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SENATE

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EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (TREATY DOC. 108–23)

SEPTEMBER 20, 2006.—Ordered to be printed

Mr. LUGAR, from the Committee on Foreign Relations, submitted the following

R E P O R T

[To accompany Treaty Doc. 108–23]

The Committee on Foreign Relations, to which was referred the Extradition Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland, and related exchanges of letters, signed at Washington on March 31, 2003 (Treaty Doc. 108–23) (hereafter the "Treaty"), having considered the same, reports favorably thereon with one understanding, two declarations, and three provisos as indicated in the resolution of advice and consent, and recommends that the Senate give its advice and consent to ratification thereof, as set forth in this report and accompanying resolution of advice and consent.

CONTENTS

I. PURPOSE

The United States is currently a party to over 100 bilateral extradition treaties, including a treaty with the United Kingdom (U.K.). The existing treaty was signed in 1972, entered into force in 1977, and was amended by a Supplementary Treaty that entered

into force in 1986. The Treaty, which replaces the 1972 treaty, is consistent with modern U.S. extradition practices and other U.S. extradition treaties approved by the Senate in the last decade and would strengthen law enforcement cooperation between our two countries.

II. Background and Summary

Extradition—a legal mechanism for returning a fugitive to a country where he faces charges or has already been convicted—is a critical law enforcement tool, facilitating the prosecution of serious crimes, including terrorism and other violent offenses, trafficking in persons, drug offenses, and large-scale financial crimes. The United Kingdom is a key law enforcement and counterterrorism partner of the United States. Recent events, including the foiling of a terrorist plot targeting civil aircraft scheduled to fly between the United Kingdom and the United States, have underscored the importance of this relationship.

The Treaty was signed in Washington on March 31, 2003, and was transmitted to the Senate for advice and consent to ratification on April 19, 2004.

A detailed article-by-article discussion of the Treaty may be found in the Letter of Submittal from the Secretary of State to the President, which is reprinted in full in Treaty Document 108–23. A summary of the key provisions of the Treaty is set forth below.

Article 2 of the Treaty contains a modern "dual criminality" provision defining extraditable offenses as those punishable under the laws in both states by deprivation of liberty of 1 year or more or by a more severe penalty. This type of provision is common in modern extradition treaties, and is less restrictive than the existing treaty, which permits extradition only for offenses listed in the 1972 treaty, or in cases where the offense is considered extraditable under domestic U.K. extradition law and is a felony under U.S. law. The dual criminality approach in the new Treaty ensures that new criminal offenses will be covered as they are criminalized by both parties, without a need to constantly amend the Treaty. At the same time, it protects against extradition of an individual for conduct that would not constitute an offense in the United States, such as conduct protected under the first amendment of the U.S. Constitution.

Article 4 of the Treaty addresses political and military offenses. Paragraph 1 bars extradition for political offenses; the political offense exception is longstanding under U.S. extradition practice. Consistent with U.S. policy and practice in recent years, paragraph 2 of the article excludes certain crimes of violence from being considered political offenses. The list of crimes in the Treaty excluded from the political offense exception is generally similar to the list set forth in the 1986 Supplementary Treaty with the United Kingdom. The 1986 Supplementary Treaty was the first treaty to so limit the political offense exception. Since then, such limitations have become common in bilateral and multilateral extradition treaties to which the United States is a party, because an international norm has emerged that terrorism and other crimes of violence are unacceptable as a political tactic.

In approving this narrowing of the political offense exception in 1986, the Senate added a provision to the Supplementary Treaty precluding extradition of an individual for an offense that was excluded from the political offense exception if that person proved to a U.S. court by a preponderance of the evidence that the extradition request itself was made with a view to try or punish such person on account of his race, religion, nationality, or political opinions, or that he would be prejudiced at trial or punished, detained, or restricted in his personal liberty by reason of his race, religion, nationality, or political opinions. No other U.S. extradition treaty negotiated before or since that time authorizes judicial review of the motivation of a state to seek extradition. Rather, all other treaties permit review of claims of political motivation to be made by the Secretary of State. Article 4, paragraph 3 of the new Treaty prohibits extradition where the competent authority of the requested state determines that the request was politically motivated, and consistent with other U.S. extradition treaties, provides that such determinations will be made by the executive branch. The determination of a claim of political motivation is distinct from the determination of application of the political offense exception, which will continue to be made by the U.S. judiciary, consistent with U.S. law. The committee has included an understanding in the resolution of advice and consent that addresses this point (see section V below). Finally, paragraph 4 provides that a requested state may refuse extradition for offenses under military law that are not offenses under ordinary criminal law. This type of provision is common to extradition treaties; the power to make such decisions is assigned to the executive branch.

