IN THE WESTMINSTER MAGISTRATES' COURT

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Requesting Government

-v-

COREY DE ROSE

Requested Person

JUDGMENT

Issues raised:

- Section 83(A) - Forum
- Section 91 – Mental or physical health
- Article 8 ECHR

Representation at the final hearing:

- Government – Mr Caldwell
- Requested Person – Mr Fitzgerald QC and Mr Hall

Introduction and history of proceedings

1. The Government of United States of America ('the Government') has submitted a request for the extradition of Corey De Rose ('the Requested Person or RP') to face a criminal prosecution for the matters set out in the request and detailed below.

2. This Request is governed by the provisions of Part 2 of the Extradition Act 2003 (the Act). The United States of America is designated for the purposes of sections 71(4), 74(5), 84(7) and 86(7) of the 2003 Act. This means that the Court is not required to determine whether the extradition request contains sufficient evidence to establish a *prima facie* case.

3. The RP was arrested on 9 February 2021 pursuant to a provisional arrest warrant. The initial hearing took place the following day and the case was adjourned for the service of the full extradition request. The RP was remanded in custody.

4. On 7 April 2021 the Secretary of State issued a certificate pursuant to section 70 of the Act, which was served with the full extradition request on 8 April 2021. The RP was granted conditional bail by the Court on 10 May 2021 and he has remained on bail since this date. The case was allocated to me and the full extradition hearing was listed for a 4 day hearing commencing on 22 November 2021.

5. The full hearing commenced on 22 November 2021 and concluded on 25 November 2021. At the conclusion of the final hearing I made directions for the service of written closing submissions. I therefore reserved judgment until 23 January 2022. I granted the RP conditional bail until this date.

The Extradition Request

6. The extradition request and the Affidavits of Mr Nathan P Kitchens provide details, or particulars, of the criminal conduct. I am very grateful to Mr Caldwell who provided a clear and concise summary of the criminal conduct described in these documents in his Opening Note and Skeleton Argument. No issue was taken with the summary of the criminal conduct, as set out in the Opening Note and Skeleton Argument and opened at the final hearing before me, save to extent of the value of the loss. I will deal with that matter later in this judgment. That said, for the purposes of setting out or summarising the particulars of the criminal conduct, I am satisfied that it is an accurate summary. I can do no better than that summary and therefore I re-produce that summary here, in this judgment. The criminal conduct can be summarised as follows:

   i) The RP is charged in the United States with four counts, which includes wire fraud, conspiracy to commit wire fraud, conspiracy to commit money laundering and aggravated identity theft contrary to the United States Code.

   ii) Between approximately 2017 and 2018, members of an online collective calling itself The Community conspired to hack numerous individual victims through SIM Hijacking or SIM Swapping. SIM Hijacking is a hacking technique that involves stealing a person's identity by compromising his or her mobile phone provider and gaining control of his or her mobile phone number with the objective of stealing bitcoin and other cryptocurrencies.

iii) During the investigation, U.S. authorities identified the Requested Person, and his co-conspirators, including another UK citizen residing in Scotland and U.S. citizens residing in the United States, as members of The Community. U.S. authorities believe that, between 2017 and 2018, the Requested Person, his co-conspirators, and other members of The Community stole tens of millions of dollars' worth of cryptocurrency from victims located in the United States.

iv) As part of the scheme, the Requested Person and his co-conspirators researched victims over the Internet. Typically, targets were selected by researching publicly available sources to identify individual victims that the co-conspirators suspected possessed large amounts of cryptocurrency. These sources included news articles, social media accounts, corporate discourses, and announcements for conferences and symposia focusing on cryptocurrency. They then contacted those victims' mobile phone providers and—through either social engineering or bribery—fraudulently transferred control of the victims' mobile phone numbers to mobile devices controlled by one of the co-conspirators located in the United States or Canada.

v) Once the Requested Person and his co-conspirators controlled the victims' mobile phone numbers, they used them to compromise the victims' email and other online accounts, typically by initiating password resets that sent text messages to the mobile numbers now controlled by the co-conspirators. The ultimate goal was to gain control of crypto-currency private keys, cryptocurrency recovery seeds, or online crypto-currency exchange accounts in order to steal the victims' cryptocurrency. Over the course of the scheme, different co-conspirators played different roles. Some of the Requested Person's roles included researching the victim and identifying accounts to be compromised. He is specifically identified and accused in the fraud on R.M.

The Attack on RM

vi) In July 2017, a team of hackers affiliated with The Community, including the Requested Person, stole the cryptocurrency, ether and an Ethereum-based crypto-currency tokens from a U.S. citizen victim, R.M. To start the attack, one hacker contacted T-Mobile customer service, impersonating R.M. At the request of the hacker, T-Mobile changed the routing of R.M.'s mobile phone number so that calls and messages intended for R.M. were routed instead to a phone controlled by the hackers. This enabled the hackers to request codes for password resets on R.M.'s online accounts, which were sent to the phone controlled by the hackers. In the course of the attack, the hackers gained access to R.M.'s Gmail and Paypal accounts as well

as a private cryptocurrency wallet controlled by R.M. Once the hackers accessed R.M.'s wallet, they transferred approximately $8.5 million worth of ether and the Ethereum-based token to cryptocurrency wallets controlled by the hackers.

Evidence of the Requested Person's participation

vii) The investigation revealed that the Requested Person was associated with the Skype moniker "live:cr00k000". Specifically, U.S. authorities reviewed Skype chats in which other Skype users referred to "live:cr00k000" as "Corey," and the name "Corey DE ROSE" was included in multiple chats. Additionally, "live:cr00k000" provided the full name, address, and email address of the Requested Person to another user in the context of discussing a purchase. Skype chats also contained references to an Instagram account linked to the Requested Person, and the same IP address was used in March 2017 to log into both the "live:cr00k000" Skype account and the Requested Person's Facebook account. In multiple Skype chats, the user "live:cr00k000" identified an email address, cjihyf@gmail.com, under his control. Through U.S. legal process, U.S. authorities obtained and reviewed records regarding the account associated with email address cjihyf@gmail.com, as well as the contents of the email account. Email content further linked the email address to the Requested Person, including:

(a) Billing invoices addressed to him denominated in bitcoin;

(b) Emails including his name and home address;

(c) correspondence setting up an appointment in London to obtain a "Citizencard" in his name;

(d) A completed form from the "HM Courts and Tribunals Service" including his full address requesting an official names change from "Rachid Medhi Benhab" to "Corey James Rachid Benhabib De Rose";

(e) n insurance policy in his name bearing his address; and

(f) A rental invoice in his name.

viii) U.S. authorities also reviewed the search history for the above-referenced email account, which revealed that the account user ran a search the day after the attack for the type of Ethereum-based token stolen from R.M. Roughly two weeks later, the account user also searched for the victim, "R.M."

ix) In order to identify the hackers and locate the stolen cryptocurrency, U.S. authorities reviewed Skype chat logs connected to the attack. U.S. authorities determined that one of the participants in the attack used the Skype moniker "live:cr00k000." A review of the chat logs revealed that "live:cr00k000" provided the Personally Identifiable Information (PII) necessary to impersonate R.M. to Co-Conspirator 1 via Skype. A review of the chat logs showed that the day before the July 2017 SIM-swapping attack, "live:cr00k000" and a Skype user later identified as Co-Conspirator 1 discussed their step-by-step efforts to identify R.M.'s accounts, obtain his credit report, and contact R.M.'s phone provider, and they openly discussed SIM swapping.

x) A review of the chat logs further revealed that, on the day after the attack, Co-Conspirator 1 told "live:cr00k000" the amount of cryptocurrency stolen in the attack and discussed efforts to convert the Ethereum-based token to a more liquid cryptocurrency, noting that he was going to "let [Co-Conspirator 4] exchange it." On the same day, the Skype user "live:cr00k000" discussed with a Skype user later identified as Co-Conspirator 3 each conspirator's role in the attack and the pay-out for each person. Cryptocurrency tracing confirmed that DE ROSE and Co-Conspirator 3 received the exact pay-outs from the SIM-swapping attack that were discussed in this chat.

xi) The stolen crypto-currency was consolidated into a wallet containing a bitcoin address ending in V2aTDrtCjPjjVuPBL controlled by one of the U.S. co-conspirators. The US authorities have established that the Requested Person provided Co-Conspirator 1 with a wallet address in a Skype chat around 12:40 UTC on the day of the theft. Blockchain information verified that, less than one minute later, the Requested Person's 's wallet address received approximately 108.18 bitcoins valued at approximately $300,000 at the time of the transaction from a bitcoin address held by Co-Conspirator 1.

xii) The supplemental affidavit of Mr Kitchens confirms that the victim, R.M. is a United States citizen who was in New York at the time of the SIM-swapping attack and when his identity and cryptocurrency assets were stolen. (See § 10 of the Prosecutor's Affidavit.) In addition, the Superseding Indictment alleges that after the SIM-swapping attack, an additional U.S. co-conspirator, Anthony Francis Faulk, participated in the laundering of the stolen proceeds to conceal the illicit transfer of funds. (Indictment §21). Mr. Faulk is the U.S. co-conspirator described at §12 of the Prosecutor's Affidavit, which describes how Mr. Faulk consolidated all the stolen proceeds from R.M. into a single bitcoin address under his control and then distributed those proceeds for pay-outs to the other co-conspirators. At the time of this conduct, Mr. Faulk was in the United States.

Section 78(2) and (4)

7. Section 78(2) of the 2003 Act places a duty on the Judge dealing with the extradition request, at the extradition hearing, to decide a number of matters.

8. I need to be satisfied that the documents sent to me include the following:

   i) The documents referred to in section 70(9) of the 2003 Act, namely the extradition request and the accompanying certificate issued by the Secretary of State.

   ii) The particulars of the person whose extradition is requested.

   iii) The particulars of the offence specified in the request.

   iv) In the case of a person accused of an offence, a warrant for his arrest issued in the category 2 territory.

9. Having reviewed the documents received, I am satisfied to the necessary standard that the provisions of section 78(2) have been fully complied with. The documents sent to the Court include the following:

   i) The section 70 certificate issued by the Secretary of State.

   ii) The particulars of the RP. The RP is known by several names, namely Corey James Rachid Benhabib De Rose, Corey Benhabib De Rose, Rachid Medhi Benhad, Benhabibderose and Derose.

   iii) The particulars of the offences specified in the request, which have been set out above and summarised by Mr Caldwell for which I am grateful.

   iv) The warrant for the RP's arrest issued in the USA, specifically a warrant issued by the District Court of the Northern District of Georgia dated 7 October 2020.

   Therefore, as set out above, I am satisfied to the necessary standard that the provisions of section 78(2) have been fully complied with

10. I must now move on to consider the provisions of section 78(4) of the 2003 Act. No issue was taken in relation to section 78(4) of the Act on behalf of the RP.

11. Section 78(4) of the 2003 Act requires me to consider and to be satisfied that:

(a) the person appearing before me is the person whose extradition is sought;

(b) each offence specified in the request is an extradition offence; and

(c) copies of the documents received from the Secretary of State have been served on the person.

12. I am satisfied that the RP, who appeared before me in these proceedings, is the person whose extradition is sought. I am also satisfied that the documents sent to me by the Secretary of State have been served on the RP.

13. In relation to whether the offences are extradition offences, no issue is taken in relation to this matter. The only issue taken on behalf of the RP in relation to the offences is the value of the loss or harm. This does not mean that the offences are not extradition offences and as I have said, no issue was taken in relation to section 137 of the Act. I will give full reasons as to why the offences are extraditions offences below in this judgment and I adopt those reasons here. Suffice to say, that I am satisfied to the necessary standard that the offences are extradition offences for the reasons that will follow.

14. Therefore, having reviewed the information and documentation received, I am satisfied to the necessary standard that the provisions of section 78(4) have been fully complied with. I am satisfied that the provisions of section 78(4) have been met.

Section 137 - Extradition offence

15. I need to consider whether the offences are extradition offences. As this is an accusation matter, it is section 137 of the Act which applies in this case. As set out above, no issue was taken by the RP in relation to this matter other than in relation to the alleged value of the loss or harm. This does not mean that the offences are not extradition offences. There are no specific challenges made on behalf of the RP but of course the burden of proof is on the Government in relation to whether the offences are extradition offences.

16. In relation to section 137 of the Act, in this case the relevant section is section 137(3) of the Act. Pursuant to section 137(3) of the Act, the conduct constitutes an extradition offence if:

(a) the conduct occurs in the category 2 territory;

(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months

or a greater punishment if it occurred in that part of the United Kingdom;

(c) the conduct is so punishable under the law of the category 2 territory (however it is described in that law).

17. I am satisfied so that I am sure that the offences are extradition offences for the following reasons:

i) In relation to whether the conduct occurred in the category 2 territory, it is clear from the extradition request that in relation to each offence, the intended effect of the conduct was to bring about harm in the United States. It is clear that the intended harm was in the USA and the harm was indeed in the USA. Therefore, I find that this requirement is met.

ii) Had the conduct occurred in the United Kingdom it would constitute offences of conspiracy to defraud, conspiracy to steal and conspiracy to commit a money laundering offence. Mr Caldwell drafted specimen charges to reflect the equivalent charges in the United Kingdom in his Skeleton Argument at paragraph 16. I am satisfied that these offences accurately reflect the allegations in the USA. The maximum penalty for such offences is 10 years imprisonment, 7 years imprisonment and 14 years imprisonment respectively. Therefore, I am satisfied so that I am sure that the conduct would constitute offences under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater.

iii) The conduct in the extradition request is punishable under the law of the United States with 20 years' imprisonment. Therefore, this requirement is also met.

Therefore, for the reasons set out above, I am satisfied so that I am sure that the offences are extradition offences for the purposes of section 137 within the meaning of section 137(3) of the Act.

Issues:

18. It was agreed at the outset of the final hearing that the only issues in this case were as follows:

(a) Section 83(A) – Forum

(b) Section 91 – Physical or mental health – whether the physical or mental condition of the Defendant is such that it would be unjust or oppressive to extradite him.

(c) Article 8 ECHR – Whether Article 8 ECHR is engaged, specifically whether it is disproportionate to his rights to a private and family life to be extradited.

The Proceedings

19. The RP attended the final hearing but he did not give evidence.

20. I heard oral evidence from Dr Ajaz, Dr Deeley, Dr Picchioni, Mr Maloy, Ms Baird, Mr Burnie, Mrs De Rose and Miss Canavan.

21. Brief oral closing submissions were made by both Mr Caldwell and Mr Fitzgerald QC at the conclusion of the oral evidence. Mr Fitzgerald QC had provided a summary of his oral submissions in writing prior to the oral submissions being made.

22. I was provided with two bundles for the final hearing. The first bundle contained all the material served on behalf of the Government and the RP. There were some additional documents served during the hearing and these were added to bundle. I do not intend to list all the documents here as they were clearly indexed and paginated and can be made available to the High Court should there be any appeal in this case. The second bundle was an Authorities bundle containing the relevant cases that I was to be referred to.

23. In addition to the two bundles, I was also provided with a number of written submissions on behalf of both the Government and the RP. Mr Caldwell provided an Opening Note and a Skeleton Argument prior to the hearing commencing. Following the final hearing, and in accordance with my directions, Mr Caldwell also served a further skeleton argument dealing with his closing submissions on behalf of the Government in more detail. Mr Fitzgerald QC and Mr Hall, on behalf of the RP, served a Skeleton Argument on behalf of the RP in advance of the final hearing. They had also served a chronology in this case. As set out above, Mr Fitzgerald QC had also provided a written summary of his oral submissions prior to the oral submissions being made. Following the final hearing, and in accordance with my directions, Mr Fitzgerald QC and Mr Hall, on behalf of the RP, also served further written closing submissions dealing with their closing submissions on behalf of the RP in more detail. They also served a reply to Mr Caldwell's written closing submissions. I am extremely grateful to all Counsel in this case for the written submissions that have been provided which have been enormously helpful to me.

24. I was also provided, on the final day of the hearing, by those representing the RP, with a note of the oral evidence that had been heard during the final hearing of Dr Ajaz, Dr Deeley and Dr Picchioni. Whilst it is not an official transcript, and therefore it cannot be said to be a full transcript of the

evidence, it does, in my view, fairly represent and summarise the oral evidence that was heard during the final hearing. There are some omissions but overall, it is a fair transcript of the evidence. This has been very helpful as it has meant that I do not have to set out the oral evidence that I heard from these 3 experts in this judgment, as this note has been provided, and it does not make sense for me to replicate that by setting out the full oral the evidence that I heard. Therefore, I will refer to the relevant parts of the oral evidence as I evaluate that evidence and make findings later in this judgment. I am very grateful to those that produced this summary of the oral evidence for me. Should there be any appeal, the note of this evidence, as it was provided to me, should be made available to the Judge dealing with the appeal.

25. I have considered all the documents that I was provided with in this case. I will refer to those documents that I consider necessary in this judgment. If I do not refer to a document in this judgment, it does not mean that I have not considered it, just that it was unnecessary to refer to it for the purposes of this judgment. For the avoidance of doubt, I have considered each and every document I was provided with, together with the oral evidence, oral submissions and the written submissions. If a matter is not referred to in this judgment, as I have said, it is not because I have not considered it but simply that I have not considered it necessary to refer to it for the purposes of this judgment.

Evidence

26. The RP did not give evidence.

27. I heard evidence from Dr Dr Ajaz, Dr Deeley and Dr Picchioni. For the reasons set out above, given I was provided with a note of their oral evidence, in which they adopted their written expert reports as their evidence and confirmed these as accurate, it is not necessary for me to summarise their evidence in this judgment.

28. The witnesses evidence, set out below, is not in the order I heard from the witnesses. That said, it is a summary of the oral evidence that was given from those witnesses.

29. I heard evidence from Mr Bruce Maloy, an attorney in the USA with over 40 years experience. He had prepared three reports dated 1 July 2021, 24 October 2021 and 17 November 2021. Mr Malloy confirmed on oath that the contents of these reports were accurate and he adopted the reports as his evidence. The oral evidence given to the Court can be summarised as follows:

i) There are co-operation agreements in place in the USA whereby Defendants can provide testimony from abroad. He has had experience of these co-operation agreements which are

then formalised with department of justice. Such agreements could require a co-operator to travel to the UK to give testimony. There are also MLA arrangements in place between the USA and the UK for people to appear in Court in the UK. Therefore, Defendants could come to Court in the UK to give evidence and the victim in this case has said that he is prepared to come to the UK and give evidence in the UK.

ii) Should the RP be extradited, pre-trial, the RP would likely be refused bail and there is not much argument about that. The RP has no immigration status in the USA, he would be considered a flight risk given his lack of community ties, as he has no property or family in the USA. The RP has all the strikes against him and therefore, without reservation, the RP is not going to be released on pre-trial bail.

iii) If the RP is remanded in custody, then as set out by Mr Kitchens, the Marshalls are responsible for placing the RP into a pre-trial remand facility. Only 2 of these facilities have mental health capacity which Mr Kitchens refers to in his evidence, namely USP Atlanta and the Robert A Detention Facility (RAD). The most likely facility that the RP would be taken to is USP Atlanta (USP or USPA) which Mr Kitchens also states is the most likely facility for the RP.

iv) USP is in crisis. There are concerns over the availability of mental heath services for the RP, in terms of what services would be available or where they may be provided. When the prison is in lockdown the availability of mental health services become more limited.

v) In the third report, I surveyed colleagues about their experiences of pre-trial detention facilities in USP. My experience and those of my colleagues are that USP remained in lockdown, which means prisoners are confined to their cells for 24 hours a day with time outside their cell only every 3 days so that they can shower. Mental health services consist of medication being delivered to the cell when the facility is in lockdown and counselling is suspended. The lockdown is due to a security problem at the facility with pre-trial detainees and those serving a sentence as a result of corruption and contraband being brought into the prison, such as cell phones, tobacco and drugs. Criminal activity is orchestrated within the prison via cell phones and so the situation is out of hand and they have literally shut the place down.

vi) If the RP is found to have serious mental health issues, the prison, as it is now, is not equipped to deal with these and nobody has any way of knowing when things will improve and they do not seem to be improving at the moment. Telephone privileges can be given but they are not routinely given in a lockdown. He believed that the RP would be in a cell by himself and he

would spend his entire time in that cell whilst the prison is in lockdown save for a shower every third day.

vii) He referred to his second report and to the SEC complaint and the findings of the Federal Court. It is an enforcement action and the Court found deliberate violations of securities misconduct in that case. The proceedings are civil in nature. There is limited relief that the SEC can achieve. RM was disqualified from being a Director again and he received a significant financial penalty together with an order for restitution to the victims. This is a court order.

viii) In relation to the likely sentence that the RP would receive should he be convicted of the offences, the USA say the likely sentence is one of 10 to 12 years imprisonment. He believed that the sentence could be considerably higher and that it could be as high as 159 months (just over 13 years) to 192 months (16 years) imprisonment. He agreed that it could be 121 (around 10 years) to 145 months (12 years) imprisonment if the RP received a three-point deduction for acceptance of responsibility. There was also the issue of parole for good behaviour.

ix) In relation to the progress of this case before the US Courts, there is no sign of a trial being listed at present. The Court docket for the Defendant who is already in Atalanta is publicly available and so far the case has been continued by the agreement of the prosecution and the defence. The amount of discovery and the volume of documents in the case has meant that the defence are not ready to file pre-trial motions, so the case has been repeatedly postponed. The Court date has been postponed until the pre-trial motions have been filed.

x) There is another Defendant, who is also facing similar charges in a Court in California. It relates to similar allegations but not in relation to the same victim. The docket does not have hyperlinks but it is before a specialty Court and the Judge gets a report regularly. The case keeps being postponed for 90 days for the Judge to be given another update. The Defendant is being investigated for mental health issues.

xi) In relation to the Defendant Mr Barr, there is no information about him.

