

USA V JULIAN ASSANGE EXTRADITION HEARING

When:

Part 1: **24th February -28th February**

Part 2: **18th May - 5th June**

Where: Woolwich Crown Court/Belmarsh Magistrate's Court, which is adjacent to HMP Belmarsh (See end of this briefing for travel advice).

Magistrate: Vanessa Baraitser

Defence team: Solicitor Gareth Peirce (Birnberg, Peirce & Partners), lead
Barristers Edward Fitzgerald QC, Doughty Street Chambers, Mark Summers QC, Matrix Chambers

The US is seeking to imprison Julian Assange for obtaining and publishing the 2010/2011 leaks, which exposed the reality of the Bush Administration's "War on Terror": Collateral Murder (Rules of Engagement), Afghan War Diaries, Iraq War Logs, Cablegate, and The Guantanamo Files.

The US began its criminal investigation against Julian Assange and WikiLeaks in early 2010. After several years, the Obama administration decided not to prosecute WikiLeaks because of the precedent that this would set against media organisations. In January 2017, the campaign to free Mr. Assange's alleged source Chelsea Manning was successful and President Obama gave her a presidential commutation and freed her from prison.

In August 2017 an attempt was made under the Trump administration to pressure Mr. Assange into saying things that would be politically helpful to the President.
After Mr. Assange did not comply, he was indicted by the Trump Administration and the extradition request was set in motion. Chelsea Manning was re-imprisoned due to her refusal to cooperate with the grand jury against WikiLeaks.

President Trump has declared that the press is "the enemy of the people" (<https://www.nytimes.com/2017/02/17/business/trump-calls-the-news-media-the-enemy-of-the-people.html>). It is the first time the 1917 Espionage Act has been used to indict a publisher or journalist. Press Freedom organisations have emphasised that the indictment criminalizes normal newsgathering behaviour. The indictment applies the Espionage Act extraterritorially. Assange was publishing from the United Kingdom in partnership with UK media and other European and US press. The indictment opens the door for other journalists involved in the 2010 publications to be prosecuted. The USA will make the extraordinary claim that foreigners are not entitled to constitutional protections, so Julian Assange cannot benefit from the First Amendment.

FAQs

Will Julian be in court?

Yes, he will be present in the court room every day. Julian Assange is on remand in HMP Belmarsh, next to the courthouse.

What are the charges against Julian?

Seventeen charges under the 1917 Espionage Act for obtaining and publishing classified information, and one charge under the Computers Fraud and Abuse Act (CFAA). The CFAA indictment was unsealed on 11 April 2019. On May 23rd, the Trump Administration unveiled a superseding indictment adding 170 years to Assange's potential sentence.

What is the potential sentence?

175 years. Espionage Act: 170 years. CFAA: 5 years.

What publications does the indictment cover?

- **Collateral Murder, specifically the "Iraq Rules of Engagement 2007-2009"** that were published in Collateral Murder. (<https://collateralmurder.wikileaks.org/en/resources.html>)
 - The Rules of Engagement were published alongside the video depicting a war crime perpetrated by the US army. The US military had conducted an internal investigation which concluded the US military acted in accordance with its own Rules of Engagement for Iraq. Yet the video shows a war crime being committed under international law.
 - WikiLeaks published the Collateral Murder video alongside the Rules of Engagement for Iraq for 2006, 2007 and 2008, revealing these rules before, during, and after the killings. The fact the US military had classed the actions as lawful when they were clearly illegal was a central part of the publication.
 - <https://collateralmurder.wikileaks.org/>
 - <https://collateralmurder.wikileaks.org/en/resources.html>
- **Afghan War Diaries**, referred to by the US prosecution as "Afghanistan SIGACTs" <https://wardiaries.wikileaks.org/>
- **Iraq War Logs**, referred to by the US prosecution as "Iraq SIGACTs" <https://wardiaries.wikileaks.org/>
- **Cablegate**, referred to by the US prosecution as "State Department cables" <https://wikileaks.org/plusd/>
- **Guantanamo Files/GITMO Files**, referred to by the US prosecution as "Guantanamo Detainee Assessment Briefs" <https://wikileaks.org/gitmo/>

Surely if Assange is extradited, he can argue that he published in the public interest?

