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US says it has right to kidnap British citizens

David Leppard

AMERICA has told Britain that it can “kidnap” British citizens if they are wanted for crimes in the United States.

A senior lawyer for the American government has told the Court of Appeal in London that kidnapping foreign citizens is permissible under American law because the US Supreme Court has sanctioned it.

The admission will alarm the British business community after the case of the so-called NatWest Three, bankers who were extradited to America on fraud charges. More than a dozen other British executives, including senior managers at British Airways and BAE Systems, are under investigation by the US authorities and could face criminal charges in America.

Until now it was commonly assumed that US law permitted kidnapping only in the “extraordinary rendition” of terrorist suspects.

The American government has for the first time made it clear in a British court that the law applies to anyone, British or otherwise, suspected of a crime by Washington.

Legal experts confirmed this weekend that America viewed extradition as just one way of getting foreign suspects back to face trial. Rendition, or kidnapping, dates back to 19th-century bounty hunting and Washington believes it is still legitimate.

The US government’s view emerged during a hearing involving Stanley Tollman, a former director of Chelsea football club and a friend of Baroness Thatcher, and his wife Beatrice.

The Tollmans, who control the Red Carnation hotel group and are resident in London, are wanted in America for bank fraud and tax evasion. They have been fighting extradition through the British courts.

During a hearing last month Lord Justice Moses, one of the Court of Appeal judges, asked Alun Jones QC, representing the US government, about its treatment of Gavin, Tollman’s nephew. Gavin Tollman was the subject of an attempted abduction during a visit to Canada in 2005.

Jones replied that it was acceptable under American law to kidnap people if they were wanted for offences in America. “The United States does have a view about procuring people to its own shores which is not shared,” he said.

He said that if a person was kidnapped by the US authorities in another country and was brought back to face charges in America, no US court could rule that the abduction was illegal and free him: “If you kidnap a person outside the United States and you bring him there, the court has no jurisdiction to refuse — it goes back to bounty hunting days in the 1860s.”

Mr Justice Ouseley, a second judge, challenged Jones to be “honest about [his] position”.

Jones replied: “That is United States law.”

He cited the case of Humberto Alvarez Machain, a suspect who was abducted by the US government at his medical office in Guadalajara, Mexico, in 1990. He was flown by Drug Enforcement Administration agents to Texas for criminal prosecution.

Although there was an extradition treaty in place between America and Mexico at the time — as there currently is between the United States and Britain — the Supreme Court ruled in 1992 that the Mexican had no legal remedy because of his abduction.

In 2005, Gavin Tollman, the head of Trafalgar Tours, a holiday company, had arrived in Toronto by

plane when he was arrested by Canadian immigration authorities.

An American prosecutor, who had tried and failed to extradite him from Britain, persuaded Canadian officials to detain him. He wanted the Canadians to drive Tollman to the border to be handed over. Tollman was escorted in handcuffs from the aircraft in Toronto, taken to prison and held for 10 days.

A Canadian judge ordered his release, ruling that the US Justice Department had set a "sinister trap" and wrongly bypassed extradition rules. Tollman returned to Britain.

Legal sources said that under traditional American justice, rendition meant capturing wanted people abroad and bringing them to the United States. The term "extraordinary rendition" was coined in the 1990s for the kidnapping of terror suspects from one foreign country to another for interrogation.

There was concern this weekend from Patrick Mercer, the Tory MP, who said: "The very idea of kidnapping is repugnant to us and we must handle these cases with extreme caution and a thorough understanding of the implications in American law."

Shami Chakrabarti, director of the human rights group Liberty, said: "This law may date back to bounty hunting days, but they should sort it out if they claim to be a civilised nation."

The US Justice Department declined to comment.

Additional reporting: Anna Mikhailova

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