30. Mr Maloy's evidence was challenged. In relation to the availability of witnesses in prosecutions that take place outside the USA, it is possible for Defendants who reach an agreement with the prosecution, to accept terms as part of that agreement, that they are to co-operate in proceedings wherever that may be. Mr Maloy conceded that obligation does not extend to a prosecution witness and that the prosecution cannot force a witness to take part in proceedings overseas.

31. Mr Maloy conceded that it was possible for the RP to be granted bail but stated that the odds were stacked against him. Mr Maloy explained that the Government could appeal any decision to grant the RP bail but conceded that in theory, the Judge had the power to grant bail to the RP.

32. Mr Maloy agreed that pre-trial, the RP would likely be detained in USP Atalanta. Mr Maloy explained that RAD was a private facility and that this was liable to be closed under the President's Order, or rather, not closed but the US Marshalls would be unable to house their prisoner's there. The President's Order means that it would cease to be a prison for a federal prisoner.

33. Mr Maloy was referred to the Article in the news that he had referred to at page 348 of the bunde relating to the situation at USP Atlanta. Mr Maloy explained that before May 2021, before the press high-lighted the problems in that facility, he believed that the prison did have mental health facilities but that these were primarily available to those serving sentences. Mr Maloy conceded that USP Atlanta had both psychological and psychiatric facilities and that there were people trained in mental health working there. Mr Maloy was unable to say how many people there were working in these services or how many clinicians worked there.

34. Mr Maloy agreed with Mr Kitchen's evidence that there are two facilities within USP Atalanta, namely a federal prison for convicted offenders and a detention facility for pre-trial detainees. Mr Maloy did not agree that the press article only referred to the prison and not to the pre-trial detention facilities as Mr Kitchens claimed. Mr Maloy stated that the same issues with corruption of personal within the facility have led to both the prison and pre-trial detention facility being placed in lockdown. Mr Maloy stated that the pre-trial facility would not be de-populated like the prison but explained that the problems that existed were the same for both.

35. Mr Maloy conceded that the warden, who managed the prison, had stated that the situation remained unchanged for those in pre-trial detention and would remain as such but stated that his colleagues had reported that their clients in pre-trial detention were not receiving mental health services.

36. In relation to the SEC proceedings, Mr Maloy agreed that these were civil and not criminal in nature. Mr Maloy explained that people cannot be imprisoned by that Court but nonetheless the court deals violations of the law. Mr Maloy stated that a fund was to be set up for those who had purchased the crypto asset following that judgment. In relation to a restitution order which the Court could order following a conviction in a criminal trial, Mr Maloy stated that the US District Court would be required to order restitution for the loss, if there has been a financial loss,

regardless of a person's ability to pay. Mr Maloy conceded that the Court could order the money was to be paid into that fund rather than to RM if they considered that the appropriate victim.

37. In relation to the co-Defendants, Mr Maloy explained that Mr Faulk had been brought to Atlanta and had appeared in Court in Atlanta and that he was to be prosecuted in relation to these proceedings in a Court in Atlanta. Mr Maloy explained that Mr Narvaez was the person with Mental health issues, which was identified on the docket in California. Mr Maloy stated that there was no filing for Mr Narvaez in Atlanta other than the indictment which includes the RP. Mr Maloy explained that Mr Narvaez needs to be arrested and brought to Court in Atlanta but so far no request had been made for him to brought before the Court or to be arraigned in relation to these proceedings. Mr Maloy explained that in the USA, there is a concept of a person not being competent to stand trial but stated that the person would still appear before the Court and be arraigned at which point it would be suggested that the person was not competent and the Court would order an independent evaluation of the person.

38. In re-examination, Mr Maloy explained that mental health services were primarily available for those serving sentences, as the Marshalls take the view that for those in pre-trial detention, a person's long-term mental health condition will be met by either being released or when they are sentenced, so any plan for mental health treatment is delayed.

39. I heard evidence from Ms Maureen Baird, a former employee of the Department of Justice where she had worked in many capacities, including that of a Warden in a federal institution. Ms Baird had prepared three reports in this case dated 21 June 2021, 22 October 2021 and 21 November 2021. Ms Baird confirmed on oath that the contents of these reports were accurate and she adopted the reports as her evidence. The oral evidence given to the Court can be summarised as follows:

    i) She confirmed that the RP would be unlikely to be given bail pre-trial and she agreed that the RP would likely be detained at USP Atlanta. She explained that a section of that prison was made available for pre-trial detainees. She stated that she understood that the prison was currently in lockdown but that she was unaware of the reasons for this. She explained inmates were kept in their cells for 24 hours a day with no programmes and no visits save possibly legal visits. Inmates are only being transported to and from court.

    ii) She stated that the prison did hold 1800 to 1900 3 months ago but that since that time, over 1000 inmates have been moved out to other institutions. She was unaware of the reasons for this but stated that the prison was old and in need of repair but also there had been press

reports of staff corruption whereby cell phones and other contraband were being taken into the prison by staff but she did not know all the details.

iii) In lockdown, in relation to mental health treatment, there would be no counselling or programming for inmates. She stated that the RP would be assessed in relation to his mental health and suicide risk when he arrived at that institution. Should the RP be assessed as a suicide risk, he would be placed on suicide watch, where he would be assessed each day by a psychologist and a decision would be taken as to whether that was to continue or if the RP could be removed from suicide watch. She stated that this would normally last for up to 3 days. If the RP was to be assessed as still requiring suicide watch after 3 days, then he would need to be moved to a medical facility. In pre-trial detention, if there were a continuing need as to a suicide risk there would be no on-going treatment but the person would be assessed periodically and if it was brought to someone's attention that they were suicidal, then they would be re-assessed and placed on another suicide watch if appropriate. The problem of a prison being in lockdown is that there is not a lot of interaction with staff and a person is locked in a cell with no visibility to staff or inmates, so a person's suicide risk is not as apparent. If there is no lockdown, then in pre-trial detention, there is no individual or group counselling available to inmates pre-trial. There is for those inmates who have been sentenced and the facilities for convicted persons is not available to those in pre-trial detention. There would be no individualised treatment for his mental health or one to one counselling with a psychologist pre-trial. If this is needed and there is an imminent risk for the RP, and the psychologist is aware of this, then they would meet with the RP but the psychologist needs to be made aware of this.

iv) In relation to suicide watch, this would be used if a person is an imminent risk of suicide. The RP would usually be detained in the medical department, in a separate area with a glass window for 24 hour observation. Furnishing in the cell for those on suicide watch is sparse. There would be a bed and the person would be issued with a suicide smock, which could not be removed and is like a paper jumpsuit.

v) She confirmed she had seen the RP's medical reports. She stated that there is nothing like an ACCT in the USA. She stated that it was a miracle as to the conditions the RP had in prison in the UK and that those conditions should be made available in the USA but she had concerns about the RP being detained pre-trial in USP Atlanta due to his high and significant risk of suicide and lengthy history of self-harm and suicide attempts. The RP's risk of suicide would not

be met in the USA unless it was brought to the attention of staff and if this was not done, then it could have a very bad outcome for the RP.

vi) Day to day, in the USA, pre-trial, there would be no treatment for the RP save for his medication.

vii) Post-conviction, there are stark differences between a US citizen and a non-citizen as to the type of facility that they would be housed in. The RP would be held in a low or medium secure facility but a US citizen would be held in a minimum security prison camp. As a result of closures of facilities under the Biden Administration, which is to close privately run prison facilities, a lot of low security prisoners are going to medium secure prisons as the space no longer exists. The violent offenders are usually held in medium and secure facilities so the RP would be out of place in a medium secure facility and would likely become the victim of a predator in prison by people who seek out vulnerable people, like the RP, and target them. In relation to mental health treatment, whilst she has never met a psychologist in prison who is not committed to their job and to doing their best, things get missed due to policies and policies are not always put into practice.

viii) If the prison is in lockdown, prisoners would not be able to use phones to make calls abroad. If the prison is not in lockdown, there is a bank of around 5 phones. Prisoners stand in line to access the phone and they get 15 minutes per call. They would then have to wait in line again to make another call. Prisoners are allowed around 300 minutes a month.

40. Ms Baird's evidence was challenged. Ms Baird conceded that all pre-trial detainees are vested with the US Marshalls service and should the RP be remanded into custody, that it is for the US Marshalls to detain the RP in an appropriate institution. She was unaware whether the US Marshalls are sent to the UK to collect the person, if a person is extradited.

41. Ms Baird was unaware of the maximum detention capacity of USP Atlanta. Ms Baird conceded that in terms of number of prisoners in pre-trial detention, that it was a smaller proportion of the overall prison population as they are held is a section of the prison. Ms Baird explained that the pre-trial detention part of the prison operated with the same policies. Ms Baird was unable to state what the specific conditions were at USP Atlanta as she had never worked at that prison. Ms Baird conceded that when she had referred to the availability of psychological and psychiatric services she was speaking generally and not what was specifically available in USP Atlanta.

42. Ms Baird said that she had a high regard for the ACCT process in the UK Prisons and said that she understood that those on an ACCT were closely monitored. In the USA, suicide watch would typically last for 1 to 3 days. Ms Baird explained that should longer be required, a referral would need to be made to the medical facility, an external facility. A referral would be made to a prison with a more intensive mental health unit but that those units are very scarce.

43. Ms Baird conceded that Atlanta was the principle city of Georgia. Ms Baird explained that inmates were not always referred to an outside hospital and that they could be kept on suicide watch or be transferred to a mental health unit at a medical centre.

44. Ms Baird stated she did not know the co-defendant who was detained in a mental health institution in California.

45. Ms Baird stated that there was capacity for an external referral to a psychiatric hospital and that after 72 hours, there would be an examination by a specialist mental health practitioner. The assessments would be made each day as to a person's suicide risk. Ms Baird conceded that this regime could continue for as long as it was deemed necessary and if the clinician who carried out the assessments took the view that medication was required, they could prescribe that. She also conceded that the information about the RP's current medications and mental health needs could be sent to the prison with the RP, so that his medication was available for him.

46. Ms Baird explained that there is an inmate companion programmes available at some institutions, which in her view was a good programme, where another inmate makes notes about a person who is on suicide watch and notify staff if there are any issues. Ms Baird explained that the inmates on this programme work in shifts and that they receive training on how to observe a person on suicide watch. Ms Baird conceded that the observer is not the person's cell mate but rather a companion, as a person on suicide watch is kept on their own, in a cell. Ms Baird conceded that post suicide watch, medication would continue if it were needed and it would be dispensed by a nurse or another member of staff who was medically trained.

47. Ms Baird conceded that she had no first hand knowledge of staffing at USP Atlanta and so she could not say much about the staff or resources at that facility.

48. Ms Baird explained that the population at USP Atlanta had reduced significantly, by more than half. Ms Baird informed me that she was aware that Mr Kitchens had spoken to the Warden of USP Atlanta from his Affidavit and that the warden had said things were unchanged for those in pre-trial detention. Ms Baird stated that she had no reason to doubt what had been said by the

Warden to Mr Kitchens. Ms Baird also stated she had read Dr Picchioni's report and the recommendations he had made. Ms Baird conceded that they were relevant recommendations that, save for the specific references to the ACCT, that could be applied to the RP in principle. Ms Baird conceded that the RP would have access to religious support in prison in the USA if he asked for it, that he would be visited by a psychologist if he were on suicide watch and be assessed daily and that the RP could request for support with, or changes to be made to, his medication and that those requests would be looked at. Ms Baird conceded that when a person is taken off suicide watch and put back in the prison with the other inmates, that the psychologist would try to have regard to who the person was to share a cell with but she stated that it is not always possible and the reality is that the person is placed where there is a bed available. Ms Baird explained that there are a limited number of jobs for inmates in pre-trial detention but she conceded that a person can request to work and consideration would be given to that request.

49. Ms Baird conceded that when a person was on suicide watch there would be limited furniture in the cell and they wear special clothing, so that they would have no access to anything that they could use to commit suicide. Ms Baird stated that she did not know of any incident where a person had committed suicide whilst on suicide watch in prison in the USA. Ms Baird stated that the risk to the RP was not whilst he was on suicide watch but when this had ended.

50. Ms Baird conceded that there was a prisoner transfer arrangement between the USA and UK. She conceded that she had not referred to this in her reports. Ms Baird stated that there was no reason that she had failed to mention this in her reports but agreed that the RP could have a reasonable expectation that, with the requisite agreements, the transfer of any sentence to the UK could be made. Ms Baird did not know what the chances were of that being successful. Ms Baird was aware of cases where transfers had been made soon after the sentence had been passed but that this was not in short order. She believed that it would take place, if allowed, in terms of months.

51. In re-examination, Ms Baird stated that the inmate companion was only available at some prisons. She also stated that the measures that the RP had in the UK whilst on the ACCT, that there was no comparable provision in pre-trial detention in the USA. Ms Baird stated that the talking based psychological therapy referred to in her report at 5.5.8 was not available in pre-trial detention but that it may be available post conviction.

52. Ms Baird stated that in the case of Mr Epstein, he had been removed from suicide watch in the USA and place in SHU with a cell mate, but that the cell mate had been removed and he had then committed suicide.

53. I asked some questions. Ms Baird told me that if a Judge directed that medical reports were served on a prison, the prison would sometimes get them but sometimes they would get lost. She estimated that the reports are not received 25% to 30% of the time.

54. Ms Baird told me that she did not recall any cases of prisoners who had been extradited to the USA from the UK in her time as Warden but that it was likely there were such prisoners at the prison in that time. She was unaware whether there were any specific policies that existed about paperwork getting to the Warden in such cases.

55. Ms Baird told me that if a person was on suicide watch, then this would continue for as long as it was necessary and that it would not just end after 3 days. She told me that the decision to end suicide watch must be made by a psychologist.

56. Ms Baird was unable to tell me if USP Atlanta was still in lockdown as of today and that it would be the Warden who made the determination as to when it was safe to resume operations.

57. I heard evidence from James Burnie, a partner in a law firm in the UK specialising in FinTech regulations, blockchain and crypto assets. He had prepared two reports dated 24 October 2021 and the further report was undated. Mr Burnie confirmed on oath that the contents of these reports were accurate and he adopted the reports as his evidence. The oral evidence given to the Court can be summarised as follows:

    i) He explained that in relation to the allegations, two things were stolen, namely the ether, which was a relatively well known crypto asset at that time, and Veritas tokens, which was a new crypto asset to the market. He explained that he understood the value of the ether stolen to be 10,000 USD. The value of the Veritas token, as he understood it, was said to be 8.5 million USD.

    ii) He explained that it was difficult to see the value of the token as there was a large amount of subjectivity around this and he would need a lot more evidence before he could be convinced that this was the real value of the token as it is based upon the prospective value of the enterprise. In his view, the value given is much higher than the actual value of the token. He explained that the real value is not really know as the question is whether you believe something of value will happen with the enterprise and people are known to inflate the value.

iii) In 2017, Bitcoin was bought by people but there were questions over its future and whilst it had a value, its future was not assured. There were new tokens coming out and claims were being made about how these would change the world but some were scams. Around 95% were fraudulent or scams. Mr Burnie explained that it is still not known who will win out of Bitcoin and ether yet.

iv) Mr Burnie explained that RM was investigated by the SEC and they found that he and a cohort had raised millions of dollars on fraudulent activity and that they had made a series of misleading statements about the value of Veritas. It is also in the interests of those who had purchased Veritas to give them a higher value as it is human nature to want these to be valuable.

v) He is cautious about accepting the value as being 8.5 million USD as there is not a lot of information as to how that value was derived and it is a highly speculative token. Further, RM has been found to have mislead people as to the value.

vi) RM has made statements about the value of Veritas but he had an option to fork, where he could recreate the same thing by re-setting the blockchain to the pre-theft position, which is a common way of fixing this issue, but RM chose not to do this. RM also stated that the value of the tokens was 90 million empty cups. Mr Burnie explained that the fact that a fund had been set up by the Court to refund those who had bought the tokens demonstrates it should not have been sold to the public. This would not have been set up if the token had been solid.

vii) The Veritas that was acquired in the theft were transferred into Bitcoins, so some value was acquired by those who stole them. The theft is unusual, in particular RM's comments about their value and the fact that there was a drop in the value of the trading of the tokens. Mr Burnie explained that you cannot automatically link the drop to the theft, as the fact that someone stole the tokens, means that it could be said that it has a value and is valuable. These tokens are volatile and will go up and they will also drop. By looking at the graph, you cannot say that there is a drop, so there has been a theft.

viii) The RP in this case is said to have received Bitcoins, which have a value, so the fact that Veritas was converted into a thing of value shows that it had a value but this has to be seen in the context of silly money running around. The RP and the co-Defendants definitely got something of value but there were silly things been done at a silly time like the wild west. 8.5 million USD is not a reliable value and it is very difficult to value it. One view is that the SEC found it had no value, so it is valueless, and the money is being given back to those who

purchased them as if they had not been sold in the first place. The other view is that it was speculative, so it may be worth something someday and you can try to give it some value but it is not worth the 8.5 million USD that has been ascribed to it.

58. Mr Burnie's evidence was challenged. Mr Burnie conceded that the allegations are that RM's identity was taken over and that the RP and others accessed his mobile phone to obtain information which allowed them access to his digital wallets. Mr Burnie explained that the digital wallet is governed by an access key and that the code to make the transaction was unique. Mr Burnie stated that the key is the person who has access to the blockchain and that this is its vulnerability as the blockchain does not check your identity if you have the access key. So, if you have the access key, the safe door is open. Mr Burnie conceded that once a person's account is taken over, they are not aware of it. Mr Burnie stated that at some point the person will find out but that it operates in a similar way to if your bank account was used fraudulently.

59. Mr Burnie explained that as soon as the instruction is made to send the amount to another account, it is gone. He explained that it can then be converted into another currency, such as Bitcoin. As to Bitcoins value, Mr Burnie explained that at the start of 2017 it was worth 1000 USD and at the end of that year it was worth 20,000 USD and in the Autumn of 2017, it traded around 2500 USD per Bitcoin, with a huge rise in the Autumn. Mr Burnie explained that the market fluctuates, and that different exchanges give different values of Bitcoin, so it is an estimate based on an average of the different exchanges. Mr Burnie stated that if the value is taken as 2500 USD in July 2017 and that if 1,780.76 Bitcoins were exchanged at that time, he conceded that the value would be around 4.5 million USD.

60. Mr Burnie conceded that the allegation was that the co-conspirators were given Bitcoins for their participation in the offending and that the RP was said to have received 108.18 Bitcoins. Mr Burnie conceded that if the RP still had the Bitcoins, today's value of them was £42,000 per Bitcoin, so they would now be worth over £4.5 million. Mr Burnie stated that is one of the stressful thing about this currency, knowing when to sell.

