Neutral Citation Number: [2020] EWHC 2178 (Admin)

Case No: CO/3086/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 August 2020

Before:

THE RIGHT HONOURABLE THE LORD BURNETT OF MALDON
LORD CHIEF JUSTICE OF ENGLAND AND WALES

THE HONOURABLE MR JUSTICE JULIAN KNOWLES

- -

Between:

WEI MIAO	**Applicant**
- and -	
GOVERNMENT OF THE UNITED STATES OF AMERICA	**Respondent**

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- -

Mark Summers QC and Ben Cooper QC (instructed by **Commons**) for the **Applicant**
Helen Malcolm QC and Aaron Watkins (instructed by **CPS**) for the **Respondent**

Hearing date: **2 July 2020**

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, and release to BAILII. The date and time for hand-down is deemed to be 07 August 2020 at 10.30am.

Lord Burnett of Maldon CJ:

Introduction

1. This is the judgment of the Court to which we have both contributed.

2. This is a 'rolled-up' application under section 103(1) of the Extradition Act 2003 ("the 2003 Act") for permission to appeal against the decision of District Judge Richard Blake on 31 May 2019 to send the applicant's case to the Secretary of State under section 87(3) of that Act. The Government of the United States has requested the applicant's extradition.

3. For the reasons which follow we refuse permission to appeal.

4. The applicant is wanted in the County of Santa Barbara in California to stand trial for the murder of Chung Yu Ping, a former business associate. The charge is that on or about 6 June 1991, following a dispute involving the non-payment of $5,000, which Mr Ping had borrowed to pay medical bills, the applicant bludgeoned him to death with a hammer, strangled him, and then drove his body the best part of 200 miles before disposing of it in a roadside ditch. Mr Ping's body was found with his head in a plastic bag that had been secured with electrical wire.

5. The following month a warrant was issued for the applicant's arrest. The prosecution's complaint, filed with the Santa Barbara County Municipal Court on 28 July 1991, charges the applicant with one count of second-degree murder contrary to section 187(a) of the California State Penal Code.

6. The applicant is a fugitive from justice. He was contacted on the phone by detectives investigating Mr Ping's murder on 18 June 1991. He agreed to meet them but failed to attend. He then fled from the United States eventually arriving in the United Kingdom (via Mexico and Jamaica) where he obtained leave to remain under a false name. The Government made its extradition request on 25 February 2015. The request was certified by the Secretary of State pursuant to section 70 of the 2003 Act on 2 March 2015. An extradition warrant was issued by Westminster Magistrates' Court on 29 April 2015 on which the applicant was arrested on 20 August 2015. He initially denied being the person sought and denied ever having been in the United States. Eventually, he admitted disposing of Mr Ping's body but denied killing him. He also said, 'It's totally accident. It's not something I did on purpose'. He appeared before Westminster Magistrates' Court on the same day, when the case was opened, and was remanded in custody.

Proceedings before the District Judge

7. The extradition proceedings have been protracted. Ms Malcolm QC, who appears for the Government, explained that there were 12 adjournments during the course of the hearing. There was some delay caused by the defence preparation and service of evidence but the principal cause was the applicant's mental health, which is at the heart of the argument to resist extradition.

8. The applicant resisted extradition on a number of grounds, including:

i) Extradition was barred under section 87 of the 2003 Act read with Articles 2 and Article 3 of the European Convention on Human Rights (the Convention). Section 87 prohibits extradition where it would be incompatible with the defendant's Convention rights The risk of suicide resulting from his mental illness would not be appropriately managed in the California prison estate (in the Santa Barbara County Jail pre-conviction, and an unknown Californian prison post-conviction).

ii) His extradition was barred by section 91 of the 2003 Act, which bars extradition where physical or mental health would render extradition unjust or oppressive.

iii) Extradition would violate his rights under Article 3 of the Convention because of overcrowding and gang violence in Californian prisons.

iv) The proceedings were an abuse of process because officials from California who had given evidence about prison conditions had failed to reveal or refer to material critical of standards of care in Californian prisons, especially for mentally ill prisoners. There had been a failure in the duty of candour with the result that the proceedings should be stayed as an abuse.

