SPECIAL IMMIGRATION APPEAL COMMISSION

Field House,
Breams Buildings
London

EC4A 1WR

Thursday, 20th October 2005

BEFORE:
THE HONOURABLE MR JUSTICE OUSELEY

IN THE MATTER OF APPEALS AGAINST NOTICES OF INTENTION
TO DEPORT
AND
IN THE MATTER OF APPLICATIONS FOR BAIL

BETWEEN:

A AND OTHERS
SC/33/34/35/36/37/38/39
Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondents

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MR B EMMERSON QC, MR R HUSAIN, MR D FRIEDMAN and (instructed by Messrs Birnberg Peirce & Partners)
MR K STARMER QC and MS S HARRISON (instructed by Messrs Tyndallwoods) appeared on behalf of the Appellants.
MR S WILKEN, MR T EICKE, MS L GIOVANNETTI, MR J GLASSON (instructed by Treasury Solicitor) appeared on behalf of the Respondents.
MR M SHAW QC, ,MR K BEAL and MR M CHAMBERLAIN (instructed by Treasury Solicitor) appeared as Special Advocates.

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Court Reporters

Tel: 020 7269 0370

MR JUSTICE OUSELEY:

1. I shall deal first of all with the decisions on the bail applications. I shall then deal with the directions in relation to those hearings and then the next lot of bail directions.

2. On 11th August 2005, the Secretary of State for the Home Department detained the ten individual applicants for bail under paragraph 2.2 of Schedule 3 of the Immigration Act 1971, pending the making of deportation orders in respect of them. He gave notice of his decisions to make deportation orders at the same time.

3. The appeals and bail applications come before SIAC because the decisions raised grounds related to national security, as provided for in Section 3(2) of the SIAC Act.

4. Those individuals are now applicants for bail.

5. The applications raise a number of common issues which is it convenient to deal with before turning to the individual cases.

6. Of the ten, eight, not Q and T, have been the subject of adverse decisions on their appeals to SIAC against certification and detention under Part 4 of the Anti-Terrorism and Crime and Security Act 2001. Q has an appeal pending, although Part 4 has been repealed. T was not subject to such detention. All, save T, were the subject of control orders made under the Prevention of Terrorism Act 2005 in March 2005, having been granted bail shortly before by SIAC, save for G, who had been on bail on stricter terms since April 2004. The control orders were revoked by the Secretary of State on the detention of these individuals on 11th August 2005. The control order appeals had not been heard.

7. The decisions to make deportation orders and to detain in each case arise from Memoranda of Understanding with Jordan and Algeria actual and presently envisaged, respectively.

8. Abu Qatada, or Othman, is from Jordan, with whom a Memorandum of Understanding has been concluded, although the monitoring provisions as yet lack an identified monitor.

9. The other applicants are Algerian. No Memorandum of Understanding with Algeria has as yet

been concluded, though the Secretary of State is hopeful that one will be signed in the near future.

The SIAC Approach to Bail

10. There were submissions based on paragraph 28 of the SIAC bail judgment on 20th May 2004 in G, when he was released on bail for ACTSA detention, based also on the SIAC bail decision in MK, 24th May 2005, in RM, 17th June 2005, and in The Queen, on the application of I, against the Secretary of State for the Home Department [2002] EWCA Civ 88 [2003] INLR 196, a habeas corpus case.

11. In our view the question is this. Are we satisfied that there is a real risk that, if released on bail, subject to whatever conditions may be imposed, an applicant would abscond, in the sense of not turning up to the hearing as required, and are we satisfied that there would be a real risk to national security if he were meanwhile on such bail, whether having absconded or even if he had not absconded?

12. In answering those questions, we recognise the special role and responsibility of the Secretary of State in determining what actions constitute a risk to national security - what used to be called "deference" - and we recognise the expertise of the Security Services in the assessment of individual past and predicted behaviour and of the efficacy of conditions in controlling it. That is a question of the weight to be given to evidence, rather than an acknowledgement of specific and separate functions.

13. We specifically reject the Secretary of State's submission that there should be a presumption at the outset against bail.? Accordingly, we do not regard the SIAC judgment of May 2004 in G, at paragraph 28, as now helpful to the issues arising here. Question 3 is irrelevant to these applications; question 4 overlaps question 2; question 2, Mr Emmerson's submissions notwithstanding and preferring instead Mr Starmer's submissions, is probably wrong in according deference to the Secretary of State on that point. We do not regard R, on the application of I, as of real assistance, because it does not deal with the principles applicable, while an appeal against the decision to make a deportation order itself is pending, and the appeal is progressing according to a timetable set by a court.

14. We emphasise, as I observed during the course of the proceedings, that it will be for SIAC to give directions for the hearing of these appeals and it is SIAC's intention, and it has the ability to see this through, that the appeals are progressed within a reasonable timetable. The decisions on bail here do not have a longer time horizon than, put very broadly, the hearing of an individual appeal. If an applicant is successful on such an appeal, the question of bail, if the Secretary of State were to appeal that decision, would have to be considered. Again, likewise, if an applicant were unsuccessful.

Assessment of the Risk to National Security

15. National security considerations are relevant, both to the risk which might be run were an applicant to abscond, but also to the risk of activities whilst on bail which might threaten national security.

16. For all applicants, whether or not they had been under a control order, the point was made, as a matter of principle, that the Secretary of State was satisfied that control order conditions, themselves less stringent than those which might be imposed on bail, had been regarded as adequate to protect the United Kingdom against the risk to national security which the applicants under control orders were said to pose.

17. Given what those under the control orders were said to have done, the same principle was argued to be applicable to T, who had not been subject to a control order at all. The control order conditions, rightly, were also said to be relevant to the abscond risk, which I deal with later.