No. There is no public interest defence under the Espionage Act.

What conditions would he be placed under in the United States?

If extradited, Julian Assange will be placed under "Special Administrative Measures" (SAMS) which are far more restrictive than the UK's most restrictive conditions. He will be in solitary confinement, in a small cell. He will not be permitted any contact with family. He will only be able to speak to his lawyers, who will not be able to transmit any messages from him or themselves face criminal charges. Such conditions are a living death sentence.

Can Assange rely on the First Amendment?

The Trump Administration has stated that Julian Assange has no First Amendment rights (free speech and free press) because he is a foreigner national. Hence, US criminal laws apply abroad -

- but US constitutional protections do not. This means that all journalists, anywhere in the world, risk US prosecution if they publish something the US government considers to be in violation of its laws.

But surely US laws do not apply in the UK where Assange was publishing from?

Julian Assange published the 2010/2011 publications in the UK and Europe. The extradition is a test of sovereignty. The US-UK extradition treaty is centre stage.

Can the US-UK Extradition treaty stop the extradition?

There is consensus in the UK Parliament that the US-UK Treaty is in need of reform. Both the UK Prime Minister Boris Johnson and the leader of the opposition, Jeremy Corbyn, criticised the Treaty's imbalance in favour of the United States in Parliament on 12 February 2020. <https://www.independent.co.uk/news/uk/politics/jeremy-corbyn-julian-assange-extradition-us-wikileaks-war-crimes-a9331376.html>.

Doesn't the US-UK Extradition Treaty exclude "political offences"?

Yes. Espionage is a classical political offence. The UK executive had a chance to throw out the extradition request before it reached the courts. Instead, the then Home Secretary Sajid Javid certified the US request. It is now up to the judge to determine whether the extradition should be thrown out on these grounds.

Is Assange charged with hacking?

No. The indictment makes no claim that Assange "hacked" anything. In fact, the indictment makes no mention of "hacking". The "hacking" language comes from a press release from the US prosecution office announcing Assange's indictment on 11 April 2019. The charge is that Julian Assange allegedly agreed to try to help Manning log into her work computers (which she already had access to) using a different username so that she could maintain her anonymity. <https://theintercept.com/2019/04/11/the-u-s-governments-indictment-of-julian-assange-poses-grave-threats-to-press-freedoms/>

But doesn't the US allege that Assange went beyond what 'normal' journalists do by helping Manning obtain access to document databases to which she had no valid access?

No. The US allegation is that Assange agreed to attempt to help Manning use a different login with the same security access. This extremely flimsy allegation is made using the CFAA, a statute that is vague, outdated and overbroad, and does not clearly define what "computer intrusion" actually means. This lack of clarity in the legislation has led to the statute having been used for political purposes before, and US courts and the US government has even interpreted the CFAA to include consensual password sharing or web scraping by data journalists (<https://www.wired.com/story/julian-assange-computer-fraud-and-abuse-act/>, <https://www.rcfp.org/wp-content/uploads/2018/12/12-8-2019-Leaks-Chart-1.pdf>). As Assange's US criminal defence lawyer put it, the "factual allegations boil down to encouraging a source to provide him information and taking efforts to protect the identity of that source." <https://www.nytimes.com/2019/05/23/us/politics/assange-indictment.html>

Does the US indictment criminalise normal journalistic activities?

Yes. The US allegations that Julian Assange coordinated with Manning on the receipt and publication of classified documents (Counts 2-14 of the indictment). The Espionage Act (which was formulated in 1917, in relation to espionage) is now being applied to a journalist communicating with a source. The Espionage Act states that someone who aids, abets, counsels, commands, induces, or procures, or “willfully causes,” an offense to be committed can be punished as the offender.

