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March 4, 2004

Honorable Richard G. Lugar, Chairman
Honorable Joseph A. Biden, Ranking Member
Senate Foreign Relations Committee

Re: Proposed United States-United Kingdom Extradition Treaty

Dear Senators Lugar and Biden:

I.

I am in receipt of an undated document entitled "Response by the U.S. Department of State and the U.S. Department of Justice to Points Raised by the *Irish-Americans Against Extradition* Petition." I wish to thank you for your kind consideration in obtaining this formal Response to some of these concerns about the proposed U.S.-U.K. Extradition Treaty from the Department of State and the Department of Justice. As a preliminary matter, I fully concur with the 18 December 2003 Letter already sent to you by Ms. Laura W. Murphy, Director of the ACLU Washington Legislative Office and Mr. Timothy H. Edgar ACLU Legislative Counsel, which was also sent to all Members of the Senate Foreign Relations Committee on behalf of the American Civil Liberties Union. Articles 2 and 4 of the proposed Treaty will gut, destroy and eliminate the longstanding, time-honored, and well-grounded "political offense" exception to U.S. extradition law and practice in all but the name.

The United States of America was founded by means of a Declaration of Independence and a Revolutionary War fought against the British Crown, with which this proposed Treaty is to be concluded. But under the terms of this proposed Treaty, our Founding Fathers and Mothers such as John Hancock, George Washington, Thomas Jefferson, James Madison, Ben Franklin, John Adams, and Dolly Madison, inter alia, would be extradited to the British Crown for prosecution of their very revolutionary activities that founded the United States of America itself. Because of our Republic's unique historical origins and background, special care, concern, attention, and consideration must be taken with respect to the conclusion of any extradition treaty between the United States of America and the British Crown.

II.

It is obvious from the text of this proposed Treaty that it is directed primarily against Irish American citizens engaged in the lawful exercise of their constitutional rights under the First Amendment to the United States Constitution in order to protest the longstanding military

occupation of six counties in Ireland by the British Crown in violation of the international legal right of the Irish People to self-determination as well as of the United Nations Declaration on the Granting of Independence to Colonial Countries and Territories, Resolution 1514(XV) of 14 December 1960, which constitutes customary international law and jus cogens. See Francis A. Boyle, The Decolonization of Northern Ireland, 4 Asian Yearbook of International Law 25-46 (1995), a copy of which is attached. In particular, the inchoate crimes specified in article 2(2) and article 4(2)(g) of the proposed Treaty would make extraditable to the British Crown Irish American citizens who are exercising their rights under the First Amendment to the United States Constitution to protest the continued British military occupation of these six counties in Ireland as well as the deplorable human rights violations that have historically been inflicted by the British Crown upon Irish Catholics living in the north of Ireland, in the rest of Ireland, as well as within Great Britain itself and elsewhere.

Moreover, because of the court-stripping provisions found in article 2(4), article 2(5), article 4(3), article 4(4), article 5(3), article 7, article 18(1)(c), and article 18(2) of the proposed Treaty, there would be no judicial review by a U.S. Federal Court of the exercise of such First Amendment rights under the U.S. Constitution by Irish American citizens, and thus this proposed Treaty would be unconstitutional for that reason as well. Under the terms of this proposed Treaty, the First Amendment rights of Irish American citizens would be subjected to the unfettered discretion and political biases of Executive Branch officials who in the past have shown no respect for the First Amendment rights of Irish American citizens when it came to the former's infiltration, investigation, prosecution, and persecution of perfectly lawful Irish American citizens as well as Irish American humanitarian organizations and Irish American political groups who were only exercising their First Amendment rights under the U.S. Constitution in order to protest the longstanding military occupation of six counties in Ireland by the British Crown as well as its campaign of human rights atrocities against Irish Catholics.

Moreover, the unconstitutional retroactivity of the proposed Treaty as set forth in article 22 would render Irish American citizens subject to extradition to the British Crown for their perfectly lawful exercise of First Amendment rights under the U.S. Constitution going all the way back into the indefinite past to at least the 1916 Irish Revolution for Independence against the same British Crown with which this proposed Treaty is to be concluded. This conclusion is only further confirmed and strengthened by article 6 of the proposed Treaty that unconstitutionally purports to eliminate any Statute of Limitations requirement for extradition as well.

Furthermore, such Irish American citizens would be subjected to unconstitutional preventative detention under article 12 of the proposed Treaty at the behest of the British Crown in violation of the Fifth Amendment and the Eighth Amendment to the United States Constitution. Furthermore, such Irish American citizens could be unconstitutionally seized and incarcerated pursuant to article 8(3)(c) and article 12 of the proposed Treaty at the behest of the British Crown in violation of the U.S. Constitution's Fourth Amendment prohibition on "unreasonable searches and seizures" as well as the Fourth Amendment requirement of "probable

cause” for the issue of any warrants related thereto. Furthermore, such Irish American citizens would have their property unconstitutionally confiscated and transferred to the British Crown pursuant to article 16 of the proposed Treaty at the behest of the British Crown itself in violation of the “due process of law” requirement of the Fifth Amendment to the United States Constitution.

