



Office of the Attorney General
Washington, D. C. 20530

August 18, 2020

The Honorable Priti Patel
Secretary of State for the Home Department
Home Office
2 Marsham Street
London SW1P 4DF
United Kingdom

Dear Home Secretary Patel:

On behalf of the United States Department of Justice, I am writing to provide an assurance that, if the United Kingdom grants our mutual legal assistance request, the United States will not seek the death penalty in any prosecutions it might bring against Alexanda Kotey (Kotey) or El Shafee Elsheikh (Elsheikh), and if imposed, the death penalty will not be carried out.

I know that the United Kingdom shares our determination that there should be a full investigation and a criminal prosecution of Kotey and Elsheikh. These men are alleged to have been members of the terrorist group the Islamic State of Iraq and al-Sham and to have been involved in kidnappings, murders, and other violent crimes against the citizens of our two countries, as well as the citizens of other countries.

Five years ago, on June 19, 2015, the United States made a mutual legal assistance request for evidence in the United Kingdom's possession, obtained in the course of the United Kingdom's investigation of Kotey, Elsheikh, and others. Three years later, in April 2018, United Kingdom authorities, having previously stripped Kotey and Elsheikh of their United Kingdom citizenship, concluded that prosecutions in the United States federal court system would be the best approach for securing justice for their alleged victims. Thereafter, in June 2018, then Home Secretary Javid agreed to provide the evidence that we requested in our 2015 mutual legal assistance request, without seeking a death penalty assurance.

After two years of litigation concerning this decision, the Home Office remains unable to transmit the requested evidence or to commit to provide the cooperation required to use the evidence. Although the Supreme Court of the United Kingdom ruled in March 2020 that Secretary Javid had failed to perform the analysis required by the UK Data Protection Act before providing the evidence without a death penalty assurance, the Supreme Court has yet to issue its final order, and even after that order is issued, it is possible that additional litigation to block transfer of the evidence could ensue.

If a prosecution is to go forward in the United States, our prosecutors should have the important evidence that we have requested from the United Kingdom available to them in their efforts to hold Kotey and Elsheikh responsible for their terrorist crimes. If we receive the requested evidence and attendant cooperation from the United Kingdom, we intend to proceed with a United States prosecution. Indeed, it is these unique circumstances that have led me to provide the assurance offered in this letter. We would hope and expect that, in light of this assurance, the evidence can and will now be provided promptly.

However, time is of the essence. Further delay is no longer possible if Kotey and Elsheikh are to be tried in the United States, and further delay is an injustice to the families of the victims. Kotey and Elsheikh are currently held by United States military authorities in an overseas theater of military operations, and it is not tenable to continue holding them there for an extended period. Final decisions must be made about this matter. Accordingly, given these circumstances, it should be clearly understood that the United States will move forward with plans to transfer Kotey and Elsheikh to Iraq for prosecution in the Iraqi justice system unless, by October 15, 2020, all litigation in the United Kingdom seeking to prevent the use of United Kingdom evidence in a United States prosecution has been fully and finally resolved, and the United Kingdom has transferred the requested evidence to us, along with a commitment to provide ongoing cooperation with respect to such evidence for the duration of any legal proceedings.

We also confirm that the material already provided by the United Kingdom in response to the mutual legal assistance request will not be used to seek the death penalty in any prosecutions the United States might bring against Kotey or Elsheikh, and if imposed, the death penalty will not be carried out. Moreover, we will not transfer any evidence already or subsequently provided to us by the United

Kingdom to third countries that might impose the death penalty upon Kotey or Elsheik (and in any event will not transfer any such evidence to any third country without the express permission of the United Kingdom).

Thank you again for your assistance and for your continuing commitment to seek justice in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "WP Barr", with a long horizontal flourish extending to the right.

William P. Barr