61. Mr Burnie conceded that when the act, the theft, took place, the intention by those involved in the offending was to get 8.5 million USD. Mr Burnie also conceded that the money was realised and that those who pulled this theft off made a lot of money that day. Mr Burnie conceded that on the day of the theft, the Veritaseum achieved a value in the market of substantial value and that the offence was one of dishonest taking. Mr Burnie conceded that act was the dishonest taking of the crypto assets and the people involved in this got value but he stated he was cautious about the

exact value and what it was worth. He conceded that those involved in the offending did get value for them.

62. Mr Burnie explained that after the theft, RM made statements to the market and that it was inconsequential. Mr Burnie also stated that RM did not fork and he could have done so, which would have avoided the loss had he chosen to do this. Mr Burnie stated that RM said that it was not worth the effort to fork. Mr Burnie conceded that RM had the right to run his enterprise as he chose and that the thieves did not have the right to take the items from him. That said, Mr Burnie said that the value has to be looked at in the round and also looked at by considering the value of the asset over time.

63. In re-examination, Mr Burnie stated that the loss which is said to be 8.5 million USD is not based on any proper basis as far as he could see. If the exchange was made to Bitcoins of a value of 4.5 million USD, then that is what the value of the loss should be. Mr Burnie explained that the veritas tokens are like a bet; if the bet comes off, then it is worth a lot but if not, it is worth nothing. With hindsight, the SEC have said that the Veritas tokens are valueless and should not be sold but that is after the event and with hindsight.

64. I asked some questions. Mr Burnie told me that cryptocurrency was a speculative and volatile market. He told me that Bitcoin was worth over £40,000 per Bitcoin. Mr Burnie told me that in relation to Veritas, if you had a veritas token say worth 200 USD and that was stolen, that would be the value you had lost but in this case RM had not lost 200 USD as he had inflated the price. He conceded that someone has lost, as someone paid for the Veritas that had been stolen in Bitcoins, and the people involved in the offending made money. Mr Burnie agreed that someone had paid that amount for the Veritas tokens and that someone therefore made a loss.

65. I asked Mr Burnie whether cryptocurrency, or veritas was like artwork, in that the market for a piece of artwork may vary and that it may have a value but that the artwork was only worth what someone was prepared to pay for it. I stated that if you bought a piece of artwork for a certain price, the artwork may go up or down in value depending on what someone else thought of it and were prepared to pay for it. Mr Burnie stated that was a very good analogy and in fact that people are looking at this as a market. Mr Burnie stated that all of that is right and what he is questioning in this case is value of the assets that were stolen.

66. Mr Burnie clarified that when he says the Veritas that were stolen was not the value that is claimed, he does not mean it has no value, as it has some value, as the people who bought it have

to be paid back but that it is now a dead coin. He agreed that it was similar to shares when a company goes under the shares are valueless.

67. In re-examination, Mr Burnie stated that he did not know who bought the token or on what basis they were exchanged into Bitcoins. Mr Burnie agreed that it does not appear that the people who bought them for Bitcoins are saying that they lost money. Mr Burnie stated that the tokens are now valueless but that the SEC has said that the money has to all be given back to those who bought them.

68. I heard evidence from Mrs Claire De Rose, the RP's mother. She had prepared a witness statement which was signed and dated 2 July 2021. Mrs De Rose confirmed on oath that the witness statement was true to the best of her knowledge and belief and she adopted it as her evidence. The additional oral evidence given to the court can be summarised as follows:

i) The RP is her son and he is her only child. He lived with her until recently at her home address.

ii) The RP had required contact with mental health professionals from an early age as she was concerned about him. The RP did not get along with people at school and did not want to interact with others. She was also concerned about his safety to himself.

iii) The RP was hospitalised in early 2010. She found him on the edge of a balcony and he was taken to hospital by ambulance. She explained that she had previously argued with the RP over his homework and he put a knife against his wrist and he was going to jump out of the window. It was very traumatic and the RP spent 2 weeks on a locked ward. The RP was then referred for treatment and he spent around 3 weeks in the Collingham Centre. There have been other incidents since then of self-harm and suicide attempts.

iv) He has a partner now who is expecting his child.

v) She had breast cancer in 2019. The RP was devastated. He stayed with her during this time and he is still scared. There was an incident when the RP went to Wandsworth Bridge and she called the police. Since she had cancer, the RP has supported her and taken her to appointments. The cancer is now in remission but it is highly likely to return.

vi) In December 2020, there was another incident with the RP when he was in the bathroom and she was in the house. The incident is outlined in her witness statement.

vii) When the RP was refused bail in relation to this matter, she was in contact with the RP in prison. There was an e-mail and a couple of phone calls. When the RP was granted bail he came to live with her but he now lives with his partner.

viii) Since his release from custody, there have been no other incidents of self harm that she is aware of.

ix) She is worried that she would not see the RP again if he were extradited as she suffered from an aggressive form of breast cancer and she would probably give up. She is sure that the RP would kill himself if he were extradited.

69. Mrs De Rose's evidence was challenged. Mrs De Rose conceded that in 2013 the RP started weekly physcotherapy but stated that his attendance was sporadic as he did not want to leave the house. She stated that the RP started treatment in 2015 and again he went only a few times.

70. In relation to the incident in 2019 when the RP went to Wandsworth Bridge, Mrs De Rose explained that as soon as she was aware that he gone there, she called the police. Mrs De Rose denied that she had been with the RP's girlfriend at that time. Mrs De Rose explained that the RP's girlfriend told her and she was concerned so they called the police together but they were not in the same place when they did this. Mrs De Rose stated that the police attended the Bridge but she could not remember what happened or where the RP went after this.

71. Mrs De Rose was unaware what had prompted the RP to refer himself to a specialist for an assessment at a Harley Street clinic in December 2020. She thought that the RP may have wanted help. She explained that it was difficult to talk to the RP about his mental health as he gets upset and then she gets upset.

72. I asked some questions. Mrs De Rose told me that the RP moved out of her home around 4 to 6 weeks ago. She explained that when the RP was released on bail in May 2021 he returned to live with her and he remained living with her until the court varied his bail so he could live with his girlfriend. Mrs De Rose explained that the RP had wanted to move in with his girlfriend as she was pregnant. Mrs De Rose informed me that the RP's girlfriend found out she was pregnant in June 2021 but that they did not inform her until September 2021.

73. Mrs De Rose explained that the RP lives a 10 minute walk from her home or a 5 minute car journey. It was just over a mile away. Mrs De Rose told me that the RP only held a provisional driving license. Mrs De Rose stated that since the RP moved out, she saw him 3 to 4 times a week.

74. Finally, I heard evidence from Denise Canavan, the RP's girlfriend. Miss Canavan had prepared a witness statement which was signed and dated 30 June 2021. Miss Canavan confirmed on oath that the contents of this statement were true to the best of her knowledge and belief and she adopted this as her evidence. Miss Canavan's additional oral evidence to the Court can be summarised as follows:

i) She has been in a relationship with the RP since July 2018. She explained that the RP was not how he was now when they first met. She explained that when the RP's friend, Kyle, dies, this really affected him as he was his only friend at the time.

ii) When the RP found out his mother had cancer in 2019, it almost destroyed him as he thought he would lose his mother. The RP spent all his time caring for his mother and she had a rare form of cancer.

iii) There was an incident in 2019 where she and the RP had been talking about splitting up. The RP went to Wandsworth Bridge and she was concerned about him. He had not told her where he was going but she saw a notification from Uber, so she called the RP's mother and then the police. The police found the RP at the bridge and talked him down. She believed he would have jumped had the police not stopped him.

iv) The RP cared for his mother and lived with her until his arrest in February 2021. When the RP was in prison, she spoke to him on the telephone but he was not allowed visitors. The RP did not really cope and was really down on every telephone call. She was concerned about the RP every day and she waited for his call each day.

v) She was pregnant with the RP's baby before but she suffered a miscarriage. She is now pregnant again and the baby is due to be born in February 2022.

vi) There have been other incidents with the RP since his release from prison. There was an incident in October 2021. The RP was really stressed about this case coming up and they got into an argument. As she was walking out, the thought of her leaving him at a time like this, hit him and he began to cut his neck. She left and called the police and an ambulance. She wanted to be out of the way of the RP as she was pregnant. The RP was taken to hospital to have the wounds checked.

vii) The RP moved in with her around 2 months ago.

viii) If the RP were extradited, she would not cope. She would have a baby and the RP not being there would affect her. If the RP was extradited to the USA, she did not believe he would make it there and if he did, he would not be here anymore.

ix) In relation to an incident in June 2021, she could not help with this as the RP was not living with her then. When reminded about the incident, she explained that it was shortly after the RP had been released from prison and that he was panicking and stressed and he self-harmed. She explained that the RP tried to strangle or hang himself but she was not there when it happened and found out about it afterwards.

75. Miss Canavan's evidence was challenged. In relation to the incident at Wandsworth Bridge, Miss Canavan explained that she received a notification from Uber so she thought something was wrong. Miss Canavan stated that she did not call the police herself but explained that she called the RP's mother and that she called the police. Miss Canavan did not know what happened after the police talked him down but she believed that the RP went home.

76. In relation to the incident in October 2021, Miss Canavan explained that she had an argument with the RP, so she left the home, where they were living together. Miss Canavan stated that the RP made some marks on his neck. Miss Canavan stated that she left as she was stressed out and explained that she had been in that situation before, which she believed led to the miscarriage, so she want to go outside and remove herself from the situation. Miss Canavan denied that she called the police out of spite. She stated that she called the police for the RP's own safety. Miss Canavan stated that the RP was taken to hospital where his wounds were checked but they were not that deep, so he was not kept in overnight and he was let out.

77. Miss Canavan explained that the RP works and that he earns around £6000 per month.

78. I asked some questions. Miss Canavan told me that she did not work currently as she had stopped work to attend University. Miss Canavan told me that if she was not living with the RP, she would be living in her family home, which is where she was living before she moved into the flat with the RP in September 2021. Miss Canavan stated that the flat was in joint names but she was not sure how much the rent was and the RP was paying the rent.

79. In re-examination, Miss Canavan stated that she was in her last year of University. She stated that the RP is an entrepreneur and that is how he makes his money.

80. No other witnesses gave evidence.

Value of the Loss or harm of the Offending

81. I want to deal first with the issue that was raised on behalf of the RP in relation to the value of the loss or harm of the offending. I want to deal with this matter here as it is relevant to the issue of the seriousness of the alleged conduct and this is a matter that relates directly to the issues that are raised in this case on behalf of the RP.

82. On behalf of the RP it was conceded that there had been "criminality" in the offending but it was submitted that the value of the harm or loss, as set out in the Government's request, was not reliable. On behalf of the RP it was conceded that there had been some loss, although it was submitted that it was difficult to see who the loss had occurred to and what the value of the loss was. To this extent, I was invited to consider the evidence of Mr Burnie as it was submitted that "the figure of a loss of USD 8.5million on the part of Mr Middleton is unsubstantiated". It was further submitted as follows:

> "A series of alternative figures were put forward by the prosecution including USD 2.5million in the prosecution Opening and 4.5million in cross-examination. But the SEC's own official estimate is that he lost nothing because his fraudulently presented and fraudulently valued Veritas tokens should never have been introduced to the market and should be considered to be "**valueless"** (James Burnie said in evidence "It will be difficult to value it – you can say SEC found it valueless as they are giving back money") – hence the need for full restitution."

83. Whilst it is right that Mr Burnie said that the Veritas tokens were "valueless" in his oral evidence, he later clarified this on more that one occasion in his evidence and in both cross-examination and in relation to my questions. Mr Burnie said that he was cautious about "accepting the value as being 8.5 million USD" and gave his reasons for this, such as the findings of the SEC and the comments by Mr Middleton or RM himself, after the offence had taken place. Further, when Mr Burnie said that the token were "valueless", he clarified that this was only one view of looking at the value. He went on to say that "the other view is that it was speculative, so it may be worth something someday and you can try to give it some value but it is not worth the 8.5 million USD that has been ascribed to it".

84. Further, Mr Burnie later stated that it is clear that the Veritas tokens "had some value" and that they were not "valueless" but the question was more what the actual value of them was. Mr Burnie conceded that on the day of the theft, the Veritaseum achieved a value in the market of "**substantial value"** (my emphasis) and that the offence was one of dishonest taking. Mr Burnie conceded that act was the dishonest taking of the crypto assets and the people involved in this

offending did get a value. Mr Burnie was cautious about the exact value but he conceded that those involved in the offending did get value for them. Importantly, in re-examination Mr Burnie stated that whilst "the loss, which is said to be 8.5 million USD, is not based on any proper basis….[if] the exchange was made to Bitcoins of a value of 4.5 million USD, then that is what the value of the loss should be". He also stated that the it is only with hindsight, when the SEC found that the Veritas tokens should not be sold, that they were in effect valueless, but of course, that is after the event.

85. Mr Burnie also told me that there had been a loss as someone had paid for the Veritas that had been stolen in Bitcoins, and the people involved in the offending made money. Mr Burnie therefore agreed that someone had paid an amount for the Veritas tokens in Bitcoins and that someone therefore made a loss. He also clarified in the questions that I asked of him that when he says the Veritas tokens that were stolen was not the value that is claimed, he did "not mean it has no value, as it has some value, as the people who bought it have to be paid back but that it is now a dead coin".

86. Therefore, for all the reasons set out above, I do not find that the Veritas tokens were "valueless".

87. On behalf of the Government, Mr Caldwell submitted that the submissions made on behalf of the RP in relation to the value of the loss are "seriously misplaced" and that it is clear from the allegations that the RP's conduct was that he was "part of a large and sophisticated criminal group…[and] that this is not a case of extra-jurisdictional overreach at all". It is further submitted that the RP is said to have received Bitcoins worth approximately 300,000 USD for his role in the offending and therefore the "proposition that no harm resulted to the victim RM is completely unreal".

88. It is clear to me that the value of the harm and/or loss would be an issue raised in the USA on behalf of the RP and that this will be a matter for a Court to determine in due course. That said, I do have to make a decision as to the seriousness of the conduct described in the extradition request and to that extent this is a relevant issue which I find I must determine to this extent, and to this extent, alone. I do not agree with the submissions on behalf of the RP that the tokens had little value, as the submissions that are made are somewhat confusing. On the one hand, the evidence upon which they seek to rely, that of Mr Burnie, is that the tokens were valueless as a result of the findings of the SEC and the fact that the people who purchased those tokens are to be paid back. However, in the submissions that were made on behalf of the RP, they accept that "it is **not** the defence case that no loss has occurred". Whilst it is questioned to whom the loss occurred

and the value of the loss, it is clear that there is a concession on behalf of the RP that there has been some loss. That said, there is no proper value suggested on behalf of the RP as to what that loss was.

89. Whilst I agree with the submissions made on behalf of the RP that the true value of the loss may well not be as a high as 8.5 million USD as claimed in the extradition request, I do not have all of the information to make that assessment. Indeed, it is not for me to do so as that would be a matter for the criminal trial to determine in due course. That said, I appreciate it is relevant in so far as I need to determine seriousness. It is clear to me that the overall offending, when the offences took place, involved significant sums of money being gained by the criminal group involved in the offending. Mr Burnie conceded that if "the exchange was made to Bitcoins to a value of 4.5 million USD, then that is what the value of the loss should be". This in itself is a significant sum of money. The RP himself is said to have received a significant amount of money for his role in the offending. The RP is said to have received around 300,000 USD worth of Bitcoins for his role. This is also a significant sum of money. It is clear therefore that there was a loss and that harm was caused or intended by this offending.

90. I find, on the evidence before me, that there was a loss of a significant value and that those involved in the offending made substantial gains from the offending. The tokens that were stolen were exchanged for Bitcoins of a substantial value. The RP himself is said to have received a very significant amount for his own role in the offending. There were a number of figures put forward at the extradition hearing but all of these were substantial and significant amounts. Whilst Mr Burnie did say they tokens could be said to be valueless, he explained that this was only with hindsight, and he conceded on more than one occasion that they clearly had "substantial value" but he questioned the real value of this. He conceded that the true value may be what the offenders made from the offending and that if that sum was 4.5 million USD, then that is what the loss should be. I find that the loss, whether it is 2.5 million USD, 4.5 million USD or 8.5 million USD, is a significant and substantial amount and the offending can only be characterised as very serious offending. The RP is said to have received Bitcoins worth approximately 300,000 USD for his role in the offending and this is also a significant sum. I find that the only proper characterisation of this offending is that it is very serious and that it cannot be said to be anything less than very serious.

91. It was also submitted on behalf of the RP that the victim, RM, or Mr Middleton as the RP identified him as, was not a victim or that his interests are much diminished as a result of the findings of the SEC and the fact that RM did not suffer any significant loss. However, I find that this is a rather unattractive proposition and is not one that I find favour with. As Mr Caldwell submitted at the

final hearing, “even if RM is guilty of personal misconduct, he is still protected by the law and it is not for the RP to act as Robin Hood for his own personal gain”. I agree with this. It also clear to me that the findings of the SEC took place some time after the alleged offending. Whilst I find that RM is a victim, he is not a vulnerable victim.

92. Therefore, when the offence took place, as conceded by Mr Burnie in his evidence to me, the people involved in the offending clearly believed the tokens had substantial value, which is why they stole them in the first place, and they made substantial gains from the offending by converting the tokens into Bitcoins, which had a considerable value. RM is clearly a victim of the offending, as he had the tokens stolen from his account. At this time, there had been no findings by the SEC and RM was clearly the victim of the offence that took place when these tokens were stolen from him. It simply cannot be right that RM is not a victim of the offending. I find that RM was a victim of the offences in the extradition offence. I agree with Mr Caldwell that the fact that someone is later found to be involved in misconduct and a Court has ordered monies to be repaid to those who bought the tokens, does not mean the person is not entitled to be protected by the law. All persons are entitled to be protected by law, regardless of their own conduct. I cannot find favour with the submissions made on behalf of the RP that RM is not a victim. He is clearly a victim of the offending at the time the offences took place. It may well be that the money that people spent on the tokens has to be repaid but that does not mean that RM was not a victim of these offences or of this offending.

93. Of course, the findings of the SEC are relevant but those were made some time after the offending. The findings are relevant in so far as the victim’s interests in relation to forum and in relation to the Article 8 balancing exercise and I will consider this later in the judgment. Importantly, the findings of the SEC, I find, does not mean that RM was not a victim of the offending when the offences took place. RM was clearly a victim, as it was his account that was hacked and the tokens stolen from. I find that the submissions made on behalf of the RP that RM was not a victim, or that he is undeserving of being considered a victim, are unattractive and somewhat flawed.

94. Further, whilst there is some dispute between the evidence of Mr Kitchens and that of Mr Maloy as to the length of any custodial sentence the RP would likely receive should he be convicted of the offences or should he plead guilty to the offences in the USA, they both agree that any custodial sentence is likely to be a significant and substantial custodial sentence. Mr Maloy does not suggest that the RP would receive a short custodial sentence or indeed a non-custodial sentence for these offences.

95. Therefore, I find that the only proper characterisation of this offending is that it is very serious and that it cannot be said to be anything less than very serious. The loss or intended loss was of a significant value and those involved in the offending made substantial gains. The RP himself is said to have received around 300,000 USD in Bitcoins for his role which is a substantial amount. I also find that RM is a victim of this offending when the offences took place.

96. **Section 83(A) – Forum**

97. Section 83(A) of the Extradition Act 2003 states as follows:

(1) The extradition of a person ("D") to a category 1 territory is barred by reason of forum if the extradition would not be in the interests of justice.

(2) For the purposes of this section, the extradition would not be in the interests of justice if the judge—

(a) decides that a substantial measure of D's relevant activity was performed in the United Kingdom; and

(b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.

(3) The `specified matters` above are as follows:

(a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;

(b) the interests of any victims of the extradition offence;

(c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;

(d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;

(e) any delay that might result from proceeding in one jurisdiction rather than another;

(f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to—

(i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and

(ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;

(g) D's connections with the United Kingdom.