Furthermore, article 18 of the proposed Treaty eliminates in all but name the longstanding, time-honored and well-grounded Rule of Specialty for such Irish American citizens. In addition, article 18(2) of the proposed Treaty would permit Irish American citizens extradited to Britain then to be summarily shipped onward to some undesignated third state at the order of the British Crown and the political whim of the Department of State, where such Irish American citizens could readily be persecuted by that indeterminate third state. It becomes crystal clear that the primary purpose of this proposed Treaty is for the British Crown to target, threaten, intimidate, harass, persecute and terrorize Irish American citizens for exercising their First Amendment rights under the United States Constitution.

III.

Weighing most decisively against approving this proposed Treaty is the fact that since the U.S.-U.K. Supplementary Extradition Treaty came into force in 1986, the United States became a contracting party to the International Covenant on Civil and Political Rights in 1992, to which the United Kingdom is also a contracting party. This proposed U.S.-U.K. Extradition Treaty will violate several fundamental provisions of the Covenant that are expressly designed to protect the basic human rights of Irish American citizens, inter alia. In particular, but not limited to, I respectfully call to your attention the following treaty obligations and human rights protections under the Covenant that will be violated by this proposed Treaty:

Article 2(1): “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 2(2): “Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other

- competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.”

Article 9(1): “Everyone has the right to liberty and security of person.”

Article 9(1): “No one shall be subjected to arbitrary arrest or detention.”

Article 9(3): “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”

Article 9(3): “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial. . . .”

Article 9(4): “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

Article 9(5): “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

Article 10(1): “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

Article 14(1): “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

Article 14(2): “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

Article 14(7): “No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”

Article 15(1): “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”

Article 17(1): “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honour and reputation.”

Article 18(1): “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

Article 19(1): “Everyone shall have the right to hold opinions without interference.”

Article 19(2): “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Article 21: “The right of peaceful assembly shall be recognized.”

Article 22(1): “Everyone shall have the right to freedom of association with others. . .”

If the Senate were to consent to this proposed Extradition Treaty with the British Crown, that would effectively abrogate, violate, and set at naught these most basic human rights of Irish American citizens under the Covenant, to which the United States is a contracting party. Furthermore, Senate consent would also place the United States of America in breach of its solemn treaty obligations under these provisions of the International Covenant on Civil and Political Rights with respect to all the other contracting states parties as well. Such violations will render the United States subject to the treaty enforcement mechanisms of the Covenant as well as to the other ordinary enforcement mechanisms, remedies, and sanctions for violating a solemnly concluded international human rights treaty as well as the basic principle of customary international law and jus cogens that pacta sunt servanda.

IV.

Most significantly, on 18 December 2001 the British Crown formally derogated from its obligations under article 9 of the Covenant, whereas the United States of America has not so derogated. So long as that U.K. derogation to article 9 of the Covenant remains in force, there is no way the United States can lawfully extradite any Irish American citizen to the British Crown pursuant to the terms of this proposed Treaty without the United States government violating its own obligations under article 2(1) of the Covenant: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its

jurisdiction the rights recognized in the present Covenant. . . .” The United States cannot lawfully extradite Irish American citizens to the British Crown, which has derogated from its obligations under Covenant article 9, without the United States itself violating Covenant article 2(1) and article 9 with respect to its own Irish American citizens and also with respect to all the other contracting states parties to the Covenant.

Furthermore, as a contracting party to the Covenant, the United States is currently under an obligation not to extradite Irish American citizens to the United Kingdom where they will be subjected to gross and repeated violations of their most basic human rights by the British Crown. These facts have been most recently documented by the Nobel Peace Prize Winning Amnesty International, whose Headquarters and International Secretariat are located in London, the capital of the United Kingdom. Since Amnesty International is right there on the spot, they certainly know of what they speak. See International Secretariat of Amnesty International, United Kingdom: Scrap Internment, AI Index: EUR 45/008/2004 (23 Feb. 2004); Amnesty International, United Kingdom: A Shadow Criminal Justice System, AI Index: EUR 45/030/2003 (Public), News Service No: 1278 (11 Dec. 2003); Amnesty International, United Kingdom: Justice Perverted Under the Anti-Terrorism, Crime and Security Act 2001, AI Index: EUR 45/029/2003 (11 Dec. 2003); Amnesty International Press Release, UK.: Basic Rights Denied After 11 September, ENGEUR 45019 2002 (25 Feb. 2004); Amnesty International, United Kingdom: Rights Denied: The UK’s Response to 11 September 2001, AI Index: EUR 45/016/2002 (5 Sept. 2002); Amnesty International, United Kingdom: Amnesty International’s Memorandum to the UK Government on Part 4 of the Anti-terrorism, Crime and Security Act 2001, AI Index: EUR 45/017/2002 (5 Sept. 2002).