18. For the purposes of this argument, the applicants relied on: first, the fact of the SIAC bail terms, acceded to by the Secretary of State, who relinquished his initial argument for house arrest terms under Part 4, following the decision of the House of Lords in A; secondly, the control order terms, which reflected those that he was, himself, seeking; thirdly, the absence of any derogating control order being made, despite the statutory power to make such an order; and, fourthly, on the statements made by the Secretary of State, first, in March 2005 in connection with these cases, that the range of bail conditions found later in control orders were proportionate to controlling the risks and might effectively reduce to the greatest extent possible, short of a 24-hour curfew, albeit not eradicate, the threat posed by an individual and, secondly, in September 2005 in the House of Commons Select Committee on Home Affairs, to the effect that control orders had the effect of preventing those subject to them "from committing or engaging in particular terrorist acts". We consider that those words have to be weighed carefully, individually as well.

19. In general terms, and subject to specific individual circumstances, at least for those subject to control orders, the past Secretary of State's assessments as to the effectiveness of control orders, the potential for considering stricter bail conditions and the fact that, if the appeals are successful, a control order regime would be the only framework available to the Secretary of State for controlling the risk to national security, all tell strongly in favour of national security considerations themselves not being a basis for the refusal of bail taken alone.

20. But, as the Commission said in the case of RM, at paragraphs 26 and 27, it is not an answer to national security concerns simply to point to the position of those who are either under a control order or who have been released on immigration bail or who are not subject to a control order at all.

21. First, these are national security cases. Secondly, these are not United Kingdom citizens and,

therefore, can be removed and detained pending removal, in principle. Thirdly, the control order conditions and system represent a view as to the balance between risk and liberty where detention is not available, although, unquestionably, it would be more effective in reducing the risk to national security, in principle.

22. Where detention, in principle, is not unlawful, a different view may be taken as to the balance which can properly be struck between the risk to national security and the liberty of the individual; that is to say one cannot automatically say that the national security concerns are met by control order conditions. It will depend upon the circumstances and, in certain circumstances, national security considerations may justify detention pending an appeal, even though, if the appeal is successful only on Article 3 grounds and the national security concerns remain, other lesser measures will have to suffice.

National Security and Absconding Abroad

23. The applicants submitted that the SIAC judgment in RM on bail went too far, if it is suggested that the risk of absconding abroad was relevant to the abscond risk as such. It was accepted that in RM, itself, a risk of absconding abroad clandestinely could lawfully be relevant to national security considerations if there was evidence suggesting that activities abroad would undermine the national security of the United Kingdom. But, following the brief comment of Sedley LJ, as a single LJ, in a permission to appeal judgment in Doku, a bail decision in a criminal deportation order of 30th November 2000, it was submitted that the risk of absconding abroad was irrelevant here, other than in special circumstances so far as national security and risk of absconding were concerned. Sedley LJ had commented that the risk that Doku might leave the UK was irrelevant. The applicants also point out that the control orders so far did not preclude non-clandestine departure.

24. We accept the essential proposition in a deportation order case that a risk that a would-be deportee might leave the country, whether for his country of nationality or a third country, is not of itself a relevant factor for the abscond risk. The purpose of a deportation is a removal plus exclusion. It is not delivery to a particular country, nor is it akin to extradition. Nonetheless, the risk of clandestine departure abroad in order to carry out activities which would present a risk to national security is relevant and the risk of clandestine departure abroad is allied to a closely-associated risk of a clandestine return to the UK. That latter can be very relevant to the assessment of the risk to national security created by absconding pending the hearing.

National Security and the Events of July

25. ? The applicants contended that, in the absence of allegations of involvement in those events and in the absence of specific allegations of breach of the control orders, there was no reason for the assessment of national security risk posed by any of these ten applicants to have changed from that which it was when the control orders were imposed, or not imposed in the case of T. Indeed,

as we go on to consider, in a number of respects for some individual cases the national security case can be said to be weaker than when the control order was made.

26. It is not alleged in any case that there was direct involvement in the events of July by any of these applicants. There was a debate, and it is fruitless to try to resolve it now, over whether the Al Qaeda claim of responsibility was opportunistic or reliable. The only basis of indirect involvement was said by the Secretary of State to be through the contribution which those of the views held by the applicants had made to create a climate of opinion amongst some Muslims, including motivation and inspiration through the provision of facilities for training, for jihadist experiences, for logistical support for jihad and association with like-minded persons and spiritual teaching or guidance in a general way.

27. The Secretary of State said that the July events had changed "the landscape of risk evaluation"; a metaphor which conveyed no meaning by itself and was not readily explained. To SIAC the significance of the July events for these bail applicants is, first and foremost, that they appear to add a significant impetus to, and would be seen by applicants as adding a significant impetus to, the motivation and sustained efforts by the Secretary of State to deport these individuals and to pursue Memoranda of Understanding effective to that end.

28. We appreciate that such efforts have been part of the Secretary of State's approach for some time, initially, at the level of a possibility being explored in his case of the House of Lords in A to subsequent firmer statements. But the events of July have seemingly reinforced the political determination and to have spurred the endeavours of the Secretary of State and enlisted, perhaps, greater sympathy from the foreign countries in question to any requests made by the United Kingdom.

29. The July events demonstrate the existence of risks which, at a specific level, may be unknown or dimly perceived or which may create a heightened awareness that much is unknown and that individuals of interest may be of greater significance than realised, but we do not see the September 2005 evidence of the Secretary of State to the House of Common Select Committee on Home Affairs as containing an assessment that the extent to which risks will be contained by control orders has been underestimated generally or specifically so far as relevant here. So at this bail stage, SIAC does not consider that it should regard the events of July 2005 as evidencing a greater direct national security risk posed by these applicants than before.

30. The real point, as we have said, is that the political reaction and the impetus which that gives to deportation is relevant to the absconding risk and, thus, indirectly relevant to national security issues to which we shall come.

Control Order Breaches

31. So far as breaches of the control orders are concerned, no individual has been subject to

prosecution or, indeed, charge for any breach of the control order. The Secretary of State was prepared to say in open, without being specific as to which individual or which condition, that individuals may have breached conditions 4, 5 and 8, which deal, respectively, with visitors, pre-arranged meetings and the use of communications equipment. The conditions do not prohibit association as such with any individuals.

32. The Secretary of State said that closed material gave him grounds for believing that condition 5 had been breached in some cases, including that of Abu Qatada or Othman. SIAC is not in a position to reach a conclusion that there has been a breach of control order conditions on the basis of open or closed evidence. A breach is a criminal offence, to be proved to the criminal standard and in no case has the applicant been told of the case in a way which he would be if criminal proceedings were brought and so he cannot respond to it.

