WESTMINSTER MAGISTRATES COURT

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

V

ROGER ALAN GIESE

DECISION AND REASONS OF DISTRICT JUDGE M. COLEMAN.

BACKGROUND AND ISSUES

The Government of the United States of America seeks the extradition Roger Alan Giese, the requested person. Mr Giese is a citizen of the United States of America and has been a fugitive in this country since 2007.

He is wanted to stand trial in Orange County in the State of California where he faces trial on nineteen counts of serious sexual offences as set out in the "replacement" first amended information dated 24 January 2014. The conduct relates to a series of acts committed against a boy, who was at the time 13 years of age, during the period between May 1998 and May 2002.

The defendant appeared before the court in the State of California. He pleaded not guilty to all charges and was granted bail. Despite a significant bail bond being lodged on his behalf the defendant failed to appear for his trial on 12 March 2007 in accordance with his bail obligations. He fled the United States and came to the UK, where he has been living ever since.

There was an earlier extradition request which was issued on 12 February 2014. On 21 April 2015, having heard evidence and submissions on the matter I discharged the defendant. I rejected the challenge that the defendant raised as to the risk to him of a violation of his convention rights under article 3 ECHR. I allowed the challenge that there was a real risk the defendant would be subject to a civil commitment order, in breach of article 5 of the Convention, based on the available information.

This decision should be read with reference to my previous judgement which has been included in the agreed bundle of papers.

Following my decision there were appeal, proceedings brought by the Government, before the High Court. The decision of this court was upheld.

Following the rejection of the appeal, the High Court gave the Government of the United States of America the opportunity to give an assurance that if the RP were extradited to the USA he would not be the subject of a petition for civil commitment. The High Court pointed out that he was not being extradited for civil commitment but to stand trial in connection with the sexual offences. An assurance was offered but, after representations were made on behalf of Mr Giese, the High Court did not accept the assurance and the RP remained discharged.

The High Court's reasons for rejecting the assurance are at paragraphs 19-22 of its decision.

The Government commenced afresh its request to extradite Mr Giese. The re-issued request is dated 11th October 2016. That request was certified by the Secretary of State on 8th December 2016. On 11 January 2017 the defendant voluntarily surrendered to this court and was arrested on the warrant and presented with a copy of it.

The initial hearing took place that day and the hearing was formally opened. The defendant was granted conditional bail and has remained on bail throughout.

The requested person's legal representative indicated at the initial hearing that Mr Giese would put forward the same Convention arguments as previously, namely under Articles 3 and 5, but in addition would argue the adequacy of the assurance and the propriety of the proceedings; i.e. abuse of process.

For reasons to do with case management I heard the abuse of process argument on the 5th May 2017. Mr Giese was represented by Mr Knowles QC and Mr Watkins. Mr Cadman represented the Government of the USA. I considered the arguments and gave my decision that I would not stay the proceedings.

I indicated then I would include my reasons for rejecting the abuse argument with my decision on the substantive challenges at the conclusion of the main hearing, which was fixed for 31 July.

FORMALITIES

The requirements of section 78(2) Extradition Act are satisfied, the court has the necessary documents. The court is required to satisfy itself under section 78(4) as to:
a) the RP's identity. This is not in dispute.
b) the offences specified in the request are extradition offences. I am so satisfied and the point is not challenged.
c) I am satisfied the RP has been provided with copies of the documents. This is accepted.

I am thereafter required to proceed under section 79, namely whether any bars to extradition are applicable. No bars are raised on behalf of Mr Giese.

ISSUES FOR DETERMINATION

Mr Giese challenges his extradition to the USA under section 87, namely whether his extradition would be compatible with Convention rights within the meaning of the Human Rights Act 1998. If I decide the question in the negative, the RP must be discharged. If I decide in the affirmative then I must send Mr Giese's case to the Secretary of State for her decision whether the person is to be extradited.