In light of this most extensive documentation by Amnesty International of massive violations of the most basic human rights of foreigners by the British Crown under the International Covenant on Civil and Political Rights, to which the United States is a contracting party, under the European Convention on Human Rights, under the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the United States is a contracting party, and under other basic sources of both customary and conventional international human rights law too numerous to list here but identified, analyzed, and condemned authoritatively by the International Secretariat of Amnesty International headquartered in London itself, now is certainly not the time for the United States to conclude this proposed Extradition Treaty with the British Crown. According to Amnesty International, there currently exists a grave human rights emergency for foreigners in the United Kingdom that is quickly degenerating into a human rights catastrophe. Certainly the United States Senate must not subject Irish American citizens to these massive violations of their most fundamental human rights currently being inflicted on a daily basis by the British Crown against foreigners, as authoritatively documented by Amnesty International itself. And the human rights emergency/catastrophe in the United Kingdom for foreigners is getting worse every day. See, e.g., Alan Cowell, Britain, Citing Terrorist Threat, Plans to Expand Its Spy Agency, New York Times, Feb. 26, 2004 (U.K. government proposals for secret trials and reducing the “proof beyond a reasonable doubt” standard for criminal convictions). The United States Senate must not risk subjecting Irish

American citizens to secret trials, kangaroo courts, and a less-than-reasonable-doubt standard for criminal convictions by the British Crown. The odious infamy of Britain's Star-Chamber and Diplock Courts shall live forever in the annals of American Jurisprudence.

V.

Finally, even if the U.S. Senate were to amend article 3 of the proposed Treaty so as to prohibit the extradition of U.S. nationals thereunder to the British Crown, the above objections to the proposed Treaty would apply pari passu with respect to foreigners present in the United States whose extradition might be sought under the terms of the new Treaty by the British Crown, and especially for those foreigners of Irish Descent. The proposed Treaty would violate the most basic human rights of foreigners present in the United States, and especially those of Irish Descent, under the International Covenant on Civil and Political Rights. Covenant article 2(1) provides that the Covenant protects the basic human rights of everyone living in the United States, both citizens and foreigners alike: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The same can be said for those basic protections of the United States Constitution mentioned above, which apply equally to U.S. citizens and foreigners present in the United States.

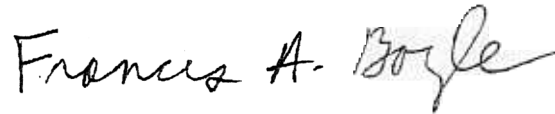
Furthermore, with respect to those foreigners present in the United States, and especially those of Irish Descent, the proposed Treaty would also violate the solemn U.S. dual obligations of both (1) asylum and (2) non-refoulement as required by the 1967 U.N. Refugees Protocol, to which the United States is a contracting party, as well as under customary international law. We must never forget the grave injustices that the British Crown inflicted upon Joe Doherty with the support of the Department of State and the Department of Justice. See United States and United Kingdom Supplementary Extradition Treaty: Hearings on Treaty Doc. 99-8 Before the Senate Committee on Foreign Relations, S.HRG. 99-703, 99th Cong., 1st Sess. 511 (1985). There must be no more Joe Dohertys!

Conclusion

For all of these reasons then, the United States Senate must refuse to give its advice and consent to the proposed U.S.-U.K. Extradition Treaty for any reason. There is no way this proposed Treaty can be salvaged by attaching any package of Amendments, Reservations, Declarations, and Understandings. The Senate Foreign Relations Committee must reject this Treaty outright. The currently existing bilateral and multilateral extradition treaty regime between the United States and the British Crown is more than sufficient to secure the prosecution or extradition of alleged terrorists. This proposed Treaty will only secure and guarantee the persecution of Irish American citizens, voters, and tax-payers by the British Crown. This proposed Treaty will also secure and guarantee the persecution of foreigners of Irish Descent

present in the United States by the British Crown. The perfidy of this proposed Treaty cannot be overstated or underestimated. This Treaty is a British dagger pointed at the heart of Irish America.

Yours very truly,

A handwritten signature in black ink that reads "Francis A. Boyle". The signature is written in a cursive, flowing style.

Francis A. Boyle
Professor of Law
Board of Directors, Amnesty International USA
(1988-92)

cc: The Honorable Members of the U.S. Senate Foreign Relations Committee

Enclosure