Article 6 of the Treaty provides that the decision whether to grant an extradition request shall be made without regard to any statute of limitations in either state. This provision reflects modern U.S. extradition policy that statutes of limitations claims are best addressed by the court of jurisdiction following surrender. It does not preclude a person from raising any available statute of limitations defense in that venue.

Article 8 of the Treaty addresses the documentation required in support of extradition requests. Under the current treaty, the requesting party must present evidence that would justify the committal of the fugitive for trial under the law of the requested party. This meant, in practice, that in seeking fugitives from the United Kingdom, the United States had to present a *prima facie* case, a requirement that often proved to be burdensome. The new Treaty does not set forth a specific burden of proof for requests to the United Kingdom. Under a domestic U.K. law, the evidentiary standard for extradition requests by some countries has been eased to one that U.K. officials have described as similar to the U.S. standard of probable cause. This lower U.K. standard has been applied to United States extradition requests to the United Kingdom since January 2004, when the United Kingdom designated the United States as eligible for this standard under its domestic extradition law in anticipation of U.S. ratification of the Treaty. U.S. ratification would ensure continued application of the less burdensome standard for the United States. For requests made by the United Kingdom to the United States, evidence sufficient to meet

the probable cause standard will still be required, as set forth in article 8(3)(c) of the new Treaty and under applicable U.S. case law.

Article 12 of the Treaty addresses provisional arrests in urgent circumstances, and streamlines the process by permitting requests to be transmitted directly between the U.S. Department of Justice and the U.K. competent authority. The duration of provisional arrest permitted under the new Treaty (60 days) is identical to the current treaty. The information required to be provided in such requests follows the example of treaties recently approved by the Senate. It should be emphasized that the textual changes in the new Treaty (as compared to the 1972 treaty) are not intended to effect a substantive change to the standard that applies under the existing treaty for securing the provisional arrest of an alleged fugitive pending extradition. The committee agrees with the Department of Justice that the fourth amendment of the U.S. Constitution applies to provisional arrests under the 1972 treaty, and under the new Treaty. Further, the Department indicated in response to committee questioning that it "does not anticipate any substantive change in the type or quantum of evidence that [it] submit[s] to our courts in support of a request for issuance of a provisional arrest warrant" under the new article.

Article 14 of the Treaty permits the requested state to temporarily surrender for proceedings in the requesting state a person who is being proceeded against or is serving a sentence in the requested state. The person is to be kept in custody in the requesting state and returned upon completion of the proceedings there. This type of temporary surrender provision is common in modern extradition treaties and is an important improvement over the existing 1972 treaty, which specifically requires that extradition be deferred until the conclusion of the trial and the full execution of any sentence. The new Treaty thus allows for prosecution closer in time to commission of the offense, thereby advancing the goal of securing justice. Long delays in commencing trial raise the danger that witnesses will no longer be available or that their memories will fade.

III. Implementing Legislation

No new implementing legislation is required for the Treaty. The Treaty will be implemented consistent with an existing body of Federal law, including the provisions of Chapter 209 of Title 18, United States Code.

IV. Committee Action

The Committee on Foreign Relations held two public hearings on the Treaty, on November 15, 2005, and July 21, 2006, at which it received testimony from the Departments of State and Justice, and from private sector witnesses, including opponents of the Treaty. (Transcripts of these hearings and questions and answers for the record may be found in S. Hrg. 109–352 and S. Hrg. 109–570, which are forthcoming.) The witnesses who testified are as follows:

NOVEMBER 15, 2005

Mr. Samuel M. Witten, Deputy Legal Adviser, Department of State
Ms. Mary Ellen Warlow, Director, Office of International Affairs, Criminal Division, Department of Justice

JULY 21, 2006

Mr. John J. Meehan, Jr., National President, Ancient Order of Hibernians in America
Dr. Robert C. Linnon, National President, Irish American Unity Conference
Prof. Madeline Morris, Duke University Law School
Mr. Paul J. McNulty, Deputy Attorney General, Department of Justice
Mr. Samuel M. Witten, Deputy Legal Adviser, Department of State

In addition, the committee invited Professor Francis A. Boyle of the University of Illinois College of Law at Urbana-Champaign to testify at the hearing on July 21, 2006. Professor Boyle was unable to attend the hearing because his flight to Washington was canceled due to inclement weather, but his written testimony was entered into the hearing record.