33. Certainly, in relation to the contention that there has been a possible breach of condition in relation to communications equipment by Abu Qatada, as a result of a search at which he was present, Abu Qatada was able to produce material which at least put the allegation in a somewhat different light.

34. I also add that limited disclosure so far in the bail proceedings means that more on this, and generally, remains still to be sought by way of disclosure. The bail disclosure was without prejudice to further arguments, both on material currently before the Special Advocates and, necessarily, on any material which subsequently arises that would be relevant to the substantive hearings.

35. In no case has SIAC concluded that there actually was a breach of a control order and, therefore, it has not held any such allegation against any applicant for bail in considering the likelihood of compliance with the conditions of bail.

36. However, SIAC has considered the factual matters that are alleged and the substance of the evidence in considering the degree of risk of absconding and of the risk to national security. It has considered how far the evidence is even capable of going to establish a breach, particularly in the light of the submissions of the Special Advocates. For example, continued association with Islamic extremists is by itself incapable of being a breach of a control order and it has been a not unusual allegation. But we have not and could not sensibly ignore those associations in reaching our conclusions. Much depended on what evidence there was as to with whom and in what circumstances the association was alleged.

Change favouring Applicants

37. In four respects, the national security case is said to have been weakened in ways which affected a number of applicants. First, the collapse of the US extradition case against Abu Doha, because of the decision of the key witness, Ressam, a co-conspirator, to withdraw co-operation and to

refuse to give evidence. Abu Doha is now in immigration detention. This was said to show that he was, therefore, a less significant figure and that association with him was, therefore, less indicative than previously thought of significant terrorist associations. The Ressam statements were a significant part of the evidence in open in respect of him. However, for present purposes, the total open and closed evidential picture of Abu Doha did not incline us to alter the views previously expressed by SIAC as to his significance. The new material we had on Ressam for these hearings, dealing with his change of heart, essentially the speech related to his sentence in the United States, did not persuade us that he had recanted the correctness of what he previously said, but, rather, that he had simply refused to co-operate further.

38. The evidence as to this change should be part of the Secretary of State's continuing evaluation of the risk to national security and ought to be dealt with in open statements so far as possible. It was a surprise to us that it had not been referred to, for bail purposes, in the Secretary of State's evaluation.

40. 40. Secondly, there are the acquittals in the so-called ricin plot. There was the acceptance by the Crown, as we were told by Mr Emmerson and in Ms Garcia's second witness statement, that there had been no actual ricin, the ricin recipe could not be attributed to Afghanistan and the implications of various events or statements at the trial for the reliability of what was said by Meguerba, at least in an environment which was not judicially controlled, were said to weaken the significance of associations with individuals and of various activities. This all emerged in a rather unsatisfactory way and it will continue to emerge pursuant to discussions which have already taken place before SIAC, but, thus far, the position as to what SIAC and the parties know is scarcely satisfactory. There is force in the applicants' claim that these events should be the subject of explicit open and, if necessary, closed evaluation and, whatever subsequent evaluation there, in fact, was, is not clear either in open or in closed. There is certainly nothing explicit.

41. We do not have all that Crown counsel or the trial Judge said, which might bear on these issues. Those are the key aspects. The acquittals by themselves show very little and, certainly, do no more than show that the jury was not satisfied as to guilt on the criminal standard of proof. It is unclear how, if at all, any comments on the reliability of Meguerba's statements came to be made. Nothing in the transcript that we were shown constitutes an acceptance of unreliability in the way or to the extent so far suggested here. The "shifting sands" of his evidence, to use Crown counsel's phrase, and his alleged role as a co-conspirator are not as strong as the suggestion that his evidence had been accepted as wholly unreliable. He was not put forward as the "witness" against whom the Crown's case should be measured. There is certainly something of a question mark over Meguerba and his evidence which has been there in the past and has not been - and maybe never will be - resolved. There does appear to have been satisfaction by the jury that there was at least a poison plot in which Bourgass and Meguerba were involved.

42. It is very difficult at this stage to know how far this goes, but, certainly, at present it bears out Mr Starmer's submission that it has shown the national security case to be no stronger than it was, rather the reverse, if anything.

43. Mr Starmer also pointed to the withdrawal of the certificate under Part 4 against D. We have never regarded SIAC's state of knowledge over the withdrawing of the certificate against D as satisfactory, especially in comparison with others, and the issue has not yet been fully ventilated. There is an aspect there which may affect the strength of the national security case, particularly against Q, but there are wider resonances. SIAC cannot form any conclusion now other than to say, at least in open, that the national security case is no stronger for that withdrawal.

44. Fourthly, we also recognise the assessment of JTAC in June about the absence of a single group with the intent and capability to attack the UK. Although that assessment was sadly proved to be wrong in July, the applicants fairly make the point that that assessment would be likely to have included the applicants subject to the control orders at least, a point which they are fully entitled to take.

National Security Conclusions

45. We have concluded, however, that the right approach at present, bearing in mind that these are bail applications, is for SIAC to take its earlier determinations where it has reached one as the starting point for the assessment of the national security risk. It has to recognise that there are question marks which it cannot yet resolve over some of the assessments in those determinations which tell in favour of the applicants.

46. We note that the Secretary of State's national security case is not accepted by the applicants, but how far that goes is a matter for the examination of individual cases at the substantive stage.

47. The chief point which I have dealt with, and which for present purposes we accept, is that since the control orders nothing has worsened in the national security case so far as these applicants are concerned and there are unresolved question marks over certain aspects of the evidence which SIAC has previously considered.

48. For Q and T, where there is no previous SIAC determination, we have considered the Secretary of State's submission and, save to the extent that flaws or weaknesses have been demonstrated at this stage, including in closed, have taken it at face value for the time being, subject, where relevant, to the same general points that we have already made.