9. Other grounds of challenge have fallen away.

10. The parties adduced many hundreds of pages of evidence including medical reports, as well a considerable body of evidence about Californian prison conditions and attendant civil litigation in the United States. The judge's task was far from easy but he produced a judgment of commendable clarity and brevity.

11. The judge focussed on two main areas:

i) *The applicant's mental health*: Dr Hopley, a consultant psychiatrist, gave evidence that the applicant suffered from an adjustment disorder and a serious depressive disorder. These were treatable conditions which were being treated. His condition fluctuated over time but as at 15 March 2018, Dr Hopley noted in his report that 'Mr Miao still poses a very high risk of committing suicide if faced with extradition'. He had attempted suicide twice. Dr Kucharski, a New York psychologist said that 'there is a very high likelihood if not a certainty that Mr Miao will take his own life if he is ordered extradited to the United States'. Dr Hewitt, a consultant psychiatrist, said that the applicant was 'at increased risk of self-harm and suicide' resulting from the on-going stress of the extradition proceedings. She thought his depression would worsen if he were extradited but the judge noted that extradition was not the only stressor, in particular that some of the applicant's mental health difficulties might be linked to his being a fugitive and the non-disclosure of his situation to his family. He also said that Dr Hopley thought that the suicide attempts (like his initial lies on arrest) might have been manipulative behaviour.

ii) *Prison conditions in California*: In support of his Article 3 argument, the applicant relied on alleged systematic failings within the Californian prison system; overcrowding and lack of resources; inadequate care and treatment;

and risk of *violence* from other inmates. He said the effect on him of all of this would be more serious because of his mental vulnerability. The Government relied on assurances as to the treatment which the applicant would receive if extradited. These had been given by employees of the County of Santa Barbara Sheriff's Office (which is responsible for the County Jail) and by the California Department of Corrections and Rehabilitation, which is responsible for post-conviction prisons.

12. The judge found that the applicant had mental health problems which created a suicide risk. He identified the central issue as whether adequate care and supervision would be provided to the applicant within the Californian prison estate so that the risk would be properly dealt with. He had to be satisfied that the applicant's 'depression and behaviour' would be safely managed in prison if he were extradited. Mr Summers QC, on behalf of the applicant, recognised that the judge asked himself the right questions but submits that the judge did not grapple properly with the evidence which showed that the suicide risk would not be managed safely.

13. The judge referred to the six reports submitted about the applicant's mental health. He noted, in particular, that in March 2018 Dr Hopley had said that the applicant had responded well to clinical care. Dr Hopley maintained his view that the applicant posed a 'very high risk' of committing suicide if extradited, but there was at that time no immediate risk of self-harm/suicide. Dr Hopley had no reason to doubt the good faith of the assurances that had been given and he had no direct experience of Californian prisons. By February 2019 the diagnosis was adjustment disorder in response to the stress of the impending hearing and possibility of extradition.

14. The judge concluded that the applicant's mental difficulties had been caused by the position he finds himself in but was not different from the position that would be faced by anyone charged with such a serious offence. The judge observed that it could not be suggested that someone who had twice attempted suicide whilst on remand for murder in England should not for that reason face trial.

15. The judge set out further details of the assurances that had been offered in particular by Shawn Lammer of the County of Santa Barbara Sheriff's Office and Katherine Tebrock of the Department of Corrections and Rehabilitation, including in relation to matters such as screening and mental health treatment intervention. He asked himself whether he could be satisfied that these assurances sufficiently mitigated the real risk that the applicant might commit suicide. He noted that the United States is a democratic country governed by the rule of law with a long history of giving effective assurances in extradition proceedings. He was satisfied that the assurances could be relied upon and in consequence rejected the arguments under section 91 of the 2003 Act and relating to the applicant's mental health difficulties suggested to bar extradition.

16. The judge then made findings about prison conditions in California more generally. The evidence included extensive reports of serious problems in the Californian prison estate, which he accepted. They included underfunding, reduced staffing levels, overcrowding and gang violence. He was satisfied that the Californian authorities were taking general measures in an attempt to improve matters, and that they would address the applicant's particular vulnerabilities. Assurances were provided that he

would be housed in a clean and sanitary cell and that he would be placed in an area of the jail that was not overcrowded.