On September 7, 2006, the committee considered the Treaty and ordered it favorably reported by voice vote with no objections and with a quorum present, with the recommendation that the Senate give its advice and consent to ratification, subject to the understanding, declarations, and provisos contained in the resolution of advice and consent.

V. Committee Recommendation and Comments

The Committee on Foreign Relations believes that the proposed Treaty is in the interest of the United States and urges the Senate to act promptly to give advice and consent to ratification.

The committee carefully considered areas of concern raised by critics of the Treaty, and has addressed several of these issues in the resolution of advice and consent, consistent with the underlying international legal obligations of the Treaty. The executive branch has reviewed and concurs with each understanding, declaration and proviso in the resolution.

The committee has included in the resolution of advice and consent an understanding relating to article 4, paragraphs 3 and 4 of the Treaty. Paragraph 3 precludes extradition where the competent authority of the requested state determines that the request was politically motivated. Paragraph 4 provides that the competent authority of the requested state may refuse extradition for offenses under military law that are not offenses under ordinary criminal law. Each paragraph further states: "In the United States, the executive branch is the competent authority for the purposes of this Article." The executive branch confirmed that the parties intended that the words "for the purposes of this article" apply only to these specific paragraphs. The understanding in the resolution of ratification sets forth that interpretation, which is binding on the executive branch. The understanding also states that the quoted sentence in paragraphs 3 and 4 does not alter or affect the role of the

United States judiciary under U.S. law in making certifications of extraditability (under section 3184 of Title 18, United States Code), and in determining the application of the political offense exception.

The committee has also included two declarations in the resolution of advice and consent. Concerns were expressed in the hearing in July 2006 that the Treaty could be used to extradite persons from the United States for conduct protected by the first amendment of the U.S. Constitution, and that the Treaty would remove from the U.S. judiciary the determination of extraditability. As noted above in the discussion of article 2, the dual criminality provisions of that article would not permit extradition of persons for conduct protected by the first amendment because such conduct would not constitute a criminal offense in the United States. Additionally, nothing in the Treaty changes U.S. law that requires a judicial determination of extraditability—specifically section 3184 of title 18 of the United States Code—prior to the surrender of the fugitive to the foreign state. The committee determined that it would be appropriate to address these concerns by including declarations addressing the relationship of the Treaty to the U.S. Constitution and relevant U.S. law. The first declaration states that nothing in the Treaty requires or authorizes legislation or other action by the United States that is prohibited by the U.S. Constitution. Although Article VI of the U.S. Constitution provides that all treaties made shall be the "supreme Law of the Land," the Supreme Court has made clear that a treaty cannot violate the Constitution. "It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights—let alone alien to our entire constitutional history and tradition—to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions." *Reid* v. *Covert,* 354 U.S. 1, 17 (1957). This declaration reflects that constitutional principle. The second declaration states that the Treaty shall be implemented by the United States in accordance with the U.S. Constitution and relevant Federal law, including the requirement of a judicial determination of extraditability that is set forth in title 18 of the United States Code.

The committee has included three provisos in the resolution of advice and consent. The first proviso clarifies the intent of the Treaty. It recognizes that concerns have been expressed that the purpose of the Treaty is to seek the extradition of individuals involved in offenses relating to the conflict in Northern Ireland prior to the Belfast Agreement of April 10, 1998. Also known as the Good Friday Agreement, the Belfast Agreement was a joint effort of governments of the United Kingdom and the Republic of Ireland, and the major political parties in Northern Ireland, to resolve the decades-long conflict by formulating a means for local government based on a power-sharing arrangement. As part of the peace process, the Provisional Irish Republican Army agreed to a cease-fire in the 1990s, and last year declared an end to the armed campaign. In connection with the Belfast Agreement, the Government of the United Kingdom provided a mechanism for early release for individuals convicted of terrorist-related offenses committed before

April 10, 1998. In 2000, the U.K. Government announced that it would no longer pursue extradition of individuals who appear to qualify for the early release plan under the Belfast Agreement, and it has since restated and expanded upon this position, most recently in September 2006.