98. I remind myself that the forum bar was introduced to safeguard a RP who may face extradition when he might be tried in the UK for the offending. As held in the case of ***Love v USA*** **[2018] 1 WLR 2889** at paragraph 22:

> "…section 83A is clearly intended to provide a safeguard for Requested Persons…Its underlying aim is to prevent extradition where offences can be fairly and effectively tried here, and it is not in the interests of justice that the requested person should be extradited….The forum bar only arises if extradition would not be in the interests of justice: section 83(1). The matters relevant to an evaluation of "the interests of justice" for these purposes are found in section 83(2)(b). They do not leave to the Court the task of some vague or broader evaluation of what is just. Nor is the bar a general provision requiring the court to form a view directly on which is the more suitable forum, let alone having regard to sentencing policy or the potential for prisoner transfer, save to the extent that one of the listed factors might in any particular case require consideration of it."

99. In relation to whether a substantial measure of RP's relevant activity was performed in the United Kingdom pursuant to section 83(2)(a) of the Act, there is no dispute in relation to this. It is clear that the RP's alleged relevant activity in the offending took place whilst he was in the UK. This is not a case where it is not clear where the RP was. Therefore, this part of the test pursuant to section 83A(2) is met. I must therefore consider the 'specified matters' referred to in section 83A(2)(b) of the Act.

100. I remind myself that I must determine, having regard only to the 'specified matters' listed in section 83A(3), set out above, whether it has been shown by the RP that extradition should not, in the interests of justice, take place pursuant to section83A(2)(b) of the Act. The 'specified matters' contained in section 83A(3) of the Act do not have any hierarchy or pre-allocated weight (***Dibden v France*** **[2014] EWHC 3074 (Admin**) at paragraph 18). The Court is required to reach an

overall 'value judgment' (***Atraskevic v Lithuania*** **[2016] 1 WLR 2762** at paragraph 14) following an 'evaluation' of the respective weights of, rather than a numerical balancing of, the factors (***USA v McDaid*** **[2020] EWHC 1527 (Admin)** at paragraph 44)**.**

101. Further, the High Court in ***Shaw v USA*** **(2014) EWHC 4654 (Admin**) at para 41 held that 'the test is not… whether the appellant should be tried in the requesting state or in the UK. The question is whether, in the interests of justice, there should not be an extradition to the requesting state.'

102. I will now deal with each of the 'specified matters' contained in section 83A(3) of the Act in turn.

Section 83A(3)(a) – The place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur

103. In the case of ***Love,*** it was held that this will usually be "a very weighty factor". Mr Caldwell also reminded me that in the case of ***Shaw*** it was held that the word "loss" might be attached to a particular victim who has, for example, lost money and that "harm" can be associated with both victims and others.

104. It is clear from the evidence in this case that the place where most of the loss or harm occurred or was intended to occur was in the USA. Whilst, as set out earlier in this judgment, on behalf of the RP it was submitted that the value of the loss was questionable, and indeed the tokens were "valueless", it was conceded in the evidence of Mr Burnie that there was some loss. It was also submitted on behalf of the RP that the real victims were those that the SEC have found should be repaid the money from the fund for tokens that should never have been sold by RM. It was also submitted that as the real victims were those who are to be compensated from the fund, then it is not known who these people are, or where these people are.

105. Mr Caldwell reminds me that the wording of section 83A(3)(a) is "the **place** where most of the loss or harm.. occurred or was intended to occur". I have for the reasons set out earlier in this judgment found that RM is a victim in this case. I adopt those reasons here and do not intend to repeat them. I also find, again for the reasons set out earlier in this judgment that there was loss, in that RM had tokens stolen from his account which were then sold, or exchanged, for Bitcoins of a substantial value. It is clear to me that the loss in the case was therefore in the USA, as that was where RM was when the tokens were stolen from him. Further, whilst I accept that the SEC have found that RM unlawfully introduced these tokens to the market and have ordered him to pay a

fine and that the people who purchased the tokens are to be compensated by being repaid, it is clear that it was RM's digital wallet that was hacked and therefore the place of the loss, and indeed the intended loss and/or harm, was in the USA.

106. It was accepted by Mr Burnie in his evidence that at the time of the alleged offending, the offenders clearly believed the tokens had value which is why they stole them and they were exchanged for a substantial amount in Bitcoins. The RP himself is said to have received a significant sum for his role in the offences. That said, it is not the value of the loss or harm that is relevant but I refer to this as the RP questions to what extent there was any loss and it is submitted that RM was not a victim and that he did not suffer any loss. I reject these arguments for the reasons set out above. Therefore, I find that the intended harm, whatever the actual value of the loss is determined to be, was significant and substantial and the place, which is the relevant factor here, of the intended loss or harm was, without question, was in the USA.

107. Further, I do not accept that the fact that RM did not fork the blockchain, which could have mitigated the losses, means that the loss or harm or intended loss or harm was not in the USA. This is not a relevant factor when considering "the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur" which I have found was clearly in the USA.

108. For all the reasons set out above, I find that "the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur" was in the USA and this would usually be a very weighty factor. Therefore, I find that this is a factor that weighs **against** the Forum bar and that it is a very weighty factor.

Section 83A(3)(b) – the interests of any victims

109. I bear in mind that victims of offences are likely to want a prosecution to take place in the jurisdiction where they suffered the harm or loss, as this would mean that the trial is subject to their domestic laws, and, if there is a conviction, an appropriate sentence according to the laws of the USA.

110. I have, for the reasons set out earlier in this judgment, found that RM was a victim of this offence. Whilst it is submitted on behalf of the RP that RM is not a victim, or that he is not a legitimate victim whose interests should be a significant factor in determining where the interests of any victims lie, I do not find favour with these submissions. It is clear to me that RM was a victim of the alleged offending. The fact that the SEC has found misconduct in relation to RM, as a

result of the tokens that were placed by him on the market, and imposed sanctions against him, does not mean he is not a victim, which I have explained earlier in this judgment. I do find however, as set out earlier in this judgment, that RM is not a vulnerable victim. It is clear to me that whilst RM is a victim of the offending, I cannot ignore the findings of the SEC against RM's activities in relation to the sale of the Veritas tokens. That said, matters of credibility of RM in relation to these offences, I find will be a matter for the trial in due course. I do not find that they are a matter for me to take into account in relation to this specified matter, which are solely in relation to the interests of any victims and not their credibility or otherwise.

111. As RM is in the USA, and I have, for the reasons set out above, found that he is a victim, it is clear to me that the interests of RM would be to have a trial in the USA, which is where RM is based, as this would be the least inconvenience to RM and that this would also mean a trial according to the local laws and, if convicted, a sentence according to the legal system in the USA.

112. It is also submitted on behalf of the Government that there are other victims, as the theft of the tokens caused a significant drop in the market and so the investors also suffered a loss. That said, I do not know whether these victims have been identified or whether it is intended that they give evidence in any proceedings or indeed where these investors are, as they have not been identified to me. Further, I note that these victims are eligible to some form of compensation from the fund that the SEC set up but I accept that they will be receiving far less than the value of the tokens at the time the theft took place. That said, I cannot say what the interests of these victims would be, as I do not know who these are or where they are.

113. RM has indicated a willingness to give evidence in the UK. I do not know what RM means when he qualifies this willingness by reference to "substantial restitution" but I find it is likely to mean compensation for the loss he suffered as a result of the offending. The law in the UK would allow compensation and other ancillary orders, in the event of a conviction. Therefore, whilst no guarantees could be given to RM, there are the powers to compensate victims in the UK, if that is deemed appropriate in the event that there is a conviction. Further, I bear in mind that RM could give evidence, if requested, via video link and therefore avoid the need to travel to the UK. So RM's interests could be met in having a trial in the UK, in which he could evidence via video link from the USA to a Court in the UK. The UK has facilities for witnesses to give evidence via video link and indeed, not least as a result of the pandemic, the Courts are used to receiving evidence in this way and have the equipment to do so. RM could give evidence via video link to the UK at a time and location that is convenient to him.

114. Therefore, whilst I acknowledge RM's interests are likely to be a trial which causes the least convenience to him, and that this would be a trial in the USA, which would also mean a trial according to the local laws and, if convicted, a sentence according to the legal system in the USA, RM has indicated a willingness to give evidence to a Court in the UK. This could be given via video link, at a time and place that is suitable to RM and therefore, his interests could still be met in this way should a trial take place in the UK. That said, I accept a trial in the UK would likely lead to more than one trial, as certainly 2 of the co-Defendants are in the USA, but I do not know the exact stage of those proceedings or whether there are likely to be guilty pleas. There is another co-Defendant, Mr Barr, and I do not know where he is currently. It appears to me, from the evidence of Mr Maloy that the proceedings in relation to only one of the co-Defendants is currently under way in the USA. Therefore, it may be that there is more than one trial in any event.

115. A point that was not specifically taken before me, but one I consider relevant, is that this is a case where there is a risk that the RP may commit suicide if extradition were ordered. I will deal with this matter later in this judgment when I deal with the issue raised pursuant to section 91 of the Act. Suffice to say, the experts in this case agreed that the RP was a risk of suicide which was more than fanciful should extradition be ordered. Indeed, the RP is a high or substantial risk of suicide should extradition be ordered, as I will explain later in the judgment as I have said. In ***Love*** it was stated that where there is a suicide risk and therefore a risk that there may be no trial at all, if that were to happen, then clearly the victim's interests were in there being a trial, rather than no trial at all. I find that this is a relevant factor here in this case, when all the matters are considered in the round in relation to this specified matter.

116. As I found that this was an issue was that was relevant in this case, I e-mailed the parties following the receipt of closing submissions, to clarify whether in fact this was a matter that was being raised on behalf of the RP and gave both sides the opportunity to comment upon this. The following were the submissions I received on behalf of the RP:

> "The expert psychiatric evidence in this case demonstrates that, if extradited, there is a high risk of mental deterioration and a high risk of suicide. As the High Court found in ***Love*** at [33], there are therefore "*significant risks that there would be no trial at all in the US*". Clearly that would not be in the interests of the victims. This is especially so where a prosecution could take place in the UK with markedly reduced risks of suicide or life-threatening self-harm.

Furthermore, the evidence of all three psychiatrists demonstrates that there is a very high risk of a deterioration in Mr de Rose's mental condition, irrespective of whether he actually takes his own life. Such a serious deterioration would inevitably threaten the possibility of holding a trial in the US at all, and at the very least result in inevitable delay whilst his fitness to plead was examined: cf. ***McDaid*** at [48]. The Court can readily take account of the inevitable risk to the holding of a trial if there is the serious deterioration in his mental health that all three psychiatrists consider to be highly likely. Again, a lengthy postponement or cancellation of the trial by reason of a serious deterioration in Mr de Rose's health, or some act of serious self-harm falling short of death, would not serve the interests of the victim or victims - to the extent that they can legitimately be taken into account."

117. On behalf of the Government, I received the following submissions:

"In *Love,* the High Court's consideration of the risk that there might be no trial [33] derived from a medical assessment of Mr Love's fitness to plead [32]. That opinion considered Mr Love's mental condition in the context of a series of listed physical conditions that were thought likely to deteriorate. In the present case, only Dr Picchioni expressed an opinion about Mr de Rose's fitness to plead [US tab 14, pp156-158, with opinion at §5.1.4], concluding that Mr de Rose was fit to plead. The issue of suicide risk alone, does not resolve a prospective assessment of fitness to plead, which is an issue best determined in the Requesting State: *Dewani* [2014] EWHC 153 (Admin).

In Scott [43] the Court considered a choice between a trial in one jurisdiction and no trial in the other jurisdiction. In the present case it is a matter of conjecture whether, in the event that extradition were refused, a trial would take place in the UK.

Victim interests must be viewed within their proper boundaries. Victims have a legitimate interest in a trial according to law, but victim interests should not be taken to prioritise achieving a conviction over the protection of defence rights. Whilst delay may affect victim interests, the accommodation of defence rights does not diminish those interests. An assessment of delay deriving from Mr de Rose's mental condition (whether tried in the UK or US) would be entirely speculative."

118. Having considered the submissions, I find that it whilst it would be in the victim's interests for the trial to take place in the USA, subject to what I have already set out above, as set out in ***Love*** and ***Scott*** "their interest in having a trial at all is the more important". I find that there is a

risk that there may not be a trial in the USA, should the RP be extradited, as there is a high or substantial risk that he would commit suicide. The reasons for this will be fully set out when I deal with the issue raised pursuant to section 91 of the Act, which I adopt here for the purposes of this specified matter. Therefore, whilst the victim's interests (that of RM) are best met by a trial in the USA for the reasons set out above, they could equally be met by a trial in the UK, which RM has indicated a willingness to participate in if needs be. I have borne in mind that any inconvenience to RM giving evidence to the UK can be mitigated by him giving evidence to the Court in the UK via video link, so he would not need to travel in person to the UK. He is not a vulnerable victim. He could also follow the trial via video link if he wished to do so. Alternatively, he could attend in person in the UK. These factors do reduce the interests of the victims in the trial taking place in the USA.

119. Therefore, taking all the matters I have set out above, overall, I find that this is a factor, that weighs **against** the Forum bar but it is more finely balanced in this case for the reasons set out above.

Section 83A(3)(c) - any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;

120. It was agreed that in this case this was not a relevant as there was no prosecutor's belief relied upon. Therefore, this is a **neutral** factor in this case.

Section 83A(3)(d) – were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom

121. The evidence is in the USA and this is not a matter that is in dispute. The Government have explained that this evidence could be transferred to the UK pursuant to a Mutual Legal Assistance request and this was a matter conceded by Mr Caldwell at the final hearing. RM has also indicated that he would assist with a prosecution in the UK. He could give evidence either in person or via video link, as could any other witnesses. No witnesses are vulnerable nor do they appear to be in a sensitive category of witnesses.

122. Therefore, it was conceded on behalf of the Government that the evidence necessary to prove the offences could be made available in the UK. Whilst Mr Caldwell submitted that this was therefore "at best, a neutral factor", I disagree with that submission. As the evidence necessary to

prove the offences could be made available in the UK, I find that this is a factor which weighs **in favour** of the forum bar.

Section 83A(3)(e) - any delay that might result from proceeding in one jurisdiction rather than another

123. It was submitted on behalf of the RP that "there is no reason to suspect that there would be delay over and above that to be expected in the transfer of a prosecution from one jurisdiction to another." It was further submitted that the two co-Defendants, Faulk and Navaez, who are in the USA, are nowhere near trial and no significant progress is being made in those cases. I was referred to the case of ***Love***, where it was accepted that no investigation had taken place in the UK and the evidence was that the USA had plainly investigated the case. The High Court concluded in that case at paragraph 38 that in relation to delay "there is no clear justification for favouring one jurisdiction over another on that score".

124. On behalf of the Government, Mr Caldwell submitted that the proceedings in the USA are at an advanced stage and Mr Faulk is before the Court already in relation to these offences. There is also reference to the Speedy Trial Act but I did not hear evidence as to how that would or could apply to this RP's case. Therefore, I simply do not know whether this would apply to the RP.

125. I find that there would inevitably be delay were these matters to proceed in the UK. There has been no investigation in the UK and the proceedings in the USA are clearly at an advanced stage, as one co-Defendant's case is proceeding before the Court already. I accept that it appears that the proceedings have not begun in relation to the other Co-Defendants but nonetheless, it is clear to me that the proceedings are at an advanced stage in the USA. If the matter were to be tried in the UK, there would need to be an investigation in the UK and the prosecution would need to consider substantial evidence, a matter which has been underway in the USA for some considerable time, and this would need to be carried out in accordance with the relevant UK criminal justice rules and procedures. I find that it is clear that proceedings would be concluded much quicker in the USA should extradition be ordered in relation to these offences.

126. I also bear in mind that it there is a significant delay in the UK in relation to the backlog of cases in the Crown Courts in the UK. Whilst this was not a matter that was raised on behalf of the RP, it is a matter I cannot ignore. Although no evidence was put before me as to the current backlog of cases in the UK, it is well known that this is significant as a result of the impact of the pandemic. This would also undoubtedly mean delay in the UK.

127. Therefore, considering all these matters, I find that a trial in the USA would be concluded much more swiftly and that there would likely be substantial delay should the proceedings take place in the UK. Therefore, I find that this is a factor which weighs **against** the forum bar.

Section 83A(3)(f) – the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to— (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and (ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom

128. On behalf of the Government, Mr Caldwell submits that, as set out in the evidence of Mr Kitchens, 3 of the 4 co-Defendants are in the USA. It also submitted that the prosecution witnesses are all in the USA and therefore, as it is the intention of the USA to seek a joint trial for all 4 co-Defendants, it is desirable and practicable for all prosecutions to take place in the USA.

129. That said, the prosecution have not provided details as to the status of proceedings against the co-Defendants. Indeed, on behalf of the RP, Mr Maloy, who looked into the proceedings against the co-Defendants in the USA, was not able to find any docket that refers to Mr Barr in the USA. Further, in relation to Mr Faulk, whilst he has been brought to Atlanta and had appeared in Court in Atlanta, the case had been adjourned several times due to the amount of discovery that had been filed in the case. Mr Maloy explained that defence motions were still to be filed in the case and that no trial would be listed until those had been filed. In relation to Mr Narvaez, Mr Maloy explained that he was facing charges in California and that he had not yet been arrested for the allegations in relation to this matter. Mr Maloy explained that Mr Navaez had mental health issues, which was identified on the docket in California. Mr Maloy confirmed that there was no filing for Mr Narvaez in Atlanta, other than the indictment which includes the RP. Mr Maloy explained that Mr Narvaez needs to be arrested and brought to Court in Atlanta but so far no request had been made for him to brought before the Court or to be arraigned in relation to these proceedings. Mr Maloy explained that in the USA, there is a concept of a person not being competent to stand trial but stated that the person would still appear before the Court and be arraigned at which point it would be suggested that the person was not competent and the Court would order and independent evaluation of the person. I accept the evidence of Mr Maloy. He was a credible witness and he was not challenged about the accuracy of this evidence. I therefore accept what Mr Maloy has said about the co-defendant's cases in the USA.

130. I find, as I have said earlier in this judgment, that all the witnesses in this case are in the USA. Two of the co-Defendant are also in the USA. It is clear to me, that certainly in relation to one co-Defendant, the proceedings are already taking place in the USA. Another co-Defendant is also in the USA but he is yet to appear before a Court in Atlanta. That said, he is in the USA. Therefore, it is clearly preferable, and indeed desirable, for all prosecutions to take place in the same jurisdiction, according to the laws of that jurisdiction, even if that is the subject of separate trials. There is no suggestion that any other co-Defendants would be tried in the UK in relation to these offences. The evidence is that the other prosecutions are either taking place in the USA already, as in the case of one co-Defendant, or that they are likely to take place in the USA, in the case of another co-Defendant who is already in the USA. There are clear benefits from having all prosecutions in the same jurisdiction, under the same laws, and indeed, should there be a conviction, for sentence to take place subject to the same sentencing regimes.

131. Any witnesses in this case could give evidence via video or live link to the UK. This can be done at a time and location that is suitable to the witnesses. This can also be arranged so that it fits in with the time difference. Indeed, I heard evidence from Mr Maloy and Ms Baird in these proceedings, who gave evidence from the USA, in such a way. The use of video link for witnesses to give evidence is an increasingly common feature of criminal trials in this jurisdiction. The use of video-link evidence throughout the legal system has grown significantly since the beginning of the pandemic. There is nothing to suggest that, despite the time difference between the USA and the UK, the witnesses in this case could not give their evidence to a Court in England at a convenient time of day for them.

132. Whilst I accept that the witnesses could give evidence to the UK for the reasons set out above and that RM has indicated a willingness to participate in any trial in the UK, there is no suggestion that the co-Defendants would, or could, be tried in the UK also.