Mr Giese argues that extradition is incompatible with his rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention rights) specifically under Article 3 and Article 5. The Article 3 argument relates to prison conditions for sex offenders within the Californian prison estate and the Article 5 argument relates to the process of Civil Commitment. The decision of this court, as upheld by the High Court, that detention pursuant to a civil commitment order, would constitute a breach of the RP's article 5 rights has been accepted by the Requesting State as has the finding that there is a real risk that this RP, in the event of conviction, would be made the subject of such an order. The argument therefore depends on the acceptance or rejection of the fresh assurance which has been provided jointly by the USA Department of Justice and the District Attorney for Orange County, California.

ABUSE OF PROCESS

The arguments were thoroughly and clearly advanced by Mr Knowles QC who was leading Mr Watkins. He produced his argument to me in a very helpful written document which I do not intend to reproduce. In summary the defence argued the following:

- there is a clear distinction between Extradition Act 2003 Part One and Part Two cases and that Part Two cases have a wider jurisdictional basis
- the authorities establish that the court has a residual jurisdiction to deal with an abuse argument despite the Extradition Act 2003 being silent on the point
- the abuse focused on the issuing of a second request and an amended assurance
- the abuse was made out because of the Government's failure and /or refusal to provide an acceptable assurance the first time around, and despite being provided with the opportunity to do so during the first set of proceedings, had failed to do so
- the Government was culpable for not producing an adequate assurance prior to the High Court's ruling and the defence allege it was trying to safeguard its position until the court had ruled against it
- the principle of finality applied
- the government had acted improperly throughout proceedings
- the fresh assurance remained inadequate and unacceptable.

Mr Knowles argues the Government's conduct is offensive to justice. He said that the timing in the previous proceedings when an undertaking was offered was only part of his complaint, but is not at the heart of it. It is the breach of the principle of finality. Mr Knowles addressed me on Mr Cadman's attempt to use Rule 50.27 to re-open the appeal in February 2016. The High Court refused to permit that, and that for this Court to allow a second attempt to proceed now is improper and why it is an abuse of process.

In response Mr Cadman, who represented the Government argued:

- whilst he conceded that the abuse jurisdiction exists in extradition requests the power to stay proceedings is limited to exceptional cases.
- The material facts of this case do not constitute a violation of the fundamental principles of justice which underlie the community's sense of fair play and decency
- there is nothing exceptional or extreme in the circumstances of this case which require a departure from the fundamental norm of honouring our extradition treaty with the United States
- this is not a case where there have been repeated requests made, or a failure to disclose relevant information, or a significant passage of time that would render the request either unjust or oppressive or any other factor which would support the argument that the conduct is capable of amounting to an abuse of process
- there is nothing to support the defence assertion that there has been any bad faith or improper conduct on the part of the requesting state
- in summary the conduct complained of cannot amount to an abuse of the process of this court.

ABUSE DECISION

In *R (Government of United states of America) v Bow Street Magistrates Court and Tollman [2006] EWHC (Admin)* Lord Phillips CJ identified the steps that are to be followed in relation to an abuse of process challenge :

1. The Judge should initially insist that the conduct alleged to constitute the abuse is identified with particularity.
2. The Judge must then consider whether the conduct, if established, is capable of amounting to an abuse of process.
3. If it is, then the Judge must next consider whether there are reasonable grounds for believing that such conduct may have occurred.

4. If there are, then the Judge should not accede to the request for extradition unless he has satisfied himself that such abuse has not occurred.

Tollman also states that *" It is the good faith of the requesting authorities which is at issue because it is their request coupled with their perverted intent and purpose which constitutes the abuse."*

I have considered the chronology of events as set out by the defence in their skeleton argument for the abuse argument. The defence argue that the background chronology is of central importance to the application to stay the proceedings. They argue that the USA Government has already had a *"full and more than fair opportunity"* to obtain extradition and it should have provided a proper assurance in those proceedings. They argue that the Government deliberately maintained a position not to provide an assurance concerning the risk of an Article 5 violation through exposure to civil commitment. It was not offered to me when an enquiry was made towards the end of the first instance proceedings. The defence argues that it was only at the same stage in the High Court when defeat was in sight that it agreed to provide one, which when produced, the High Court found to be insufficient. The defence argue that it is unfair for the Government now to restart the entire process in order to try to obtain a different outcome this time around.

