference has been publicly disclosed including:

    a) the dismissal of the Federal Criminal prosecution of New York Mayor Eric Adams
    b) Dismissal of cases against MS-13 Leaders
    c) Investigation of Environmental Grants Awarded by Biden Administration
    d) The immigration detention of Palestinian activists
    e) Criminal Prosecution of Kilmar Abrego-Garcia
    f) Authorisation of Capital Charges against Luigi Mangione
    g) Interview with Ghislane Maxwell
    h) Colorado State prosecution for 2010 election interference

98. Mr Dratel also gives examples of where President Trump has used his power to pardon to reward his supporters, political and financial, which Mr Dratel says demonstrates the *"administration utilising that system to exert political influence".*

Examples given include, Presidential Pardons for those convicted of crimes in connection with January 6, 2002.

99. Mr Patton also gives various examples from open-source material and media articles of where he says the DOJ has purged prosecutors and law enforcement involved in January 6, 2001. In his second report he cites articles in the New York Times where a federal judge resigns quoting *"the White House's assault on the rule of law is so deeply disturbing to me that I feel compelled to speak out".* Mr Dratel also refers to articles commenting that the DOJ has now forfeited the "presumption of regularity, with particular reference to a study undertaken and published in November 2025 entitled *"The Presumption of Regularity" in the Trump administration Litigation* **[tab 51 of the supporting material bundle].**

100. Mr Dratel makes reference to a further memo issued by the Attorney General Bondi on 5th February 2025 entitled *"Restoring Integrity and Credibility of the Department of Justice",* which has been referred to as the "weaponization memo". He says the purpose of the memo is to ensure the DOJs personnel are ready and willing to implement to policy agenda of the President. He again refers to media material describing the memo *" its not neutral or even-handed justice, it's Trump Justice".* In oral evidence Mr Dratel said this memo was to give a clear message to DOJ personnel. If people do not tow the line of the agenda of the Administration and the President they will be dismissed. That is a huge departure from the normal operation of the DOJ.

101. Mr Dratel also refers to other articles where he suggests the appointment of US Attorneys is being manipulated and political adversaries and activists are being targeted.

102. Mr Dratel also refers to other articles in support of his view that the Trump Administration has embarked on a campaign of harassment, intimidation and defiance of judges and lawyers as well as targeting law firms. In oral evidence he describes the departures and dismissals of prosecutors as unprecedented and gave various examples cited in media articles and commentary.

103. Mr Dratel says the reach of the Administration also extended to the conditions of confinement for those sentenced to prison. Mr Dratel says the designation of convicted defendants to particular federal prisons lies within the *"unreviewable discretion of the US Bureau of Prisons, which is an agency within the DOJ and therefore under AG Bondi's authority".* He suggests President Trump and AG Bondi are utilising the federal prison system to enhance punishment for those the Administration considers undesirable, including those whose circumstances can promote the Administration's political objectives. Again, this includes articles and media articles making reference to moving defendants to ADX or placing defendants in CMUs and even using Guantanamo Bay and El Salvadore., as well as reactivation Alcatraz.

104. In his second report, Mr Dratel refers to examples of what Mr Dratel describes as President Trump's broad animus against what he perceives to be left-aligned political activism and domestic terrorism. He concludes by saying that as the RP's alleged crimes have already been labelled domestic terrorism by the FBI, the proceedings against him, if extradited to the US will be an obvious target for the Trump Administration. He Dratel says *"I think his case falls within the category of activism which the President and Attorney General have been focussed on."*.

105. In cross examination, Mr Smith KC identified that Mr Dratel had been subject to some adverse commentary in previous first instance judgments and that he had been found to be biased and partisan. Of note he accepted that he should reflect in paragraph 10 of his first report that he has been found not to be an expert. Such adverse findings have not been disclosed in Mr Dratel's report in accordance with CPR 19 and the Criminal Practice Direction 7.1.4.

106. In relation to political interference it was suggested to Mr Dratel that he was grossly exaggerating the issue. Mr Dratel replied it was *"conceivable"* the RP's case would be subject to political interference but acknowledged there was no evidence the prosecution had been commenced for any inappropriate purpose. He accepted that bombing a pharmaceutical company would be a justified prosecution and that such repeated detonations would b serious criminal offences. He accepted there was no evidence of political interference before 2024, or in the extradition request itself, or in any of the further information provided by the US Government and no political interest expressed by this Administration in the RP's case. He also confirmed he was not aware of any social media commentary about the case. He also accepted, having considered the responses and affidavits from the US Attorneys in this case that there was no evidence of improper influence at this time.

107. In terms of departure to charging and plea negotiations with the DOJ and the "Bondi Memo" Mr Dratel explained that if you deviate from the policy you must put it in writing and get approval up the chain. He says this creates a monitoring system which is very different. However, Mr Dratel accepted that the charges in the RP's case had already been laid so the core principle that prosecutors must charge and pursue the most serious charges was actually irrelevant here and the memo would have no impact on the RP's case. He also accepted that within the memo there is a prohibition of being influenced as attorneys by political association, activities and belief.

108. Overall, Mr Dratel was challenged that examples cited in his report were all political examples directly relating to the President and the RP's case does not involve the promotion of any political agenda. Mr Patten accepted that the RP was not a political adversary of the President.

109. It was submitted to Mr Patten that examples set out in his report had no alignment at all with the RP's case and the opinions he expresses are all conjecture. In relation to political interference Mr Dratel says it was quite possible the RP's case could come to President Trump's attention. When challenged this was speculation Mr Patten simply replied *"speculation in terms of quantifying it but not speculative in terms of possibility".* This appeared to me to be a statement made without foundation.

110. Mr Dratel accepted that federal judges were independent and they take their oaths seriously. He says though they are subject to threats to their safety and impeachment. Mr Dratel says that it cannot be discounted that a threat or post in relation to the RP's case could place a judge in danger.

111. In terms of conditions of confinement, Mr Dratel was challenged on whether the RP would face death penalty, or will be sent to ADX. However, Mr Dratel would not be pushed on his position that the RP could be sent to ADX by stacking the sentences, which could place him in the category of a domestic terrorist. In terms of being deported to a foreign country to serve the sentence, it is pointed out that the RP is a US citizen as it stands now, such deportation would be unlawful. Mr Dratel did not really answer that question.

112. Mr Dratel was challenged that in terms of CMU and ADX, the RP simply does not meet the criteria. He was challenged about his references in his report to Guantanamo Bay as being "over the top".

113. Of note, when challenged about the contents of his report particularly in relation to political influence, Mr Dratel responded frequently with the same response *" It cannot be discounted" and " cannot predict anything" .* Mr Dratel concluded cross examination with the following statement *"I'm not going to predict what happens, but of a call comes from Washington who can predict what will happen….. It does not work anymore. That is what judges, academics and prosecutors are saying".*

Report of Shannon Race dated 30th May 2025 [Tab 6 Core Bundle]

114. I received oral evidence from Shannon Race and she adopted her report. She also produced a bundle of supporting material.