133. That said, as I have said, it does appear to me that there are likely to be separate trials in relation to these co-Defendants. Whilst the Government have stated that they intend to seek a joint trial in relation to all the co-Defendants, I find that it is highly likely that this will not be achieved. I rely on the evidence of Mr Maloy, which I found credible. I accept that the case against Mr Faulk is at an advanced stage. The USA do not appear to be waiting for Mr Naveraz to be joined to that trial, as they have taken no steps that I am aware of, to put him before a Court in Atalanta in relation these offences. I also do not know where Mr Barr is or what stage the proceedings are at in relation to him. I find I cannot ignore the likelihood, of whatever decision I reach today, the RP or the Government, would no doubt seek to appeal my decision, which would inevitably cause

a delay in this RP being extradited to face a prosecution in the USA, if that was to be the outcome. Therefore, I find that it is highly unlikely that the RP would be able to be tried jointly with Mr Faulk or that there is to be a joint a trial for all 4 co-Defendants. Therefore, as was said in ***Scott,*** the fact that it is highly unlikely that there will be a joint trial, in other words a single trial, is a factor I am entitled to take into account.

134. It was submitted on behalf of the RP that the weight to be given to RM's interests in a trial in the USA should be qualified due to the findings of the SEC. As I have said when dealing with the victim's interests, whilst I do not ignore the findings of the SEC against RM's activities in relation to the sale of the Veritas tokens, matters of credibility of RM in relation to these offences, I find will be a matter for the trial in due course. I do not find that they are a matter for me to take into account in relation to this specified matter, which is based on the desirability and practicality of proceedings in one jurisdiction.

135. In conclusion, I find that it is desirable, for all prosecutions to take place in the same jurisdiction, according to the laws of that jurisdiction, even if that is the subject of separate trials. Therefore, this is a factor which weighs **against** forum bar, but the fact that I find, despite the Government's intention, that it is highly unlikely that there will be a single, joint trial in relation to all four co-Defendants, this is a factor which reduces the weight that I give to this matter.

Section 83A(3)(g) - D's connections with the United Kingdom.

136. It is accepted that the RP is a UK national with very strong ties to the UK. It was also conceded on behalf of the Government that the RP is a carer for his mother and that his partner is pregnant and the baby is due to born in the next few weeks. The RP also works in the UK.

137. The court in ***Love*** specified limitations on this factor and found that the concept is not "so elastic that it replicates the full scope of Article 8. No exhaustive definition can be attempted judicially, but `connection 'is closer to the notion of ties for the purposes of bail decisions…. The risk of suicide upon extradition, or serious deterioration in health would not, of itself, create a connection with the UK.… It is also difficult to see that the prospect of being prosecuted here shows a connection to the UK….'

138. In relation to this matter, I find that in this case that there are features of the RP's mental health conditions that do add to his strong ties to the UK. This is not based upon his risk of suicide should extradition be ordered in itself. Rather it is based upon his support from his family members which I find is significant and an important factor in this case.

139. It is clear from the evidence of the RP's mother that she has cared for the RP for many years. It was also accepted by the medical experts in this case that the RP's family connections and support they provide are an important factor in relation to the RP and his mental health. The RP has ASD and he has relied heavily on his mother for support in relation to this. He also relies on his partner for support.

140. I also take into account that the RP's mother has had cancer and that the RP was devastated by this diagnosis and that he provided his mother with a great deal of support through this time, when his mother was very ill. There is a risk that the cancer may return.

141. Whilst I accept that the RP's mother does not talk to the RP about his mental health as he finds this difficult to talk about, the RP's mother is acutely aware of his mental health issues and is aware of triggers that can lead to a deterioration. Indeed, his mother has intervened on more than one occasion, which has ensured that the RP was not successful in taking his own life. I also accept that the friction between the RP and his partner, or indeed following an argument with his partner or his mother, that this is when the RP has self-harmed or attempted to take his own life, but that does not mean that they are not important in terms of his support. I find that all this demonstrates is the fragility of the RP's mental health and that in situations of conflict, his mental health can deteriorate so that he commits acts of risky self-harm or suicide. The fact is that this is a very vulnerable young man who has significant mental health issues and he strongly relies on his family for support.

142. On the evidence before me, I find, for example, the fact that the RP believed, or hoped, that he would be granted bail when he was in custody in relation to this matter in the UK, and that he would return home to his mother, was a source of hope for the RP. I find that the RP did find his time in prison in the UK, which included being away from his family with no face to face contact with them, an extremely difficult time and that his mental health deteriorated during that time, although I accept he did not engage in self-harm whilst he was in custody in the UK.

143. The RP's mother has supported her son from an early age with his mental health and indeed she sought a referral for him to CAMHS when he was 10 years of age and had the RP admitted to a psychiatric unit in 2011 for 2 weeks, which result in him then going to the Collingham Centre for a number of months. Mrs de Rose tried to encourage her son to go to school, when he refused to go. So whilst I accept that the RP's mother does not speak to her son about his mental health, I do not find that this means that she does not offer strong support to her son.

144. Further, in Dir Picchinoi's report, he stated that "in my opinion [extradition] will formally remove [the RP] from direct face to face contact with his family, that notwithstanding the complexity of some of those relationships, are still considered to be supportive and protective for him and serve to reduce his risk of self harm and suicide." Dr Picchioni also stated in his oral evidence that he had spoken with the RP about other hopes that he had and that the RP had spoken about his desire to be able to support his girlfriend and his child, when it is born. Dr Picchioni also conceded that there were significant risks in removing the RP from the UK and his family, which is the essence of the evidence of Dr Deeley and Dr Ajaz.

145. Dr Picchioni also gave evidence about the importance of the RP's family support, in that his family have intervened on occasions to prevent the RP from completing the act of suicide, as follows:

> "There are specifics in the RP's case, namely his emotional instability, mood impulsivity and his deeply entrenched low self-esteem. In the moment, when he is exposed to triggers, in those moments, and those triggers are multiple and broad for the RP and some are everyday, he can be decompensated mentally, his mental faculties are destabilised and his ability to tolerate his emotions under those circumstances becomes overwhelming, and in those circumstances, he has, in the past, engaged in multiple recurrent acts of deliberate self-harm and these have spanned a wide range of types of behaviours, none of which are trivial, all of which are important; some comparatively safer and others very dangerous. In terms of times when he has been actively suicidal, when his desired outcome was to end his life, in those moments it seems to me that the desire is relatively short-lived but it does seem to be present. In those moments, some behaviours he has engaged in, particularly the use of ligatures and taking himself to high place, they are potentially serious and life-threatening. Finally, in most circumstances, either he or someone else, has intervened and applied the brakes and the behaviour has not escalated to a final point or someone had intervened and the action has not been completed."

I find that this recognises the importance of his family and thus his connections to the UK. The RP's mother in particular is aware of the RP's mental health and she has acted to intervene when he has attempted to commit suicide in the past. I find that the RP's mother, and to some extent his girlfriend, are therefore important factors in the context of this case and the support that his mother gives to the RP cannot be underestimated. The RP now has a baby on the way, and I have no doubt that this will be an additional protective factor for the RP.

146. I accept that the RP's previous behaviours of self-harm and/or attempted suicide have largely been brought about following an argument or disagreement with family members, specifically his mother and girlfriend. That said, I also find on the evidence before, that his family are a stabilising factor for the RP and a strong support, particularly his mother. Whilst his mother is not able to discuss the RP's mental health with her son, that does not mean that she is not a strong support for the RP or that the relationship between them is not a stabilising factor. I find that she is a stabilising factor for the RP. I found the evidence of Mrs de Rose to be credible and she explained how the RP was scared and devastated when she was diagnosed with cancer and that he supported her throughout that time. I observed the RP as his mother gave evidence and I find that their connection or bond is strong.

147. Therefore, taking all these factors into account and having considered the evidence provided and the submissions made, I find that the RP's connections to the UK are very strong. Therefore, this is a matter which is strongly **in favour of** the forum bar and I give substantial weight to this factor.

Conclusions in relation to Forum

148. I remind myself that the 'specified matters' contained in section 83A(3) of the Act do not have any hierarchy or pre-allocated weight (***Dibden***) and that I am required to reach an overall 'value judgment' (***Atraskevic v Lithuania***) following an 'evaluation' of the respective weights of, rather than a numerical balancing of, the factors (***McDaid***)**.** Further, the High Court in ***Shaw*** held that 'the test is not… whether the appellant should be tried in the requesting state or in the UK. The question is whether, in the interests of justice, there should not be an extradition to the requesting state.'

149. I have found a number of factors to be against the forum bar. In relation to (a), the place where the harm took place, this is a matter which weighs against the forum bar and this is weighty factor. In relation to (b), the victim's interests, I have found that this is a matter which weighs against the forum bar but that it is more finely balanced in this case for the reasons I have given, so the weight I attach to this matter is reduced. In relation to (e), delay, I have found that this is a matter which weighs against the forum bar. Finally, I have found that (f), the desirability and practicality of all prosecutions taking place in the one jurisdiction, is a matter which also weighs against the forum bar but I have reduced the weight I have given to this matter as I have found it highly unlikely that there would be a single joint trial in relation to all co-Defendants.

150. I have found that one matter, namely (c), the prosecutor's belief, is a neutral matter in this case.

151. I have found two matters in favour of the forum bar, namely (d), whether evidence could be made available in the UK, and (g) the RP's connections to the UK. In relation to the RP's connections to the UK, this is not an overwhelming factor but nonetheless I find, for the reasons set out above, that it is a weighty factor and I give substantial weight to this.

152. Of the four matters which weigh against the forum bar, I remind myself that the place where the harm took place is a weighty matter but the weight I attach to the victim's interests and the desirability and practicality of all prosecutions taking place in the one jurisdiction, I have reduced for the reasons I have given. Whilst there is one neutral matter and two matters in favour of the forum bar, and I give substantial weight in this case to the RP's connections to the UK, I remind myself that this is not a "numerical balancing" exercise. I must form an overall 'value judgment'. The question is whether, in the interests of justice, there should not be an extradition to the requesting state.

153. I have carefully considered the specified matters in this case and the submissions that have been made on behalf of the Government and the RP. Given my findings in relation to each of the specified matters, with the weight I have given to each, as set out above, I have carefully considered and evaluated the specified matters. I find that the overall value judgment I make in this case is that I am satisfied, in the interests of justice, there should not be an extradition of the RP to the USA to face a criminal prosecution.

154. Therefore, I find that the RP's extradition is barred by reason of forum as the extradition of the RP to the USA would not be in the interests of justice for the reasons set out above.

Section 91 – Health

155. Section 91 of the Act provides as follows:

> "(1) This section applies if at any time during the course of the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
>
> (2) The condition is that the physical or mental condition of the person in respect of whom the Part 1 warrant is issued is such that it would be unjust or oppressive to extradite him."

156. In relation to cases where the Defendant is a risk of suicide, there are a number of cases which had set out the law in relation to this issue. In ***Turner v Government of the USA*** **[2012] EWHC 2426 (Admin),** Aikens LJ summarised the position in relation to section 91 of the Act at paragraph [28]:

> "(1) The court has to form an overall judgment on the facts of the particular case.
>
> (2) A high threshold has to be reached in order to satisfy the court that an Appellant's physical or mental condition is such that it would be unjust or oppressive to extradite him.
>
> (3) The court must assess the mental condition of the person threatened with extradition and determine if it is linked to a risk of a suicide attempt if the extradition order were to be made. There has to be a "substantial risk that [the appellant] will commit suicide". The question is whether, on the evidence the risk of the appellant succeeding in committing suicide, whatever steps are taken is sufficiently great to result in a finding of oppression.
>
> (4) The mental condition of the person 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 and if that is the case there is no oppression in ordering extradition.
>
> (5) On the evidence, is the risk that the person will succeed in committing suicide, whatever steps are taken, sufficiently great to result in a finding of oppression?
>
> (6) Are there 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?
>
> (7) There is a public interest in giving effect to treaty obligations and this is an important factor to have in mind".

157. The Divisional Court in ***Polish Judicial Authority v Wolkowicz and others*** **[2013] EWHC 102 (Admin)**, Thomas LJ stated:

> "The key issue… will, in almost every case, be the measures that are in place to prevent any attempt at suicide by the requested person with a mental illness being successful. As (Counsel for the Judicial Authority) correctly submitted on behalf of the respondent judicial authorities, it is helpful to examine the measures in relation to three stages:

(i) First, the position whilst the requested person is being held in custody in the UK is clear. As Jackson LJ observed in Mazurkiewicz at paragraph 45, a person does not escape a sentence of imprisonment in the UK simply by pointing to the high risk of suicide. The court relies on the Executive branch of the state to implement measures to care for the prisoner under the arrangements explained in ***R v Quazi*** **[2010] EWCA Crim 2759, (2011) Crim LR 159.**

(ii) Second, when the requested person is being transferred to the requesting state, arrangements are made by the Serious Organised Crime Agency (SOCA) with the authorities of the requesting state to ensure that during the transfer proper arrangements are in place to prevent suicide in appropriate cases. As Collins J helpfully mentioned in ***Griffin*** at paragraph 52, steps should ordinarily be taken in such cases to ensure that no attempt is made at suicide and proper preventative measures are in place. Medical records should be sent with the requested person and delivered to those who will have custody during transfer and in subsequent detention.

(iii) Third, when the requested person is received by the requesting state in the custodial institution in which he is to be held, it will ordinarily be presumed that the receiving state within the European Union will discharge its responsibilities to prevent the requested person committing suicide, in the absence of strong evidence to the contrary."

158. In ***Gromovs v Latvia*** **[2014] EWHC 4155 (Admin)** it was held that:

> "…the threat of suicide will not result in a decision that extradition should not take place unless the chances that the individual will commit suicide are utterly overwhelming….it has to be an overwhelming case and the court has to be satisfied that nothing could be done in order to avoid that result…. It is usual, and indeed essential, that where there are problems such as are raised in this case the receiving state's authorities in any given case must be given full information so that the necessary care can be given. So, in this case, it will be essential that the psychiatric report and any other reports there may be from this country which are material should accompany the appellant when he is extradited …so that the…authorities are given the fullest information to enable them to deal with the situation."

159. In the case of ***Vincenzo Suricov Public Prosecuting Office of Bari, Italy [*2018] EWHC 401 (Admin)**, the court concluded that it was not just a risk of suicide that the court needed to consider, as there were cases that were not based just on the risk of suicide. In particular the Court held:

> *"*I consider that there is some force in Ms Brown's criticism that the district judge was wrong to focus on the risk of suicide to the extent that he did – it having been accepted that this was not a 'suicide case' – instead of considering the Appellant's primary case that his extradition and incarceration in Italy would cause his physical and mental health to decline and that this, combined with the absence of the strong support network from his family, would result in oppression, with the consequence that extradition is barred by s 25 of the EA 2003. A risk of suicide in the requesting state is just one way in which s 25 may be engaged so as to bar extradition. But it is not necessary to establish a risk of suicide before s 25 comes into play. If the evidence discloses that extradition may result in a deterioration in a person's mental health so that they will become seriously unwell if they are extradited then that might serve to establish the necessary oppression for the purposes of s 25."

160. In ***Republic of South Africa v Dewani*** **[2013] 1 WLR 82** the Divisional Court held that the statutory test is a fact specific process as part of which "all the relevant circumstances" must be considered including the fact that all extradition involves some stress and hardship, neither of which are enough to make out oppression

161. Further, as found by Ouseley J in ***Mikolajczyk v. Poland [2010] EWHC 3505 (Admin)*** is*:*

> "…it is of course possible that treatment will be less satisfactory in Poland than in the United Kingdom, but the question is whether the difference in treatment would mean that extradition was oppressive. It is for the appellant to demonstrate that this is so."

162. In ***Magiera v Poland*** **[2017] EWHC 2757 (Admin)**, it was held that:

> "the range of medical care that is provided in prisons is necessarily and inevitably more limited than that which is available in the outside world … and it is also obvious that the sort of medical care which can be provided in prisons is subject to constraints arising from security requirements and the like [and so]… where the treatment or management of the illness or condition is more complex, more detail may be required [of how it is intended that a specific condition will be managed]….

…[It requires] an intense focus on what that medical condition is and what it means for [an appellant] in terms of his daily living, so that a proper assessment can be made of what effects upon him and his condition extradition and incarceration would have". (paragraph 32).

163. Finally, as set out in ***Milan Spanovic v Government of Croatia and Secretary of State for The Home Department*** **[2009] EWHC 723 (Admin)**, the graver the charge, the higher the bar. So, the seriousness of the offence for which extradition is sought is a relevant consideration.

164. It was submitted on behalf of the RP that extradition to the USA would be oppressive given his medical conditions, in particular his mental health conditions. In relation to this issue, I heard evidence from Dr Ajaz and Dr Deeley on behalf of the RP. I also heard evidence from Dr Picchioni on behalf of the Government. I also heard evidence from Mr Maloy and Ms Baird in relation to prison conditions in the USA and the ability for the RP's health to be treated in prison in the USA. I will deal with these matters later. First, I want to deal with the evidence of Dr Ajaz, Dr Deeley and Dr Picchioni.

165. In this case, there was broad agreement as to the RP's medical conditions. On behalf of the Government, it was conceded that the RP had a difficult upbringing and that he had a longstanding history of mental disorder. This was not a case where the RP's mental condition had only arisen after his arrest on the extradition request, as is often the case. All three psychiatrists agreed that the RP has Asperger Syndrome (ASD), Attention Deficit Hyperactivity Disorder (ADHD), an anxiety disorder and a depressive disorder. Whilst Dr Ajaz and Dr Deeley refer to the RP having a recurrent depressive disorder, Dr Picchioni stated that the RP presents with a labile mood state and that this can vary over time but he conceded in his oral evidence that the RP did have a recurrent depressive disorder. Dr Picchioni also believed that the RP may have an Emotionally Unstable Personality Disorder but explained in his oral evidence that he was not making this diagnosis, rather that there were abnormalities present and that it may develop into a full personality disorder. It was agreed by all experts that these conditions are all linked to the RP having a real risk of self-harm and suicide.

166. It was also agreed by all the psychiatrists that there was a high risk of self-harm in relation to the RP.

167. The real issue in this case was the extent of the RP's suicide risk and the likelihood that he would commit suicide should extradition be ordered and/or take place in this case. There was also an issue as to the measures, or arrangements, that would be available in the USA to "cope properly with the person's mental condition and the risk of suicide". After the final hearing, in

written closing submissions, I was invited by Mr Caldwell to consider whether assurances were required from the Government as part of this judgment.

168. As set out earlier in this judgment, I have considered all the written and oral evidence in this case. I will refer to the parts of the evidence that I consider necessary for the purposes of this judgment. If I do not refer to a matter, it does not mean that I have not considered it, just that it was not necessary to refer to it in this judgment.

169. It was accepted on behalf of the Government that the RP has a long-standing and documented history of his mental health conditions. In particular, as set out in the Closing submissions on behalf of the Government, it was accepted that the medical records showed the following:

> "The Requested Person first received a professional assessment of his mental health upon his admission to hospital in September 2010, following an incident when he cut his arm superficially with a blade and poured red ink over himself. That assessment led to his admission as an inpatient to the Collingham Child and Family Centre where he spent a week as a voluntary inpatient and thereafter as a day patient. Mr de Rose was not considered to suffer from depression; his discharge diagnosis was conduct disorder.
>
> Mr de Rose received an assessment of his cognitive abilities in December 2010 and was within the average range with no evidence of distractibility. Letters from 2012 and 2013 refer to Mr de Rose experiencing low mood. When seen in September 2013 he was not felt to be depressed. He denied any suicidal or self-harm ideation.
>
> The occasion, put as summer 2019, when the Requested Person went to Wandsworth Bridge did not result in a hospital admission or assessments and it appears that the next assessment prior to these proceedings was with Dr Tunstall in December 2020. Dr Tunstall diagnoses ADHD and prescribed medication which has had a marked improvement on his ability to concentrate, impulsivity and organisational skills."

I should add, that there are other documented self-harm or suicide attempts in the papers but it is not necessary for me to set these out here, as they are not in dispute in this case.

170. In relation to the RP's risk of suicide, Dr Ajaz and Dr Deley agreed that the RP was a high risk of suicide. Dr Ajaz, in his oral evidence, stated that when he saw the RP in prison, he was worried about the RP as his mental health have deteriorated over the 4 weeks that he had been in

custody, that the RP suffered with debilitating panic anxiety and panic attacks, in addition to this depression and that the mental health services were not really helping the RP. Dr Picchioni was of the opinion that the RP's risk of suicide was comparatively lower than his risk of self-harm but that it was higher than the general public. He also accepted that there was a significant, though lower, risk of suicide in the next 6 months even if no order for extradition was made and no extradition actually took place.