The problems with the Memoranda

49. We have already identified the crucial questions: what is the risk of absconding and what are the risks associated with any absconding, if terms equivalent to or stricter than control order are imposed? We recognise the force of the arguments about the control orders in the past, in general, and the way in which the national security case is not at this stage stronger - there may be individual factors which apply which weaken it - but, as we have said, the applicants' principal point, which at least at this stage we accept, is that the principal and only real change of relevance

for bail for these purposes is the existence of the Memorandum of Understanding with Jordan and the closer prospect of a Memorandum of Understanding with Algeria. It is not any national security point. As we said, if anything, that strengthens the applicants' case. But the prospect of and existence of the Memoranda of Understanding with, respectively, Algeria and Jordan is plainly capable of influencing how individuals react to any opportunity to abscond and can plainly affect their fear of return. This needs to be considered in the context of the individual cases, but we make three observations.

50. First, this is not and was not suggested to be, despite the volume of material, the stage at which the strengths or weaknesses of the Secretary of State's potential case falls to be assessed. True it is that there is no Memorandum of Understanding with Algeria and no monitoring in place, despite past optimism, pursuant to the Memorandum of Understanding with Jordan, and it is impossible to see how, on the Secretary of State's past view of Chahal, the Secretary of State could possibly succeed today if the cases were heard today.

51. SIAC does not know what legal advice was given to the applicants, but it will infer that it may have been very positive. But only a fool would advise with certainty and, especially, before the fool sees the full case of the Secretary of State. The applicants will know that they, the applicants, have a proper case to be heard on that score. I accept that that is usually seen as a factor which encourages attendance, although we do not find the Secretary of State's general policy statements on bail in ordinary immigration cases particularly helpful in this unusual type of case, with an unusual background to the applicants and the national security role. But we recognise that in ordinary cases the prospect of an appeal may be seen as an incentive to attend. That may best be seen in the context of the consequences of dismissal of appeals in the absence of attending. There is a different context here, anyway, with the national security background and the risk to it, but, if return to a country would breach Article 3 and if absconding led to the disposal of the appeal, it is, nonetheless, difficult to avoid the conclusion that an applicant would still be able to object to removal if there was an Article 3 case which had yet to be heard. That provides a different context for the assessment of the incentive which an appeal may bring.

52. We accept, next, that the Secretary of State's aim of securing such Memoranda has been public knowledge since before the control orders and, indeed, to readers of his case in A in the House of Lords, since September 2004. That is relevant to assessing the significance of the non-absconding of any applicant subsequently.

53. It is also relevant to these points that such Memoranda were always seen as a parallel track to be pursued in respect of foreigners, but there are two very important considerations that apply to that.

54. First, one Memorandum has actually been concluded and the prospect of another being concluded is now very much greater than would have been realised publicly in September 2004 or January 2005. These have now taken concrete form in the form of the decisions to make deportation

orders, which, when previously made, were coupled with a recognition, at least in some instances, that they could not be made effective.

55. Secondly, the events of July underscore, and it seems to us that it would be foolish to deny it, a political will to reach and implement such agreements expressed in the public statements which would have brought home very clearly to the applicants the position in which the Government is, so far as it can, determined to put them.

Prison Conditions

56. ?? 56. At one time, significant material was deployed by applicants in relation to the prison conditions in which they were held. SIAC held an urgent hearing into the bail applications for B and G because of evidence in relation to their mental conditions in prison. B's application was adjourned and remains adjourned, because he is currently in Broadmoor. G will be dealt with in this judgment. The question of conditions has been responded to by the Prison Governors and with video material since then and it has become a rather lesser factor, deployed as a more general proportionality point. We are not concerned here with indefinite detention.? The bail decisions which SIAC is reaching, as we have said, relate to the position broadly to the date of SIAC hearings in the substantive appeals.

57. I now turn to the individuals in the order in which we dealt with them.

K

58. We start from general acceptance of the SIAC open determination on national security risk. We are not yet persuaded that that has been significantly affected by the collapse of the Abu Doha extradition case. K is a senior member of the Abu Doha group in the United Kingdom and is an active supporter of it. The case may be affected in certain but not primary aspects by the position in relation to Meguerba's evidence. K has a history of absconding, in 2001, during consideration of his second asylum claim and after a fire at Yarlswood. He has used false identity documents to travel within and to and from the UK. He has access to extremist funds. He can live illegally in the UK. He has no family ties in the UK and is in good physical and mental condition. The change in prospects for his removal with that background, and notwithstanding the absence of proven breach of the control order conditions, satisfy us, both, that there is a real risk of his absconding, living illegally in the UK, perhaps departing and returning to the UK clandestinely, and that, if he absconded, he would be a real risk to national security.

59. ? 59. We do not consider that any bail conditions would suffice to prevent that absconding, however draconian those might be. The incentive that he now has to abscond is critically different from what it was before. The prospect of deportation and the lawfulness of the detention warrants a different balance being struck between the risk to national security and his liberty than under the control order.

60. The closed evidence, accepting the force in some of the Special Advocates' submissions, still supports an assessment of the opportunities and risks of absconding even with very strict conditions. He cannot be prevented from absconding by conditions however tight. We are satisfied that there is a real risk that he would take the opportunity. Bail is refused.

H

61. We start with the SIAC judgment and two review decisions and see no reason to regard the national security case as weakened by any subsequent events. It is correct that he was involved in fraud, but this logistical support is of real importance to successful terrorist operations. We accept that H is familiar with false documents and has shown himself to be security conscious. He married a Somali, now a British citizen, in 1994. They have no children, but care, at least at times, for her nieces because of her sister's illness. She says that she would go with him if he were deported, according to her witness statement. H has no history of absconding, though arrested four times and released without charge.

62. We heard evidence from Dr Kopelman, who provided two reports of 21st September 2005 on H and his wife. He is a professor of neuropsychiatry and a chartered psychologist. He had been involved with H in detention since April 2004 and had seen him on release as an outpatient and again since his subsequent detention. Dr Kopelman's report concluded that the diagnosis continued to be of clinical or major depression, now very severe indeed, with biological features, such as weight loss and more desperate than when H was in Belmarsh. H had symptoms of PTSD. He had been depressed at the tightness of the restrictions in the control order. Dr Kopelman expected his mental state to deteriorate rapidly. Mrs H also showed features of major depression and PTSD. In custody, H is on suicide watch and on anti-depressants. Dr Kopelman was dismissive of the prison assessment which did not converge with his own concerns, because, he said, of H's suspicion of authority. He had not seen the SIAC judgment, nor, until he gave evidence, the in-mate medical records. He was to a considerable extent dependent upon what H and his wife told him, but asserted his understanding of medical records and his ability to take a clinical history, as an experienced clinician, in reaching conclusions as such.

