IN THE CITY OF WESTMINSTER MAGISTRATES COURT

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

V

CHRISTOPHER HAROLD TAPPIN

JUDGMENT

1. This is a request by the Government of the United States of America ("**The Government of the USA**") for the extradition of **Christopher Harold Tappin** ("**Mr Tappin**") in order for him to stand trial before a Federal Court in the United States of America in relation to alleged criminal breaches of export controls. The conduct of which **Mr Tappin** stands accused, had it taken place in the United Kingdom, is said by those representing the **Government of the USA**, to have amounted to conspiracy to defraud Her Majesty's Revenue and Customs by dishonestly exporting prohibited or restricted goods directly or indirectly to **Iran** between **13th December 2005** and **25th January 2007.**

2. **Aaron Watkins** appeared for the **Government of the USA** and **Ben Cooper** appeared on behalf of **Mr Tappin**. I have been ably assisted by the following documents prepared by them :
   - **(a)** Defendant's Note dated **26th May 2010**
   - **(b)** Note from the Govt. of USA dated **10th June 2010**
   - **(c)** Defendant's List of issues dated **29th June 2010**
   - **(d)** Defendant's Skeleton Argument dated **12th August 2010**
   - **(e)** Defendant's Speaking Note dated **1st Sept. 2010**
   - **(f)** Submissions on behalf of Govt. of the USA dated **1st Sept.2010**
   - **(g)** Defendant's Supplementary Speaking Note dated **4th Nov. 2010**

3. The United States of America is a territory designated by the **Extradition Act 2003 (Designation of Part 2 Territories) Order**

2003 and accordingly the provisions of **Part 2** of the **Extradition Act 2003** ("**the 2003 Act**") apply to this extradition.

4. Mr Tappin does **not** consent to his extradition and raises a number of challenges, **each** of which is to be separately considered .

5. The basis of this extradition request is set out in the affidavit sworn **2nd December 2009** of **Gregory E McDonald**, Assistant United States Attorney for the **Western District of Texas**. He states that on **12th January 2007 United States** Special Agent **Ronald O. Marcell** filed a criminal complaint before **United States Magistrate Judge John W. Primomo** of the **Western District of Texas** charging **Mr Tappin** and **others** with criminal offences against the laws of the United States. The said filing of the criminal complaint formally commenced the criminal prosecution .

6. On **7th February 2007** a Grand Jury sitting in **El Paso, Texas** returned an indictment charging **Mr Tappin** with criminal offences against the laws of the United States and on that same day the clerk of the District **Court** for the **Western Court of Texas** signed a warrant for the arrest of **Mr Tappin**. A perhaps minor correction needs to be made to the very helpful **Opening Note** prepared by **Mr Watkins** (dated **10th June 2010**) wherein he states (point 2.4) that the warrant for **Mr Tappin**`s arrest was issued on **2nd July 2007** : I anticipate this may have been caused by reading the date **2/7/2007** as we would in the United Kingdom (day before month): that date should read **7th February 2007**.

7. On **12th February 2010**, the **Secretary of State** issued a **certificate** in accordance with **s.70** of the **2003 Act** certifying that the extradition request was valid and had been made in the approved way. On **5th May 2010** an **Appropriate District Judge**, sitting at this Court, issued a warrant for the arrest of **Mr Tappin** . The police arrested **Mr Tappin** on **12th May 2010** and served him with a copy of the full extradition request.

8. **Mr Tappin** first appeared at this Court on **13th May 2010** in custody. All preliminary matters were concluded without difficulty on that first appearance. Mr Tappin stated that he was **not** consenting to his extradition. He was subsequently released on conditional bail and has remained on bail throughout.

9. As previously stated, the conduct alleged against **Mr Tappin** is set out in detail in the affidavit of **Gregory E McDonald** . The conduct complained of against him can, perhaps, be summarized as follows:

An investigation was carried out by the United States Department of Homeland Security, Immigration and Customs Enforcement (" **ICE**") and this showed that on or about **13th December 2005, Mr Tappin** was concerned in a **conspiracy** with **Robert Frederick Gibson, Robert Thomas Caldwell** and **others**, to export defence articles, namely a number of Eagle Pitcher brand batteries, a special component of the United States Army Hawk Air Defence Missile, from the **United States** to or via the **Netherlands**, en route to **Iran**, without obtaining the necessary license or written approval from the United States Department of State, Directorate of Defense Trade Controls.