115. Shannon Race is an independent consultant and expert on BOP policies and procedures, having been employed by the BOP from 1995 – 2021. Most of her experience was in BOPs Designation and Sentence Computation Centre (DSCC) in Texas.

116. Based on the information she reviewed, in her opinion the RP will be classified as a High Security inmate if convicted and sentenced to prison. She accepted she does not have a pre-sentence report on which to base her analysis, but bases it on

the RPs age, history, likely sentence, allegations within the affidavits and the placement of the RP on the FBIs Most Wanted Terrorist list. There will also be Management Variables and Public Safety Factors to be considered.

117. She says BOP has a comprehensive way of determining security classification and based on these factors he will be placed in a high security institution (USP). The allegations is proved will also expose the RP to be placed in an environment where he will be closely monitored. Also, due to the terrorist implications within the alleged charges, the counter terrorism unit could weigh in on the RPs designation which could result in him being placed in high security institution or ADX Florenece.

118. In cross examination, Ms Race accepted the RP would not currently hit designation for ADX Florence. She was challenged that she does not know what the RP will be convicted off or the contents of any pre-sentence report and therefore any exercise to opine his security classification was a speculative exercise. Ms Race agreed but said her opinion was based on 15 years of experience.

Report of Nicole English dated 30th May 2025 [Tab 6 Core Bundle]

119. I received oral evidence from Nicole English and she adopted her report. She also produced a bundle of supporting material.

120. She is a corrections consultant, specialising in federal correction, providing consulting services on aspects of the federal prison system, having worked in the BOP for over 31 years. Her final position was a Regional Director in the North East Region managing 20 institutions and wardens up until 2021.

121. She describes the BOP being an agency in crisis. If convicted the RP will spend years in a USP – a High Security Prison., where he will live in fear of being attacked. This will result in him being placed into protective custody where he will live in isolation before being transferred and the scenario repeating itself. Protective custody is accomplished by placing an inmate in a Special Housing Unit (SHU). They are held in cells for most of the day, showers, calls and recreation are very limited. USPS are the most violent prisons in the country. Individuals are forced to align with a gang for protection or be subject to attacks.

122. The BOP is facing a budgetary crisis causing it to cut staff. In addition the BOP has started putting non-US citizens in a high security prison in El Salvadore and there are promises by the Administration to start sending violent US citizens to serve their terms in El Salvadore. The type of crime the RP is accused of is related to animal rights activism which would appear to put the RP in a category that the current administration would target for sending to El Salvador.

123. In terms of designation, she accedes to Ms Race's opinion that the RP will be designated as a High Security classification.

124. In terms of the USP, High Security houses the most violent inmates, with the highest proportion of inmate on inmate and inmate on staff assault. Inmates live in a "different sub-cultural code" than in low security facilities. There will be relentless pressure to join gangs and or pay for protection. She opines that the Aryan Brotherhood will likely recruit the RP as he is Caucasian. Vulnerable Inmates have to seek protective custody or isolation from the general population. This is akin to solitary confinement, in a section of the facility called the Specialized Housing Unit (SHU) She describes life in an SHU as "brutal". Extended placement in SHUs will lead to sever psychological distress. She says there is a high probability the ROP would have to seek out protective custody and may spend a significant amount of time in a SHU.

125. In terms of BOPs structural and budgetary challenges she refers to the Congress' failure to properly fund the BOP. In 2023 an audit found *"the BOPs infrastructure planning efforts were negatively impacted by the mismatch between available and needed funding*". As a consequence Ms English says the BOP operates facilities which are uncomfortable, pose severe heath and safety hazards to inmates, staff and visitors. She describes chronic understaffing, with "augmentation" becoming a regular and over used practice. Augmentation impacts on other needs and services. Medical Health centres are understaffed and inadequate and inmates with serious conditions go untreated. In addition BOP staff engage in egregious abuse of the inmates. I note at this point that Ms English's examples and materials which are footnoted are not recent or up to date and many seem to refer to material from 2023, 2022 and as far back as reports from 2015.

126. Ms English does not believe the additional funding which Congress has allocated will remedy the infrastructure problems and it will take several years for improvements to be made. In terms of the statistics quoted by Mr Rodrigues in terms of violent assaults, Ms English says the statistics capture reports incidents and adjudications and that it is difficult to evaluate inter-prisoner violence and believes the statistics under report prison violence.

127. In terms of the current administration, Ms English notes a partial hiring freeze at the BOP which will intensiy staff shortages and operation issues. She notes the use of El Salvadores Terrorism Confinement Centre (CECOT) and the Administration exploring the possibility of placing US citizens who are deemed the worst of the worst in CECOT and other foreign prisons and the risk this presents to the RP as being placed in the worst of the worst category for his animal rights terrorist ideology and his fugitive status .

128. In cross examination, she accepted that the prison population had reduced across the BOP. She accepted the addition $5 billion additional funding and said she

hoped things would move in the right direction. In terms of working in a BOP prison itself she last worked in 2019. In terms of the prions suggested by Ms Race as likely placement she had visited in all three of the prions, USP Altwater, USP Tucsona and USP Victorville and worked in Tuscon in 2004 and Altwayer visited in 2019.

129. Mr Smith asked Ms English if she was aware of the obligations as an expert under CPR 19. She accepted she had not read them.

130. She accepted that a prisoner who fears for their safety does have the ability to seek protection which can be afforded at a reasonable level. She accepted USPS take action to try and prevent conflict. She also accepted SHUs were not the only type of protective custody. She believed SHU is akin to solitary confinement although accepted it was with cell mate. It was suggested that she is labelling SHUs as solitary. She also accepted condition is SHUs are subject to oversight by the Courts and have been upheld to be constitutional. Neither placement or conditions are arbitrary and BOP used the least restrictive regime necessary to protect inmates. She was challenged about the conditions in SHUs, with access to staff, psychology staff, exercise, access to programmes and recreational material. She acknowledged that the RP had no significant medical issues.

Statement of Bridget Prince dated 17th June 2025 [Tab 8 of the Core Bundle]

131. I received a statement from Bridget Prince. She is a director of One World Research a public interest research firm. She was asked to provide a report in relation to the RP's circumstances if he is extradited to the US and whether there is information in the public domain that may assist in understanding whether individuals prosecuted for offences involving forms of protest similar to the background alleged on the RP, might be exposed to treatment within the criminal justice system and in particular to their circumstances of imprisonment of an enhanced severity.

132. She concludes from a series of case studies that she has researched, alongside the statement of Ms English that there are immediate dangers faced by individuals placed within higher security prisons and even where eligible for placement in lower security prions, the individuals involved in the case studies were all transferred to and served a substantial proportion of their respective sentences in prisons and under prison regime reserved for the most serious crimes and lengthiest sentences.

Analysis and findings on the evidence

133. At this point I will make some general findings regarding the live witnesses in this case. In addition, significant volumes of supporting evidence has been submitted in these proceedings, I have referenced the relevant material with care; however, I do not attempt to set out a summary of all the documentary evidence exhibited in this case, especially in relation to Mr Dratel and Mr Patten's reports.