171. Dr Ajaz informed me in his oral evidence, that should the RP be extradited, he was very concerned that the RP's mental state would deteriorate and that if he was in the USA, away from his family, that this would have a damaging effect upon him. Dr Ajaz believed that the RP would be very vulnerable in a prison setting and that he would be liable to exploitation from others and be taken advantage of. Importantly Dr Ajaz stated that should the RP's extradition be ordered, his mental state would deteriorate and the risk of suicide would increase and that this would remain high should the RP be extradited, whatever steps were taken. Dr Ajaz informed me that lack of control is a key feature of autism and ADHD and that he believed that the RP would be unable to resist urges to commit suicide, as the RP has demonstrated over many years. Dr Ajaz was of the opinion that should the RP be extradited, he was a high risk of completed suicide and that he was concerned that the RP's mental stated would deteriorate. Dr Ajaz stated that were the RP in custody in the UK, he would still be concerned about his mental health and being in custody in the UK would still have some effect upon him, but he would have some contact with his family in the UK and he would know what to expect in custody in the UK now, which would be mitigating factors. Dr Ajaz referred to the RP as being a very vulnerable young man and that he would be concerned for the RP's safety and his life should extradition take place. Dr Ajaz was also of the view that the RP's repeated risky behaviours, such as cutting his neck, could lead to suicide. In cross-examination, Dr Ajaz stated that the RP did not cope with being in custody in the UK, he survived. Dr Ajaz conceded there was no self-harming by the RP when he was in prison in the UK but stated that was because the RP had some hope and he wanted to get bail so he could be there for his mother. Dr Ajaz believed that were the RP to be extradited, he would lose all hope. Dr Ajaz was clear that the RP's risk of suicide was a result of his mental disorder and that it was not a voluntary choice. Dr Ajaz explained to me that the RP's choice of words that he would end his life should he be extradited were voluntary but the act would not be and this would be impulsive. Dr Ajaz explained that the RP's mental conditions were such that it would significantly impact his capacity to resist the impulse to commit suicide.

172. Dr Deeley explained that the RP was a high risk of self-harm and suicide should his extradition be ordered and that this would increase if he were taken to the USA. Dr Deeley stated

that the RP was not able to control these impulses as they occur in the context of acute mental deterioration of his existing mental health conditions, which is not an enduring risk, but is situational and dynamic. Dr Deeley explained that the RP's prediction, that he would take his own life on extradition, is not inconsistent with a conclusion that such an act results from his mental disorder and from an impulsive act. Dr Deeley explained that the RP's prediction shows an awareness of his mental health condition and the triggers, to know how he would act should extradition be ordered.

173. In relation to medication for the RP's anxiety and depression, Dr Deeley was of the opinion that whilst this may reduce the severity of the RP's symptoms of depression and anxiety they would still be present and equally it may have very little difference at all. Dr Deeley stated that medication would not address the RP's mood differences or his instability and impulsivity. Dr Deeley also stated that should the RP's extradition be ordered, or should extradition take place, sooner or later, more likely than not, the RP would feel overwhelmed and would make an attempt to take his own life.

174. Dr Picchioni explained that the RP has had problems in terms of his mood throughout his life and that he has a diagnosis of depression but there have been occasions when depression has been excluded such as in 2010 and 2012 to 2013. That said, Dr Picchioni conceded in oral evidence that it was likely that the RP did meet the criteria for a recurrent depressive disorder with variations of severity. Dr Picchioni also conceded in oral evidence, that when the RP was seen by Dr Ajaz in prison, that it was likely that the RP experienced a depressive episode. In relation to anti-depressant medication, Dr Picchioni expressed the view that the RP would benefit from this but explained that if the RP had powerful stressors in his life, then it would reduce the effectiveness of the treatment but that it should still be offered to the RP as it may have some benefit to him. Dr Picchioni stated that the RP was a high risk of self-harm and that whilst there was a risk of suicide, this was comparatively lower. Dr Picchioni explained that there is a cavaet about making predictions as to a person's suicide risk as they are imprecise and susceptible to change with dynamic factors and that the RP has numerous risk factors. Dr Picchioni explained that the RP had engaged in risky behaviours in the past and that he had multiple psychiatric diagnoses which have a cumulative impact. Dr Picchoni said as follows:

> "There are specifics in the RP's case, namely his emotional instability, mood impulsivity and his deeply entrenched low self esteem. In the moment, when he is exposed to triggers, in those moments, and those triggers are multiple and broad for the RP and some are everyday, he can be decompensated mentally, his mental faculties are

destabilised and his ability to tolerate his emotions under those circumstances becomes overwhelming, and in those circumstances, he has, in the past, engaged in multiple recurrent acts of deliberate self-harm and these have spanned a wide range of types of behaviours, none of which are trivial, all of which are important; some comparatively safer and others very dangerous. In terms of times when he has been actively suicidal, when his desired outcome was to end his life, in those moments it seems to me that the desire is relatively short-lived but it does seem to be present. In those moments, some behaviours he has engaged in, particularly the use of ligatures and taking himself to high place, they are potentially serious and life-threatening. Finally, in most circumstances, either he or someone else, has intervened and applied the brakes and the behaviour has not escalated to a final point or someone had intervened and the action has not been completed. There is a distinction between deliberate self-harm and suicide, in my opinion. The risk of Mr de Rose engaging in deliberate self-harm is high".

175. Dr Pichionni explained that the RP's risk of suicide was lower and that when he saw him in the Autumn, by which time the RP was at home, in the community and that he was under the supervision of a private psychiatrist who he was seeing once a month. At that time, the risk was comparatively lower but Dr Picchioni explained that this risk would not necessarily remain significantly lower, if circumstances changed. Dr Picchioni explained that there were inaccuracies about predicting a person's risk over time. He stated that there were processes and legal steps which represented potential triggers for destabilisation (or a deterioration) of the RP's mental state and that deteriorations in his mental state were likely to increase in him engaging in self-harming behaviours. Dr Picchioni recognised that the risk of suicide for the RP was a real risk and that it needed to managed, perhaps with restrictive and intensive interventions by psychiatric services or prison staff.

176. Dr Picchioni recognised that things would get worse for the RP should extradition be ordered and that this would have a destabilising effect on him, which would increase his risk of suicide and that this risk would potentially be high if no steps were taken to mitigate or manage this risk. Dr Picchioni also recognised that each escalating step in the extradition process would mean that further steps were needed, as each step would represent a trigger for destabilising the RP's mental health. In cross-examination, Dr Picchioni agreed with the RP's own words, that should extradition be ordered he would experience a meltdown. Importantly, Dr Picchioni conceded that should extradition be ordered, the RP would have, what feels like to him, a

meltdown and that the RP's risk of self-harm, which is already high, his potential suicide becomes high and that there was a significant risk of competed suicide if extradition was ordered.

177. Dr Picchinoi agreed that the RP's suicidal impulses arose from his mental condition, triggered by an external event, and that his self-harm and suicidal behaviours would not have happened but for his mental disorder creating those impulses. Dr Picchioni conceded that the RP's risk of self-harm was high and that extradition would be a trigger and increase that risk and that a person who engages in the behaviours that the RP has in the past means that whatever his intention was at the time, the result could well be death.

178. In relation to whether the risk could be managed if the RP were to be extradited to the USA, Dr Picchioni stated that he had strayed away from expressing an opinion about this and that he could not offer an opinion as to the effectiveness of the measures that could be offered in a prison in the USA as the documents he had seen speak in general terms only. Further, he explained that some of the documents he had read say certain things would be available to treat and mange the RP's conditions but other documents say they are not available or may not be available.

179. Dr Picchioni explained that the risk of suicide was high and that it would remain high if no steps were taken but that he would expect services to attempt to put in place steps to assess the risk and manage the risk. Dr Picchioni conceded that if inadequate steps were taken, then it was likely that the RP would engage in self-harm and suicidal behaviour.

180. Dr Picchioni conceded that when the RP was in prison in the UK, the prospect of bail was a positive factor for him and that hope is important in managing the risk of suicide. Dr Picchioni also stated that he had spoken with the RP about other hopes that he had and that the RP had spoken about his desire to be able to support his girlfriend and his child, when it is born.

181. In relation to the RP mental health, I make the following findings:

i) The RP had a difficult upbringing and he has a longstanding history of mental disorder, which includes acts of self-harm and suicide attempts. The RP has engaged in risky self-harming behaviour in the past.

ii) The RP has ASD, ADHD and a recurrent depressive disorder. Whilst Dr Picchioni made reference in his written report that the RP may have an Emotionally Unstable Personality Disorder, he explained in his oral evidence that he was not making this diagnosis, rather that there were abnormalities present and that it may develop into a full personality disorder.

iii) As agreed by all experts in this case, the RP's medical conditions are all linked to the RP having a real risk of self-harm and suicide.

iv) As agreed by all the psychiatrists in this case, there is a high risk of self-harm in relation to the RP.

v) A high threshold has to be reached to satisfy me that the RP's mental condition is such that it would be unjust or oppressive to extradite him.

vi) Dr Picchioni considered that there would be a high risk of suicide if extradition was ordered and that "steps of extradition will trigger destabilisation", which he accepted was another word for deterioration. Therefore, I find, on the evidence before me, that the RP's extradition would likely lead to a deterioration in his mental health. Importantly, I find that should the RP's extradition be ordered and/or take place, there is a significant risk to the RP of completed suicide. Whilst Dr Picchioni initially gave evidence that the RP's risk of self-harm was high but his risk of suicide was comparatively lower, but higher than the general public, he later gave evidence that should extradition be ordered, or take place, there was a "**significant risk of completed suicide"** [my emphasis]. I am also satisfied, on the evidence on all the psychiatrists, that the RP's mental condition is such that it removes his capacity to resist the impulse to commit suicide, and that it is not his own voluntary act which puts him at risk of dying. Further, Dr Picchioni "totally agreed" that the reason for the suicidal incidents in the RP's history was due to his mental disorders, which included ADHD, ASD and his personality disorder, creating the impulse to commit suicide. These concessions were in line with the evidence of Dr Deeley as to the RP's risk of suicide. Dr Picchioni also conceded that there were significant risks in removing the RP from the UK and his family, which is the essence of the evidence of Dr Deeley and Dr Ajaz.

I found all the psychiatrists credible in this case but I preferred the evidence of Dr Picchioni and Dr Deeley, as I found they gave a more balanced overview of the RP's mental health and expressed the difficulties in being able to accurately predict an intention to commit suicide that would be successful. Dr Picchioni, I found, was objective in his evidence and as set out by Mr Caldwell, he recognised and explained the changing nature of the RP's mental health and he set limits on the accuracy of his assessments. Dr Picchioni was also able to recognise that there would be triggers for the RP that would increase both his risk of self-harm and of suicide.

In relation to Dr Ajaz, he was more inflexible in his evidence to me and was not prepared to make concessions in the way that Dr Picchioni was in his evidence, which I found surprising.

For example, Dr Ajaz in making in his assessment as to the RP's suicide risk, stated that had placed some weight on the RP's inability to express himself and access help. I agree with Mr Caldwell's characterisation that "Dr Ajaz was very slow to accept from the medical records the positive implication that the RP had been candid in his discussions with prison staff". I struggled to understand why Dr Ajaz failed to recognise this, as it was clear that the RP had actively discussed his mental health, thoughts of self-harm and requested his medication whilst in prison.

vii) The RP does not take medication for his anxiety and depression. Whilst the RP does take amitriptyline, it is accepted that this is at a dose for analgesic reasons only. The evidence of Dr Picchioni was that the RP would likely benefit from a medication such as sertraline. Dr Deeley was of the opinion that whilst medication may reduce the severity of the RP's symptoms of depression and anxiety, they would still be present and equally it may have very little difference at all. Dr Deeley stated that medication would not address the RP's mood differences or his instability and impulsivity. I accept this evidence. Dr Picchioni's evidence in relation to medication was similar, in that he stated that the effectiveness of such medication would reduce if the RP had powerful stressors in his life.

viii) I accept that the RP's previous behaviours of self-harm and/or attempted suicide have largely been brought about following an argument or disagreement with family members, specifically his mother and girlfriend. That said, I also find on the evidence before, that his family are a stabilising factor for the RP and a strong support, particularly his mother. Whilst his mother is not able to discuss the RP's mental health with her son, that does not mean that she is not a strong support for the RP or that the relationship between them is not a stabilising factor. I find that she is a stabilising factor for the RP. I found the evidence of Mrs de Rose to be credible and she explained how the RP was scared and devastated when she was diagnosed with cancer and that he supported her throughout that time. I observed the RP as his mother gave evidence and I find that their connection or bond is strong. On the evidence before me, I find, for example, the fact that the RP believed, or hoped, that he would be granted bail when he was in custody in relation to this matter in the UK, and that he would return home to his mother, was a source of hope for the RP and that this had a bearing on his mental health. That said, I find that the RP did find his time in prison in the UK extremely difficult and that his mental health deteriorated during that time, although I accept he did not engage in self-harm whilst he was in custody in the UK. That said, I do not find that this means that the RP would not do so should extradition be ordered. I find that the RP, faced with the prospect of being removed from the UK, from his family, to an alien country, would, as the evidence was before

me, cause a deterioration in his mental health and at that point there would be a significant risk that the RP would commit suicide. I also note that Dr Picchioni, in his oral evidence to me, recognised the risks of removing the RP from the UK and his family.

I also find, as accepted in the evidence of the psychiatrists, in particular that of Dr Picchioni, which I have set out above but repeat here, as I find it is important in the context of this case, that his family have intervened on occasions to prevent the RP from completing the act of suicide:

> "There are specifics in the RP's case, namely his emotional instability, mood impulsivity and his deeply entrenched low self-esteem. In the moment, when he is exposed to triggers, in those moments, and those triggers are multiple and broad for the RP and some are everyday, he can be decompensated mentally, his mental faculties are destabilised and his ability to tolerate his emotions under those circumstances becomes overwhelming, and in those circumstances, he has, in the past, engaged in multiple recurrent acts of deliberate self-harm and these have spanned a wide range of types of behaviours, none of which are trivial, all of which are important; some comparatively safer and others very dangerous. In terms of times when he has been actively suicidal, when his desired outcome was to end his life, in those moments it seems to me that the desire is relatively short-lived but it does seem to be present. In those moments, some behaviours he has engaged in, particularly the use of ligatures and taking himself to high place, they are potentially serious and life-threatening. Finally, in most circumstances, either he or someone else, has intervened and applied the brakes and the behaviour has not escalated to a final point or someone had intervened and the action has not been completed."

I find that this recognises the importance of his family. The RP's mother in particular is aware of the RP's mental health and she has acted to intervene when he has attempted to commit suicide in the past. I find that the RP's mother, and to some extent his girlfriend, are therefore important factors in the context of this case and the support that his mother gives to the RP cannot be underestimated. The RP now has a baby on the way, and I have no doubt that this will be an additional protective factor for the RP.

ix) The RP is a vulnerable by reason of his medical conditions, and there is a very real likelihood of bullying, intimidation and extortion in prison in the USA. I agree with the submissions made on behalf of the RP that the evidence of Dr Deeley and Dr Ajaz in relation to this matter "was not contradicted in any significant way by the prosecution's own evidence or by the evidence of Dr

Picchioni". This was supported by the evidence of Mr Maloy and Ms Baird which I will turn to in due course.

x) The high risk of suicide and self-harm for this RP, I find would arise as soon as extradition was ordered by the court. The risk, from the evidence before me, would arise at the various "steps of extradition" which would trigger a 'destabilisation' or 'deterioration' in the RP's mental health. Therefore, I find that the risk would be present whilst he is still in the UK, should extradition be ordered, and also whilst in transit to the USA and in custody in the USA.

I accept that the RP did not self-harm whilst he was in custody whilst he was in the UK, but I have found that his hopes of being granted bail were a strong factor for the RP, as too were the steps taken in custody in the UK, such as the use of the ACCT. Therefore, were extradition to be ordered in this case, given that the RP has said he would take his own life, I find that the risk of suicide in the UK could be met by remanding him in custody and by the prison taking steps, similar to those they have taken previously. In those circumstances, the time on an ACCT, should that be deemed necessary by the prison in the UK, would be limited to the time it takes for his removal to be arranged. If there is an appeal, then the RP would have hope, similar to when he hoped he would be granted bail. The risk to the RP, I find, could not be met with the RP being on bail should extradition be ordered, as I find that the RP would take the opportunity of being on bail, to take his own life to avoid extradition.

182. I remind myself that the gravity or seriousness of the offending is relevant to this issue and I adopt my reasons earlier in this judgment as to the seriousness of these offences, which are undoubtedly serious.

183. Therefore, given my findings in relation to the risk of suicide should the RP be extradited, I need to consider the steps that could be put in place or whether the risk of the RP succeeding in committing suicide is sufficiently great, whatever steps are taken. In particular, I need to consider whether there are there appropriate arrangements in place in the prison system in the USA so that the authorities can cope properly with the RP's mental condition and his risk of suicide.

184. In relation to whether the risk could be managed if the RP were to be extradited to the USA, Dr Picchioni stated that he had strayed away from expressing an opinion about this and that he could not offer an opinion as to the effectiveness of the measures that could be offered in a prison in the USA, as the documents he has seen from Dr Leukefeld speak in general terms only and that he had insufficient knowledge of prisons in the USA to given an opinion about this. Dr Picchioni explained that the risk of suicide was high and that it would remain high if no steps were

taken but that he would expect services to attempt to put in place steps to assess the risk and manage the risk. Dr Picchioni conceded that if inadequate steps were taken, then it was likely that the RP would engage in self-harm and suicidal behaviour. As conceded on behalf of the RP in closing submissions "Dr Picchioni did agree that if all the treatments referred to in Dr Leukefeld's evidence were made available to the RP and all the safeguards laid down in Bureau of Prison policies were applied then he considered that the risk would be significantly lower" but Dr Picchioni was careful not to express an opinion as to what measures should be put in place in prison in the USA to reduce the risk of suicide for this RP.

185. Dr Deeley and Dr Ajaz on the other hand were clear that there is a high risk that Mr de Rose would commit suicide whatever steps were taken due to the dynamic nature of his disorders and the prospective emotional "meltdown", that would result from his extradition to the USA and his removal from the support of his family and familiar surroundings. It is clear that that RP has said that he would take his own life before being extradited to the USA. The evidence of the psychiatrists have accepted that this is what the RP has said that he would do.

186. I will now turn to the evidence that I heard in relation to the measures that were available in prison the USA should the RP be extradited. I accept the evidence of Maloy, that the RP would be unlikely to be granted bail should he be extradited, given his lack of connections to the USA. To this extent, the RP would therefore be placed in pre-trial detention in the USA. In relation to the conditions of detention, the relevant evidence is from Dr Leukefeld, the former Chief of Mental Health Services for the Bureau of Prisons (BOP) and current the Psychology Branch Administrator for the BOP, on behalf of the Government, and from Mr Maloy and Ms Baird on behalf of the RP. Whilst Dr Deeley, Dr Ajaz and Dr Picchioni all commented on this evidence, as set out above, I will deal with the evidence of the measures in the USA now. It was confirmed to me on behalf of the RP, that whilst the submissions have a separate heading entitled 'Prison Conditions' this was raised only in relation to this issue and not in relation to an Article 3 ECHR submission.

187. The evidence served on behalf of the Government confirms that the place of detention for the RP, should he be detained in pre-trial custody, would likely be USPA and that the facility always has mental health staff on site. Whilst both Ms Baird and Mr Maloy, on behalf of the RP, gave evidence that USPA was currently in lockdown and that this would effect the mental health services available, the evidence of Mr Kitchens, in an affidavit dated 9 November 2021, was that he had spoken to the warden of USPA who confirmed that notwithstanding the lockdown, the conditions at the facility were unchanged.

188. In written closing submissions on behalf of the RP, they referred me to further evidence by way of a report dated 31 December 2021, that stated that "USP Atlanta is "in disrepair, lacking leadership and dangerous", and that there have been 13 suicides in the past 9 years, of which 5 took place between October 2019 and June 2021. Official reviews into the suicides have concluded that there were "several instances where Lieutenants failed to make rounds on each shift for inmates who were on suicide watch. In addition, the fifteen (15) minute checks were not recorded in accordance with policy.""

