1. I submit this evidence in a personal capacity as a researcher with a specialist interest in extradition, race and citizenship in the context of the War on Terror. I have been researching this area for three years with a particular interest in the cases of terrorism suspects who have been requested for extradition and extradited to the US.

2. The evidence I submit specifically concerns matters relating to the 2003 US-UK Extradition Treaty. There are two main issues that I wish to discuss and submit to the committee for consideration. The first concerns the imbalance of extradition and its use for prosecution of terrorism-related offences in the US. The second concerns the importance of retaining safeguards such as the requirement of prima facie evidence.

Extradition and terrorism-related offences

3. There has been much debate and concern regarding the issue of imbalance within the US-UK Treaty. While my purpose here is not to deliberate over the legal distinctions in evidentiary requirements set by each of the two nations, I would submit that there are clear imbalances which are revealed through examination of the extradition cases. It is clear, for example, from statistics that when extradition is invoked for terrorism-related offences the US has taken the lead role of prosecutor. Since the 2003 US-UK Treaty came into force all of the extradition requests for terrorism-related offences have been made from the US to the UK.¹ There were no requests from the UK to the US for terrorism-related offences.

4. These statistics do not merely look to be coincidental. There have been seven individuals who were extradited for terrorism-related offences between 2004, when the US-UK Treaty came into force in the UK, and 2013. Of these seven cases, at least four individuals were extradited for charges where links to the US were tenuous or when there was an arguable case for concurrent jurisdiction.

5. In the cases of Babar Ahmad and Talha Ahsan who were indicted for alleged terrorism-related offences that concerned associations with a website- Azzam Publications, the connections to the US were simply that one of the websites had been hosted for a short time on a US server. Despite the fact that the European Court interim decision on the cases of Ahmad and Ahsan stated that it had an acknowledgement from the UK Government that they could be tried in Britain,² in July 2004,

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¹ Revealed from freedom of information request to the Home Office. Ref 26373, 11 April 2013.
² Babar Ahmad and Others v. the UK, European Court of Human Rights Partial Decision, 6 July 2010, para 175, p.71.
October 2006 and December 2006, the Crown Prosecution Service (CPS) and the Attorney-General declared that there was insufficient evidence to charge Babar Ahmad with any criminal offence under UK law and that he should therefore be extradited. On 17 May 2005, Senior District Judge Timothy Workman approved Babar Ahmad’s extradition at Bow Street Magistrates Court, stating, ‘This is a troubling and difficult case. The defendant is a British citizen who is alleged to have committed offences which, if the evidence were available, could have been prosecuted in this country...’. On 4 December 2011 Ahmad’s lawyers received a letter from the CPS that admitted for the first time it was never given the evidence that was sent to the US, apart from a few documents. The bulk of the evidence was shipped straight to the US by the Metropolitan Police (House of Commons debate, 2011, c101). Talha Ahsan was not questioned at all by British authorities in regards to the charges he was being indicted for. He was simply arrested pending extradition.

6. In the case of Abid Naseer, who was extradited to the US in January 2013, the proceedings against him largely concerned allegations of a planned terrorist attack in Manchester, England. His lawyers wrote to the Director of Public Prosecutions (DPP) inviting him to proceed against Abid Naseer as a domestic UK terrorist trial. The DPP did not respond and District Judge Purdy refused to adjourn extradition proceedings pending any response from the DPP or the outcome of any judicial review, stating that ‘The DPP was obviously long since aware of the April 2009 arrest and these extradition proceedings and had had ample opportunity to commence domestic proceedings but chose not to do so’.

7. In the case of Fahad Hashmi, a US citizen who had been studying in England and was extradited to the US in 2007, he was accused of providing material support to a terrorist organization. Appealing against his extradition, his lawyers argued ‘that his conduct...occurred wholly within the United Kingdom and had nothing to do with America’. The Judge stated ‘essentially what he has said to have done is to have allowed his flat in London to be used by someone to store various items of clothing etc., pending their despatch by that person to Al Qaeda in Afghanistan’. Yet there was judged to be limited connection to the UK.

Safeguards: innocent until proven guilty and the importance of prima facie evidence

8. It is worth noting that between 2004 and 2013 163 extradition requests were made by the US to the UK. Only 7 of these requests were for terrorism-related offences (4%). During this time 106 people were extradited, but only 7 were extradited for terrorism-related offences (though some of these related to pre-2003 requests). There are at least one or two cases currently pending. Thus terrorism-related cases only account for a small proportion of total extradition requests from the US. Yet it is the War on Terror which has been used politically to justify a shift in extradition arrangements.