134. I find Mr Dratel and Mr Patten are both clearly experienced criminal defence attorneys. However throughout both their written and oral evidence they were partisan. They took their roles as criminal defence lawyers as their starting point, rather than actually seeking to assist the Court with impartiality and independence. Mr Datel, having received judicial criticism in other cases did not disclose it in his report and concede that paragraph 10 of his first report should have been amended to reflect that. I found their evidence to be genuinely speculative, conjecture and at times sensationalist and at all times trying to fit the RP's case into the rhetoric or narrative without any objective evidential basis.

135. There is no evidence adduced of any improper involvement of political figures in the RP's case. There is no evidence other than conjecture, that the RP would be punished or prejudiced on account of his political beliefs which at its highest amounts to what is described as "left leaning activism / terrorism".

136. Neither Mr Patten nor Mr Dratel sought to argue that the charges were not properly laid nor the extradition request properly sought. The allegations which the RP faces are plainly criminal conduct and I find there was no evidence of any political motivation or interest in the RP's case at present. There is no evidence of any Presidential interference or interest with the RP's case.

137. In their reports and in oral evidence Mr Patten and Mr Dratel have resorted to "speculative and inapposite reliance on other proceedings, which bear no relation to this case", a submission made by Mr Smith KC and with which I wholeheartedly concur.

138. Criticism is made by both Mr Patten and Mr Dratel of memorandums issued by the Attorney General Pam Bondi, in particular the Policy of Charging, Plea Negotiations and Sentencing and what is described as the "Weaponization Memo". Neither Mr Patten nor Mr Dratel in their reports highlight the fact that the memorandum prohibits prosecutors from being influenced by a person's political association, activities or beliefs. Criticism is made of the "Weaponiztion memo" without reference to the purpose of the memo and the working group being set up by the Attorney General *"to identify instances where a department's or agency's conduct appears to have been designed to achieve political objectives or other improper aims rather than pursuing justice".* I find this is is not a memo which demonstrates political

interference. Its an memo from an Attorney General seeking to eradicate political interference.

139. Mr Dratel relies in his report and in oral evidence on a number of reports of cases concerning individuals with personal connection or animus to the current president or the administration. A few examples included the withdrawal of the prosecution of New York Mayor and what he describes as a purge on prosecutors with previous involvement in prosecutions relating the to 6th January 2021. Documentation relating to litigation against firms who have been involved in previous litigation with the President in a personal capacity and media reports of withdrawal of prosecutions alleged MS-13 gang members. I found none of this material helpful, and they provide no assistance in determining whether the prosecution against the RP has been brought vindictively or has any connection with the Administration.

140. Indeed Mr Dratel does not caste any doubt on the integrity of the prosecutors involved in the RP's case who have provided affidavit and further information in this extradition request. He accepted in cross examination in relation to their affidavits and further information there no evidence of improper influence at this time. Some examples such as investigations into Environmental grants, some social media postings by the President in relation to other cases, and commentary on current prosecutions of Mr Abrego-Garcia who is currently being prosecuted following his illegal deportation to El Salvadore are irrelevant and unhelpful and detract from the central issues in this request, namely whether this RP risks prejudice on account of his political beliefs. In cross examination, on these points Mr Smith suggested Mr Dratel was grossly exaggerating the issues with which I agree and this overall affects the weight I attach to Mr Dratel's evidence in relation to all the issues in this case.

141. In terms of the erosion of the "presumption of regularity", the RP relies on a wealth of material adduced by Mr Patten and Mr Dratel, most of with is commentary and media articles or reference to other cases which have no analogy or nexus with the RP's case. There is no evidence that this RP will not have access to all his convention rights. The prosecutors have confirmed that the RP will be prosecuted legally and ethically. Mr Patten accepted the RP would have the right of appeal against conviction and sentence and Mr Patten agreed there was no issue with the Court of Appeal's independence and impartiality. Mr Dratel confirmed there was no issue with the independence of the federal judiciary.

142. I find the RP faces ordinally criminal proceedings, there is no evidence within either Mr Dratel's report and oral testimony or indeed Mr Pattens reports and oral testimony of any political interest in the RP's case. There is no challenge to the way the charges have been laid or the propriety of the extradition requests. The prosecutors are identifiable, have provided appropriate assurances to this court within their affidavits and further information and their integrity has not been subject of any challenge.

143. Evidence from Mr Patten and Mr Dratel that the RP is an activist, left leaning terrorist who will attract the attention of the current administration is pure conjecture and speculation. Again, I find there is no evidence that the RP is a "politically disfavoured individual". That is speculative.

144. In terms of prejudice at trial and in punishment on account of RP's political beliefs, concerns are expressed about the impact of plea bargaining. There is no evidence that the RP will be either forced into plea bargaining or prevented from plea bargaining on the basis of his political beliefs. Indeed, the Bondi memos which came under criticism from both Mr Patten and Mr Dratel would in fact prevent it. The memo dated February 5th 2025 Bondi on 5th February 2025 entitled *"Restoring Integrity and Credibility of the Department of Justice*, which seems to have adopted a title of the "Weaponization memo" states the working group being set up by the Attorney General to identify instances where a department's or agency's conduct appears to have been designed to achieve political objectives or other improper aims rather than pursuing justice". The second memo, "*Policy Regarding Charging, Plea Negotiations and Sentencing" dated 5th February 2025* actually prohibits prosecutors from being influenced by a person's political association, activities or beliefs.

145. Suggestions by Mr Patten of pressure being brought to bear upon the jury or the judge is unsubstantiated. Indeed Mr Dratel's comment in closing cross - examination was *"I'm not going to predict what happens, but of a call comes from Washington who can predict what will happen….. It does not work anymore. That is what judges, academics and prosecutors are saying"* was sensationalist. Neither gave any evidence questioning the integrity or lack of independence of the federal judiciary which had any evidential bearing to demonstrate in relation to the RP's case, a judge would behave in any manner causing prejudice to the RP.

146. In relation to evidence from Mr Dratel and Mr Patten that the US have engaged in charge stacking in order to create disproportionate sentence exposure or coerce pleas or that the US prosecutors have deliberately misstated the law to be simply without foundation. Mr Patten gave evidence that he considers Counts 3 & 6 on the superseding indictment cannot be properly added under "double jeopardy" rules. He accepted in cross-examination that the 9th Circuit, the relevant Circuit in the RP's case, has never considered the argument directly and there is no binding authority on the point. Mr Patten relies on cases from other Circuits which he argues are persuasive and he does not believe the position taken by the US Attorney to be tenable, albeit he reluctantly conceded in cross- examination the point can be litigated. Mr Patten's evidence in this regard appeared partisan and less than objective with his position as a defence attorney appearing forefront in his mind, making his evidence fit with the narrative being pursued on behalf of the RP rather than being willing as an expert to accept the true position set out by AUSA James that a dispute with regard to the law may exist and can be litigated by the RP at any trial and on appeal. His concession on that point was reluctant which I found concerning.