63. We accept, as Mr Emmerson said, that the medical condition is not at the level of being an emergency reason for bail, even taking Dr Kopelman at his highest. It is a factor and, for present, we accept that there is no firm ground to dispute that there is clinical depression. There are questions of degree, at least, raised through other assessments and through Miss Giovannetti's comments on the contrast between the in-mate medical records and Dr Kopeleman's diagnosis. It is not necessary here to resolve those further.

64. We recognise that the changed circumstances of the notice of making the deportation order and the background to it puts a significant incentive on H to abscond and that, if he were to do so, continuing his activity and contacts, he would be a risk to national security. However, in this case we consider that with very strict bail terms the risks can adequately be managed. The particular

reasons here include the nature of the activities, the lack of a history of absconding, his quite longstanding marriage to a British citizen and some other family ties, albeit with no children of their own. Although she would go with him, those factors will provide a significant counterpressure to the temptation to abscond. It would not apply only to his temptation to abscond as an individual, but he would also appreciate his marriage to a British citizen gives him additional argument in respect of deportation.

65. Accordingly, he will be granted bail. The terms will essentially be those of the control order, but there will be a much reduced time during which he can go out. They will be limited to two hours a day in daylight hours, the precise times to be fixed, and there will be a map associated with that as to where he can go.

A

66. Again, we start with the SIAC determinations in respect of A. He is GSPC linked, actively associated with Abu Doha, interested in the wider jihadist agenda, deceitful, with a history of absconding or laying a false trail. We apply what we have already said in respect of Ressam and Abu Doha.

67. A absconded during his 1992 to 1993 deportation order appeal. He disappeared during his later asylum appeal, when he was already in a relationship with his current wife, a Polish national, and had at least two children by her. He disappeared after giving a false name and address on arrest in 1996. He now says, through Mr Emmerson, that he remained with his family at the true address but he did not come to light until some time later in 2000. He was, however, bailed twice during criminal investigations for activities which led to his certification under Part 4, but he did not abscond on those occasions. He now has five children between three and 14, all born in the United Kingdom. His wife says that they and the children would not go to Algeria. Both she in her witness statement and A through psychiatric reports are very vague about the times they have spent together and apart, including how long apart, if at all, they were and what they were doing from 1996 onwards. His wife, however, provides evidence as to the strain on the family of the past year of detention and control order.

68. There was psychiatric evidence from Dr Davidson, based on the circumstances before the August 2005 arrest. A had been worried and depressed before his first release, but Dr Davidson recorded his increasing fears in 2004 that he would be deported, that the Algerian Government would accept what the UK Government said about him and torture him. He did not find that control order conditions in the upshot made life much easier for him because of the pressure, or rather fear, of police visits and the impact of the restrictions on his family. Dr Davidson diagnosed that he was suffering from depression, precipitated by detention and perpetuated, amongst other things, by the control order and the fear of return to Algeria or of re-arrest.

69. Dr Kopelman saw him after his detention in August and concluded that there was clear evidence

of a deterioration in his condition since detention, taking the Davidson report as the starting point. Dr Kopelman was, again, inclined to discount the value of the Prison Service medical reports and the different picture in the in-mate medical records, because of the brevity of the prison interview, A's suspicion of authority and the activities which Dr Kopelman attributed to A trying to keep his morale up. A was on suicide watch and anti-depressant medication. Dr Kopelman was, again, unaware of the SIAC determination.

70. A's case was not put forward as a medical emergency justifying bail in exceptional circumstances, but, again, was said to be relevant to the question of whether detention was truly necessary.

71. But for the potential effect on his family, we would be satisfied that there is a real risk that he would abscond, both in order to carry on what SIAC concluded was the wider jihadist activities, without the impact on them which a deportation order would have, and to avoid what is demonstrated to be a strong subjective fear of return to Algeria, which we conclude is unlikely to be substantially alleviated by advice as to the prospects of success.

72. The question, therefore, is, with the genuine family life which he has, notwithstanding the past history of absconding and false trail laying, the opportunity and facilities, including money and documents, for absconding, whether the most stringent bail conditions would act as a sufficient restraint. The risk to national security on bail would be greater than if he were detained, but less than on the current control order conditions and, obviously, greater than strict bail or control order conditions were he to abscond.

73. In the end, and after the most anxious consideration, we have come to the view that, provided the bail restrictions amount, in effect, to house arrest, the risk of absconding and damage to national security, were he to abscond or indeed remain compliant on bail, can adequately be controlled. This is because we see the position of his family, the wife and the children, as both strengthening his case on the merits in a way that he would understand, and as encouraging him not to depart, because it would be particularly disrupting either if he were to separate from them and have no contact, or for them to join him in a new location, either way more disrupting than he would be likely to accept.

74. If A is unwilling to abide by such terms, as he indicated in a SIAC hearing early in 2005, we will refuse bail. We were inclined to think that those statements were a piece of political theatre rather than a desire to stay in Belmarsh overcoming the attractions of living at home with wife and family. We have considered carefully whether some period out of the house would be appropriate. We are very conscious of his past absconding and the limit that that places on the confidence we can feel in the family tie. We are very conscious of his subjective fear and concern that even the control order represented too severe a restriction on his family. There are such very strong and conflicting indicators that we have concluded that no period outside the house should be allowed.

G

75. The SIAC open judgment concluded that G had been involved in false documentation, that he had facilitated young Muslims to travel for Jihad training and had actively assisted Al Qaeda-GSP linked terrorists. He has a number of jihadist extremist associations. ?His activities have been undertaken, notwithstanding coping with childhood polio weakening his right leg. His wife is a French national and they have a daughter of about five.

