



RECEIVED 12 JUN 2009

# Home Office

## HOME SECRETARY

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Rt Hon. Tessa Jowell, MP  
House of Commons  
London  
SW1A 0AA

CTS reference: M12412/9  
Your reference: 01091811

11 JUN 2009

Dear Tessa

Thank you for your letter of 22 May on behalf of your constituents about the United States' request for the extradition of Mr Gary McKinnon.

Mr McKinnon's case has been the subject of much public and media interest and the Government has taken careful note of all the points which have been forwarded on his behalf. It is also important to note that the role of the Home Secretary is important, but relatively limited, in the extradition process.

Mr McKinnon was arrested for extradition purposes in June 2005. There followed a hearing at City of Westminster Magistrates' Court where, in an attempt to defeat the United States' request for his extradition, Mr McKinnon and those acting for him sought to raise certain statutory barriers to surrender. However, in May 2006, the District Judge concluded that none of the safeguards applied and he accordingly sent the case to the then Home Secretary, John Reid, for a decision as to surrender.

At that stage, Mr McKinnon had an opportunity to make representations to the former Home Secretary directly against his surrender – but only on certain limited grounds. Where, as in this case, such representations are found not to be applicable or not to be made out, the law requires the Home Secretary to order surrender. That decision was reached in Mr McKinnon's case in July 2006.

As was his right, Mr McKinnon then appealed to the High Court, both against the District Judge's decision of May 2006 and that of the former Home Secretary in July 2006. The High Court dismissed both appeals in April 2007. Mr McKinnon further appealed to the House of Lords, which dismissed his appeal in July 2008. Mr

McKinnon then made an application to the European Court of Human Rights but in August 2008 his application was rejected.

You will see, therefore, that Mr McKinnon's case had withstood the closest possible judicial scrutiny before the diagnosis of Asperger's Syndrome.

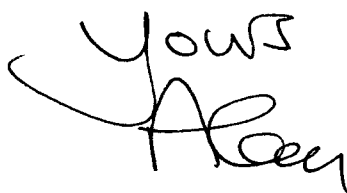
Notwithstanding the Home Secretary's relatively limited role in the process and the late stage in the case at which Asperger's Syndrome was diagnosed, the role of the Home Secretary cannot be incompatible with the European Convention on Human Rights (ECHR). In these exceptional circumstances, the then Home Secretary, Jacqui Smith, therefore agreed to consider fresh representations, including on grounds of Mr McKinnon's diagnosis of Asperger's Syndrome, as to whether the order for Mr McKinnon's surrender to the United States should be upheld. She gave very careful consideration to those further representations but concluded in October 2008 that the order for surrender must be upheld.

Those acting for Mr McKinnon have since applied for judicial review of that further decision. On 23 January the High Court granted permission for a judicial review, but on grounds limited to the role played by the diagnosis of Asperger's Syndrome in the lawfulness of the decision on surrender, and a hearing commenced on 9 June 2009 in the High Court.

As the case is before the courts, you will understand that it would be inappropriate for me to comment further upon the case at this stage.

In the event of Mr McKinnon's extradition and conviction it would be open to him to make an application to serve any custodial sentence in the United Kingdom, both the United Kingdom and the United States being signatories to the Council of Europe Convention on the Transfer of Sentenced Prisoners. Although repatriation is not automatic, and both countries have to give their approval first, the United States' authorities have already gone so far as to say they would not oppose an application solely on the basis of any earlier refusal by Mr McKinnon to consent to his extradition.

I hope that this background is of assistance and demonstrates that the greatest possible procedural protections and fairness are being applied to this case.

A handwritten signature in black ink that reads "Yours Alan Johnson". The word "Yours" is written in a simple, slightly slanted font. Below it, "Alan Johnson" is written in a more cursive, flowing script.

**Alan Johnson**