Counts 15-17 concern what the Reporters Committee for the Freedom of the Press call "pure publication". To fit the language of the Espionage Act, the indictment alleges that Julian Assange “communicated” reports from the Afghanistan and Iraq wars, and the State Department cables, “by publishing [the documents] on the internet.” The RCFP calls this a "profoundly troubling legal theory, one rarely contemplated and never successfully deployed. Under those counts, the Justice Department now seeks to punish the pure act of publication of newsworthy government secrets under the nation’s spying laws." It calls this theory a “dire threat” to newsgathering and the “pure publication” counts a “direct threat to news reporting.

<https://www.rcfp.org/wp-content/uploads/2018/12/12-8-2019-Leaks-Chart-1.pdf>
<https://www.lawfareblog.com/assange-indictment-seeks-punish-pure-publication>
<https://www.rcfp.org/may-2019-assange-indictment-analysis/>
<https://www.rcfp.org/may-2019-assange-indictment-analysis/>

The US alleges that the 2010 publications have resulted in harm. Is there any evidence of this?

The "harm" rhetoric by the US aims to distract from the tens of thousands of named victims of extrajudicial killings, torture, war crimes, and other hard evidence of human rights violations revealed in the publications by WikiLeaks and its publishing partners. The US military and current or former administration officials are guilty of many of the crimes that WikiLeaks has exposed, none of which has been prosecuted.

During the Manning Court Martial, the United States stated under oath that they had not found any person who had been killed as a result of the publications. Ten years on, the US still has not been able to produce any evidence that anyone has been seriously harmed as a result of the Iraq War Logs, the Afghan War Logs, and the 2010 diplomatic cables.

The public rhetoric by the US government contrasts with its internal briefs and assessments, as Reuters reported in 2011: “A congressional official briefed on the reviews said the administration felt compelled to say publicly that the revelations had seriously damaged American interests in order to bolster legal efforts to shut down the WikiLeaks website and bring charges against the leakers. . . . ‘We were told (the impact of WikiLeaks revelations) was embarrassing but not damaging,’ said the official, who attended a briefing given in late 2010 by State Department officials.” (Reuters, “U.S. officials privately say WikiLeaks damage limited,” Reuters, January 18, 2011 <https://www.reuters.com/article/us-wikileaks-damage/u-s-officials-privately-say-wikileaks-damage-limited-idUSTRE70H6TO20110118>)

What role does the Spanish case of illegal spying on lawyers play in this extradition case?

Evidence is being investigated in Spain which involves United States agencies, specifically unlawful

acts committed against Mr. Assange and his lawyers, which make a fair trial in the United States impossible and which make the extradition abusive.

Whistleblowers in Spain who worked for the security company hired by Ecuador to man the Ecuadorian embassy stepped forward last year, leading to a criminal complaint that is now in the hands of the Spanish High Court or Audiencia Nacional, being led by the judge de la Mata. The whistleblowers have given evidence that the company's director was carrying out espionage on Julian Assange's lawyers for US intelligence via the head of security of Sheldon Adelson, Trump's biggest financial backer, a casino magnate who owns the company Las Vegas Sands. The Spanish company installed hidden microphones and cameras that surreptitiously recorded sound, opening visiting journalists' and doctors' cellphones to copy serial numbers and IMEI codes, an attempt to steal a baby's DNA, physical surveillance, breaking into lawyers' offices, and more.

The Spanish company's spying coincides with New York Times reports of Mike Pompeo's (then CIA director) "more aggressive efforts to try to disrupt WikiLeaks" which made "some lawmakers express[] discomfort." CIA director Mike Pompeo vowed to "take down" WikiLeaks, calling WikiLeaks a "hostile non-state intelligence service".

<https://web.archive.org/web/20181117193457/https://www.nytimes.com/2018/11/16/us/politics/trump-administration-assange-wikileaks.html>

Does it matter if Julian Assange is a journalist?

Julian Assange has been a card-holding member of the Journalist Union of Australia MEAA for more than a decade, and has received the highest journalistic award bestowed in his country, the Walkley Award, which is the equivalent of the Pulitzer Prize. He is also a member of the International Federation of Journalists and has won dozens of journalism awards.