The arguments put forward by the defence, whilst argued most attractively and thoroughly, are not arguments which I accept.

The way events unfolded before the High Court during December 2015 and February 2016 do not reflect particularly well on the Government of the USA. The assurance which was offered in the earlier proceedings should have been more carefully considered and drafted. Nonetheless, I do not accept that by issuing a repeat request to extradite the defendant to stand his trial in California, the Government of the USA has demonstrated any bad faith whatsoever, nor has it sought to manipulate this court's process in any way. There is nothing, using the language in *Fuller v Attorney General of Belize [2011] UKPC 23* which is *an affront to the rule of law* or use of the process of the court for an improper motive or purpose. Quite the contrary. There is a victim who has been waiting for many years in California for the alleged perpetrator of serious criminal conduct against him to be tried before a jury. The victim also has rights which are currently being denied. The Government of the USA is using the only method available to it to have a fugitive from justice extradited to stand his trial and to address the rights of the victim. I believe that far from being an affront to justice it is in fact in the public interest of both the USA for the Government to pursue Mr Giese and for the UK to surrender a fugitive.

The defendant may well have been persuaded that this second request is unfair. The test for an abuse of process requires a great deal more. I do not consider a further extradition request to be oppressive or unfair. The reason for reissuing is clear. I accept there has not been a change of circumstances but nonetheless I am not satisfied that the circumstances of this case come close to the rare circumstances in which a court ought to stay proceedings.

The argument is rejected.

ARTICLE 3

It was accepted by Mr Watkins at a case management hearing that the question of prison conditions in relation to this RP had been litigated before and that I would hear the argument on the basis of what, if anything had changed since then.

The RP, as last time, relies on the evidence of Richard Subia. I accepted him as an expert witness on the last occasion and do so again. The following is taken from my decision in the first set of proceedings:

"He had 26 years' experience with the California Department of Corrections and Rehabilitation. He has been responsible for administration, management, supervision and line-staff duties and responsibilities. He has given evidence previously as an expert witness. By the end of the witness's career within the department he had reached a very senior position being responsible or the housing, programs and the operation of 162,000 inmates over 33 prisons as well as out of state contract facilities housing over 9,500 Californian inmates in private prisons. His knowledge and experience covers policy, policy development, implementation and modification decisions including rule violations, discipline, appeals, investigations, access to health care, safety, security, escape, gang management and others. He is clearly an expert within his field.

Mr Subia provided the court with two reports. In summary they cover:

- *a) general conditions within Californian Prisons;*
- *b) the risks faced by those accused of or convicted of sex offences of violence and mistreatment in custody*
- *c) the ability of the DoC to protect those individuals.*

If convicted and imprisoned Mr Giese would be placed into the general population within the prison unless he specifically requests a sensitive need facility, or, as I understood Mr Subia's evidence, the DoC can place within sensitive needs facilities without a prisoner's request. There is also the option for a prisoner to request "segregated housing" for his own safely. This is within the Administrative Segregation Unit. (AdSeg) This is effectively solitary confinement for 23 hours per day and the only contact with other prisoners is for the remaining one hour. However, I was told that Mr Giese could be placed in a cell with another inmate who has been given an order to assault, and that "in-cell" assaults happen in AdSeg cells on a regular basis. This option would deprive the prisoner of access to rehabilitative programmes.
It is Mr Subia's opinion that Mr Giese's offences would result in serious stabbings, assaults, bashings and batteries. He states that sex offenders/child molesters are deemed to be the "lowest" of the prisoners within the Californian Department of Correction and Rehabilitation. The offender's offences are known to other prisoners. Inmates ask for the paperwork of new