Furthermore it is alleged against **Mr Tappin** that he **knowingly** and **willfully** attempted to export those said items, **and** that he **aided** and **abetted** the said attempted export of the same items to the same destination, without obtaining the necessary license or written approval of the United States Department of State, Directorate of defense Trade Controls.

Additionally it is alleged against **Mr Tappin** that he conspired to conduct illegal financial transactions from on or about **13th December 2005** onwards.

10. s.78(2) of the 2003 Act requires me, at the extradition hearing, to decide a number of matters. I must decide whether the documents sent by the Secretary of state consist of or include the following :

(1) **The extradition request and the certificate issued by the Secretary of State** : These documents were included in the documents received .

(2) **Particulars of the person whose extradition is sought**: A description of the defendant's appearance and date of birth coupled with a photograph of the defendant has been received.

(3) **Particulars of the offences specified in the request** : **Gregory E McDonald** gives a detailed description of the alleged offences in the body of his said sworn affidavit .

(4) **A warrant for the arrest issued in the Category 2 territory** : This is exhibited to the said sworn affidavit of **Gregory E McDonald.**

I am satisfied that the requirements of s.78(2) of the **2003 Act** have been complied with.

11. I must also decide whether the **person** brought before me is the person whose extradition is sought. **Charles Harold Tappin** has at no stage disputed his identity.

12. I must also decide whether the **offence** in the request is an **extradition offence** and I shall return to deal with this shortly.

13 .I must also decide whether the **documents** sent to me by **the Secretary of State** have been served on the person whose extradition is being sought. I am satisfied that copies of those documents were served on the defendant at the time of his arrest (see the unchallenged statement of **Detective Constable Murray** dated **12th May 2010.)**

14 .Extradition Offence Challenge : I now return to consider whether the **offence** set out in the request for extradition of the defendant is an **extradition offence.**

s.137 (1)(a) of the **2003 Act** applies in relation to conduct of a person if he is **accused** in a category **2** territory of the commission of an offence constituted by the conduct .

s.137(2) states that the conduct constitutes an extradition offence in relation to the category **2** territory **if** these conditions are **satisfied** –

(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 another 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 (however it is described in that law).

15. **Mr Watkins** argues that, notwithstanding the fact that **Mr Tappin`s** conduct may **all** have taken place **within** the **United Kingdom**, his extradition is to be ordered by reason of the fact that his actions are part of a **cross-border criminal enterprise**, as he was clearly acting with others who were in the **United States**. (see **King`s Prosecutor, Brussels v Armas & Another (2005) UKHL .)** **Mr Cooper** submits that in order to determine whether the **Government of the USA** has satisfied the **dual criminality** test , the conduct test requires this court to look at the conduct alleged against Mr Tappin in the **USA** and **then** to consider whether it would amount to be the equivalent offence in the **United Kingdom** of **conspiracy to defraud** . He adds that there is strong and

compelling evidence of entrapment by agents acting on behalf of the **United States** authorities and that those same agents have acted in a way which removes any dishonesty that could be levelled against **Mr Tappin**. He further submits that there is no element of dishonesty present because there is no need for the **importer** to obtain an export license from the US authorities, that being the **sole responsibility** of the **exporter**.It is also appropriate to point out that **Mr Tappin** vehemently protests his innocence in relation to the allegations that are brought against him.

16. The case of **Ahsan and Tajik v Government of the United states of America and Another (2008) EWHC 666** is of considerable assistance and importance to this current extradition request. That case related to 2 appeals dealt with simultaneously by the **Divisional Court** albeit there was **no** factual connection between the separate cases. It was alleged that **Mr Tajik** and others were involved in the illegal export and re-export of goods from the **United States** to **Iran** without first obtaining the required license or written approval from the US Dept. of State, Directorate of Defense Trade Controls. The case came to light after an investigation by the **US Immigration and Customs Enforcement ("ICE"),** part of the **US Dept of Homeland Security**. In the **Tajik** case, US undercover agents became involved and in the months that followed there were a series of communications between the alleged conspirators and US undercover agents regarding the proposed transaction.

17. There are a number of similarities between the allegations against **Mr Tajik** and those that **Mr Tappin** faces. It was submitted by **Mr Alun Jones QC** on behalf of **Mr Tajik**, inter alia, that the condition in s.**137(2)(b)** of the **2003 Act** was not met, in that the conduct relied on would **not** constitute an offence under the laws of England and Wales, so that the dual criminality requirement was not met. The alleged crime – had it taken place in the UK – was said to have constituted the offence of conspiracy to defraud at common law by **Mr Tajik** and others. **Mr Jones** submitted that dishonesty was an integral part of the UK offence but did not form part of the accusation against **Mr Tajik** in the **United States**.