147. Mr Patten also gave his opinion that Counts 3 and 6 under USC 844(h) provide for additional penalties while committing an additional felony, so called charge stacking as well as the counts offending the double jeopardy rule, therefore supporting the submission that the prosecutors have deliberately mistaken the US law or are laying charges which cannot be pursued. As I have found above, Mr Patten did not consider the prosecutions argument would succeed as it was not a tenable argument. The evidence of AUSA James is that in their opinion the is no double jeopardy concerns and stand by the indictment. In addition, in relation to charge stacking suggestions, AUSA James has provided further information confirming that the "*plain terms of the statutory provisions, as enacted in legislation by the US Congress, state that the charging structure of the Superseding Indictment is appropriate".* I find he RP will have an opportunity to raise any claims against the indictment in the US District Court, and the prosecution would present opposing authorities in the event of any motion to dismiss. I find that therefore Mr Patten's assertions that every federal court that has considered the issue has consistently ruled the charging structure as violating the Double Jeopardy rule is a sweeping generalisation and is not acknowledging the genuine legal disputes which can be raised on the 9Th Circuit.

148. AUSA James states the RP will have the right and opportunity to challenge the form and substance of the Superseding Indictment and in relation to sentence exposure, the allegations faced by the RP are serious crimes and a serious penalty has been set by the US Congress. US 844(h) provides for additional penalties while committing an additional felony. I find it is not the function of the executing court dealing with an extradition request to step into the shoes of an appeal judge on the 9th Circuit to determine what is an arguable point of law in relation to the indictment stacking and double jeopardy submissions. Legitimate disputes as to the operation of the indictment do not amount to the US prosecutors deliberately misstating the law. AUSA James has acknowledged the legitimate issue in dispute regarding the indictment. Mr Patten did not go as far as saying AUSA James has lied or misrepresent the US aw.

149. In terms of Briget Prince, Shannon Race and Nicole English I found their evidence to be general and unspecific. The statement of Bridget Prince is referenced to open source and all hearsay. Her conclusions cannot be considered expert opinion about the conditions of detention and treatment in US prisons. I have considered the examples she has set out in her case studies.

150. Shannon Rice and Nicole English have not worked within the BOP since 2021 and therefore I do not find their evidence can relate reliably to the up-to-date position with the BOP estate and classification of prisoners. Shannon Race gave her opinion on the RP's security classification without the benefits of knowing what offences the RP may be convicted of on the indictment, any sentencing remarks or recommendations from the judge or a pre-sentence report. This was despite her

evidence that BOP has a comprehensive way of determining security classification which would include this material. Of concerns was that Ms English was unaware of her obligations as an expert witness under CPR 19 and the Crim PD and had not read them. Much of the material she was relying on was not recent or up to date.

151. Mr Dratel is neither a penologist or prison inspector and cannot assist me in terms of expert opinion on prison conditions, pre or post-conviction.

152. I place little weight on the evidence from these witnesses and place reliance on the information provided by the United States from the attorneys and in particular Timothy Rodrigues, Senior Counsel, US Department of Justice, Federal Bureau of Prisons (BOP) and John Lopez, Deputy Chief US Marshal's Service at Tabs 11 and 12 of the Core Bundle.

Challenges to extradition.

Extradition Offences

153. In accordance with s.78(4)(b) EA 2003, I must decide whether the conduct set out in the request and the supporting documents constitutes extradition offences as defined by s.137 EA 2003 as amended.

154. Section 137(2) & (3) provides:

(2) The conduct constitutes an extradition offence in relation to the category 2 territory of the conditions of subsection (3), (4) or (5) are satisfied:

(3) the conditions in this subsection are that –
(a) the conduct occurs in the category 2 territory;
(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or other form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United kingdom;
(c) the conduct is so punishable under the law of the category 2 territory.

155. There is no dispute in this case that all the conduct took place in the US.

156. Transposing the conduct to the United Kingdom, the Requesting State submit would amount to the following offences within the Superseding Indictment:

Counts 1 & 4
Causing an explosion likely to endanger life or property contrary to s.2 of the Explosive Substances Act 1883. This offence carries a maximum of life imprisonment.

Counts 2, 3, 5 & 6

Possessing an explosive substance with intent to engager life or cause serious injury to property contrary to s.3 Explosives Substances Act 1883. This offence carries a maximum of life imprisonment.

Possessing an explosive substance under suspicious circumstances contrary to s. 4 Explosive Substance Acta 1883. This offence carries a maximum of life imprisonment.

Possession of an article for terrorist purposes contrary to s. 57 Terrorism Act 2000. This offence carries a maximum of 15 years imprisonment.

157. Initially Mr Summers KC submitted that in relation to Counts 2 & 5, possession of unregistered explosive device there was no corresponding UK penal provision which imposes a requirement akin to a charge Title 26 US Code § 5861(d). However, it is now conceded that a transposing offence is. 33 (1) (c) Health & Safety at Work Act 1974 to contravene any health and safety regulations… or any requirement or prohibition imposed under any such regulations (including any requirement or prohibition to which he is subject by virtue of the terms of or any condition or restriction attached to any license, approval, exemption or other authority issued, given or granted under the regulations). Offences carries a maximum penalty of 2 years imprisonment. The regulation in question being:

Regulation 5 of the Explosives Regulations 2014:

5.—(1) Subject to paragraph (3), no person may acquire any explosives unless—

(a) that person has a valid explosives certificate certifying that person to be a fit person to acquire explosives;

(b) that person acquires no more explosives than any quantity referred to in the explosives certificate;

(c) where the explosives certificate specifies the description of explosives which that person is a fit person to acquire, that person acquires only explosives of that description; and

(d) where the explosives certificate specifies purposes for which that person is a fit person to acquire explosives, that person acquires them only for those purposes.

(2) Subject to paragraph (3), no person may keep explosives unless that person—

has a valid explosives certificate certifying that person to be a fit person to keep explosives;

(b) keeps no more explosives than the quantity referred to in the explosives certificate;

(c) where the explosives certificate specifies the description of explosives which that person is a fit person to keep, keeps only explosives of that description; and

(d) keeps them at any place specified in the explosives certificate.

158. However, Mr Summers KC maintains his submission at paragraphs 73 – 74 of his closing submissions that any equivalent UK registration offence would require proof of mens reas, that is to say knowledge of the requirement to register.

The Law

159. The correct approach is to look at the essentials of the conduct relied on and consider whether if it had occurred in England, at the time it was alleged to have occurred, it would have constituted an English offence. The words "constitute an offence" in s.137(2)(b) EA 2003 do not mean the RS have to prove guilt of the RP in English law, It simply means that, if proved, it would constitute a comparable English offence *Maurov v. USA [2009] EWHC 150 (Admin).* Maurice Kay LJ made it plain that whether to court is dealing with the actus reus or mens rea, the principle is the same, namely it suffices that the matters alleged would "*be capable of satisfying the requirements of the English offence, if proved*."

160. A request need not identify the relevant mens rea of the equivalent English offence for the purposes of satisfying dual criminality. Instead, it suffices that the necessary mental element can be inferred by the court from the conduct identified in the request documents or that the conduct alleged includes matters capable of sustaining the mental element necessary under English law.