17. The judge concluded, in light of the principles in *Othman v United Kingdom* (2012) 55 EHRR 1, that the assurances could be relied upon. They were appropriate to the state of the applicant's mental health. They come from a state which has routinely provided undertakings that have been honoured. He rejected the applicant's broad-based Article 3 argument.

18. In support of the abuse of process argument, the applicant complained that the Government had failed to disclose or refer to publicly available documents relating to the condition of Californian prisons. There was a critical report from 2016 from Disability Rights California (a non-profit organisation that advocates on behalf of people with disabilities) dealing with the care of mentally ill prisoners. They referred also to material arising from long-running legal proceedings which had resulted in the prison authorities being placed under the continuing supervision of the federal courts to secure improvements in identified shortcomings. At December 2018 the Department of Corrections and Rehabilitation was under investigation by the court for an alleged fraud on the court relating to falsified standards of care. The judge observed that the applicant had the evidence about which they claimed there was no disclosure and that there were not findings of fraud against those who had given the undertakings. He was satisfied that fresh undertakings were unnecessary and that there was no basis for staying the proceedings as an abuse of process, either because of any failure by the Government to discharge the duty of candour, or their bad faith in the manner in which the proceedings had been conducted.

The grounds of appeal

19. On behalf of the applicant, Mr Summers advances three grounds of appeal:

    i) Ground 1: The request is an abuse of process because the Government failed to honour its duty of candour in laying out the problems in the Californian prison estate and thus the treatment the applicant could expect on remand awaiting trial and, if convicted, thereafter. Moreover, the material rendered the assurances unreliable.

    ii) Ground 2: The judge should have found that extradition was barred by Articles 2 and 3 of the Convention in consequence of the applicant's mental illness and risk of suicide.

    iii) Ground 3: The judge should have found that extradition is barred by section 91 on the same basis.

20. Both parties relied upon updated evidence.

The parties' submissions

The Applicant's submissions

21. Mr Summers submits that the applicant's mental illness is such that it removes his capacity to resist the impulse to commit suicide and that he cannot be adequately

protected in custody in California: *Wolkowicz* v *Regional Court at Bialystok, Poland* [2013] 1 WLR 2402 at [8(4)]. His mental condition is contained only through careful psychiatric medication and management. The evidence before the judge did not provide sufficient comfort the he would be properly cared for. In consequence extradition is barred under section 91 of the 2003 Act and by Article 3 of the Convention. Moreover, there is evidence of overcrowding including people sleeping on the floor sleeping in the County jail. He refers to the 2016 Disability Rights California inspection which found that mentally ill inmates routinely received inadequate mental health care. He points to reports of inadequate conditions of detention and of care of those acutely mentally ill.

22. Mr Summers referred us to a 2018 report from Dr Stellman. He inspected the County Jail's mental health and suicide prevention services and 2017 as part of a Structured Negotiations Agreement between the Sheriff's Office and Disability Rights California. He was critical of the standard of health care. The judge, he submits, had not analysed the evidence properly. Had he done so, he would inevitably have concluded that extradition was barred.

23. Mr Summers also submits there was no proper factual basis for the judge to accept the evidence of the United States' witnesses of assurances of special individual treatment. He said that the judge's ability to rely upon assurances was undermined by the fact he said that none of them had acknowledged the known problems at the County Jail. Mr Summers' central point was that these witnesses were advancing a case that they knew to be at odds with the real picture and that this was the failure in the Government's duty of candour: see *Bartulis v Panevezys Regional Court (Lithuania)* [2019] EWHC 3504 (Admin), [133]. He refers to evidence of staff fabricating records (an incident witnessed during an inspection when an officer completed an observation sheet without looking in on the prisoner). Whether as a standalone abuse or as a reason for rejecting 'assurances', the judge ought not to have acted upon the County Jail witnesses' assurances in this case.

24. Mr Summers also points to evidence concerning post-conviction prisons (the responsibility of the Department of Corrections and Rehabilitation). If the applicant is convicted there are several prisons in which he might be held. The judge had to make a general assessment of the mental health care at post-conviction prisons in California. In *Brown v Plata* 131 S Ct 1910 (2011) the United States Supreme Court found conditions in Californian jails for mentally ill offenders to violate the Eighth Amendment to the Constitution (which prohibits cruel and unusual punishments). The case arose out of two separate class actions challenging Californian prison conditions, including overcrowding, and the standard of care: *Coleman v Brown* (1990) and *Plata v Brown* (2001). The court ordered remedial action under the scrutiny of the federal courts including the appointment of Special Masters.