In light of these developments, the proviso makes clear the Senate's understanding that the purpose of the Treaty is to strengthen law enforcement cooperation between the United States and the United Kingdom by modernizing the extradition process for all serious offenses and that it is not intended to reopen issues addressed in the Belfast Agreement or to impede any further efforts to resolve the conflict in Northern Ireland. In this regard, the Senate notes with approval the September 29, 2000, statement of the United Kingdom Secretary of State for Northern Ireland that the United Kingdom does not intend to seek the extradition of individuals who appear to qualify for early release under the Belfast Agreement, as well as a subsequent letter from the U.K. Home Secretary dated March 2006, and an exchange of letters between the U.K. Secretary of State for Northern Ireland and the U.S. Attorney General dated September 2006, reconfirming this position and the intent of the United Kingdom to "address the anomalous position of those suspected but not yet convicted of terrorism-related offenses committed before the Belfast Agreement." The full text of the September 2000 statement and the 2006 letters are printed in the Appendix to this report.

The second proviso addresses a provision of recently enacted United Kingdom domestic law that may allow for the retrial in the United Kingdom, in certain limited circumstances, of an individual who has been previously tried and acquitted in that country in a manner that would not be permitted in the United States under the Double Jeopardy clause of the U.S. Constitution. Although U.S. courts have indicated that extradition in such contexts is not barred, and although retrial or prosecution appeal after acquittal is often permitted in European countries with civil law traditions, it is uncommon in the Anglo-American system. Accordingly, the committee sought to call attention to the provision. The proviso notes that, although the Treaty does not address this situation, it is the understanding of the Senate that under U.S. law and practice a person sought for extradition can present a claim to the Secretary of State that an aspect of foreign law that may permit retrial may result in an unfairness that the Secretary could conclude warrants denial of the extradition request. It urges the Secretary to carefully review any such claims involving a request for extradition in the rare case where this provision of United Kingdom domestic law is implicated.

In order to facilitate committee oversight of U.S. implementation of the Treaty, the third proviso calls on the Secretary of State to submit to the committee, within 1 year of entry into force of the Treaty and annually thereafter for the next 4 years, a report containing specified information regarding implementation. The report is to contain, for each 12-month period: The number of persons arrested in the United States pursuant to requests from the United Kingdom under the Treaty, including the number of persons subject to provisional arrest; a summary description of the alleged con-

duct for which the United Kingdom is seeking extradition; the number of requests granted; the number of requests denied, including whether the request was denied as a result of a judicial decision or a decision of the Secretary of State; the number of instances the person sought for extradition made a claim to the Secretary of State of political motivation, unjustifiable delay, or retrial after acquittal and whether such extradition requests were denied or granted; and the number of instances the Secretary granted a request under article 18(1)(c) to waive the rule of specialty.

VI. RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO UNDERSTANDING, DECLARATIONS, AND PROVISOS

The Senate advises and consents to the ratification of the Extradition Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland, and related exchanges of letters, signed at Washington on March 31, 2003 (hereinafter in this resolution referred to as the "Treaty") (Treaty Doc. 108–23), subject to the understanding in section 2, the declarations in section 3, and the provisos in section 4.

SECTION 2. UNDERSTANDING

The advice and consent of the Senate under section 1 is subject to the following understanding:

> Under United States law, a United States judge makes a certification of extraditability of a fugitive to the Secretary of State. In the process of making such certification, a United States judge also makes determinations regarding the application of the political offense exception. Accordingly, the United States of America understands that the statement in paragraphs 3 and 4 of Article 4 that "in the United States, the executive branch is the competent authority for the purposes of this Article" applies only to those specific paragraphs of Article 4, and does not alter or affect the role of the United States judiciary in making certifications of extraditability or determinations of the application of the political offense exception.

SECTION 3. DECLARATIONS

The advice and consent of the Senate under section 1 is subject to the following declarations:

(1) Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States.

(2) The Treaty shall be implemented by the United States in accordance with the Constitution of the United States and relevant federal law, including the requirement of a judicial determination of extraditability that is set forth in Title 18 of the United States Code.