189. I was asked on behalf of the RP to admit this evidence as it had come to light only after the conclusion of the final hearing. On behalf of the Government, Mr Caldwell opposed the admission of this evidence due to the fact that it was submitted after the final hearing and that I had directed that no further evidence was to be admitted without my leave. Mr Caldwell requested in an e-mail, that should I be minded to admit the evidence, that the Government be given an opportunity to respond to this evidence.

190. I indicated to the parties in an e-mail that I had not decided whether to admit the evidence but that in any event, the Government could respond to this and I requested an indication of time as to when that response could be received. On 20 January 2022, I received an e-mail from the CPS stating the following:

> "The CPS has received a preliminary response from the United States, that the Bureau of Prisons may not be able to provide a specific response to the article in question because it cites anonymous sources and an alleged non-public report. The Bureau of Prisons has however indicated a willingness to provide further information should the Court require it.
>
> In the circumstances, the CPS does not invite the Court to postpone its judgment to await a response to the article, unless further information would be likely to be of assistance to the Court, in accordance with the principles in *Assange,* to which the Court has been directed in our closing submissions."

191. In relation to the article which was referred to in the closing submissions, I do not admit this evidence, as I do not consider that it is in the interests of justice to do so. The article was served after the conclusion of the final hearing and the witnesses were not able to be asked about this. Whilst I accept the article was published after the hearing, the fact remains that witnesses were not able to be asked about it. Further, as stated by the CPS, the article refers to anonymous sources and an alleged non-public report, so I do not know where the information has come from

and I am unable to attach weight to this evidence for this reason. So even if I am wrong not to admit the evidence, I attach no weight to this article for these reasons.

192. Returning to Dr Leukefeld's evidence, Mr Caldwell helpfully set out a summary of Dr Leukefeld's written evidence in his skeleton argument and I repeat that here in this judgment:

> "Dr Leukefeld notes that were the Requested Person to be extradited it would be helpful for the BOP to receive copies of his updated medical and mental health records in order to ensure continuity of care and to designate him to the institution most appropriate for his mental health [§23]. Those notes would inform decisions taken at the initial screening process [§12] and a Suicide Risk Assessment [§13]. That may lead to an inmate being placed on suicide watch [§14] and any such inmate will be seen by the Program Coordinator (a doctoral level psychologist) on at least a daily basis to interview and record clinical notes.
>
> The warden of the facility may also authorise that the inmate is placed on a Companion Program with a suitably trained and vetted inmate. That programme may not be used however where an inmate is suicidal – it is not an alternative to suicide watch [§18]. Although a psychiatric referral may be indicated at any time, any inmate who does not respond to treatment interventions (and in any even where an inmate has been on continuous watch for 72 hours) will be referred to a Medical Referral Center for assessment and therapy.
>
> That degree of awareness of mental health needs also informs the BOP's approach to inmates serving a prison sentence. All inmates are screened by a doctoral level psychologist at the outset of their sentence [§9] and may be provided with a variety of therapies according to their needs, including cognitive behavioural therapy. Alix McLearen [RS, tab 13] confirms that the Requested Person would also be eligible to access a wide range of programs based on his needs."

193. Whilst I accept that Dr Leukefeld's evidence sets out the facilities and systems that are in place in prisons in the USA to deal with prisoners who have mental health issues and those that are considered to be a suicide risk, they are broad and generalised and not specific to the RP, in that it does not address the specific mental health issues of this RP or how they would specifically manage the deterioration in the RP's mental health which would arise, as I have found above, or indeed his suicide risk, which is linked to fact that he would be removed from his family and placed into an alien environment. Further, it does not address the harm to the RP of being kept on

suicide watch or in a psychiatric hospital, which would undoubtedly have an adverse effect on, and lead to a deterioration in, the RP's mental health.

194. Ms Baird conceded in her evidence that certain aspects of the care that would be available at USP Atlanta was outside her knowledge and/or experience, for example, Ms Baird was not aware whether the companion programme would be available. I do however accept that the mental services that would be available pre-detention would be more limited than for those serving a sentence, simply because of the length of time that would be involved in working with an individual.

195. In relation to the measure that would be available for the RP in prison in the USA, as set out by Dr Leukefeld, Dr Deeley was not satisfied that the information was specific enough to reassure him that the RP's risk of suicide could properly be managed in custody in the USA. Dr Deeley also stated that notwithstanding the suicide protocol that is in place in the USA, that the RP would still be at a high risk of attempted suicide and that any rigorous preventative regime would lead to a deterioration in the RP's mental health.

196. Mr Maloy and Ms Baird explained that USP Atlanta is currently in lockdown as a result of staff corruption at that prison. I accept that this means that inmates are in their cells for 24 hours a day save for limited reasons, such as to attend Court or for a shower. I also accept that this means that conditions in detention for inmates is particularly restrictive. That said, as this has been going on for some time, it is likely that this will end in due course. Ms Baird explained that it would be for the warden to decide when it was safe to resume normal operations and that usually 6 months to a year would be the length of such a lockdown. Whilst the evidence on behalf of the RP was that no counselling or programming would be available whilst the prison was in lockdown, the warden confirmed that notwithstanding the lockdown, the conditions at the facility were unchanged. I prefer this evidence as this is the evidence of the warden. Therefore, I find that counselling etc is available for those that need this but I accept the evidence of Ms Baird that this would be limited in pre-trial detention.

197. It was the evidence of Ms Baird, that should the RP be deemed to be a risk of suicide whilst in custody in the USA, then he would be placed on suicide watch and she described the restrictive nature of this. It was clear from Ms Baird's evidence that nobody, to her knowledge, has committed suicide whilst on suicide watch in the USA. That said, she was concerned about how this would be a harsh environment for any length of time and that the risk to the RP in relation to any suicide risk would be when he was not on suicide watch. Ms Baird explained that a person is

usually only placed of suicide watch for a period of 1 to 3 days but she conceded that a person would be kept on suicide watch for as long as it was deemed necessary, in other words, for as long a person was a risk of suicide, and that it would be for a psychiatrist or psychologist to make this assessment.

198. Ms Baird gave evidence that should the RP be convicted of the offences, then he would likely serve his sentence in a low or medium security prison. Ms Baird explained that the RP would not be detained in a minimum-security camp due to the Biden administration's decision to close privately contracted prison facilities which means that they have few beds available. Ms Baird explained that these beds are kept for US citizens and so the RP would not be detained at such a facility. I accept this evidence as I found Ms Baird credible.

199. As the RP is likely to serve his sentence in a low of medium security prison, it was the evidence of Ms Baird, supported by the evidence of the psychiatrists, that the RP would be vulnerable in such facilities, as a result of his ADHD and ASD, which would leave him exposed to predatory and targeted behaviour from other more criminally sophisticated offenders, who would target the RP. Again, I accept this evidence.

200. Whilst Ms Baird conceded that the RP could be transferred to a psychiatric hospital, should his mental health be such that this was deemed appropriate, she explained that this did not happen often and that it did not reduce the risk of suicide for this RP in its entirety as she told me she was aware of a person who had committed suicide in such a hospital. Further, there is limited information from the Government as to how this may apply to this RP. Therefore, I do not know whether the RP would be eligible for such a transfer or the effects that this environment would have on the RP's mental health as I have little information about this.

201. Whilst it was suggested by Mr Caldwell in cross-examination of Ms Baird that the RP may be eligible to have his sentenced transferred to the UK, so that he can serve his sentence in the UK, I had limited information as to how this may apply or how long it would take or indeed the likely success of such a request. Therefore, I do not know whether this would happen and certainly, it seems to be that it is a possibility at best and that it is likely that the RP would be held in custody in the USA, both pre-trial and after a conviction, should he be convicted, for a significant period of time.

202. I accept that the RP's medical notes and reports could be, and indeed should be, served on the Government, on the persons who would be responsible for removing the RP from the UK to the USA and on any prison that the RP were to be sent to. That would mean that all those dealing

with the RP would be aware of his mental health conditions and his risk of suicide. Whilst Ms Baird explained that in 25% to 30% of cases these medical records were not received and were lost in transfer, I found that this was not in relation to extradition proceedings. Indeed, I have no doubt, that if I were to direct service of medical records on the prison etc. that this would be done and that they would be received.

203. Whilst I accept Mr Caldwell's submissions, that the evidence on behalf of the Government is that the management of the RP's "mental condition in a US prison is likely to involve, as it did in HMP Wandsworth, meetings with mental health professionals, assessments by psychologists and a psychiatrist, in-cell supervision, the use and review of medication and access to mental health support from an Imam", I do however find, on the evidence of Ms Baird, that the mental services that would be available pre-detention would be more limited than for those serving a sentence, simply because of the length of time that would be involved in working with an individuals. I find that there would be some meetings with mental health professionals, assessments by psychologists and a psychiatrist and some in-cell supervision, as explained in the evidence served on behalf of the Government, as Ms Baird conceded in her evidence that certain aspects of the care that would be available at USP Atlanta was outside her knowledge. Therefore, to this extent I prefer the evidence served on behalf of the Government. That said, I did find Ms Baird credible and I accept her evidence that the mental services that would be available pre-detention would be more limited than for those serving a sentence, simply because of the length of time that would be involved in working with an individual.

204. The difficulty I have with the other submissions made by Mr Caldwell in this case, is that I find that should the RP be extradited to the USA and placed in pre-trial detention, then the RP's mental health would likely significantly deteriorate. I do not accept that by the RP simply accessing his ADHD medication and meeting with a psychiatrist would be sufficient to address the likely deterioration that would occur to the RP's mental health should he be extradited. I find that the conditions that the RP would be faced within a prison in the USA, in order to keep him safe and prevent him from committing suicide, would be by placing him on suicide watch. This would likely be required for the entire time that he was in custody in the USA, or at least for a very pro-longed period of his detention. I find, on the evidence before me, that the RP could not remain on suicide watch for this length of time without it having a serious and adverse effect on his mental health. I find, that any significant length of the RP being kept on suicide watch, would have a serious adverse effect on the RP's "very vulnerable" and "unstable mental well-being".

205. Ms Baird informed me that she was not aware of anyone who had committed suicide whilst on suicide watch in the USA. Ms Baird explained that the risk of someone committing suicide was when that person was no longer on suicide watch. Therefore, I am satisfied on the evidence of Ms Baird, that measures could be put in place, by keeping the RP on suicide watch, to ensure that he did not commit suicide. This was the same evidence that the Court heard in the case of ***Love***. However, as in the case of ***Love,*** that is not the end of this issue, as I need to consider, as set out in ***Love***, the following questions:

> "The important issue which flows from that conclusion is the question whether those measures would themselves be likely to have a seriously adverse effect on his very vulnerable and unstable mental… wellbeing?"

I bear in mind that Ms Baird explained, that the RP on suicide watch, would be kept in a room on his own, there would be no ligature points in the room, he would not be able to hoard medication, he would be issued with special clothing described as a paper-like jumpsuit and the only furniture in the room would be a bed. So, on suicide watch, the RP would effectively be in isolation which would be detrimental to his mental health and would cause a deterioration, referred to by the psychiatrists who gave evidence before me.

206. The RP is not taking any medication for his mental health. Whilst Dr Deeley and Dr Picchioni believed that the RP should be prescribed anti-depressant medication for his mental health, there is no evidence that the RP has taken any steps to take such medication. In any event, it was also conceded by Dr Deeley and Dr Picchioni, that whilst medication may improve the RP's mental health, the effectiveness of this is untested and therefore unknown.

207. I have received the medical records for the RP from the time that he was in custody in the UK. It is clear from those medical records that the RP repeatedly informed medical professionals that he was struggling with his time in custody and that he had daily thoughts of suicide and self-harm. As a result of concerns over the RP's mental health and his risk of suicide, the RP was placed on an ACCT by the prison as soon as he was remanded into custody. The RP's ACCT was reviewed regularly by mental heath professionals and the prison and for the vast majority of the time that the RP was in custody, he remained on the ACCT as he repeatedly referred to struggles with his mental health and that he had suicidal thoughts and thoughts of self-harm. Checks of the RP whilst he was subject to the ACCT were reduced at times, as the RP had requested this. On 7 April 2021, there was an ACCT review. At that review, the notes show me that the RP stated he was struggling with his mental health and that he had thoughts of suicide but no plan as to how he

would do this. It also records that the RP did not find officers were helpful during welfare checks and that it was suggested he may prefer to speak to officers of his choosing when he wishes to do so. The ACCT was closed after this review. On 14 April 2021, the notes show that the RP reported that he felt better since the ACCT had closed and that he had some self-harm ideation but no intent. On 26 April 2021, the notes show that the RP was assessed and that he reported struggling with thoughts of self-harm and he was informed that the ACCT would be re-opened. It states that the RP was displeased about this, that he found the ACCT process unhelpful and that he felt coerced into having the ACCT closed.

208. The evidence of Dr Ajaz was that the RP minimised the extent of his mental health difficulties whilst in custody in the UK to get himself taken off the ACCT. Whilst the RP was removed from the ACCT for a period of time, it is clear that this was for a short time and that the prison placed the RP back on an ACCT soon after he had been remove from it due to concerns about his mental health and his risk of self-harm and suicidal ideations. Therefore, it is clear to me that the RP was vulnerable whilst in custody in the UK in relation to his mental health and that the RP did suffer a deterioration in his mental health whilst he was in custody. It is also clear, that notwithstanding the fact that he was removed from the ACCT, the medical professionals remained concerned and placed the RP back on the ACCT. I find that the RP did minimise his mental health and the importance of the ACCT so that he could be removed from this. Whilst I accept that the RP did not self-harm or attempt to take his own life whilst in custody in the UK, the RP had the hope that he would be given bail and be returned to his family. Should the RP be in prison in the USA, I find that the RP would minimise his mental health and his risk of suicide to be removed from suicide watch. At this stage, whilst I accept that he would not be able to commit suicide when on suicide watch, should he be released from this, then he would have the opportunity to take his own life, which I find he would be determined to do.

209. The RP, if he were to remain on suicide watch for his entire time whilst he was in custody in the USA, then this would be seriously detrimental to his mental health. The RP would be in isolation, in a paper suit with very limited furniture in the room. This would have an adverse effect on his mental health and it would be oppressive to keep someone on suicide watch and subject to these conditions for any significant length of time, which I find would be necessary to keep the RP safe in prison in the USA. Whilst the RP could be transferred to an external medical facility, I have limited information about these, but in any event, such facilities would also be restrictive and be detrimental to the RP's mental health.

210. I find that the evidence before me is that should extradition be ordered and the RP be removed to the USA and placed in custody, then this would cause a deterioration in his mental health and he would be a high or substantial risk of suicide. The RP has said that he would take his own life rather than be extradited to the USA and I accept the evidence of the professional's that the RP has said this and that it is genuine. Therefore, on the evidence before me, whilst I find that the RP could be kept on suicide watch in prison in the USA, which would undoubtedly prevent the RP from committing suicide, as Ms Baird stated that nobody, as far as she is aware, has taken their own life whilst on suicide watch in the USA, I find that this measure would have a seriously adverse effect on the RP's "very vulnerable and unstable mental… well-being".

211. Mr Caldwell, in his written closing submissions, referred me to the case of ***USA v Assange*** **[2021] EWHC 3313 (Admin)**. Mr Caldwell submitted that the case set out the following principles in relation to section 91 of the Act:

> "1) The test in *Turner* applies unmodified by *Farookh* or *Fletcher*;
>
> 2) Where the Court identifies a deficiency in the proposed conditions of detention the Court should allow the Requesting State the opportunity to provide assurances that may address its preliminary finding;
>
> 3) Assurances provided by the United States ought to be accorded a high degree of confidence."

Therefore, Mr Caldwell submitted that, "applying those principles in the present case, the Court should first evaluate facts *per Turner*. If the Court considers on the evidence and information before it that the test of oppression has not been satisfied, the challenge under section 91 will fail. Where however, the Court finds that there are grounds for a finding of oppression, it should identify in what respects it would be assisted by assurances from the Requesting State and afford the US authorities an opportunity to provide those assurances."

212. I remind myself that the burden is on the RP to satisfy me that the RP's mental condition is such that it would be unjust or oppressive to extradite him. I have to assess the risk to this RP. The RP's extradition is sought in relation to an undoubtedly serious offence. I remind myself that a high threshold has to be reached to satisfy me that the RP's mental condition is such that it would be unjust or oppressive to extradite him.

213. In conclusion, I find, as agreed by all the psychiatrists in this case, that there is a high risk of self-harm in relation to the RP. I also find that there would be a high risk of suicide if extradition

was ordered and that "steps of extradition will trigger… a deterioration" in the RP's mental health. Importantly, I find that should the RP's extradition be ordered and/or take place, there is a significant risk to the RP of completed suicide. Further, Dr Picchioni recognised the risks of removing the RP from the UK and from his family. I find that the RP is a vulnerable by reason of his medical conditions, and there is a very real likelihood of bullying, intimidation and extortion in prison in the USA. The RP would be removed from his family, in particular his mother and girlfriend, who is due to give birth to the RP's son, and he would lose all hope, should his extradition take place to the USA.

214. In terms of identifying in what respects I would be assisted by assurances from the Government that this would assist in this case, I find that no measures could be put in place in prison in the USA to deal with the RP's suicide risk, given the findings I have made set out above, save for that of suicide watch. The RP may be transferred to an external medical facility should that be deemed appropriate, although I have little information in relation to this, but even that would be restrictive, and I find would likely cause a deterioration in the RP's mental health. Ms Baird also stated that she was aware of a person committing suicide in such as facility. The evidence of Dr Deeley was that the RP would be a high risk of suicide whatever steps were taken in the USA but I find that on the evidence of Ms Baird, the RP would not be able to commit suicide whilst on suicide watch. Therefore, whilst I find that a step could be put in place to ensure that the RP did not commit suicide, namely to keep the RP on suicide watch in prison in the USA, I find that this measure would have a seriously adverse effect on the RP's "very vulnerable and unstable mental… well-being, such as to render extradition oppressive in this case". This is the only measure I find, that would keep the RP safe and prevent him committing suicide. Therefore, given the evidence in this case and the findings that I have made, I would not be assisted by assurances in this case. Therefore, I do not adjourn for assurances in this case.

215. Therefore, for all the reasons set out above, I find that the RP's mental conditions are such that it would be unjust or oppressive to extradite him. I therefore accept the challenge made on behalf of the RP pursuant to section 91 of the Act.

Article 8 ECHR – Right to Respect for Private and Family Life

216. Article 8 provides:

a) Everyone has the right to respect for his private and family life, his home and his correspondence.

b) There shall be no interference by a public authority with the exercise of this right except in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of crime or disorder, for the protection of public morals or for the protection of the rights and freedoms of others.

217. The general principles in relation to the application of Article 8 in the context of extradition proceedings are set out in**: *Norris v Government of USA* (No2) [2010] UKSC 9, HH [2012] UKSC 25** and ***Celinski & Others v Slovakian Judicial Authority* [2015] EWHC 1274 (Admin).**

218. The Court held in ***Celinski*** that, when applying the principles set out in ***Norris*** and ***HH***, the following must be borne in mind:

(i) That HH concerns the interests of children and the judgments must be read in that context;

(ii) The public interest in ensuring extradition arrangements are honoured is very high. So too is the public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice;

(iii) The decisions of the judicial authority of a Member State making a request should be accorded a proper degree of mutual confidence and respect;

(iv) The independence of prosecutorial decisions must be borne in mind when considering issues under Article 8;

(v) Factors that mitigate gravity of the offence or culpability will ordinarily be matters that the court in the requesting state will take into account. Although personal factors relating to family life will be brought into the balance under Article 8, the judge must take into account that these will also form part of the matters considered by the court in the requesting state in the event of conviction.

219. In ***HH*****,** the court held that whilst there is no test of exceptionality, "it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe." The test is always whether the gravity of the interference with family life is justified by the gravity of the public interest pursued.