18. The **Divisional Court** confirmed the decision of the **District Judge** who had found that the conduct alleged against **Mr Tajik** included dishonesty in that " **an agreement to engage in such prohibited criminal conduct and to conceal such criminal conduct from the requesting territory's responsible authorities involves an intent to defraud and is dishonest**". Furthermore **Mr Justice Richards** (paragraph **92** in **Tajik)** added .. "In my view that conclusion is clearly correct. There does not need to be an express averment of dishonesty. It is

to be **inferred** from the allegations against **Tajik** taken as a whole". After final submissions had been made, in **Tajik**, but **before** the **Divisional Court** delivered its judgment, the **House of Lords** handed down its decision in **Norris v USA (2008) UKHL** and this was thus available to the **Divisional Court** when it considered the **Ahsan and Tajik** appeals. Their **Lordships** in **Norris**, having considered the authorities and relevant provisions of the **2003 Act**, concluded that the conduct test was to be preferred. (paragraph **93** of **Norris**).. " The committee has reached the conclusion that the wider construction should prevail. In short, the conduct test should be applied consistently throughout the **2003 Act**, the conduct relevant under Part **2** of the Act being that described in the documents constituting the request (the equivalent of the arrest warrant under Part **1**), ignoring in both cases mere narrative background but taking account of such allegations as are relevant to the description of the corresponding UK offence. Had Mr **Norris**`s appeal failed on the first issue the extradition order on count 1 would have stood." Having particularly considered the Judgments in **Tajik** and **Norris**, notwithstanding the very able submissions made by Mr Cooper on Mr Tappin`s behalf I am entirely satisfied that the conduct set out in the **Request** constitutes an extradition offence and that the provisions of **s.137(2)(b)** of the **2003 Act** are satisfied. This challenge is therefore **rejected**.

19.Abuse of Process : I now turn to the next submission which is that these proceedings ought be stayed as an **abuse of process**. **Mr Cooper** submits that the conduct of the US Immigration and Customs Enforcement officers **("ICE")** amount to **impermissible entrapment** which would justify a **stay** of these proceedings. In **R(Govt of the USA) v Tollman (2006) EWHC(Admin)** it was held that the judge hearing the extradition request **does** have the power and the duty to decide whether the process of the court is being abused. It is submitted on **Mr Tappin`s** behalf, as indeed it had been on behalf of **Mr Tajik**, that this was, in effect "**State-created**" crime (see **Jenkins and Benbow v Govt of the USA (2005) EWHC (Admin)** and that such unacceptable and improper behaviour requires the court to intervene to put a halt to the proceedings. **R v Looseley (2001) UKHL** sets out the relevant test in UK domestic law : adding, however ... "But if a person freely took advantage of an opportunity to break the law, given to him by a police officer, the police officer was not to be regarded as inciting or instigating the crime in the context of the prohibition of entrapment."

20. In **Teixera de Castro v Portugal (1998) EHHR** the court drew an important distinction between an **agent provocateur** and an **undercover officer**, recognizing the legitimacy of the latter. In that case it was found that the police officers had gone **beyond** mere passive investigation of the appellant`s criminal conduct to the point that they actively **incited** the commission of the crime (of being involved in the supply of a controlled drug). **Sedley LJ** added that this was **not** to be read as meaning that only **passive investigation** was to be considered legitimate: between that and active incitement many degrees of passivity and activity were possible. Returning to **Tajik**, Mr Jones submitted (as does **Mr Cooper** similarly on behalf of **Mr Tappin**), that the evidence before the court shows that the crime being considered by the court had been **solicited, encouraged** and **incited** by US agents tantamount to **unlawful entrapment. Mr Jones`** submissions on behalf of **Tajik** were rejected. In the case of **Mr Tappin** did the conduct of the **ICE** agents equate to entrapment that amounts to an abuse of process ? There is an assumption – which can be displaced- (**but it is for Mr Tappin to displace it on the balance of probabilities**) that the requesting State is acting in good faith.

21. In **Ahmad and Aswat v Govt of USA (2007) HRHL** Laws LJ referred to this fundamental assumption of good faith on behalf of the requesting state..."where the requesting State is one in which the UK has for many years reposed the confidence not only of general good relations, but also of successive bilateral treaties consistently honoured, the evidence required to displace good faith must possess **special force**." (my highlighting).