76. His bail application would be a very marginal or finely balanced one given the risks that he poses, the incentive, means and opportunity to abscond and the evidence of very strong subjective fears of return to Algeria. Yet his family connection has some weight. However, G was released by SIAC on house-arrest bail terms in April 2004, because of severe mental illness, an illness which did not cause SIAC to revise its view as to the strength of the grounds for believing that he was a threat to national security. SIAC recorded its grave suspicion, but not its satisfaction beyond reasonable doubt, that he had breached those conditions on one occasion.

77. In a report by Professor Robbins, a consultant psychologist, of 17th August 2005, shortly after G's arrest, reference was made to G's strong depression, his hopelessness, a man whose mood had plummeted since his recent detention and who would now be properly diagnosed as suffering from a major depressive disorder with the development of a number of psychotic features. These were an early part of his deterioration in late 2003/early 2004. G was actively considering suicide. Significant further detention had led to a marked deterioration which was difficult to manage in the prison system. Some such symptoms included head banging, noted in the IMR (in-mate medical record).

78. His mental state was giving rise to sufficient concern that we held an initial bail hearing in late August to see if he should be released, but we were not satisfied that the emergency then existed to warrant interim release which might then have to be revoked.

79. We have a subsequent report from Dr McKeith, a consultant psychiatrist, dated 24th September 2005. There had been what was regarded as a genuine suicide attempt by hanging on 15th September 2005. Staff had intervened while G was still conscious. A report described fears of return, his fears for his wife and child and his sense of hopelessness in the face of the pursuit of him by implacable state agencies. The visiting psychiatrist at Long Lartin agreed with the assessment of the distress level that G was showing and that he was at risk of future attempts at suicide. Both rejected the possibility that it was simple malingering. Neither thought Broadmoor appropriate and it appears not to be suggested by the Secretary of State either. Dr McKeith concluded that the risk of suicide was severe and could not acceptably be mitigated in prison.

80. Dr McKeith gave oral evidence. He said that the fear of return to Algeria was an additional factor in G's state. His abnormal state was manifest and serious before that, though bail would be of some relief. Dr Kenny- Herbert had sought referral to Broadmoor not because he thought

Broadmoor was appropriate but because it was better than staying where he was with the suicide potential. G was not necessarily mentally ill, though hopeless and wishing for suicide which the spirits were telling him to commit. He was more likely than not to commit suicide and that risk would certainly be greatly reduced if he were granted bail. The risk was borne out not by what Dr Kenny-Herbert said, but by the attempted suicide and by more recent in-mate medical records in September. There were also competing demands for the anti-ligature cell.

81. Dr Lane of Newham Primary Care Trust, a clinical psychologist, wrote of the prolonged distress, with physical symptoms, which G's travails were having on his wife and their daughter.

82. We do not accept the Secretary of State's suggestion that we should await the outcome of Dr Kenny- Herbert's approach to Broadmoor. It is not seriously pursued by the Secretary of State, unlike the case of B, where the interim bail hearing, because of his condition, was followed shortly thereafter by B's transfer to Broadmoor. We recognise the strength of the subjective fears, necessarily enlivened by the Secretary of State's notice of making a deportation order and the fact that no conditions or tagging can 100 per cent prevent absconding. We recognise also the position in respect of past compliance with bail conditions.

83. We conclude that this is a case, essentially because of the gravity of the medical evidence, in which bail should be granted because of the credible evidence of a severe suicide risk and the problems of dealing with that in custody. There are other factors, including the family ties, which assist the decision, but this is one essentially made for exceptional medical reasons.

84. Bail will be granted in this case on terms akin to house arrest, but, so far as access to the garden is concerned, we have not yet had from the applicant the plans that we asked for before, but there will be access to the garden granted on terms which SIAC will decide. I do not, I should add, having seen all the correspondence, propose to enter into debates about that.

??? P

85. The SIAC open judgment identified P's close involvement with the Abu Doha group, particularly in the provision of logistical support, including the supply of false documents and credit card fraud to supply funds. These did not appear to be denied, nor his association with Islamic extremists, though the reasons for those associations were at issue. Although he was not concerned in the preparation of attacks, he was reasonably suspected of supporting cells involved in attacks in the United Kingdom, as well as abroad. He is a double amputee of hands in circumstances which he attributes, not necessarily truthfully, to a bomb being thrown on to a bus in Algeria in 1997. However, as SIAC pointed out, his disadvantages did not affect his logistic-support activities.

86. We apply what we have said in the general part of the judgment about Abu Doha and the toxic poison plot. The national security case in that respect, at least as at present, is not stronger. We

accept that there is no abscond history, despite the potential temptations when Abu Doha was arrested pending extradition, after the first ACTSA arrests and after the early investigations when Meguerba left for Algeria. However, P has no family ties in the UK.

87. In February 2004, Dr Davidson reported that P needed considerable psychiatric help to overcome his attitude towards his prosthetics, though P had also complained when they were broken. In July 2004, Dr Turner, a consultant psychiatrist, identified P's reluctance to wear his prosthetic hands and gave evidence of a major depressive disorder, PTSD. He had a significant psychiatric disturbance. He thought that that psychiatric disorder had developed in Algeria in 1988 when P was first detained there. P said that after the explosion in 1997 he became depressed. P was now said to have a changed attitude to suicide which Dr Turner thought very worrying, with P anticipating death in prison or in Algeria, a risk, he thought, lessened by his disability. P was declining medical assistance. He did not wear his prosthetic hands when under the control order.

88. Professor Robbins produced a post-August 2005 report saying that P, who had been transferred from Belmarsh to Broadmoor in ACTSA detention, had had complex health needs when under the control order. He had a moderate depressive order and PTSD which he related to the loss of the arms rather than to detention in 1988. He was reported to be particularly pre-occupied with the possibility of enforced return to Algeria and would attempt to kill himself if he could. His depression and PTSD had markedly worsened since his most recent detention, a deterioration which would continue but was not such as would warrant transfer to Broadmoor.