25. He also referred us to a report by the California State Auditor from 2016. This concluded that the Department of Corrections needed to do more by way of oversight and leadership to ensure that its suicide prevention and response policies were followed by prisons. He showed us a 2017 report from the Special Master in the *Coleman* litigation which referred to the number of mentally ill prisoners as having 'ballooned' in recent years and described the 'tortured history' of the Department's attempts to provide a viable staffing plan for the provision of mental health services. Despite federal court oversight over a number of years and the establishment by the

court of a 'Program Guide' designed to deliver adequate health care. Mr Summers submits that the evidence suggests that there are systemic problems in suicide management.

26. The fresh evidence upon which the applicant relies concerns a Federal Court finding that the Department of Corrections and Rehabilitation provided misleading testimony concerning health care for the mentally ill. He showed us a federal court judgment from 17 December 2019. The question was whether the Department had committed fraud on the court or intentionally misled it about psychiatric services at an earlier stage in the litigation. The court had an expert report which pointed to 'substantial indications of defendants' presenting misleading information to the court and Special Master'. One of the witnesses the court heard from at the hearing to investigate this matter was Katherine Tebrock (she has given assurances in these proceedings), who at the relevant time worked for the Department's State-wide Mental Health Program. The court found her testimony 'credible' but also said it was 'disappointing given the overall message it sent'. The court said she had 'failed to fully accept responsibility for her own failures' including 'failures of leadership'. The court went on to find that she had signed a declaration that had been filed with the court which contained misleading information (without a finding that she knew it was misleading).

27. Ms Tebrock signed a declaration in these extradition proceedings on 26 January 2018 which contained assurances about the treatment the applicant would receive including mental health screening on arrival; development of a treatment plan; available forms of intervention; availability of outside hospital treatment if required; that he would be detained in a clean and sanitary cell; suicide prevention; as well as other matters. Mr Summers submits that having regard to the evidence of poor conditions across the Californian prison estate despite years of court supervision, the judge had been wrong to accept the assurances that had been offered. The American litigation showed that the Department and Ms Tebrock were unreliable. He submits that the Californian evidence had been offered in the knowledge that it was untrue.

The Respondent's submissions

28. Ms Malcolm accepts that there is a justified degree of concern about aspects of conditions in Californian prisons. She made no concession that absent assurances the necessary threshold for article 3 (or section 91) purposes was crossed but submits that the central question is whether the judge was entitled to accept that the assurances that have been offered in relation to this applicant are reliable and sufficient to protect him against the risk of suicide. Whatever the difficulties in the California prison system, she submits it is possible to guarantee that a requested person will receive appropriate care and supervision.

29. In writing she summarised the applicant's medical condition as follows:

    i) Prior to his arrest and the commencement of extradition proceedings, the applicant had no severe mental health issues and reported having no mental health difficulties at all;

    ii) His mental health vulnerabilities throughout the proceedings have been almost solely caused by his reaction to his circumstances relating to extradition and his fear of it;

iii) The applicant's mental health issues respond to clinical treatment;

iv) When the applicant hoped he might reach a favourable agreement with the US authorities, he was exhibiting no mental ill health symptoms at all;

v) Symptoms returned with the perception of increased risk of extradition;

vi) The diagnoses of mental health professionals have remained: (a) an adjustment reaction disorder (caused by his new circumstances) and, at times, (b) a depressive disorder. Neither of these is an uncommon mental health condition or unusual in a prison environment.