In **Symeou v Greece (2009) EWHC (Admin)** there were allegations of serious misconduct by police officers in the requesting State investigating an allegation of manslaughter. **Mr Symeou** challenged the extradition request, inter alia, on the basis that to do so would amount to an abuse of process by reason of the said alleged serious misconduct. The **Divisional Court** dismissed all challenges raised by **Mr Symeou**. In relation to the challenge regarding the abuse of process , the **Divisional Court** held that the implied residual abuse of process jurisdiction concerned abuse of the extradition process by the **prosecuting authority** and did **not** extend to consideration of misconduct **or** bad faith on the part of the **police** of the requesting State in the investigation of the case **or** preparation of evidence for trial. This was also considered in another recent decision of the **Divisional Court** : **Mehtab Khan v Govt of USA (2010) EWHC.** In that case **Mr Khan** – also a UK citizen- was wanted by the US authorities to stand trial for drug trafficking allegations. He appealed, inter alia, against a finding that he had **failed** to make out a case of unlawful entrapment. The brief alleged facts in that case are that he is said

to have liaised with a US source (not knowing that the source was, in fact, a US undercover officer.) The **District Judge** had rejected arguments advanced on his behalf , and had ruled that there had **not** been unlawful entrapment by the undercover officer. In dismissing **Mr Khan`s** appeal, the **Divisional Court** agreed with the **District Judge** that the case of **Khan** could **not** be distinguished from **Symeou**. It confirmed that authority was clear that the abuse of process jurisdiction was **residual** in nature which applied **only** when the issues raised could not be addressed by the statutory protections, see also (**on the Application of Bermingham) v Director of the Serious Fraud Office (2006) EWHC).** It further highlighted the fact that the protection afforded by **s.87** of the **2003 Act** was available and could be properly investigated during the course of the trial in the United States. It is also important to remember that the **right to a fair trial** is enshrined in the **US constitution.**

22. In **Mr Tappin`s** case **Mr Cooper** submits that there would have been **no** offence committed or attempted had the **US "ICE"** agents not participated in a wholly artificial exercise of offering the batteries for purchase by an associate of **Mr Tappin** and also that the conduct of the phantom export needs careful consideration. The affidavit of **Gregory E McDonald**, previously referred to, sets out in considerable detail the allegations against **Mr Tappin** (see paragraphs **5** through to **48** inclusive). **I wish to underline that is not for this court to decide guilt or innocence of a person such as Mr Tappin facing extradition** . Having analysed **all** the evidence submitted both by the **Government of the United States** and by **Mr Tappin** including relevant case law, I am **not** satisfied that this is a case of **"State-created"** crime **nor** that unlawful entrapment has taken place. There is ample evidence, per the affidavit of **Gregory E McDonald** aforesaid, that the alleged conspirators, including **Mr Tappin** were willing and apparently enthusiastic participants in the crimes alleged. I am satisfied that, looking at the evidence as a whole, dishonesty – **if indeed it does have to be shown** – can be properly inferred by the actions of the named conspirators, of whom Mr Tappin is said to be one. This challenge is **rejected**. I make clear that I have considered and followed the approach suggested in **U.S.A. v Tollman and others (2006)** , commonly known as the **"Tollman criteria"**. Having considered that criteria I am **not** satisfied that there is reason to believe that the alleged abuse **may** have taken place. That challenge is therefore **rejected**.

23. **s.82 2003 Act Challenge.** I next turn to deal with the challenge based on the submission that it would be **unjust** or **oppressive** to extradite **Mr Tappin** by reason of **`passage of time`**. This challenge has been raised in

a number of cases in recent times, particularly since the decision in **Kakis v Government of Cyprus (1978) 1 WLR** wherein Lord Diplock stated "**Unjust**" I regard as directed primarily to the **risk of prejudice** to the accused of the conduct of the trial itself, "**oppressive**" as directed to the **hardship** resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping, and between them they would cover all cases when to return would not be fair". The **relevant period** of time is the time between the date of the offences are said to have taken place and the date of the extradition hearing. Culpable delay on the part of the requesting Government **may** justify discharge.