SECTION 4. PROVISOS

The advice and consent of the Senate under section 1 is subject to the following provisos:

(1)(A) The Senate is aware that concerns have been expressed that the purpose of the Treaty is to seek the extradition of individuals involved in offenses relating to the conflict in Northern Ireland prior to the Belfast Agreement of April 10, 1998. The Senate understands that the purpose of the Treaty is to strengthen law enforcement cooperation between the United States and the United Kingdom by modernizing the extradition process for all serious offenses and that the Treaty is not intended to reopen issues addressed in the Belfast Agreement, or to impede any further efforts to resolve the conflict in Northern Ireland.

(B) Accordingly, the Senate notes with approval—

(i) the statement of the United Kingdom Secretary of State for Northern Ireland, made on September 29, 2000, that the United Kingdom does not intend to seek the extradition of individuals who appear to qualify for early release under the Belfast Agreement;

(ii) the letter from the United Kingdom Home Secretary to the United States Attorney General in March 2006, emphasizing that the "new treaty does not change this position in any way," and making clear that the United Kingdom "want[s] to address the anomalous position of those suspected but not yet convicted of terrorism-related offences committed before the Belfast Agreement"; and

(iii) that these policies were reconfirmed in an exchange of letters between the United Kingdom Secretary of State for Northern Ireland and the United States Attorney General in September 2006.

(2) The Senate notes that, as in other recent United States extradition treaties, the Treaty does not address the situation where the fugitive is sought for trial on an offense for which he had previously been acquitted in the Requesting State. The Senate further notes that a United Kingdom domestic law may allow for the retrial in the United Kingdom, in certain limited circumstances, of an individual who has previously been tried and acquitted in that country. In this regard, the Senate understands that under U.S. law and practice a person sought for extradition can present a claim to the Secretary of State that an aspect of foreign law that may permit retrial may result in an unfairness that the Secretary could conclude warrants denial of the extradition request. The Senate urges the Secretary of State to review carefully any such claims made involving a request for extradition that implicates this provision of United Kingdom domestic law.

(3) Not later than one year after entry into force of the Treaty, and annually thereafter for a period of four additional years, the Secretary of State shall submit to the Committee on Foreign Relations of the Senate a report setting forth the following information with respect to the implementation of the Treaty in the previous twelve months:

(A) the number of persons arrested in the United States pursuant to requests from the United Kingdom under the Treaty, including the number of persons subject to provisional arrest; and a summary description of the alleged conduct for which the United Kingdom is seeking extradition;

(B) the number of extradition requests granted; and the number of extradition requests denied, including whether the request was denied as a result of a judicial decision or a decision of the Secretary of State;

(C) the number of instances the person sought for extradition made a claim to the Secretary of State of political motivation, unjustifiable delay, or retrial after acquittal and whether such extradition requests were denied or granted; and

(D) the number of instances the Secretary granted a request under Article 18(1)(c).

VII. APPENDIX

HOME OFFICE,
London SW1P 4DF, March 31, 2006.

ALBERTO GONZALES,
Attorney General, U.S. Department of Justice,
Washington, DC.

DEAR AL: At our meeting on 6 March I said that I would write to clarify the UK Government's position relating to the extradition of individuals wanted or convicted of terrorist offences associated with the Troubles in Northern Ireland who are currently in the United States.

In September 2000 the Government decided that it was no longer proportionate or in the public interest to seek the extradition of individuals convicted of terrorist offences committed *prior to* 10th April 1998, the date of the Belfast Agreement. The new treaty does not change this position in any way.

We have also made it clear that we want to address the anomalous position of those suspected but not yet convicted of terrorism-related offences committed before then. Had these individuals been convicted at the time of their offences they would, by now, have been able to apply for early release and so find themselves in a similar position to those already covered by the Agreement. Unfortunately, the legislation that would have resolved this anomaly had to be withdrawn due to a lack of cross-party support.

However, the British Government remains keen to make progress on this and I can assure you that when the new treaty was being negotiated, there was no intention on our part to make it easier to target these people, whose position we accept to be anomalous.

CHARLES CLARKE,
Home Secretary.

NORTHERN IRELAND OFFICE,
Belfast BT4 3TT, September 4, 2006.