30. Ms Malcom submits:

i) The position is essentially unchanged. Dr Hopley's most recent report based on his review of medical records from 8 February 2019 to 11 June 2020 recorded that the applicant was of stable mental state with no significant risk issues presenting. Nonetheless, he remained emotionally vulnerable to experiencing a rapid and significant deterioration of his depressive order if facing extradition. As a result, submits Ms Malcolm, the applicant does not meet the threshold identified in *Wolkowicz* test for his suicide risk to prevent extradition. It does not remove his capacity to resist taking his own life. Such risk as there was would be appropriately managed. She referred us to a State of California Board of State and Community Corrections report from February 2020 as an encouraging review of the prison mental healthcare and suicide capabilities. The applicant's medical history would be made available to prison medical staff. Ms Malcolm reminded us of the offer to put Dr Hopley in direct contact with the doctor supervising the treating psychiatrists at the County Jail.

ii) The criticism of Ms Tebrock's evidence in the Californian proceedings does not undermine the reliability of the assurances. In particular, she relies upon the declaration from Eureka Daye, dated 16 June 2020 (postdating the judgment) which amounts to a replacement of that evidence. Ms Daye is the Acting Director of Mental Health for the California Correctional Health Care Services and of the State-wide Mental Health Program. She declares that she has read Ms Tebrock's declaration of 26 January 2018 and that "Based on my knowledge and experience of CDRC/CCHCS' screening, housing, transfer and mental health policies and procedures, Katherine Tebrock's declaration accurately describes those processes."

iii) There was no breach of the duty of candour. Ms Malcolm reminds us that the Spellman report related to events which occurred in 2016 when the health care contractors in the County Jail were different. She points out that the applicant had possession of all the material which he wished to deploy and had deployed it effectively.

iv) The judge was correct to conclude that the applicant would be appropriately cared for within the prison estate and, additionally, that the recent information put before this court confirms the position. Specific assurances, going back to the declaration of Kathleen Allison (Deputy Director of the Division of Adult

> Institutions, Facility Support, within the Department of Corrections and Rehabilitation) of 19 January 2016 provide a detailed explanation of facilities and practices.

Legal principles

The test to be applied on the application

31. The question for us is whether there is an arguable basis for saying that the district judge was 'wrong' in his conclusions on any or all of the three grounds of appeal: *Love v Government of the United States of America* [2018] EWHC 172 (Admin), [260].

Suicide risk and extradition

32. The approach was summarised in *Wolkowicz* at [8]. In short, the threshold necessary to prevent extradition on grounds of suicide risk is high. That risk must be linked to extradition with the question being whether on the evidence the risk of the person succeeding in committing suicide, whatever steps are taken is sufficiently great to result in a finding of oppression. The mental condition must be such that it removes his capacity to resist the impulse to commit suicide, otherwise it will not be his mental condition but his own voluntary act which puts him at risk of dying. Is the risk that the person will succeed in committing suicide, whatever steps are taken, sufficiently great to result in a finding of oppression? The question will become whether there are appropriate arrangements in place in the prison system of the country to which extradition is sought so that those authorities can cope properly with the person's mental condition and the risk of suicide?

Abuse of process, disclosure, and extradition

33. The alleged abuse relied upon by the applicant relates not to the conduct of the prosecuting authority, nor the Justice Department through whom the extradition request was made, but to alleged misconduct by the prison authorities in California in providing an incomplete picture when describing the conditions in which the applicant would be held in custody both on remand pending trial and after conviction. A limited duty of disclosure has been recognised in extradition cases. It has generally been expressed as a duty to disclose evidence which renders 'worthless' the evidence upon which it relies in support of its extradition request: *Wellington v Governor of Belmarsh Prison* [2014] EWHC 418 (Admin), which was endorsed by the Privy Council in *Knowles v Government of United States of America* [2009] 1 WLR 47. The disclosure in issue related to the underlying allegation of criminality. In *R (Gambrah) v Crown Prosecution Service* [2013] EWHC 4126 (Admin), at [8] it was put as an "obligation to disclose evidence which destroys or very seriously undermines the evidence on which it relies."

34. In *Bartulis v Panevezys Regional Court (Lithuania)* [2019] EWHC 3504 (Admin), [135], a prison conditions case, the Court said at [133]:

> "… the duty of candour must … mean that evidence or assertions should not be advanced which are inconsistent with the factual position known to the requesting state. That basic

> component of the duty of candour must arise in relation, for example, to concerns raised by a CPT inspection, not yet published as a report, which are either accepted or cannot be contradicted by the requesting state. … [I]n our view the principle is clear: a requesting state cannot in candour advance a position which the representatives of the state know to be false or misleading …"

35. That case concerned a report which had not been published in respect of which the Government of Lithuania remained in dialogue with the Committee for the Prevention of Torture.