24. In this present case no explanation has been forthcoming as to why the US authorities did not seek to commence this extradition process until early 2010. The period of the alleged conspiracy spans **December 2005** through to **January 2007.** As previously mentioned , the complaint was filed on **12th January 2007**, the indictment was returned on **7th February 2007** and the affidavit of **Gregory E McDonald** was sworn on **2nd December 2009. Mr Tappin** was arrested on **12th May 2010**. There is no suggestion that **Mr Tappin** was responsible for any of the delay. **s.82** says that a discharge may only follow **"if"** it would be **unjust** or **oppressive** to extradite **Mr Tappin** by reason of the **passage of time.**

25. There have been occasions when requests for extradition have been made to this court and it has become clear, during the course of those proceedings, that there has been **unexplained** delay on the part of the requesting **Government** or **State.** This has resulted in the court having to consider – **as I do now** – what the effect of such delay has on the extradition request.
In **Finch v France (2009) All ER** the **District Judge** (and then on appeal) the **Divisional Court** found that there had been **culpable delay** on the part of the requesting judicial authority of some **5** years **but** rejected the appellant's submission that his return would be oppressive.
In **La Torre v Italy(2007)EWHC** the **Divisional Court** stated "...the words of the Act do not justify a conclusion that any delay not explained by the requesting State must necessarily be taken to show fault on the part of the State such as to entitle the putative extraditee to be discharged ... All the circumstances must be considered in order to judge whether the unjust/oppressive test is met. Culpable delay on the part of the State may certainly colour that judgment and **may sometimes** be decisive , not least in what is otherwise a marginal case...". See also **Mariotti v Italy (2005) EWHC** where an "**unexplained gap**" of **3** years (between **July 2000** and the appellant's arrest in **June 2003** was not condoned by the Divisional

Court **but** fell short of convincing the court that it sustained a submission of injustice or oppression in the circumstances of that case. Indeed in **Parfait Kila v Governor of Brixton Prison and Another (2004)EWHC (Admin)** Mr Justice Collins, as he then was, stated at paragraph **18** of his judgment "...suffice it to say that they (**ie referring as he then was to a number of authorities relied upon by the parties in that case**) make it clear that it is **only** if the court is satisfied that it will be **oppressive** that the return should not be permitted. The mere fact of delay is unlikely in most cases , indeed the vast majority of cases, to justify a decision that to return would be oppressive. There must be **more than mere** delay." Reference should also be made to **Secchi v Italy(2010)(EWHC)(Admin)** for an example of where the **Divisional Court rejected** a submission on the basis of **"inexcusable delay"**.

26. In my view in **Mr Tappin`s** case there has been some delay on the part of the requesting Government and this may be unfortunate. The allegations against **Mr Tappin** are **serious** and the thresholdfor him to demonstrate **oppression** is a **high** one. It is suggested on his behalf that memories will have faded in the intervening period and that he may well not be able to have access to important documents from the company where he was working at the relevant time. There is, however, **no** evidence that **Mr Tappin** left his former company on bad terms or that they would not assist him, indeed there is a potentially helpful letter that he produces from them to his solicitors confirming the period of employment of one Ian Pullin (it being suggested in the US evidence that **Mr Tappin** had used that name as an alias during certain relevant conversations in respect of the proposed exportation of the batteries). **Mr Tappin** gave live evidence before me and also produced a large volume of documents and adopted a number of detailed witness statements that he had made that were very relevant to his defence and in support of his challenges to extradition.
I am satisfied that the trial process in the **United States** would be able to adequately address any injustice claimed, for example, by reason of the fact that his co-conspirators have already been dealt with. I have considered submissions and evidence in support but I am **not** satisfied that, by reason of **passage of time** it would be unjust or oppressive for **Mr Tappin** to be extradited and as such, this challenges is **rejected**.

27. **Article 8. Challenge / Forum Conveniens** Extradition proceedings may be barred if there is either a real risk that extradition will breach the requested person`s **Convention Rights** (see **Soering v UK (1989) EHRR)** or where the domestic extradition procedure would result in a violation of the **Convention** (see also **R(Al-Fawwaz v Governor of**

Brixton Prison (2001) 1 WLR). It is to be borne in mind that the **Divisional Court** has confirmed that the concept of "**private life**" per Article **8** is to be **broadly** defined (see Niemitz v Germany (1977) EHRR).