220. **Factors in favour of extradition being granted:**

a) There is a strong public interest in this country complying with its international extradition treaty obligations and not being regarded as a haven for those fleeing foreign jurisdictions or seeking to avoid criminal proceedings in other countries.

b) The independence of prosecutorial decisions must be borne in mind when considering issues under Article 8.

c) The offences are undoubtedly serious. The RP is alleged to have committed offences relating to wire fraud, conspiracy to commit wire fraud, money laundering and aggravated identity theft. The RP's role is identified as being involved as a member of an online collective calling itself 'The Community', who conspired to hack numerous victims mobile phones through SIM Hacking or Swapping, whereby they would take control of the person's phone with the objective of stealing Bitcoins or other cryptocurrencies. Particular details are provided as to an attack on a victim identified as 'RM'. In those details the RM is specifically said to have provided the PII necessary to impersonate RM to another co-conspirator and discussed with another other specific details of the attack, including each persons role and the pay-out for each person. The hackers, managed to get T-Mobile to change the routing of RM's mobile phone so that calls and messages intended for RM were routed to a phone controlled by the hackers. This enabled the hackers to gain access to RM's Gmail and PayPal accounts, as well as a private cryptocurrency wallet. The hackers accessed this wallet and transferred around 8.5 million USD of ether and Ethereum-based tokens to cryptocurrency accounts held by the hackers. I do not intend to repeat my findings earlier in this judgment as to the value of the harm or loss to RM. The RP is said to have received 108.18 Bitcoins into his wallet, which at the time, had a value of approximately 300,000 USD. The maximum sentences for the offences in the USA are 10 years imprisonment, 7 years imprisonment and 14 years imprisonment. If the RP were to be convicted of these offences he would likely receive a significant custodial sentence.

221. **Factors against extradition being granted:**

a) The RP is a UK national and the offending took place when he was in the UK. The RP has a close bond with his mother and has supported her through her recent breast cancer diagnosis and treatment. The RP has recently moved to live with his girlfriend and she is expecting their first child. Should the RP be extradited he would likely miss the birth of his first child, or he would certainly not be there for the first important years of his child's life.

There would be undoubtedly be emotional distress to the RP and to his mother, girlfriend and his soon to be born first child should he be extradited.

b) The RP works as an entrepreneur earning around £6000 per month. He provides for his girlfriend who is studying at University and he pays the rent for the property they live in. Should the RP be extradited, the RP would not be able to work and his girlfriend would have to move back to her parents' home to live as she would be unable to afford to live in the property they currently live in. The RP would also be unable to provide financially for his first child who is due to be born soon. That said, it appears that the RP's girlfriend would be able to move back in with her parents and I have no doubt that her family, as well as Mrs de Rose, would rally around and do what they could to help to ensure that Ms Canavan and the child were financially secure. Therefore, there would be some financial hardship should the RP be extradited but I have no doubt that Ms Canavan would cope for the reasons I have said.

c) The RP was 17 years of age when he is alleged to have been involved in the offences in the extradition request. He was therefore a child in the eyes of the law. The RP has no convictions.

d) The RP had a difficult upbringing and he has a longstanding history of mental disorder, which includes acts of self-harm and suicide attempts. I adopt all the findings I have made earlier in this judgment in relation to this issue. A summary for these purposes is as follows. The RP has engaged in risky self-harming behaviour in the past. The RP has ASD, ADHD and a recurrent depressive disorder. As agreed by all experts in this case, the RP's medical conditions are all linked to the RP having a real risk of self-harm and suicide. As agreed by all the psychiatrists in this case, there is a high risk of self-harm in relation to the RP. The experts also agreed that the RP was a high risk of suicide should extradition be ordered in this case and that the steps of extradition would trigger a deterioration in the RP's mental health. Dr Picchioni also told me, in oral evidence, that there was a significant risk to the RP of completed suicide should extradition be ordered or take place. I am also satisfied, on the evidence on all the psychiatrists, that the RP's mental condition is such that it removes his capacity to resist the impulse to commit suicide, and that it is not his own voluntary act which puts him at risk of dying. Finally, all the experts agreed that there were significant risks to the RP's mental health in removing the RP from the UK and his family.

The importance of the RP's mother, and to a lesser extent his girlfriend, cannot be understated. The RP's mother in particular is aware of the RP's mental health and she has

acted to intervene when he has attempted to self-harm and/or commit suicide in the past. I find that the RP's mother, and to some extent his girlfriend, are therefore important factors in the context of this case and the support that his mother gives to the RP cannot be underestimated. The RP now has a baby on the way, and I have no doubt that this will be an additional protective factor for the RP.

e) The RP is a vulnerable by reason of his medical conditions, and there is a very real likelihood of bullying, intimidation and extortion in prison in the USA.

f) The RP is not a fugitive.

g) The RP could be tried for these offences in the UK. RM has indicated a willingness to give evidence in the UK, which he could give via video link at a time convenient to him, as could any other witnesses. The Government have conceded that the evidence for a prosecution of these offences in the UK could be available in the UK. I accept, as I have said earlier when dealing with the Forum bar, that there are advantages to a trial in the USA, such as all co-Defendants being tried under the same laws of one jurisdiction, given that two of the co-Defendants are already in the USA. The same would apply to any sentencing in the event of a conviction. Also, a trial in the USA, given that the harm occurred there and RM lives in the USA and was in the USA at the time of the offences, would clearly be more in his interests. That said, the fact remains that the RP could be tried for these offences in the UK should the prosecuting authorities agree to do this.

The balancing exercise

222. I have firmly in mind the guidance given by the former Lord Chief Justice in ***Celinski and others*** in considering whether it is incompatible with the RP's Article 8 rights to order his surrender. I remind myself that there is a very high public interest in ensuring that extradition arrangements are honoured.

223. As set out above, the RP has very strong ties to the UK. The RP is a UK national and the offending took place when he was in the UK. The RP has a close bond with his mother. The RP's mother has supported the RP throughout his life with his mental health which begun at a very early age. It is clear from the evidence of the RP's mother that she has cared for the RP for many years.

224. The RP had a difficult upbringing and he has a longstanding history of mental disorder, which includes acts of self-harm and suicide attempts. I adopt all the findings I have made earlier in this judgment in relation to this issue. A summary for these purposes is as follows. The RP has

engaged in risky self-harming behaviour in the past. The RP has ASD, ADHD and a recurrent depressive disorder. As agreed by all experts in this case, the RP's medical conditions are all linked to the RP having a real risk of self-harm and suicide. As agreed by all the psychiatrists in this case, there is a high risk of self-harm in relation to the RP. The experts also agreed that the RP was a high risk of suicide should extradition be ordered in this case and that the steps of extradition would trigger a deterioration in the RP's mental health. Dr Picchioni also told me, in oral evidence, that there was a significant risk to the RP of completed suicide should extradition be ordered or take place. I am also satisfied, on the evidence on all the psychiatrists, that the RP's mental condition is such that it removes his capacity to resist the impulse to commit suicide, and that it is not his own voluntary act which puts him at risk of dying. Finally, all the experts agreed that there were significant risks to the RP's mental health in removing the RP from the UK and his family.

225. The importance of the RP's mother, and to a lesser extent his girlfriend, cannot be understated. It was also accepted by the medical experts in this case that the RP's family connections and support they provide are an important factor in relation to the RP and his mental health. The RP has ASD and he has relied heavily on his mother for support in relation to this. He also relies on his partner for support.

226. Whilst I accept that the RP's mother does not talk to the RP about his mental health, as he finds this difficult to talk about, the RP's mother is acutely aware of his mental health issues and is aware of triggers that can lead to a deterioration. Indeed, his mother has intervened on more than one occasion, which has ensured that the RP was not successful in taking his own life. I also accept that the friction between the RP and his partner, or indeed following an argument with his partner or his mother, that this is when the RP has self-harmed or attempted to take his own life, but that does not mean that they are not important in terms of his support. I find that all this demonstrates is the fragility of the RP's mental health and that in situations of conflict, his mental health can deteriorate so that he commits acts of risky self-harm or suicide. The fact is that this is a very vulnerable young man who has significant mental health issue and he strongly relies on his family for support.

227. On the evidence before me, I find, for example, the fact that the RP believed, or hoped, that he would be granted bail when he was in custody in relation to this matter in the UK, and that he would return home to his mother, was a source of hope for the RP. I find that the RP did find his time in prison in the UK, which included being away from his family with no face to face contact with them, an extremely difficult time and that his mental health deteriorated during that time, although I accept he did not engage in self-harm whilst he was in custody in the UK.

228. The RP's mother has supported her son from an early age with his mental health and indeed she sought a referral for him to CAMHS when he was 10 years of age and had the RP admitted to a psychiatric unit in 2011 for 2 weeks, which result in him then going to the Collingham Centre for a number of months. Mrs de Rose tried to encourage her son to go to school, when he refused to go. So, whilst I accept that the RP's mother does not speak to her son about his mental health, I do not find that this means that she does not offer strong support to her son.

229. Further, in Dir Picchinoi's report, he stated that "in my opinion [extradition] will formally remove [the RP] from direct face to face contact with his family, that notwithstanding the complexity of some of those relationships, are still considered to be supportive and protective for him and serve to reduce his risk of self harm and suicide." Dr Picchioni also stated in his oral evidence that he had spoken with the RP about other hopes that he had and that the RP had spoken about his desire to be able to support his girlfriend and his child, when it is born. Dr Picchioni also conceded that there were significant risks in removing the RP from the UK and his family, which is the essence of the evidence of Dr Deeley and Dr Ajaz.

230. So whilst I accept that the RP's previous behaviours of self-harm and/or attempted suicide have largely been brought about following an argument or disagreement with family members, specifically his mother and girlfriend, I also find on the evidence before me, that his family are a stabilising factor for the RP and a strong support, particularly his mother. Whilst his mother is not able to discuss the RP's mental health with her son, that does not mean that she is not a strong support for the RP or that the relationship between them is not a stabilising factor. I find that she is a stabilising factor for the RP. I found the evidence of Mrs de Rose to be credible and she explained how the RP was scared and devastated when she was diagnosed with cancer and that he supported her throughout that time. I observed the RP as his mother gave evidence and I find that their connection or bond is strong.

231. I find that the RP did find his time in prison in the UK extremely difficult and that his mental health deteriorated during that time, although I accept he did not engage in self-harm whilst he was in custody in the UK. That said, I do not find that this means that the RP would not do so should extradition be ordered. I find that the RP, faced with the prospect of being removed from the UK, from his family, to an alien country, would, as the evidence was before me, cause a deterioration in his mental health and at that point there would be a significant risk that the RP would commit suicide. I also note that Dr Picchioni, in his oral evidence to me, recognised the risks of removing the RP from the UK and his family.

232. I also find, as accepted in the evidence of the psychiatrists, in particular that of Dr Picchioni, which I have set out above but repeat here, as I find it is important in the context of this case, that his family have intervened on occasions to prevent the RP from completing the act of suicide:

> "There are specifics in the RP's case, namely his emotional instability, mood impulsivity and his deeply entrenched low self-esteem. In the moment, when he is exposed to triggers, in those moments, and those triggers are multiple and broad for the RP and some are everyday, he can be decompensated mentally, his mental faculties are destabilised and his ability to tolerate his emotions under those circumstances becomes overwhelming, and in those circumstances, he has, in the past, engaged in multiple recurrent acts of deliberate self-harm and these have spanned a wide range of types of behaviours, none of which are trivial, all of which are important; some comparatively safer and others very dangerous. In terms of times when he has been actively suicidal, when his desired outcome was to end his life, in those moments it seems to me that the desire is relatively short-lived but it does seem to be present. In those moments, some behaviours he has engaged in, particularly the use of ligatures and taking himself to high place, they are potentially serious and life-threatening. Finally, in most circumstances, either he or someone else, has intervened and applied the brakes and the behaviour has not escalated to a final point or someone had intervened and the action has not been completed."

I find that this recognises the importance of his family. The RP's mother in particular is aware of the RP's mental health and she has acted to intervene when he has attempted to commit suicide in the past. I find that the RP's mother, and to some extent his girlfriend, are therefore important factors in the context of this case and the support that his mother gives to the RP cannot be underestimated. The RP now has a baby on the way, and I have no doubt that this will be an additional protective factor for the RP.

233. As I have already referred to, the RP has recently supported his mother to a great extent through her recent breast cancer diagnosis and treatment. Mrs de Rose explained how the RP supported her at this time and how this diagnosis devastated the RP and that it affected his mental health greatly. This was supported by the evidence of Miss Canavan who explained in her witness statement how this diagnosis devastated the RP and that he struggled to cope with this emotionally, so much so she decide to split up from the RP and told him. This led to an argument and the RP took an Uber taxi to Wandsworth Bridge, which Miss Canavan was alerted to by a notification on their account. Miss Canavan was concerned about this and called the RP's mother. The police were called by the RP's mother and the police talked the RP down from the bridge. It is

clear to me that the RP went to the bridge due to his mental health and that he may have ended his life, or attempted to do so, had the police not intervened and talked him down.

234. The RP has recently moved to live with his girlfriend and she is expecting their first child. Should the RP be extradited he would likely miss the birth of his first child, or her would certainly not be there for the first important years of his child's life. There would be undoubtedly be emotional distress to the RP and to his mother, girlfriend and his soon to be born first child should he be extradited.

235. The Government submit that in relation to the fact that the RP and his girlfriend are having a child, consideration should be given to the fact that they took the decision to start a family after the extradition proceedings begun and that I should therefore give this factor less weight. That may be true in some circumstances, as I accept that there are cases where people start a family after extradition proceeding have begun, to try to avoid extradition. I do not find that this is the case here. It was clear from the evidence before me, which was not challenged or disputed, that the RP and his girlfriend had begun to start to have a family together before these extradition proceedings begun and before the RP was arrested in the relation to these matters. When the RP was arrested in relation to these matters, he was initially remanded in custody. Three days after this, Miss Canavan found out that she was pregnant with the RP's child and therefore, they had begun to start to have a family before he was arrested in the UK. Sadly, whilst the RP was still in custody, Miss Canavan suffered a miscarriage in March 2021. I have no doubt that Miss Canavan and the RP were devastated by this and the fact that the RP was in custody would have made this time worse for both of them, as they were not able to be together to support one another at this devastating time. I acknowledge the distress and trauma that a miscarriage brings to all those involved. Therefore, whilst it is true that Miss Canavan has become pregnant again, and that this has happened after the RP's release from custody, so they were aware that the RP may be extradited to the USA, I cannot ignore the fact that Miss Canavan was pregnant before they were aware of these proceedings. I do therefore give the fact that the RP is to be a father significant weight on the facts of this case.

236. I do accept that Miss Canavan has family in the UK and that she lived with her family until very recently, when she moved to live with the RP. I find that should the RP be extradited, Miss Canavan could return to live with her parents and that her family, together with Mrs de Rose, would rally around and do what they could to help Miss Canavan and the baby emotionally and financially. That said, it would be very difficult for Miss Canavan to be without the RP in such circumstances but I find that Miss Canavan would cope.

237. The RP however, I find, would find this separation from his mother and girlfriend, should he be extradited, unbearable. I find that the RP would lose all hope if his extradition to the USA were ordered in this case. I find that the RP would feel that he had nothing to live for and that his mental health would deteriorate and that he would look for an opportunity to take his own life. As Dr Picchioni informed me, in such circumstances, the RP's risk of completed suicide would be substantial. This is a very weighty factor and I find it would be brought about by a deterioration in his mental health should extradition be ordered and/or take place. In such circumstances, I find that the RP's mental condition is such that it removes his capacity to resist the impulse to commit suicide, and that it is not his own voluntary act which puts him at risk of dying. As agreed by all the experts in this case, there is a significant risk to the RP's mental health in removing the RP from the UK and his family. This risk, I find, cannot be understated or underestimated and I do not do so. It is a very weighty factor in this case.

238. The RP is not a fugitive from justice. This was not in dispute. He also has no convictions but the offences are undoubtedly serious. The RP is alleged to have committed offences relating to wire fraud, conspiracy to commit wire fraud, money laundering and aggravated identity theft. The RP's role is identified as being involved as a member of an online collective calling itself 'The Community', who conspired to hack numerous victims mobile phones through SIM Hacking or Swapping, whereby they would take control of the person's phone with the objective of stealing Bitcoins or other cryptocurrencies. Particular details are provided as to an attack on a victim identified as 'RM'. In those details the RM is specifically said to have provided the PII necessary to impersonate RM to another co-conspirator and discussed with another other specific details of the attack, including each persons role and the pay-out for each person. The hackers, managed to get T-Mobile to change the routing of RM's mobile phone so that calls and messages intended for RM were routed to a phone controlled by the hackers. This enabled the hackers to gain access to RM's Gmail and PayPal accounts, as well as a private cryptocurrency wallet. The hackers accessed this wallet and transferred around 8.5 million USD of ether and Ethereum-based tokens to cryptocurrency accounts held by the hackers. I do not intend to repeat my findings earlier in this judgment as to the value of the harm or loss to RM. The RP is said to have received 108.18 Bitcoins into his wallet, which at the time, had a value of approximately 300,000 USD. The maximum sentences for the offences in the USA are 10 years imprisonment, 7 years imprisonment and 14 years imprisonment. If the RP were to be convicted of these offences he would likely receive a significant custodial sentence.

239. I do take into account the fact that the RP could be tried for these offences in the UK. RM has indicated a willingness to give evidence in the UK, which he could give via video link at a time

convenient to him, as could any other witnesses. The Government have conceded that the evidence for a prosecution of these offences in the UK could be available to the prosecuting authorities in UK. I accept, as I have said earlier when dealing with the Forum bar, that there are advantages to a trial in the USA, such as all co-Defendants being tried under the same laws of one jurisdiction, given that two of the co-Defendants are already in the USA. The same would apply to any sentencing in the event of a conviction. Also, a trial in the USA, given that the harm occurred there and RM lives in the USA and was in the USA at the time of the offences, would clearly be more in his interests. That said, the fact remains that the RP could be tried for these offences in the UK should the prosecuting authorities agree to do this. Further, given the risk of self-harm and suicide, I bear in mind that RM would likely prefer a trial in the UK, as opposed to no trial, should the RP's extradition be ordered and the RP took his own life.

240. Having carried out the balancing exercise, I conclude that the high public interest in extradition is outweighed by the other factors in this case. It would be incompatible with the Convention rights and disproportionate to extradite the RP in this case.

Conclusions on Article 8:

241. I am satisfied that the Article 8 rights of the RP are engaged. On the evidence before me the negative impact of extradition on the RP is of such a level that the court ought not uphold this country's extradition obligations. Therefore, the RP should be discharged pursuant to Article 8 ECHR for all the reasons set out above.

Conclusion

242. I have carefully considered the oral and documentary evidence in this case. I have also carefully considered the oral submissions that were made in this case, together with the impressive and carefully prepared written submissions that were submitted by Mr Caldwell on behalf of the Government and by Mr Fitzgerald QC and Mr Hall on behalf of the RP.

243. I am satisfied to the necessary standard that the offences in the extradition request are extradition offences for the purposes of the 2003 Act.

244. I am satisfied to the necessary standard that the RP's extradition is barred by reason of forum as extradition would not be in the interests of justice pursuant to section 83A(1) of the Act.

245. I am satisfied to the necessary standard that it would be unjust and/or oppressive to extradite the RP to the USA pursuant to section 91 of the Act and I order the RP's discharge pursuant to section 91(3)(a) of the Act.

246. I find that RP's extradition to the USA to face a criminal prosecution does not comply with his Convention Rights within the meaning of the Human Rights Act 1998. I therefore discharge the RP pursuant to section 87(2) of the Act.

247. In accordance with the provisions of section 105 of the Act, I have notified the RP that an appeal to the High Court may be brought on behalf of the USA against my decision to discharge him. The application for permission to Appeal can be on a point of law or fact or both. I have also reminded the parties that an application for leave to appeal must be given within 14 days of today.

248. I do however make the following observation. My findings and conclusions above do not mean that it would be unjust and/or oppressive to prosecute the RP in the UK for these offences, should the decision be taken to do this. Indeed, it seems to me, that the RP would be able to face a criminal prosecution in the UK for these offences, with the support of his family. The decision whether to prosecute the RP in the UK is not a matter for me. I simply make this observation so that there is no misunderstanding as to my decision.

District Judge (Magistrates' Court) Sarah-Jane Griffiths

Appropriate Judge

Date: 23 January 2022