Discussion

Grounds 2 and 3

36. The district judge was right to approach the issues raised in these grounds of appeal on the basis that there is a sufficiently high risk of the applicant committing suicide that he needed to be satisfied that the risk would be appropriately managed in prison in California. That, in turn, required him to consider the effectiveness of the various assurances that have been given on behalf of the County of Santa Barbara's Sheriff's Office and the Department of Corrections and Rehabilitation. Although the Government argued that the medical evidence did not show that the applicant's mental illness had entirely removed his voluntary ability to choose to commit suicide (*Wolkowicz*, supra, [8(d)]) it was unnecessary for the judge to determine that issue if the assurances provided sufficient comfort.

37. Assurances are commonly given in extradition cases in order to mitigate risks which might otherwise bar extradition. It is common for assurances to be given in respect of conditions of detention and the treatment of physical and mental illness (and associated suicide prevention) and they form an important part of extradition law.

38. The analytical tools by which the effectiveness of assurances is to be measured were explained by the European Court of Human Rights in *Othman v United Kingdom* (2012) 55 EHRR 1 between [187] and [189] in a passage which has become very familiar and unnecessary to set out.

39. In *Giese v Government of the United States of America* [2018] 4 WLR 103 at [38] the court noted:

> "Whilst there may be states whose assurances should be viewed through the lens of a technical analysis of the words used and suspicion that they will do everything possible to wriggle out of them, that is not appropriate when dealing with friendly foreign governments of states governed by the rule of law where the expectation is that promises given will be kept. The principles identified in *Othman*, which are not a check list, have been applied to assurances in extradition cases in this jurisdiction. A court is ordinarily entitled to assume that the state concerned is acting in good faith in providing an assurance and that the relevant authorities will make every effort to comply with the

> undertakings, see *Lord Advocate v Dean* 2017 [UKSC] 44; [2017] 1 WLR

40. The United States is a friendly foreign state and has offered assurances on one sort or another in support of many extradition requests. *Giese* concerned an extradition request for an alleged sex offender for trial in California. The issue in respect of which assurances were given was that there would be no attempt to secure the requested person's indefinite detention at the end of his sentence (if convicted) as a sexually violent predator. An earlier request for the appellant's extradition had failed because of that possibility, which was held to violate Article 5 of the Convention. The argument was that the assurance could not be effective because the District Attorney who gave it (the position being an elected one) could not bind his successors in office, who might choose to take a different view. The court rejected this argument at [47] and [49]:

> "47. … We start by reminding ourselves that the United States of America, and its constituent states including California, is a mature democracy governed by the rule of law. The assurance given by the District Attorney has been transmitted by the Department of Justice as a solemn promise between friendly states who have long enjoyed mutual trust and recognition. Assurances have been accepted routinely from the Government and the promises made have been honoured. The stated intention of the further assurances is clear, namely that the appellant will not be subjected to an order for civil commitment if convicted of the crimes for which his extradition is sought.
>
> …
>
> 49. … There is nothing to suggest that the Californian authorities would seek to circumvent the intent of the assurance … The good faith of the Department of Justice and the District Attorney are not in doubt. In evaluating the assurances two questions should be borne in mind. Why would anyone seek to go behind them and what would happen in they did? The District Attorney has stated unequivocally that his successors will be bound by the assurance … But even if a current District Attorney cannot strictly bind his successors, the intention of the assurance is clear, namely that no one will seek a civil commitment order against the appellant. The appellant will have the assurance and would flourish it were any attempt to circumvent it made by anyone. It is scarcely conceivable that the authorities in California or the Department of Justice would stand idle were an official to ignore an assurance solemnly provided between friendly nations."

41. We have had regard to the quality of assurances given and, whether, in light of California's practices, they can be relied upon. We take the same approach to the assurances that have been offered in this case by, in particular, Mr Lammer, and Ms Daye as this court did in *Giese*. We are satisfied that the assurances are adequate to sufficiently guard against the risk that the applicant might commit suicide in custody

and guard against any potential Article 3 risk which could arise because of prison conditions more broadly.