9. In a House of Commons parliamentary debate on 5 December 2011 a number of MPs spoke against current arrangements with the US calling for greater safeguards and a redress of imbalances. But the call for greater safeguards in the political debate was fraught with a distinction being made between those accused of terrorism-related offences and those indicted for more ‘mundane’ affairs. Dominic Raab MP questioned ‘whether, in taking the fight to the terrorists and the serious criminals after 9/11, the pendulum swung too far the other way’\(^4\). David Davis MP stated that ‘we should keep in mind that the rather draconian process that we have, which was put in place to defend us against terrorism, does not appear to have had much impact in that respect...The truth of the matter is that we will have far more Gary McKinnons extradited than Osama bin Ladens’\(^5\). The danger with this distinction apparent in the parliamentary debate is that there is an assumption of guilt in operation for terrorist suspects which is being used to legitimize a repeal of important safeguards for all. Exemplifying this sentiment, following the extradition of Babar Ahmad, Talha Ahsan, Abdul Bary, Khaled Al-Fawwaz and Abu Hamza, Theresa May opened up her speech to the 2012 Tory Party Conference with the remark ‘Wasn’t it great to say goodbye – at long last – to Abu Hamza and those four other terror suspects on Friday?’\(^6\) None of those extradited had been tried in a court of law at that time, yet guilt was assumed through the celebration of their removal.

10. This points to the incredible importance of implementing robust judicial safeguards, including a requirement for prima facie evidence prior to extradition being granted. Judicial evidence from terrorism-related cases, supports this further, indicating that there is the potential for grave injustice. The case of Lofti Raissi is pertinent here. He was indicted and requested for extradition prior to the 2003 US-UK Extradition Treaty coming into force. On 21st September 2001, Lotfi Raissi, an Algerian National living in London, was the first person arrested in connection with the 9/11 attacks. He was detained in custody for a 7-day period. Immediately following his de-arrest for lack of evidence, he was re-arrested under a provisional extradition warrant issued by the United States. Lofti Raissi remained incarcerated in Belmarsh prison for four and a half months. The initial charges against him were minor offences which the US government declared to be ‘holding charges’ while they sought to collect evidence that would allow them to bring terrorism charges against him. On 24 April 2002, the case against him fell apart when prosecutors had failed to submit any robust evidence to support their claims, and Senior District Judge Workman discharged the appellant in relation to all the extradition charges. The Judge stated ‘the court has received no evidence at all to support that allegation.’\(^7\) It later transpired that the purpose of arresting Raissi had been for interrogation and information-gathering. In a report of the case in The Washington Post, an FBI official was quoted by the newspaper as stating "We put him in the category of maybe or maybe

\(^4\) House of Commons Debate (2011) ‘UK Extradition Arrangements’ 5 December 2011, c82
http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111205/debtext/111205-0002.htm

http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111205/debtext/111205-0003.htm

http://www.politics.co.uk/comment-analysis/2012/10/09/theresa-may-speech-in-full

\(^7\) Lofti Raissi and Secretary of State for the Home Department 2008 Case No: C1/2007/0694/, s.2.
not, leaning towards probably not. Our goal is to get him back here and talk to him to find out more". In an appeal hearing to the Supreme Court for compensation, Lord Justice Hooper stated:

‘Viewed objectively, it appears to us to be likely that the extradition proceedings were used for an ulterior purpose, namely to secure the appellant's detention in custody in order to allow time for the US authorities to provide evidence of a terrorist offence. It should be noted that it would have been unlawful for the UK police to detain the appellant any longer without evidence to justify a charge; such evidence did not exist’

11. Under the current arrangements in the 2003 US-UK Treaty, had Lofti Raissi’s case been ongoing when the Treaty came into force, he would have likely suffered a very different fate and been extradited to the US in the way that others such as Babar Ahmad and Talha Ahsan subsequently have been. The removal of the prima facie evidence requirement opens up the possibility for extradition to occur when evidence against the accused is insufficient and would not meet the threshold in a British Court of Law. Lofti Raissi’s case indicates that there may be a number of motivations by the US for requesting an individual in the context of the War on Terror, not all of which would hold up to scrutiny in a British court of law and thus warrant extradition.

12. There are then also further issues raised relating to the legal process in the US that has become customary for terrorism-related cases which includes the use of pre-trial solitary confinement and the extensive use of a plea bargain system that obstruct the rights to a fair trial and due process (I suspect other submissions will elaborate on this). We need to strongly consider the implications of extradition to the US where they enter a system in which most criminal cases do not go to trial. This stands to have serious consequences for the justice system and for individuals forced into making a guilty plea as the better alternative.

12 September 2014

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9 Lofti Raissi and Secretary of State for the Home Department 2008 Case No: C1/2007/0694/, s.144.