161. Furthermore, at paragraph 57 of *Assange v. Swedish Prosecution Authority [2011] EWHC 2849 (Admin) the "inevitable inference"* test is described as" it *is not necessary to identify in the description of the conduct the mental element or mens rea required under the law of England and Wales for the offence; it was sufficient if it could be inferred from the description of the conduct set out in the EAW. However, the facts set out in the warrant must not merely enable the inference to be drawn that the defendant did the acts alleged with the necessary mens rea. They must be such as to impel the inference that he did so; it must be the only reasonable inference to be drawn from the facts alleged".*

162. This was recently affirmed in the recent decision of the Divisional Court in *Cleveland v. Government of the USA [2019] 1WLR 4392* at para[83]:

"To summarise, the "inevitable inference" test set out in para 57 of Assange's case is solely aimed at preventing a person being extradited and then convicted in the requesting state on a basis which would not constitute an offence under English law. Where an essential ingredient under our criminal law is missing from the offence for which extradition is sought, a requirement for dual criminality is none the less satisfied if the court concludes that that ingredient would be the inevitable corollary of proving the matters alleged to constitute the foreign offence. But there is no legal justification for applying the "inevitable inference" test more widely. To do so would breach the general principle that a court dealing with a request for extradition is not concerned

to assess the strength of the evidence that would be presented in any trial in the foreign court".

163. Scrutiny by the Court of the description of conduct alleged to constitute the offence specified, is not an enquiry into the adequacy of the evidence summarised in the request. The Court is not concerned to assess the quality or sufficiency of the evidence in support of the conduct alleged; *R (Castillo) v. King of Spain [2005] 1WLR 1043.*

164. The focus is not on the ingredients of the offences but on the conduct, the essence of the conduct. Where conduct in the request is reflected in different counts in the RS and that conduct is closely interconnected and concerns the same criminal enterprise, it is not necessary to demonstrate a separate extradition offence for each of the counts *Tappin v. USA [2012] EWCA 22 (Admin)*

Findings on Extradition Offences:

165. I am satisfied so I am sure that the conduct in the request, if proved is capable satisfying the requirements of the comparable UK offences set out in paragraphs 155 – 156 above.

166. In relation to the submissions on counts 2 & 5, considering Title 26 US Code § 5861(d) there is no requirement for knowledge. It is an offence *"to receive or possess a firearm which is not registered to him in the National Firearms Register and Transfer Record. "Firearms" include any destructive device.* There is equally no requirement for knowledge under s. 33 (1) (c) Health & Safety and Work Act 1974 or the underlying Explosives Regulations 2014. In any event even if I am wrong in that regard, the essence of the conduct is simply being in possession of a bomb, a destructive device at the time of the explosions at the two sites. Applying the transposition exercise, such conduct would itself be illegal under the equivalent offences set out above even without the Health & Safety at Work Act 1974 equivalent offence. Possession of a bomb is so interconnected to the other conduct and concerns the same criminal enterprise on each occasion.

167. Those comparable offences are all punishable with imprisonment of 12 months or more and all such conduct in punishable under the law in the USA.

Bars to Extradition.

Section 81 Extraneous Considerations:

168. I accept there is a clear overlap with the challenges under Article 3 and 6. However, as I have said at the beginning of my judgment, I am dealing with each challenge sequentially as required by the Extradition Act 2003. For reasons of brevity

it is simply not possible to set out every argument or every nuance of every point advanced.

169. It would appear from submissions that there is no suggestion under s.81(1)(a) that the request in this case was issued in order to prosecute or punish the RP for his political views.

170. Therefore, having considered Mr Summers' KC submissions the challenge can be summarised as follows.:

a) prejudice at trial or punished by virtue of his political opinions based on the fact that the President of the United States or those close to him, will interfere with the prosecution in a manner which is both improper by causing prejudice or punishment on account of the RP's political beliefs.
b) Political infiltration of the criminal justice system including interference with the prosecution team, interference with the jury, interference with the judge and interference with the BOP;
c) the breakdown of the rule of law;
d) RP's case will be a foreseeable target attracting the attention of the current administration.

171. The RP has relied in furtherance of his challenges on:
a) The evidence of Mr Patten
b) The evidence of Mr Dratel
c) The evidence of Miss Prince who produces open-source material.

172. **<u>The Law</u>**

Section 81 Extraneous considerations

(1) A person's extradition to a category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that—

(a)the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or

(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.

173. The law is set out in the parties' respective skeleton legal arguments. In forming my conclusions and decision I have had regard to all the relevant legal principles.

174. There are two separate limbs within the extraneous considerations bar. It would appear from submissions that there is no suggestion under s.81(1)(a) that the request in this case was issued in order to prosecute or punish the RP for his political views.

175. The second limb, s. 81(1)(b) is directed at what may happen to the RP in the future if they are extradited. If the RP will suffer prejudice at trial, punishment or detention or restriction of liberty by reasons of extraneous considerations. It is not necessary to identify precisely how prejudice will manifest itself but there is a need to identify the risk of such treatment being accorded by reason of one of the protected characteristics.

176. In *Fernandez v. Government of Singaproe [1971] 1 WLR 987 HL* summarised in *Hallili v. The National Court in Madrid and another [2006] EWHC 1239 (Admin):*

> *"the burden is on the appellant to show a causal link between the issue of the warrant, his detention, prosecution, punishment or the prejudice which he assets he will suffer and the fact of his race or religion. He does not have to prove on the balance of probabilities that the events described in 13(b) will take place, but he must show that there is a reasonable chance or reasonable grounds for thinking or a serious possibility that such events will occur…"*

177. The test was reaffirmed in the case of *Adamescu v. Bucharest Appeal Court Criminal Division [2020] EWHC 2709 (admin)*

> *"in relation to s.13(b) the court is concerned with what may happen in the future if the requested person is extradited. The burden was on the appellant to show that there is a reasonable chance (alternatively expressed as reasonable grounds for thinking, or a serious possibility) that he might be prejudiced at his trial or punished, detained or restricted in his personal liberty on account of his political opinions. The court emphasised that a requested person must establish the necessary causal link, and that…the serious possibility test applies both what might happen and reasons for it happening".*

178. "political" should be given a broad interpretation.

179. I accept the RP has adduced a significant body of evidence from the experts and the supporting material. However as per my findings on the expert's evidence at paragraphs 133 – 152, I place little weight in the reliability of their opinions. There is no cogent evidence to support the submission that s. 81 is engaged in the RP's case.

180. The charges against the RP are not laid as a result of any improper motive. The prosecution and the extradition request have not been initiated for the purposes of prosecuting the RP for his political beliefs. There is no evidence that the prosecutors in this case have acted improperly. As I have found above, I place reliance on the evidence and further information provided by the RS and in particular note that AUSA James states *"I can state my office will carry out its duties in the*

remaining steps in the prosecution of Mr San Diego vigorously as per the usual course. However, it will do so within the bounds of the laws passed by our Congress, the Federal Rules of Criminal Procedure and Evidence, the prevailing body of criminal law, rulings of the courts in this case and the rules of professional and ethical conduct that apply to all attorneys". The RP has adduced no reliable evidence to caste doubt on the good faith of the prosecutors in this case.