42. We note the following points. All the assurances were declared to have been 'given under pain of perjury under the laws of the State of California'. They have been given by State and County officials. All of them were transmitted by the Department of Justice in support of the Government's extradition request. We have no doubt that there would be very serious consequences were they not honoured. That prison conditions in California have been so closely monitored for many years now in a variety of different courts gives us comfort that any breach (in the unlikely event that one should occur) would be rapidly identified and rectified. The applicant will be legally represented in California and we have no doubt that his attorney would assiduously monitor conditions of detention and report any breach immediately. We do not consider for one second that those in California who will be responsible for the applicant's detention will attempt to determine if the effect of the assurances can be avoided, or that they will be looking to breach them.

43. Mr Lammer's first declaration of 12 August 2016 sought to engage directly with the treatment recommendations of Dr Hopley by confirming that Mr Miao could receive what Dr Hopley recommended. Information was provided by Mr Lammer in conjunction with a mental health professional, Dr Bradshaw. It identified the low level of completed suicides. It confirmed that counselling and therapy would be provided to Mr Miao. It confirmed that segregation is used on a limited basis and that prisoners are not kept in segregation unless it is necessary. Mr Lammer noted the assurances that had been requested. Those assurances were given without reservation. Mr Lammer was able to provide assurances that all of the treatment recommended by Dr Hopley would be provided including, if necessary, treatment at a psychiatric centre outside of the prison.

44. Mr Lammer's second declaration of 18 November 2016 confirmed that if the applicant's condition persisted arrangements would be made for him to be hospitalized 'without delay'. His return to the County Jail would be on the assessment of a psychiatrist and only when it was concluded he was stable and no longer actively suicidal or gravely disabled. On his return he would be monitored by a mental health clinician in psychotherapy sessions and by a psychiatrist as needed.

45. Mr Lammer's third declaration of 24 January 2018 stated:

> "I will be providing Dr Eby's, Dr Koleth's, LMFT Sanchez's and our assurances … In offering these assurances we acknowledge and accept the facts of Mr Miao's mental health condition and clinical needs as set forth in the various reports of Dr Hopley. We are able to provide Mr Miao a level of care consistent with what he is currently receiving in the UK."

46. What followed was a series of specific promises as to what will happen to the applicant upon surrender:

> "Mr Miao will be properly screened upon arrival at the county jail. All people who are arrested and brought into the county jail are properly screened for medical conditions and mental

> illness. With our new healthcare provider CFMG as of April 17, 2017, the screening consists of a four-paged medical/mental health assessment. It should be noted that this screening process is more rigorously detailed than what was provided with my previous declarations. California licensed medical and mental health clinicians would assess Mr. Miao upon intake at the jail. Given the knowledge we have of Mr. Miao, we will ensure he is properly screened by both medical and mental health clinicians.
>
> Additionally, mental health clinicians will provide a thorough suicide risk assessment which entails a two-paged assessment and treatment planning to mitigate the risk of suicide."

47. Mr Lammer went to undertake that, among other things, the applicant will not be kept in an overcrowded part of the jail and that he will receive supervision and care appropriate to his needs. He wrote:

> "Mr Miao will be subject to a proper risk evaluation. Those who suffer from a mental health related illness are given a risk evaluation. This evaluation includes a full mental status exam and, if needed, suicide risk assessment and evaluation exam. These exams will be conducted by a licensed mental health clinician. The clinician will determine what level of care Mr. Miao may need and will make immediate arrangements for such care. Mr Miao will be examined by a licensed psychiatrist too for an evaluation and a review of medications. Mr Miao will be monitored by the mental health and medical clinicians. A follow-up will be conducted on a 30/60/90-day basis by the psychiatrist or sooner if warranted."

48. Mr Lammer's fourth declaration, dated 11 June 2020, confirmed the following:

> "I continue to emphasize that what I have already provided is applicable specifically to Mr Miao and there is no doubt that the relevant authorities are, and will remain, aware of the assurances in place in order to ensure compliance with what the standards outline … In conclusion, the County of Santa Barbara relies upon its assurance provided and affirmed in good faith … Careful consideration has been given by the appropriate authorities to ensure the provision of responsive, professional and medically appropriate treatment of Mr Miao, as necessary, at all stages of his detention following extradition."