ALBERTO GONZALES,
Attorney General, U.S. Department of Justice,
Washington, DC.

DEAR ATTORNEY GENERAL: I am writing to reiterate the UK Government's position relating to the extradition of individuals from the United States in relation to terrorist offences committed during the Troubles in Northern Ireland.

In September 2000, the Government decided that it was no longer proportionate or in the public interest to seek the extradition of individuals convicted of terrorist offences prior to 10th April 1998, "who appear to qualify for early release under the Good Friday Agreement scheme, and who would, on making a successful application to the Sentence Review Commissioners, have little if any of their original prison sentence to serve." I attach a copy of the statement made by the then Secretary of State for Northern Ireland when this decision was announced. I know that the former Home Secretary reiterated this when he wrote to you in March this year. I can confirm, on behalf of the UK Government, that this remains the case.

We have also made it clear that we want to address the anomalous position of those suspected but not yet convicted of terrorism-related offences committed before the Belfast Agreement. Had these individuals been convicted at the time of their offences they would, by now, have been able to apply for early release and so find themselves in a similar position to those already covered by the Agreement. The UK Government introduced legislation to resolve this anomaly last year. Unfortunately, that legislation had to be withdrawn due to a lack of cross-party support. However, the UK Government continues to accept that the position of these people is anomalous and I can assure you, as the former Home Secretary did in March, that when

the new treaty was being negotiated there was no intention on our part to make it easier to target them. I attach a short note which explains in more detail the provisions of the early release scheme and the position of various groups of people.

It remains a matter of great importance to the UK Government that the extradition treaty should be ratified by the United States, so that its benefits can be fully realised. This is not because of any agenda related to Northern Ireland, but because of the improvements that the updated treaty will bring to the extradition process in general in both countries. My colleague, John Reid, the Home Secretary, has seen this letter and agrees fully with its contents.

I am copying this letter to Senator Lugar. Both you and he are welcome to share it with other members of the Senate if that would be helpful.

The Rt. Hon. PETER HAIN MP,
Secretary of State for Northern Ireland.

Enclosures.

US-UK EXTRADITION TREATY—NORTHERN IRELAND ISSUES

Political Background

The political and security situation in Northern Ireland has been transformed following the 1998 Good Friday Agreement. A huge amount of progress has been made since then, including the historic statement from the Provisional IRA in July 2005, in which they made clear that their armed campaign was over. **The focus in Northern Ireland today is on restoring devolved Government and continuing to build a prosperous and peaceful society.**

Good Friday Agreement and Early Release Scheme

As part of the Good Friday Agreement (GFA), **individuals convicted of terrorist-related offences *committed before 1998* were able to apply for early release after serving only two years of their sentences.** Over 400 prisoners have been released on license under this scheme. The license requires that individuals do not become re-engaged in terrorism or serious crime. Those released include many members of the Provisional IRA, which has maintained a ceasefire during this time. The Early Release Scheme was a very difficult part of the Good Friday Agreement for many people to accept, but it demonstrated the UK Government's commitment to moving forward with the peace process.

The Early Release Scheme is part of UK law and remains in force. Any individuals who are convicted of qualifying, pre-1998 offences in the future, including any individuals extradited to the UK, will be able to apply for the scheme.

Individuals convicted of pre-GFA offences

In 2000, the UK Government announced that it would **no longer pursue the extradition of individuals convicted of pre-1998 offences who had escaped from prison and who would, if they returned to Northern Ireland and successfully applied for early release, have little if any of their time left to serve.** That remains the position.

Individuals suspected of pre-GFA offences ("on the runs")

Whilst the Early Release Scheme addressed the situation of individuals who had been convicted of past offences, there remained an anomaly in relation to individuals *suspected* of past offences, who had gone "on the run" before they were tried. **The British Government accepts that these individuals are in an anomalous position since, if they had been convicted before 1998 they could have been released by now under the terms of the Good Friday Agreement.**

In 2003, **the British Government therefore published proposals for a scheme which would have allowed suspects "on the run" to be tried in their absence and to return to Northern Ireland without arrest or imprisonment.** Following the IRA's statement that its armed campaign was over in July 2005, legislation was introduced to implement that commitment.