181. The is no evidence of any improper political involvement in the RP's case or any evidence of any Presidential interference in the RP's case, now or in the future. None of the supporting evidence relied on my Mr Patten or Mr Dratel relate to the RP. Any such involvement in the future is pure speculation and conjecture based on public and social media postings relating to other proceedings in the US which have no nexus to the proceedings being brought against the RP. Evidence adduced by Mr Patten and Mr Dratel of litigation or cases brought as a result of what they say is a result of personal animus by the current President is unhelpful and irrelevant to the RP's case.

182. The evidence provides no reliable basis for establishing that the RP will be prejudiced at trial or punished for his beliefs. Indeed evidence points away from that. Evidence from Mr Dratel and Mr Patten heavily criticising memoranda issued by the Attorney General Pam Bondi, fails to recognise that these memoranda prohibits prosecutors from being influenced by a person's political association, activities or beliefs identify instances where a department's or agency's conduct appears to have been designed to achieve political objectives or other improper aims rather than pursuing justice. The memoranda specifically prohibit using criminal charges to exert leverage to induce guilty pleas.

183. In terms of conditions of detention or placement at ADX Florence , again the evidence is based predominantly on supporting material found in the media or social media which have no bearing or relevance to the RP's case. There are no parallels within that supporting material to the RP's own case. Briget Princes' evidence about detention in SHU and CMUs is all general, unspecific and limited in relevance to the RP's case. None of the evidence from Briget Prince, Nicole English or Shannon Race is reliable and does not in any way establish that the RP risks being punished for his political beliefs or risks being detailed in CMU or SHUs by virtue of his political beliefs.

184. Mr Patten and Mr Dratel place great reliance on the loss of the "presumption of regularity". I place greater reliance on the evidence provided by the RS who have engaged throughout the extradition proceedings in providing reliable information which demonstrates the RP will be protected by the full range of Constitutional Rights and as AUSA Alxis James has confirmed, will be prosecuted properly, legally and ethically. The vast swathe of supporting material relied on by Mr Patten and Mr Dratel relates to litigation, proceedings and commentary such a study undertaken and published in November 2025 entitled *"The Presumption of Regularity" in the Trump Administration Litigation.* Again, this is all unhelpful material which simply detracts the

focus of this court from the criminal proceedings being faced by this RP. None of this can be said to have any connection or nexus to the proceedings being faced by this RP. There is no evidence of any political interest in this RP or his case now or in the future. The prosecution is being brought properly and the prosecutors have provided assurances to this court on the manner in which the case will be conducted. There is no reliable evidence that this RP is a politically disfavoured individual or left leaning terrorist now or in the future. I remind myself of a comment made by Mr Dratel in evidence, *I'm not going to predict what happens, but if a call comes from Washington who can predict what will happen….. It does not work anymore. That is what judges, academics and prosecutors are saying".* This was simply sensationalist.

185. This challenge fails.

s. 87 EA 2003 – extradition compatible with the RP's Article 3 rights.

Section 87 Extradition Act 2003

(1)If the judge is required to proceed under this section (by virtue of section 84, 85 or 86) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998.

Submissions

186. I do not intend to rehearse the very comprehensive submissions made by Mr Summers KC and Miss Law on behalf of the RP as well as Mr Smith KC and Mr Dos Santos on behalf of the RS in their respective skeleton arguments. They were orally expanded upon throughout the final day of the hearing.

187. The law is set out in the parties' respective skeleton legal arguments. In forming my conclusions and decision I have had regard to all the relevant legal principles.

188. In essence the RP submits there is a real risk of a grossly disproportionate sentence and that the RP will be detained in a "USP" whether he will be subject to inter-prisoner violence, or detained in a special housing unit for his own safety or even the prospect of detention in ADX Florence or even an overseas prison.

189. In terms of a disproportionate sentence, the penalties available have been set by Congress including any mandatory minimum sentences. As found above, the RP will have th right to challenge the indictment in the RS and the "charge stacking" which effectively sits behind this submission and exposes the RP to substantial range of sentencing between 25 – 90 years. However, these are serious offences involving bombing of buildings causing significant damage and risk to life. Even if a terrorism enhancement was applied, which is purely speculative at this stage, it has to be

proved by the state to the preponderance of evidence, in an open hearing before a judge, where the RP would be able to challenge any evidence. It cannot be found that the potential sentence is one which would "shocked the conscience" or likely to be clearly disproportionate.

190. This is a high bar and sentencing policies across jurisdictions will differ. Such differences are legitimate especially where such sentencing has been set democratically by Congress, as here in the RS. At its height, the evidence is not of a punitive regime which shocks the conscience of the Court.

191. ADX Detention is speculative and detention overseas would be unlawful. The only suggestions that detention in such facilities might take place in the future is the risk of political interference that impacted on his sentence or being treated as a terrorist. For the reasons set out above in relation to the extraneous considerations bar which I find are equally relevant to the Article 3 challenge, there is no cogent or reliable evidence to support this submission.

192. In relation to placement in a USP prison or Special Housing Unit, the RP relies primarily of the evidence of Ms English. As I have found above, the weight I attach to her evidence is limited and her competence as an expert witness is questionable for the reasons I have stated above. Her inability to state what her obligations as an expert were is of considerable concern. In any event, Ms English accepted that the prison population was reducing and funding by Congress had been increased. She accepted that a prisoner can seek protection and SHUs meet BOP standards. Suggestions the RP would be recruited by the Aryan Brotherhood was unhelpful and speculative.

193. Assignment to a USP was based on Shannon Race's opinion on the RP's security classification. However as I have found above, she makes that assessment without the benefits of knowing what offences the RP may be convicted of on the indictment, any sentencing remarks or recommendations from the judge or a pre-sentence report. This was despite her evidence that BOP has a comprehensive way of determining security classification which would include this material. Again this reduced the weight I attach to her assessment and opinion.

194. I attach greater weight to the further information provided by Timothy Rodrigues, Senior Counsel to Federal Bureau of Prisons and John Lopex of the US Marshall Service and the additional information provided by AUSA Alexis James. The reports provided by Ms English, Ms Race, Ms Price and to some extent Mr Patton, contain speculative assertions and rely heavily on anecdotal, advocacy drive and sometimes outdated source material.

195. It is very clear from the additional information provided by the RS that the US is fully away of its obligations to ensure detention is compliant with the requirements of European Court of Human Rights to ensure safe, humane and transparent

detention. Information relating to the oversight and compliance of pre-conviction housing and the protections afforded for those serving sentences in State prisons.

196. I remind myself that the United States of America, and its constituent states is a mature democracy governed by the rule of law. The information in relation to conditions of detention in which the RP will be held, which I accept does not amount to an assurance, has however been provided by a Deputy District Attorney and Senior Counsel to the BOP in support of a request by the Government of the United States of America who have long enjoyed mutual trust and recognition as recognised in *Giese v. Government of the United States of America [2018] 4 WLR 103.* The information is clear, reliable and up to date. I make the same finding in relation to the information provided by John Lopez, Deputy Chief US Marshall service in relation to pre-trial detention.