89. Dr Bates, a consultant psychologist, who had been involved with follow-up work with P following his discharge from Broadmoor, provided a report of 22nd September 2005 confirming P's aversions to his prosthetics, though he had sought to obtain new ones on two occasions when they had been broken. He had not used his prosthetics at Broadmoor. He referred to P's anger at the control order restrictions. There had been an occasion when he had wanted to jump out of a window while on release under the control orders, but a friend had restrained him. In detention, P's mood had lowered because of the fact of detention and the prospect of return. There was a risk of further deterioration and of attempts to kill or harm himself. He had a moderate depressive episode and PTSD.

90. These psychiatric symptoms were not put forward as exceptional circumstances but as relevant to the need for bail and the effectiveness of conditions.

91. We are satisfied that, if released, there is a real risk of P absconding and engaging in extremist activities. He has no ties with any particular place. He has the contacts, the knowledge, the means and the will to abscond and to carry on his activities. No bail conditions can prevent that, even though the window of opportunity may be fairly short. We acknowledge the past absence of absconding, which in his case may reflect a growing confidence, but his mental state shows a clear subjective fear of being returned to Algeria which would motivate him strongly. He has the ability to have contacts arrange his absconding. We believe that, if he continued not to wear

prosthetics, the drawback would be overcome with assistance. He, as SIAC pointed out, carried on his activities after his hands were blown off. The lack of hands would, of course, make him stand out more in public, but he would have the ability to lie low and to be careful about with whom he associated and he has the contacts to enable him to do so. The closed material supports these concerns.

92. The notice of the making of a deportation order is a real change and, obviously, accentuates strongly the real fear which neither practical means nor emotional ties exist to prevent being acted on. We are satisfied there would be the real risk of absconding with the associated risk to national security. Bail is refused.

Othman or Abu Qatada

93. The SIAC open judgment adequately adumbrates the danger to national security which he poses. It also refers to his going into hiding successfully in December 2001 until October 2002. We were not remotely persuaded on the totality of what we heard by the suggestion that the Security Services had known of his actual whereabouts for a while through an intermediary and had declined to detain him. Othman's instructions precluded Mr Emmerson making any particular national security submissions.

94. Mr Emmerson fairly makes the point that, for all the risks to national security which he was said to pose, he had been put on, essentially, the same control order conditions as the others and no significant change in national security risk as such had been identified. The finding, in a search, of a computer illustrates more non-disclosure by the Secretary of State than a breach of the control order or more than a technical breach of the control order. Otherwise, as with the others, there was no positive assertion of a breach.

95. However, the monitoring system provided for in the Memorandum with Jordan was not in place and, even if it were, the case against deportation was strong, submitted Mr Emmerson.

96. Othman also had five children. He had been in the United Kingdom since 1993 and had been married for 20 years. Although there is something in each of those points, we are satisfied that there is real risk, and, indeed, would put it very significantly higher, that Othman would abscond. He has the means, will, contacts and, however tight the conditions are, the opportunity. He went into hiding not long ago when he had young and teenage children. There is no evidence that they acted as a constraint. As with the others, though in his case more so, the lawfulness of immigration detention permits a different balance to be struck between the protection of the public and his liberty from that which was struck under the control order regime, as we said in the general part.

97. Unlike the others, there is a Memorandum of Understanding with Jordan, though part remains to be given concrete expression. The prospect of a return, which would probably involve a trial in

Jordan for the offence for which he was convicted in his absence and probably detention pending it, would act powerfully on his mind as an incentive to abscond, as would his overriding interest in pursuing the jihadist agenda. We recognise that he may have thought that this would be on the cards at some stage, but it is the greater immediacy provided by the Memorandum that matters to us. His application for bail is dismissed.

B

98. B's application has been adjourned. If there are any submissions as to what should happen in that case, at the end of this I will deal with it.

I

99. I shall refer to this man as IB, because grammatically "I" sounds a bit odd in places.

100. The SIAC open judgment concluded that IB was a senior and very active member of the Abu Doha group and he has been engaged in the procurement of false documents and fraudulent fundraising. We adopt what was previously said about the current position of the significance of that group. There was strong evidence that he was an explosives expert, a trainer in the use of explosives and he had received Mujihadeen training in Afghanistan. IB produced a statement in connection with the control order proceedings complaining about SIAC's procedures and the effects of the control order. As Sullivan J pointed out in the SIAC open judgment, IB had never engaged with the detail, in open, of the case again him.? There was so much in open that there was no need in that case for a closed judgment.

101. IB married an Algerian woman in 2001, who Ms Garcia's witness statement said has an unresolved asylum application. They have one daughter aged nearly four, born in the UK.

102. The Secretary of State said that the wife's asylum claim had been refused in 2001 and her appeal rights exhausted. There was an outstanding application for ILR under the family exercise. The wife claimed she arrived in 2000, and claimed asylum when she was arrested for obtaining social security using a false French passport.

103. Instructions have not been obtained from IB because he refuses to be strip searched as required for his category of prisoner to receive legal visits.

104. Mr Starmer points to the past deportation decision of April 2002 on IB, the lack of status, his awareness of endeavours to obtain agreements to support the argument that he should be returned, and yet he did not abscond when arrested in 2002 and granted bail, nor before the ACTSA detention, nor when he was on a control order and there is no positive assertion or clear evidence as to any control order condition being breached.

105. IB's asylum claim in 1995 was not progressed for four years and, although the Home Office sought, unsuccessfully, to trace him through solicitors, IB voluntarily drew himself to the Home office's attention in 2000, obtaining exceptional leave to remain.

106. We recognise that there may be respects in which the national security case against IB may have changed, in the sense of having weakened, though it is significantly difficult to gauge that in advance of the merits hearing.

107. We are satisfied that the conclusions of SIAC, even with some prospective change, remain broadly sound as a starting point for this bail application. We recognise, as well, the absence of an absconding record when there was opportunity and some temptation or incentive. We do not regard family ties in this instance as likely to have any significant effect, however. We are quite satisfied that there is a real risk that IB would abscond. The SIAC open judgment provides proper grounds for believing him to be a significant and serious Islamic extremist, committed to the wider jihadist agenda. He has the means and experience to abscond and to be a threat to national security were he to do so.