inmates. If it is refused they will get the paperwork themselves. I was told that all Californian prisons are "run" by high level gang members who have control over attacks on inmates. No prior approval is required from a gang leader however on child molesters; the offences themselves are a "green light" to all to assault.
Mr Subia said there is a risk of really serious bodily harm and even death to these inmates. This arises as a result of prison overcrowding, staff shortages, gang infiltration, numerous blind spots within the prison and the way prisoners are housed. Violent attacks are common. I am told that hundreds of prisoners are in the exercise yards at any given time with insufficient staff to intervene in the event of an incident and, in the event that staff do intervene, they are likely to be overpowered and unable to regain control. The evidence was that in the autumn of 2014 the Inspector General of California in a report stated that the DoC is unable to protect inmates, especially those in sensitive needs facilities.
During 2014 there were 120,000 prisoners and ten victims of homicides which were specific to sensitive need yards.
Mr Subia did concede that sex offenders are considered vulnerable wherever they may be, all over the world".

The law on this point is set out in the skeleton arguments and there is no dissent between the parties. In extradition proceedings Article 3 of the Convention makes it unlawful to order the extradition of a requested person to a country where he is foreseeably at real risk of torture or inhuman or degrading treatment or punishment. [Soering v UK 1989 11 EHRR 439]
It is necessary for the requested person to demonstrate that there are strong grounds for believing that, if returned, he will face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment - see *R v Special Adjudicator ex parte Ullah (2004) AC*. This does not mean that there has to be proof of such risk on the balance of probabilities but there needs to be a risk that is substantial and not merely fanciful.

The prohibition provided by Article 3 is absolute. There is no balancing exercise to be carried out between the seriousness of the allegations faced by the requested person and the risk of ill treatment in the receiving State.

Finally, it is accepted that the test is a stringent one, which is not easy to satisfy. The burden of proof is on the requested person.

I set out the law in my previous decision and do not propose to repeat it here, save to say a State has a positive duty to take preventative operational measures to protect an individual whose life is at risk from the criminal acts of others, be those state or non-state actors. In my first judgement I described Californian prison conditions as grim and it would seem that situation has not improved. There is no evidence however that the situation has deteriorated such that I ought to reach a different conclusion to that reached in 2015.

The evidence from Mr Subia is contained in his report dated the 3rd July 2017.
Much of the report reflects the situation which he described during the proceedings in 2015. He describes that protective housing is available for sex offenders as well as but not

limited to gang dropouts, high profile/public figure inmates, inmates who are drug addicts and who failed to pay their drug debts, homosexuals who have been sexually assaulted or who are in fear of being sexually assaulted by other inmates and victims of violence with known enemies.

At paragraph 11 of his report Mr Subia describes sensitive needs yard (SNY) inmates who are segregated from the general population in all respects. They are housed and eat separately. They are transported separately. They go to medical and mental health and dental appointments separately. There has been a huge rise in the number of inmates seeking protection in the SNY and the security which the SNY's provide to these prisoners is being undermined by the number of inmates being housed there. The witness says the prison staff are unable and in some cases are unwilling to protect the sex offender population. He said SNY's now have their own gangs and that prison rapes on SNY are not uncommon. *"Of late"* it is not unheard of for convicted child molesters to request housing in the administrative segregation unit. The prisoners there have single cells but do not have the benefit of attending programmes including education and have very limited time out of their cells for exercise. This long-term isolation can cause mental deterioration and suicidal ideation. He describes the segregation unit as far more *"harsh and unforgiving"*

Risk of serious incidents is very high.

Mr Subia said that there had been one homicide in an SNY facility so far during 2017.

As far as pre-trial detention is concerned an inmate such as the requested person would have an "R" code designation which provides extra measures of protection and he would be escorted at all times by a *sheriff*, who I understand to be a prison officer.