197. Pulling all these threads together, it is my assessment that the most recent, reliable, objective information regarding the conditions the RP would be subjected to comes from the Requesting State. I cannot be satisfied on the basis of the evidence presented on behalf of the RP that there are substantial grounds to believe there is a real risk the RP faces being held in conditions which would violate Article 3. However, as addressed in the paragraphs above, I do not find the evidence relied on by the RP is "objective, reliable, specific or properly updated evidence" of a real risk of Article 3.

s. 87 EA 2003 – extradition compatible with the RP's Article 6 rights.

198. Again, I do not intend to rehearse the very comprehensive submissions made by Mr Summers KC and Miss Law on behalf of the RP as well as Mr Smith KC and Mr Dos Santos on behalf of the RS in their respective skeleton arguments and oral submission.

199. The law is addressed comprehensively in the parties' respective skeleton legal arguments. In forming my conclusions and decision I have had regard to all the relevant legal principles.

200. The RP contends his Article 6 rights will be breached for a number of reasons. I accept many of the submissions overlap with s. 81(b) above and Article 3 above.

- The trial process will be unfair
- Practical absence or otherwise of access to plea negotiations
- Sentence – a terrorism uplift would amount to bringing a new charge against the RP.

201. Much of the evidence relied on in this challenge overlaps with the other submissions and challenges and therefore the evidence of Mr Patten and Mr Dratel

are pertinent. I will not repeat my findings in relation to their evidence and the weight that I attach to it. Indeed there is significant overlap with the analysis and findings on the evidence relating to the s. 81 and Article 3 challenge.

202. Greater weight must be placed on the evidence from the RS in particular the further information responses received from AUSA James, in particular the following facts I have derived from those responses:

- There is no tangible danger of any political interference in the RP case or any cogent or reliable evidence of inappropriate political interference in the prosecution of the RP's particular case. I have already made findings in that regard above.
- No defendant can be charged with a federal felony unless the matter is heard by an independent grant jury, which has happened in this case, on two occasions. Two separate grand juries have heard evidence and approved the indictments prior to the current administration. It is clear in my opinion all checks and balances are in place with oversight of the federal judiciary.
- The RP will have opportunity to file all pre-trial motions regarding the indictment or any instances of illegal or inappropriate conduct in the investigation or prosecution. AUSA James goes as far as saying all issues and concerns raised in Mr Dratel's report can be raised at pre-trial stage.
- Guilt or innocence will be determined by a jury, not the prosecutor.
- Sentence will be imposed by a judge within boundaries set by US Congress.
- The prosecution will be carried out *"within the bounds of the laws passed by our Congress, the Federal Rules of Criminal procedure and Evidence, the prevailing body of criminal caselaw, the rulings of the courts and the rules of professional and ethical conduct that apply to all attorneys".*

203. I remind myself whether the RPs trial would be unfair and involve a flagrant denial of justice is a particularly high bar. The RP must show that he will be subject to a "flagrant denial of justice" which is "synonymous with a trial which is manifestly contrary to article 6 or the principles therein". It must go beyond mere irregularities or lack of safeguards, it must amount to a nullification or destruction of the very essence of the rights guaranteed by that article. The RP must demonstrate there are "substantial grounds for believing such a breach may occur".

204. I find there is simply no cogent or reliable evidence to demonstrate such substantial grounds for believing and the challenge must fail.

Abuse of Process

205. The final challenge to extradition is raised by way of abuse of process under both limbs, namely *"Tollman abuse"* and *"Zakrzewski abuse".*

206. I remind myself of the key principles of these residual challenges. The appropriate judge conducting an extradition hearing has a discretion to stay proceedings as an abuse of process in order to ensure the integrity of the extradition regime is not usurped by abuse of process.

207. *In R (Government of the United States of America v. Senior District Judge, Bow Street Magistrates' Court [2006] EWHC 2256 (admin) (referred to as* Tollman") the Court stated in approving the statement made by Bingham LJ in *R v. Liverpool Stipendiary Magistrate ex p Ellison [1990] 2020*

"If any criminal court at any time has cause to suspect that the prosecutor may be manipulating or using the procedures of the court in order to oppress or unfairly to prejudice a defendant before the court, I have no doubt that it is the duty of the court to enquire into the situation and ensure that its procedure is not being abused".

208. In *McKinnon v. Government of the United States of America [2008] UKHL 59*, *Lord Brown said:*

"The district judge also has jurisdiction to consider whether the extradition proceedings constituted an abuse of process so as to protect the integrity of the statutory regime".

209. Following *Zakrzewski v. Government of Poland [2013] UKSC 2,* abuse of process may be invoked in a case where the true facts were clear and beyond dispute and those facts establish that there are misleading and inaccurate statements in the warrant or supplemental information that are material to the operation of the statutory scheme. This form of abuse cannot be used as an indirect way of mounting a contentious challenge to the factual or evidential basis for the conduct alleged in the warrant, this being a matter for the requesting court., it was necessary to establish prejudice or unfairness to the requested person to establish this form of abuse.

210. The Court will start from the assumption that a Requesting State is acting in good faith, which may be displaced by evidence. To sustain an allegation of abuse of process in relation to proceedings under the Act, it is necessary, first to identify with specificity what is alleged to constitute the abuse; secondly, to satisfy the court that the matter complained of is capable of amounting to an abuse; and thirdly to satisfy the court that there are reasonable grounds for believing that such conduct has occurred. If the matter gets that far, then the court should require the judicial authority to provide an explanation. The Court should not order extradition unless satisfied that no such abuse has taken place. *United States of America v. Tollman [2008] EWHC 184 (Admin)* and *Haynes v. Malta [2009] EWHC 9880 (admin).*

211. The RP bears the burden of satisfying the Court on a balance of probabilities that not only is the issue raised capable of amounting to an abuse of process but also

there are reasonable grounds for believing that the abuse has occurred. There must be cogent evidence of abuse.

212. I repeat that the arguments are set out comprehensively in closing submissions from Mr Summers KC and Ms Law. In summary there it is submitted that in this case the US prosecutor has engaged in charge stacking, loading an indictment with multiplicitous charges for the same conduct in order to create sentence exposure that no defendant can risk, in order to coerce pleas.

213. It is submitted that this has been done despite US laws designed to stop such practice. It is said the prosecutor deliberately delayed making the extradition requests until it had sought and obtained the Superseding Indictment, adding charges in particular the § 844(h) charge (Counts 3 & 6), in a deliberate and tactical attempt to manipulate the extradition process to aggravate the sentence exposure to coerce a plea and cause the RP prejudice (*Tollman Abuse*) Secondly the US prosecutor has deliberately misstated US law to do so. Counts 3 and 6 on the indictment are legally untenable (*Zakrzewski abuse*).