Agreement could not be reached on that legislation during its passage through Parliament and it was withdrawn in January 2006. **The British Government is currently reflecting on the way forward.** However, as the 2003 proposals and the subsequent legislation demonstrate, the British Government is committed to addressing these cases in a way which resolves the anomaly.

In the absence of any change in the law, **decisions on whether to seek the extradition of suspects "on the run" for pre-1998 offences are still taken by the prosecuting authorities, in line with the legal obligations on them, as part of the normal criminal justice process.** But, as the UK Government's decision in 2000 not to pursue the extradition of convicted fugitives (including in the

United States) who would qualify for early release under the GFA illustrates, there is no "political" agenda to pursue the extradition and trial of these people. And any suspects who were extradited and subsequently convicted would be able to apply for early release after two years, under the terms of the Good Friday Agreement.

Other individuals

Anyone convicted of an offence unconnected with terrorism, or an offence committed after the Good Friday Agreement, will not be eligible for the Early Release Scheme. The UK law enforcement authorities continue to seek the extradition of such individuals in line with UK law.

Outstanding warrants

When Home Office Minister Baroness Scotland visited the US, she explained that there were currently **no outstanding warrants for the extradition of individuals from the US to Northern Ireland.**

SECRETARY OF STATE,
NORTHERN IRELAND OFFICE,
September 29, 2000.

STATEMENT BY PETER MANDELSON ON EXTRADITION OF CONVICTED FUGITIVES

On 28 July, all remaining prisoners eligible under the early release scheme who had completed 2 years of their sentences were released as envisaged in the Good Friday Agreement.

The completion of these remaining releases has implications for a number of people who were sentenced to imprisonment for offences committed before the Good Friday Agreement, but who failed to complete these sentences. In most cases those concerned escaped from custody and fled to other countries up to 20 years ago. In many cases, extradition proceedings were initiated and in some of these the government is now being pressed by Court authorities to clarify its position.

Whether to pursue an extradition request depends on the public interest at stake, including the remaining sentence which the fugitive would stand to serve if he or she were returned. It is clearly anomalous to pursue the extradition of people who appear to qualify for early release under the Good Friday Agreement scheme, and who would, on making a successful application to the Sentence Review Commissioners, have little if any of their original prison sentence to serve.

In view of this and the time that has elapsed, I do not believe that it would now be proportionate or in the public interest to continue to pursue such cases.

If these individuals wish to benefit from the early release scheme, they will be able to return to Northern Ireland and make an application to the Sentence Review Commissioners. If this is granted, normal licence conditions, including liability to recall to prison, will apply. The decision has no implications for the prosecution of other offences where sufficient evidence exists. It is not an amnesty.

As with the rest of the early release programme, I do not under-estimate the hurt this decision may cause the victims of those whose extradition will no longer be pursued, and the onus it places on all of us to ensure that the Good Friday Agreement does result in a permanent peace in which there are no more victims.

OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE,
Washington, DC, September 5, 2006.

The Rt. Hon. PETER HAIN,
Secretary of State for Northern Ireland,
Northern Ireland Office, London SW1P 4PN.

DEAR SECRETARY HAIN: I am writing in response to your recent letter regarding the 2003 United States-United Kingdom extradition treaty.

I appreciate your reconfirmation of the position of the Government of the United Kingdom (originally taken in September 2000) that it is "no longer proportionate or in the public interest to seek the extradition of individuals convicted of terrorist offences prior to 10th April 1998, 'who appear to qualify for early release under the Good Friday Agreement scheme, and who would, on making a successful application to the Sentence Review Commissioners, have little if any of their original prison sentence to serve.'" Additionally, you have reconfirmed that it was not the intention of your Government, in negotiating this Treaty, to make it easier for the UK to seek extradition of individuals suspected of committing terrorist offenses in Northern Ireland prior to April 10, 1998.

Please accept this letter as my acknowledgement of your Government's official position and our mutual understanding of these matters. I believe that we share the view that the 2003 Treaty is critical to our mutual security in this age of global terrorism and transnational crime. Accordingly, the Bush Administration has made it a priority to seek the Senate's advice and consent to ratification of this Treaty. To that end, I will ask the Senate Foreign Relations Committee to include your letter, and this reply, in the official record of the Committee's consideration of the Treaty.

Sincerely,

ALBERTO R. GONZALES,
Attorney General.

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