The discussion about whether Julian Assange is a journalist is irrelevant, because the activities that the US has indicted him over are normal journalistic activities, therefore the precedent that is being set affects all journalists.

<https://defend.wikileaks.org/2019/12/03/the-fate-of-journalism-and-julian-assange/>
<https://www.walkleys.com/board-statement-4-16/>
<https://defend.wikileaks.org/wikileaks/>

Can Julian Assange get a fair trial in the Eastern District of Virginia?

The court that will hear Julian Assange's case is the "national security" court of the United States. The jury pool is drawn from Virginia, which is a small state which headquarters the CIA and national security contractors. Former CIA officer John Kiriakou, who blew the whistle on CIA waterboarding and prosecuted under the Espionage Act for exposing torture, was tried and convicted in this court.

John Kiriakou on the prospects of Assange getting a fair trial in the Eastern District Court of Virginia: <https://www.zerohedge.com/news/2019-05-24/cia-whistleblower-assange-going-get-railroaded-hanging-judge>

Has Donald Trump said anything about the prosecution of Assange over the Manning leaks?

In 2010, Donald Trump said that Julian Assange should "face the death penalty" over the Manning publications.

https://www.youtube.com/watch?v=V-pv_3i-dOs

Does WikiLeaks only publish leaks about the United States?

WikiLeaks has published leaks from many other countries including Kenya, Peru, Syria, Saudi Arabia, Russia, Namibia, Norway and Iceland. For example:

<https://wikileaks.org/wiki/Category:Kenya>

<https://wikileaks.org/wiki/Category:Peru>

<https://wikileaks.org/Syria-Files.html>

<https://wikileaks.org/saudi-cables/>

<https://wikileaks.org/spyfiles/russia/>

<https://wikileaks.org/fishrot/>

Recommended reading

James Goodale: Will alleged CIA misbehavior set Julian Assange free? (The Hill, 13 January 2020)
<https://thehill.com/opinion/criminal-justice/477939-will-cia-misbehavior-set-julian-assange-free>

James Goodale: Pentagon Papers lawyer: The indictment of Assange is a snare and a delusion (The Hill, 14 April 2019)
<https://thehill.com/opinion/criminal-justice/438709-pentagon-papers-lawyer-indictment-of-assange-snare-and-delusion>

James Goodale: More Than a Data Dump - Why Julian Assange deserves First Amendment protection (Harpers Magazine, April 2019)

<https://harpers.org/archive/2019/04/more-than-a-data-dump-julian-assange/>

Jack Goldsmith: The U.S. Media Is in the Crosshairs of the New Assange Indictment

<https://www.lawfareblog.com/us-media-crosshairs-new-assange-indictment>

Gabe Rottman: The Assange Indictment Seeks to Punish Pure Publication

<https://www.lawfareblog.com/assange-indictment-seeks-punish-pure-publication>

Essential Background:

Press conference (19 February 2020) at London's Foreign Press Association with Assange lawyer Jennifer Robinson, Kristinn Hrafnsson (editor-in-chief of WikiLeaks), and Australian Members of Parliament George Christensen and Andrew Wilkie

<https://www.pscp.tv/w/1MYGNkaYogwJw?t=2m14s>

Kristinn Hrafnsson address to the Australian Press Association (7 December 2019)

<https://fowlchicago.wordpress.com/2019/12/07/transcript-wikileaks-editor-in-chief-hrafnsson-speaks-natl-press-club-australia/>

Selected Commentary on the Prosecution of Julian Assange:

New York Times Editorial board

“With this indictment, the Trump administration has chosen to go well beyond the question of hacking to directly challenge the boundaries of the First Amendment. This case now represents a threat to freedom of expression and, with it, the resilience of American democracy itself.”