Mr Subia also drew to the court's attention that the prison system had recently received negative attention in the press and in a review by the American Civil Liberties Union.

This challenge, as during the previous proceedings, does not relate to prisons generally in the Californian prison estate but to the conditions this RP would be subjected to as a child sex molester/offender. It is argued that Mr Giese would be exposed to mistreatment which violates Article 3.

I certainly accept as I did on the last occasion that as an alleged or convicted child molester the RP would be at risk of harm from non-state actors. Measures are put in place by the State to provide protection. I do not find that the conditions, as presented to me now, change my previous view.

The situation is not what one would wish for. I noted last time *"There is a distinction in non-state agent cases between on the one hand the risk of serious harm and on the other hand the risk of treatment contrary to Article 3. Any harm inflicted by non-state agents will not constitute Article 3 ill-treatment unless in addition the state has failed to provide reasonable protection. If somebody is beaten up and seriously injured by a criminal gang, the (member) state will not be in breach of Article 3 [Bagdanavicius [2005]UKHL 38]"*

Despite the concerns again raised by the defence, I still find them to fall well below the high threshold required by Article 3 of the Convention.

The article 3 challenge fails.

ARTICLE 5 AND THE ASSURANCE

I have considered the very ably advanced arguments put forward by the defence. I have considered the first assurance which was put before the High Court and the High Court's reasons for not accepting it.

The second assurance consists of two documents:

a) a one page letter dated 24 August 2016 from Tony Rackauckas, the District Attorney of Orange County which is addressed to Vaughn A. Ary at the United States Department of Justice AND
b) a two-page letter from Mr. Ary, acting in the capacity of the United States Central Authority for extradition proceedings, to the UK's Crown Prosecution Service enclosing a "letter of assurance" from the District Attorney of Orange County, California.

I have compared the second assurance with the first. I have listened to the evidence of Mr Jeffrey Lowry, a deputy public defender in San Bernadino County, California. He has analysed the documents and has provided his expert view on it. As with Mr Subia, he too gave evidence in the first set of proceedings. I accepted him as an expert then, and I do again.

He has made a statement for these proceedings which he adopted under oath. He has been shown the second assurance provided with the second extradition request and has given his reasons why he considers it not to be enforceable.

1. He points out that under the Welfare and Institutions Code 6600, which is the sexually violent predators (SVP) enabling statute, the district attorney is only one of two entities able to petition for a civil commitment order. The other being the County Counsel (being the legal officer for the local authority) Mr Lowry said that whilst Orange County has designated the district attorney to be the petitioning authority, if in the future the County Board of Supervisors wished to avoid honouring the assurance they could designate County Counsel as the petitioning authority.
2. The assurance does not extend to anyone other than the "*relevant officeholder.......... in the Orange County District Attorney's office*". The assurance does not extend to County Counsel which is a separate agency in the county structure. (County Counsel is the legal officer of the Local Authority) Any such assurance would need to come from the Board of Supervisors.
3. It is doubtful whether the current district attorney can bind a subsequent district attorney. The DA is an elected office and in the future a different DA may take a different view and feel answerable to the electorate who elected him rather than feel bound by the assurance.
4. There is no Californian case law on point. (but see below) The condition of Mr Giese at the time of any plea or following conviction is not relevant to SVP proceedings. It is his mental status and degree of dangerousness at the conclusion of his sentence that is important. The witness states that whilst the current district attorney can assert that he would not pursue civil commitment proceedings it is unknown what the defendants condition would be when finishing his sentence and another person

in the position of district attorney at that time may well believe proceedings are warranted and necessary.