214. Mr Patten gave evidence that he considers Counts 3 & 6 on the Supersceding Indictment cannot be properly added for a number of reasons. He accepted that the 9th Circuit, the relevant Circuit that will be hearing the RP's case has never considered the argument directly. He relies on decisions from other Circuits which he submits are persuasive.

215. AUSA Alexis James states in relation to any alleged stacking of the indictment , the plain terms of the statutory provisions, as enacted by US Congress state that the charging structure of the superseding indictment is appropriate. The charges under Title 18 US Code § 844 (h) provide for additional penalties while committing additional felonies.

216. AUSA James disagrees there is a double jeopardy concern and the RP will have an opportunity to raise this with the District Court and any appellate court. AUSA James states there are opposing authorities before the District Court. While the Seventh Circuit Court of Appeal has held that Title 18 US Code § 844 (i) and Title 18 US Code § 844 (h) are multiplicitous, at least two other Circuit Courts of Appeal have held to the contrary. Whether the Ninth Circuit Court of Appeal would hold the counts are multiplicitous is not at all clear. Federal Circuit Courts of Appeals are not binding on one another.

217. Firstly I do not consider it proper or necessary for me to make factual findings regarding litigation and procedural arguments on the operation of US law before this court. The place to do so is in the courts of the RS where their independent judiciary will assess the application of their own laws, processes and procedures and AUSA James clearly sets out the position at Tab 10 of the Core bundle.

218. The RP will have opportunity to file motions in the US District Court on issues relating to the Superseding Indictment, including alleged charge stacking, violations of the double jeopardy and multiplicitous laws. The US Attorney with conduct of the RPs cases disputes Mr Patten's "characterisation" of the law and objectively concedes these are issues which can be raised for determination before the 9th Circuit as currently there is no binding authority from the 9th Circuit Court of Appeal as other federal circuit court decisions are non-binding. There is clearly a disagreement between lawyers in the US and it would not be appropriate for me to rule as a matter of fact what US law was or was not and then go on to determine whether in fact the actions of a prosecutor had breached whatever the findings on the law were and ultimately then go on to rule on the effect this has on the on the request itself. These were the observations made by the Divisional Court in *Symeou v. Greece [2009] 1WLR 2384.* The state of the US law appears uncertain and not settled and equally perfectly arguable before the US Court following surrender by the RP.

219. In any event, Mr Patten's evidence was that he did not consider the prosecutor's argument would succeed or be tenable. Lawyers frequently disagree on the interpretation and application of the law. Such disagreement in terms of the law does not amount to an abuse under either limb. The Prosecutor AUSA James has responded in a transparent manner standing by the indictment, which has been returned by a Grand Jury which complies on the face of it with statute passed by Congress and the sentencing regime.

220. There is no cogent evidence that the RS is acting in bad faith, manipulating the extradition process, misstating the law or making misleading or inaccurate statements to manipulate the RPs extradition request and expose him to oppressive punishment, prejudice or coerce a plea. AUSA James has in the further information provided throughout these proceedings acknowledged there are potential legal arguments to be raised relating to Courts 3 and 6 on the Superseding Indictment, but takes a different view to Mr Patten as to whether the indictment would fail.

221. There has been no evidence from Mr Patten to demonstrate that AUSA James is lying or acting in bad faith. He himself accepted that there was no case law binding on the 9th Circuit. His various challenges to the indictment can be litigated, despite his own view the prosecutors arguments are not tenable. There is no basis for Mr Patten's evidence or that of Mr Dratel to be considered sufficiently cogent to consider that the RP has discharged the burden satisfying the Court on a balance of probabilities that not only are the issues raised capable of amounting to an abuse of process under either limb but also there are reasonable grounds for believing that any abuse has occurred. There must be cogent evidence of abuse. There is none and these residual abuse challenges equally fail.

Decision

222. Section 78 Extradition Act 2003 requires me in a Part 2 case to decide whether I have received various documents from the Secretary of State. No issue is raised in this regard but I find that I have the certified request (s.70(9)), particulars of the person whose extradition is requested, particulars of the offences specified in the request and as the RP is a person accused of the offences, I have the warrant for his arrest issued in the category 2 territory. It is not suggested that s.78(1) and (2) EA 2003 are not satisfied and I find that they are.

223. I must then decide whether the person appearing in front of me is the person whose extradition is requested (s.78(4)(a) EA 2003), whether the offences specified in the request are extradition offences (s.78(4)(b) EA 2003) and whether copies of the documents sent to me by the Secretary of State have been served on the RP (s.78(4)(c) EA 2003).

224. Identity is no longer disputed by the RP.

225. In relation to s. 78(4)(b), in light of my findings and conclusions at paragraphs 153 - 167 I am satisfied so I am sure that the offences specified in the request are extradition offences and s.137(3) EA 2003 is satisfied in relation to each of the offences.

226. In relation to s.78(4) (c) I am satisfied that copies of the documents sent to the appropriate judge by the Secretary of State have been served on the RPI therefore proceed under s.79 EA 2003

227. I must then decide whether the RP's extradition to the United States of America is barred by reason of:

a) the rule against double jeopardy;
b) extraneous considerations;
c) the passage of time;
d) hostage taking considerations;
e) forum.

228. The only bar to extradition raised is in relation to extraneous considerations. For the reasons I have set out at paragraphs 168 – 185 that challenges fails. I find there are no other bars to extradition. As the RP is accused of the commission of the extradition offences and is not alleged to be unlawfully at large after conviction, I must proceed under s.84 EA 2003.

229. As the United States of America is a designated territory for the purposes of s.86(7) by virtue of the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003, I am not required to decide whether there is evidence which would be sufficient

to make a case requiring an answer by the RP if proceedings were the summary trial of an information against him. I am required to proceed under s.87 EA 2003.

230. I must decide whether the RP's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998. The challenges raised on behalf of the RP is that his extradition would not be compatible with his Article 3 and Article 6 ECHR rights. In accordance with my conclusions and findings above, the challenges raised under Article 3 and Article 6 are rejected. No other challenges are raised; however, I am satisfied so I am sure that the RP's extradition to the United States, is compatible with his Convention Rights within the meaning of the Human Rights Act 1998.

231. In relation to the residual challenges under abuse of process, for the reasons set out at paragraphs 205 – 221, I find there is no abuse of process under either limb.

232. Therefore, in accordance with s.87(3) EA 2003 I am sending this case to the Secretary of State for a decision as to whether Daniel Andreas San Diego is to be extradited.

233. In accordance with the provisions of s.92(2)(a) and (b) EA 2003, I hereby notify Daniel Andreas San Diego of his right to appeal to the High Court against my decision to send the case to the Secretary of State. I also inform him that if he exercises his right of appeal, the appeal will not be heard until the Secretary of State has made their decision. The appeal can be on a point of law or fact or both (s.103(4) EA 2003).

234. Notice of appeal under s.92 EA 2003 must be given in accordance with the rules of court before the end of 14 days starting with the day on which the Secretary of State informs him under s.100 (1) or (4) EA 2003 of the order that they have made.

District Judge (Magistrates' Court) Sam Goozée
Appropriate Judge
6th February 2026.