<https://www.nytimes.com/2019/05/23/opinion/julian-assange-wikileaks.html>

Washington Post Executive Editor Marty Baron:

"With the new indictment of Julian Assange, the government is advancing a legal argument that places such important work in jeopardy and undermines the very purpose of the First Amendment. The administration has gone from denigrating journalists as ‘enemies of the people’ to now criminalizing common practices in journalism that have long served the public interest. Meantime, government officials continue to engage in a decades-long practice of overclassifying information, often for reasons that have nothing to do with national security and a lot to do with shielding themselves from the constitutionally protected scrutiny of the press."

<https://thehill.com/homenews/media/445426-washington-post-new-york-times-editors-blast-assange-indictment>

Wall Street Journal Editor-in-Chief Matt Murray:

"the indictment’s use of the Espionage Act raises deeply troubling implications for traditional journalism and freedom of the press in this country. The right to publish uncomfortable, important information that the government would prefer to be kept secret is central to a truly free press."

USA Today Editor-in-Chief Nicole Carroll:

"Investigative journalists routinely obtain and publish information the government would like kept secret. This indictment threatens such reporting and is a chilling attack on press freedoms and the public’s right to know."

International Federation of Journalists

"Julian Assange, publisher of Wikileaks, has been charged under the US espionage act for publishing the Afghanistan and Iraq war diaries and US embassy cables, important documents that many of us around the world used and helped to publicise. This sets an extremely dangerous precedent for journalists, media organizations and freedom of the press. We do not want to be silent at this time."

<https://www.ifj.org/media-centre/news/detail/category/regions/article/speak-up-for-assange-international-journalists-statement-in-defence-of-julian-assange.html>

Council of Europe

Commissioner for Human Rights, Dunja Mijatovic

"In view of both the press freedom implications and the serious concerns over the treatment Julian Assange would be subjected to in the United States, my assessment as Commissioner for Human Rights is that he should not be extradited."

<https://www.coe.int/en/web/commissioner/-/julian-assange-should-not-be-extradited-due-to-potential-impact-on-press-freedom-and-concerns-about-ill-treatment>

Council of Europe Alert on Journalists in jail (UK): Julian Assange

<https://www.coe.int/en/web/media-freedom>

Council of Europe Parliamentary Assembly Resolution 2317 (2020)

"consider that the detention and criminal prosecution of Mr Julian Assange sets a dangerous precedent for journalists, and join the recommendation of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment who declared, on 1 November 2019, that Mr Assange's extradition to the United States must be barred and that he must be promptly released"

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28508&lang=en>

Reporters Committee for the Freedom of the Press

"This is the first time the Justice Department has ever successfully obtained an indictment from a grand jury with Espionage Act charges based exclusively on the act of publication"

<https://www.rcfp.org/may-2019-assange-indictment-analysis/>

Committee to Protect Journalists

"Taken together, the 18 counts in the DOJ indictment criminalize key reporting practices and the publication of information obtained through them. And the extraterritorial application of the U.S. Espionage Act means that any journalist anywhere in the world could potentially be prosecuted for publishing classified information. A successful prosecution would chill whistleblowers and investigative reporting. This is why CPJ opposes Assange's extradition."

<https://cpj.org/blog/2019/12/press-freedom-julian-assange-wikileaks-defend.php>

Amnesty International's Deputy Europe Director, Massimo Moratti:

"All charges underpinning the US extradition request should be dropped to allow for Julian Assange's prompt release. If the charges against him are not dropped, the UK authorities are under a clear and unequivocal obligation not to send him to the USA where he could suffer serious human rights violations. Julian Assange could face detention conditions in the USA that amount to torture and other ill-treatment, including prolonged solitary confinement. The risk of an unfair trial is very real given the targeted public campaign against him undertaken by US officials at the highest levels, which has severely undermined his right to be presumed innocent."

<https://www.amnesty.org/en/latest/news/2020/02/usuk-drop-charges-and-halt-extradition-of-julian-assange/>

European Federation of Journalists General Secretary Ricardo Gutiérrez:

"the arbitrary detention and criminal prosecution of Julian Assange set an extremely dangerous precedent for journalists, media actors and freedom of the press,"

<https://europeanjournalists.org/blog/2020/01/02/international-journalist-statement-in-defence-of-julian-assange/>

Reporters Without Borders (RSF) General Secretary, Christophe Deloire

"If Assange is tried under the Espionage Act, he will even be denied the possibility of demonstrating that the information he revealed served the public interest. These proceedings violate the US Constitution. The democratic example set by Thomas Jefferson and Benjamin Franklin is in danger."