5. If the defendant were to be convicted of any offences which were committed prior to the index offences and ultimately convicted of them, Orange County or any other county, being the county in which he were tried, would then have jurisdiction to proceed with SVP proceedings. If it were another county it could do so without contravening the terms of the assurance. There is also a possibility that the defendant could be civilly committed under a different statutory scheme such as the mentally disordered offender scheme pursuant to Penal Code 2962. The witness said this is generally used to commit someone with a major mental disorder. The federal authorities have no legally binding power to oblige a State to act in a particular way; in other words the Department of Justice cannot order the State of California not to proceed with a petition if it sees fit.
6. If proceedings were taken and the defendant sought to prevent this relying on his assurance, the doctrine of judicial estoppel exists (akin to our abuse of process) and the defendant may be able to argue it. It is unpredictable, (described by the witness as "iffy") without a body of case law or guiding principles. Alternatively, it could be argued that as the assurance is between the Department of Justice and the UK, Mr Giese himself does not have standing to argue it. Mr Lowry said he would not be optimistic of such an argument being successful because there is reluctance on the part of judges to use it. The facts of this scenario are not typical of judicial estoppel cases.
7. If the RP were convicted of another offence whilst in prison, and that were out of County, the new conviction, whether sexual or not, could trigger the SVP process.
8. There might be a change in the law in the future which could remove the discretion from a DA to apply for a petition or not, and make it mandatory to petition.

In cross examination Mr Lowry conceded he was not aware of any example of an assurance between treaty States being ignored. He said he had not researched that point. He also conceded that the MDO scheme required a serious mental disorder and he has seen no evidence to suggest this defendant has such a disorder. (eg schizophrenia)
Finally on the point about whether one DA can bind another, he said there is an example of a decision on the 8th Circuit, but not on the 9th Circuit where California is. The decision is therefore not binding in California.

The decision referred to is *The People v Groves 1923 Cal.App LEXIS 324,* a decision from the Californian Appeal Court.
The facts of the case are not pertinent. The following is what is relied upon:
The defendants next contend that they were induced to plead guilty to grand larceny, and to make statements in connection with the Rowan case, by promises that they would not be prosecuted on any other charges, and this constituted a bar to prosecution in the oil-station case.
If the District Attorney made such representations he clearly exceeded his authority in so far as binding his own office or the court was concerned. Defendants cite no authorities holding that a promise of leniency given by a prosecuting officer under such circumstances has ever been held to prevent prosecution for crime, and in determining this appeal we are not

required to enquire into the ethics of the transaction, if, indeed one took place of the character alleged.

On behalf of the RP, Mr Knowles fleshed out his very full written submissions in relation to the assurance and drew my attention to the decision of Lord Justice Aitkens in the earlier proceedings at *[2015]EWHC 3658 (Admin)* at paragraphs 19-23 where his reasons for not accepting the first assurance were given. Mr Knowles submits that nothing this time is fundamentally different. This time there is a letter from the Orange County District Attorney himself, which was previously not available. However, the assurance still purports to prevent the operation of Californian law as it normally operates.

The most important observation made is in paragraph 22: "*we find it difficult to believe that a District Attorney, who will certainly not be the present incumbent, would feel bound by an assurance letter based upon an assumption of the facts that was contrary to those that would by then have been indicated in the process of assessment that had just been undertaken*".

On behalf of the Government Mr Cadman submitted that the assurance provided can bind any further individual and this is precisely what it does. He argues it is unambiguous and unequivocal in its scope and application. It binds any present or future office holder from seeking to refer the defendant as an SVP and it is clearly intended to bind the appropriate authorities at both State and Federal level. He argues that the scenarios raised by the defence are so remote and speculative that the Court should pay them no attention.

ANALYSIS OF THE ASSURANCE

I am aware of the relevant case law on the issue of assurances including the judgement in *Bulgaria v Kirchanov [2017]EWHC 827 (Admin)* dealt with on 12th April 2017 and finally concluded on the 26th July 2017.