108. Although the prospect of a Memorandum of Understanding with Algeria has been known for some time and there was a notice of the making of a deportation order in 2002, we regard the most recent decision, the political determination and the much greater imminence of a Memorandum of Understanding as altering very significantly the way in which IB would regard the risk of return and the risks he would face if returned. The incentive to abscond so as to avoid return and in order to carry on his activities would be very strong. There are no ties sufficient to keep him. Bail conditions of the most stringent kind cannot, in fact, prevent the opportunity arising. The lawfulness of immigration detention also enables a different balance to be struck so far as the risk to national security is concerned between the adequacy of the control order or bail conditions and the greater protection which detention affords. Accordingly, bail is refused.

T

109. There is no SIAC judgment, because he was not subject to the ACTSA or control orders. The national security case against him is very general at present. It is said that he was associated with P, who was part of the Abu Doha group, and with individuals convicted of or awaiting trial on terrorism charges. He had received terrorist training in Afghanistan. He claimed asylum in February 2001 with his wife, but the claim was refused and his appeal was finally dismissed in 2002. It is said that he has access to false documents, which he used on entry. His wife is Algerian and also a failed asylum seeker. They have two children in the UK, aged three and one. The family were in NASS accommodation. T has been in the country on temporary admission without restrictions. He volunteered that he used forged French documents to travel to the UK. He had always resided at the temporary admission address and he kept the Home Office informed even after his appeal was dismissed in 2002 and after the ACTSA arrests and control orders were brought in. No charge has ever been brought against him.

110. T says that the forged French passport found on the search of the premises in 2005 is the one used to travel to the United Kingdom. We are persuaded that T should be granted bail on very restrictive terms. The national security case has yet to be heard and we have considered what it shows by way of a risk. But, unlike all the others dealt with so far, there has been no determination on that aspect, so he has two strings to his bow which gives him greater incentive to attend. The family is of very limited relevance as a tie, but we give particular weight in this case to the absence of hiding or absconding, after the failure of appeal, and the way he kept in touch. We also give weight to the absence of previous controls. However, we recognise there to be a considerable and greater incentive to go into hiding than there was, but consider that it should adequately be dealt with by very strict conditions.

111. In concluding that the conditions should be as strict as we propose, we have examined the closed material and, although we have considered the Special Advocates' submissions and recognise the force in many of their points and reach no conclusion on the case, there is at least some prospect that it is sound and it has been a very significant factor in our conclusions as to the need for the degree of restrictions we are going to impose. The conditions will require him to be at home 24 hours a day, but that is subject to a satisfactory address being found. I will need to receive material from both sides on that. I do not know whether, indeed, even the present NASS address is available.

Q

112. There is no SIAC judgment on certification, which was adjourned pending the resolution of criminal proceedings in which he was convicted and sentenced to a total of three years on fraud charges. He was released on licence into SIAC detention in January 2005 and remains on licence until October 23rd.

113. He was subject to a control order on substantially the same evidence in relation to the national security case as was served in the Part 4 ACTSA proceedings, but that has not yet been passed on. As I have said, the Part 4 appeal remains on foot. The substance of the national security case against Q is that he was involved in logistical support, notably fraudulent fundraising, the procurement of false documents for a variety of Islamic terrorist networks and had facilitated travel to Afghanistan for terrorist training. The significance, so far as Mr Starmer was concerned, is the alleged involvement in terrorist activities in the United Kingdom, including toxic chemicals. He has habitually used false identities. Indeed, he now asserts that ... is a false name and that his true name is ....

114. During the period of release under control orders, he married, according to Islamic rights, a Slovak citizen who has a child. They have only recently arrived in the UK. The nature of the relationship is of no significance so far as risk of absconding is concerned. They did not know each other at all until shortly before the Islamic marriage. The marriage was undertaken simply because he wanted a wife. It does not increase the national security risk, on the other hand.

115. It is, as we have said, easy to overstate the significance of the acquittal in the ricin plot case. The ricin or poisons plot allegation is a factor in our bail view, but it is not as weighty as the Security Services would have it. But Q must know that the allegation that there was a poisons plot in the UK and that he was involved with those who are said to have been part of it and that he was involved in other terrorist planning in the UK is an allegation being pursued which, if sufficiently made out, is a very significant part of the case against him on national security grounds and a very significant justification for deportation, subject to Article 3. On the other hand, the failure of that trial may encourage him to think that he could succeed on that aspect of the case.

116. As to absconding, Mr Starmer, again, rightly pointed out that control order conditions serve both functions and that control orders imposed without any addition of restrictions demonstrated that there was no greater risk to national security from Q than had previously been assessed. He had not absconded on the failure of his asylum claim or when others were arrested under Part 4, nor on the three times that he was arrested and bailed.

117. There is a national security case of some strength for Q to meet on this appeal. He must know that there is a reasonable prospect that his challenge to that aspect will fail, though again it gives him two strings to his bow. The national security implications of his absconding, if parts of that case are correct, are, however, very significant indeed. Whatever advice he received about the strength of the Article 3 case - and no one could sensibly advise that success for Q was certain - the decision to make the deportation order, with the greater impetus and will after the July events behind obtaining a Memorandum of Understanding with Algeria giving effect to it, represents a very significant change in the way in which SIAC judges Q would evaluate the risks he faces of and on return. The evidence, if correct, indicates fraudulently-obtained funds, false documentation and the fact that extensive extremist contacts could be available should Q wish to take an opportunity to abscond, an opportunity which, inevitably, exists even with the strictest of conditions, and we think that there is a very real prospect that he would abscond and, having absconded, would go underground to continue what, on the Secretary of State's evidence at present, if it is right, would suggest very significant activities.? The control order conditions might have been adequate for their purpose, but with the now much heightened risk of his absconding, we consider that bail should be refused, as it is.

118. So far as the bail terms are concerned, I have indicted their general nature. I hope that the precise details, with one or two omissions, are available for people to consider and, if there are particular points that arise, I will deal with them, I hope, today. I have had some experience of the time it takes to-ing and fro-ing between the parties. I do not intend that that should happen in these cases.