49. In addition, he provided up-to-date information about the response to COVID-19.

50. We turn to Ms Tebrock's declaration of 26 January 2018, as validated and confirmed by Ms Daye on 16 June 2020. Ms Tebrock wrote:

> "2. In offering these assurances we acknowledge and accept the facts of Mr Miao's mental health condition and clinical

> needs as set forth in the various reports of Dr Hopley. We are able to provide Mr Miao with a clinically appropriate level of care, consistent with his current mental health status and in accordance with the federally approved 'Program Guide' for delivery of mental health care in the [Department of Correction and Rehabilitation]."

51. Ms Tebrock went on to offer assurances about mental health screening on reception to prison and what treatment will be available if the applicant screens positive for a mental health condition; that his housing would take into account mental health issues including suicide risk; that he would be monitored by a mental health treatment team including having a treatment plan put into place. The treatment plan includes the diagnosis of identified problems, and treatment objectives measurable in behavioural terms; treatment services that are available and other institutional services designed to impact the identified problems and achieve individual treatment objectives; the availability of a Crisis Intervention Team (CIT). CITs have access to custody, nursing, and mental health staff who work collaboratively to assist with those in psychotic crisis in prison. She said that interventions may include, but are not limited to, a range of group therapy, coping skills training, psychoeducation, medication management, individual therapy, and recreational therapy. At [9], as we have already said, Ms Tebrock undertook that the applicant will be detained in a clean and sanitary cell. She added:

> "If Mr Miao expresses suicidal ideation, makes suicide threats, or attempts suicide, suicide prevention efforts will be initiated including potential placement on direct observation until a clinician trained to perform a suicide risk assessment (psychiatrist, psychologist, clinical social worker) conducts a face-to-face evaluation.
>
> In the event that a clinician determines that Mr Miao is in need of a mental health crisis bed (MHCB), he will be placed in alternative housing pending the transfer.
>
> Alternative housing is a location away from the normal housing location, on 1:1 constant observation. Mr Miao will be transferred to a mental health crisis bed within 24 hours of referral if he meets the inpatient admission criteria.
>
> Mr Miao will receive appropriate clinical care if discharged from a mental health crisis bed. The patient will be returned to a lower level of care only when the treatment team in the MHCB determines that he is stable and is no longer actively suicidal, homicidal, or gravely disabled."

52. We are satisfied from this material that the applicant will be properly cared for and his mental health needs and suicide risk appropriately taken into account and dealt with as required. The assurances that have been given are specific and detailed and have been given by an on behalf of individuals who have the ability to ensure they are fulfilled. They have been in good faith. They have been the product of much detailed thought and care and consideration and are based, first and foremost, of the clinical

assessment of Dr Hopley who has assessed the applicant over a number of years. The criticisms made of officials in the litigation surrounding prison conditions in California do not support a conclusion that the assurances are unreliable.

53. As we were finalising this judgment, the parties sent us the judgment of the United States District Court for the Central District of California in the case of *Murray and others v County of Santa Barbara and others* (Case No. 2:17-cv-08805-GW-JPR), given on 16 July 2020. Mr Summers also sent us a note in relation to the California court's judgment.

54. That judgment is, in effect, a settlement between the parties, which provides for remedies for the future in relation to prison conditions in Santa Barbara County following a process of negotiation and visits by experts. The Plaintiffs are those who are now, or in the future will be, incarcerated in the Santa Barbara County Jail system, as well as those who are classified as disabled under the relevant American laws. The action was filed on 6 December 2017. It alleges that the Defendants hold the Plaintiffs in deficient facilities that are overcrowded, understaffed, and unsanitary and that they fail to provide minimally adequate medical and mental health care to people incarcerated in the jail. The judgment provides for various expert monitored remedies that are to be implemented.

55. We have had regard to the California court's judgment and to the related submissions. The plan for the future is to remedy alleged defects. In any event, there are specific assurances in place about Mr Miao. There is nothing in the judgment that causes us to doubt the conclusions that we have reached that Mr Miao will be properly treated in California having regard to the specific issues in his case of which the authorities there have been made aware and about which they have given undertakings.

Ground 1: abuse of process

56. We accept the Government's submissions on this ground of appeal. It is unarguable that this extradition request amounts to an abuse of process when the material on which the applicant relies was readily available and, in any event, does not substantially undermine the requesting state's case.

Conclusion

57. We are satisfied that judge was correct in the conclusions that he reached. His decision is not arguably wrong and we therefore refuse permission to appeal.