My assessment of the assurance in this matter is as follows:

1. The USA is a democratic state which is governed by the rule of law. We operate on a system of mutual trust and recognition and, as a matter of general acceptance, the two countries are close allies. In *Othman* language (see below) *there are long and strong bilateral arrangements between the sending and receiving States, including the Requesting State's record of abiding by (similar) assurances.* Compliance is capable of being verified through diplomatic or other monitoring mechanisms.
2. Assurances are routinely accepted from the USA in extradition cases, usually in the non-application of the death penalty in homicide cases. This too represents a departure from the usual application of the law as it would normally apply. I do accept that the scenario involving Mr Giese is very different, but it seems to me the fundamental principle remains the same, namely as a result of an assurance being provided a death penalty is not sought at it normally would. Promises given have been honoured. I would expect no difference in this case.

3. The stated intention of the assurance is absolutely clear.
4. As far as the point made by Mr Lowry about the possibility of further offences coming to light which pre-date the index offences, the RP has specialty protection in respect of those. It is too speculative a scenario. There is no evidence that the RP is wanted for any other offences. There has been ample opportunity since this defendant was first indicted for other potential victims to have come forward and made their complaints. We are not told anybody has.
5. As far as the risk of a further offence being committed during pre-trial detention or as a serving prisoner, which might trigger process, this too is totally speculative.
6. The suggestion that the Californian authorities could seek to circumvent the clearly stated intent of the assurance by appointing County Counsel to petition for commitment is well made, but I am not satisfied that they would use such a devious and manipulative mechanism to breach the spirit of trust between the USA and the UK. There is no evidence to suggest assurances have not previously been complied with and to employ such a disingenuous tactic to get around the assurance would be to betray the trust which exists between the UK and the USA.
7. Mr Lowry's evidence as to one DA being able to bind a subsequent office holder as a matter of law was opinion evidence. He conceded the point has not been tested in the courts. The case cited to me of the *People v Groves* can clearly be distinguished on the basis that one relates to what appears to be an unwritten plea bargain whereas we are dealing with a formal agreement given by the Department of Justice to the United Kingdom in extradition proceedings based on a treaty between the two States.
8. Mr Lowry's evidence in relation to the scheme to commit mentally disordered offenders can also be distinguished on the basis that there has never been a finding in English or European jurisprudence that it is Article 5 non-compliant.
9. Under WIC 6601, towards the end of a prisoner's sentence the Department of Corrections and Rehabilitations refers an individual for initial screening. The argument was put on behalf of the defendant that a lengthy process would be gone through before the DA is even invited to consider whether to apply for a petition to commit. It seems to me that if there were an assurance in place that this individual is not to face civil commitment that this initial screening process would not be commenced. There would be no point. I did not hear from Dr Putnam on this occasion and it was not a point dealt with first time around for obvious reason.
10. As far as the vague possibility of a change of law in the future is concerned, this might be the case in any democracy where Governments respond to changing circumstances. The UK government would be unlikely to countenance the refusal by EU member states to surrender individuals, whose extradition to the UK is presently sought, on the basis of a possible future change to our laws after Brexit. It is too speculative.

DECISION

I have considered this matter with great care. I accept the position taken by the defence that this is not a question of doubting the good faith of the officials who in 2017 provided the assurance. It all turns on the enforceability of it in the future.

a) I accept that this assurance does comply with the requirements of *Othman [2012] 55 EHRR 1* (at paragraph 188)
b) the stated intention of it is clear and is unequivocal.
c) I am satisfied that the Californian authorities will abide by its very clear and stated intention.

In the light of my rejection of the Requested Person's arguments, I find there are no bars to extradition and no human rights issues. I am satisfied that the offered assurance satisfies this court's previous finding in respect of Article 5 and that Mr Roger Alan Giese will not face an order for civil commitment.

Pursuant to section 87(3) I am sending this case to the Secretary of State for her decision as to whether Mr Giese should be extradited. I have advised Mr Giese of his right to apply for permission to appeal.

District Judge M. Coleman.
14th August 2017.