28. The case of Norris v USA (2010)SC has become a landmark decision on Article **8** challenges. In that case the **9 man Justices of the Supreme Court unanimously** held that the public interest in upholding bilateral extradition treaties would be "**seriously damaged**" if those who faced **serious** (as opposed to **trivial**) offences and who had families akin to Mr **Norris** thereby precluded extradition from taking place. The requested person would have to demonstrate that the impact of extradition went beyond the normal, and very often unfortunate and/or sad consequences of extradition. The threshold is set high and there would have to be "**striking and unusual**" facts for such a challenge to succeed. It was accepted in **Norris** that the effect on close family members was relevant and could be a "cogent consideration" and indeed **Lord Phillips** stated in paragraph 65 "... if extradition for an offence of no great gravity were sought in relation to someone who had sole responsibility for an incapacitated family member, this combination of circumstances might well lead a judge to discharge per **s.87** of the **2003 Act**". **Mr Norris** failed in his appeals and was, indeed extradited in **2010** to stand trial in the US.

29.As previously mentioned **Mr Tappin** gave oral evidence , confirming that he has to care for his wife who suffers from a debilitating illness which restricts her movements. He helps her with a number of household and other tasks including her baby-sitting duties for their grandchild. **Mrs Elaine Tappin** was diagnosed with her condition Churg-Strauss Syndrome with Mononeuritis Multiplex and Chronic Obstructive Pulmonary Disease in **April 2004,** approximately 20 months **before** the commencement date of the alleged conspiracy involving her husband. This illness causes severe pins and needles and weakness in her fingers, hands and feet. She has had to take strong medication, in the form of steroids and immune suppressants to try to control the condition as well as a further drug and inhalers to deal with the Chronic Obstructive Pulmonary Disease (more commonly known as Asthma). She is under the care of **Dr Robert Hadden**, Consultant Neurologist. **Mrs Tappin**, in her witnsess statement, says should be contacted to give an opinion as to the possible effects of the stress she anticipates in the event of her husband`s extradition. No report or information from **Dr Hadden** has been produced to me. There is a report dated 18th June 2010 from **Mrs Tappin`s** General Practitioner, **Dr Lewis Bailey**, confirming her then medical condition and

the assistance provided by her husband. **Mrs Tappin** also expresses fears of having to sell their home to pay for legal fees in the USA and she expresses her concerns as to how she would be able to cope with such proceedings.

30. I refer to a small number of recent cases that have come before the **Divisional Court** dealing with Article **8** challenges:
In **A v Croatia (2010) EWHC (Admin)** an appeal against extradition for matters of theft and possession of a false passport was based on the submission that to return him would amount to a disproportionate interference with his Article **8** Rights . His argument was that his wife had mental difficulties and that he had to remain in the UK so as to help look after their young child. After reviewing the evidence, the **District Judge** found that a return to **Croatia** would regrettably cause distress and difficulty and the child might well have to go into foster care but that this had to be weighed against the obligation to honour international obligations. His appeal was **dismissed.**
See also **Szubryt v Poland (2009) All ER (Admin)** where the **Divisional Court rejected** the appellant`s submission based on the assertion that extradition would have a **devastating** impact on his wife and 2 children. He argued – **unsuccessfully**- that his wife`s fragile mental state carried with it the risk that she would be hospitalized and that she was a real suicide risk.
Further see **Gibek v Poland (2009) EWHC(Admin)** for another example of where extradition was granted notwithstanding powerful submissions made on the basis that the appellant was the primary carer for his wife who was suffering from debilitating leukemia.

31. Mr Cooper also argues that **Mr Tappin** could and, indeed, should be tried in the United Kingdom this being the appropriate **Forum Conveniens.** I refer the parties to the **Divisional Court**`s decision in **Mehtab Khan v USA (2010)** aforesaid (paragraphs **45-48** in particular) and also to the dicta in **Bermingham and Others v Director of the Serious Fraud Office (2007) 2WLR** in relation to where such trial should take place . In both cases the appeals – including the **Forum** submissions were dismissed.
It has often been said that extradition will almost always be upsetting and cause anxiety and this current case is no exception, but having considered all relevant case law and precedents as well as the submissions made by both parties, the **Article 8** challenge raised by **Mr Tappin** has failed to persuade me that it would be incompatible with his or his wife`s **Convention Rights** for him to be extradited. Furthermore I am **not**

persuaded by the **forum** submissions made on his behalf : those challenges are therefore **rejected**.

32. I have very carefully considered the submissions impressively made on **Mr Tappin's** behalf but they are **all rejected** for reasons given. I am of the opinion that there are **no** bars per the **2003 Act** as would intervene to prevent extradition nor are there any **Human Rights** bars that would come to his aid. I therefore am sending this request to the **Secretary of State** for a decision as to whether extradition to the United States of America should be Ordered.

JOHN ZANI

APPROPRIATE JUDGE

11th February 2011