<https://rsf.org/en/news/assanges-extradition-us-would-threaten-work-all-journalists>

Commentators

First Amendment

James Goodale, lawyer for the New York Times for the Pentagon Papers

Jack Goldsmith, Harvard Law Professor, head the Office of Legal Counsel under the Bush Administration (Department of Justice) 2003-2004, which provides legal guidance to the president and all executive branch agencies.

Ben Wizner, American Civil Liberties Union

Computer Fraud and Abuse Act

Electronic Frontier Foundation

Lauri Love

US Intelligence

John Kiriakou, former CIA Counterterrorism Officer and former Senior Investigator, Senate Foreign Relations Committee

William Binney, former NSA Technical Director for World Geopolitical & Military Analysis; Co-founder of NSA's Signals Intelligence Automation Research Center

Coleen Rowley, FBI Special Agent and former Minneapolis Division Legal Counsel (ret.)

Ann Wright, U.S. Army Reserve Colonel (ret) and former U.S. Diplomat

US-UK Extradition treaty

David Davis, MP (<https://www.standard.co.uk/comment/comment/justice-s-scales-are-lopsided-in-extradition-treaty-with-us-a4343671.html>)

Marjorie Cohn (former pres. of Nat'l Lawyers Guild) (<https://truthout.org/articles/extradition-of-assange-would-set-a-dangerous-precedent/>)

Lauri Love

Torture

UN Special Rapporteur on Torture, Nils Melzer

Spying in the Ecuadorian embassy, US-Ecuador relations

Fidel Narvaez, former consul of Ecuador in the United Kingdom

Guillaume Long, former Foreign Minister of Ecuador

How to get to Court

- **Bus:** From Woolwich Arsenal Station catch the 244/380 bus to the prison. The bus stops are situated directly outside the exit from the railway station.
- **Train:** The nearest stations are Woolwich Arsenal and Plumstead. Catch a bus from Woolwich Arsenal station to the prison, or walk from Plumstead station (contact the visitor centre for details).
- **Approach from M25 Dartford Bridge/Tunnel:**

- **Heading South - over Bridge:** Take first slip road immediately after tolls, (NB head for 4 left hand tolls when coming over the bridge). Signposted A206. First exit at roundabout and come over the motorway. Then to * (below):
- **Heading North - towards tunnel:** Take last exit (Junction 1) before tunnel signposted A206 Crayford/Erith. Then to * (below):
 - *: Roundabout over M25 - signposted A206 Crayford/ Erith. University Way.
 - Roundabout end of University Way/ dual carriageway signposted A206 Crayford / Erith.
 - Into Bexley / single carriageway / roundabout.
 - 4th exit signposted Erith A206 Crayford/Erith
 - Roundabout end dual carriageway
 - 2nd exit signposed Woolwich/ Thamesmead A206
 - Roundabout 2nd exit signposted A2016 Thamesmead, Plumstead, Woolwich
 - Series of roundabouts signposted A2016 Thamesmead, Plumstead, Woolwich
 - Dual carriageway towards Thamesmead, roundabout signposted Western Way
 - Signpost to Belmarsh and Courts - left slip road at traffic lights.
- **Approach from Woolwich:** Proceed along Plumstead Road, turn left into Pettman Crescent (just before Plumstead Bus Garage) then take the second left at the traffic lights into Western Way. Belmarsh is situated approximately half a mile down on the right-hand side. Follow signs for HMP Belmarsh and Courts.
- **Approach from Plumstead:** Proceed along Plumstead High Street, turn right into Pettman Crescent (just after Plumstead Bus Garage) then take the second left at the traffic lights into Western Way. Belmarsh is situated approximately half a mile down on the right-hand side. Follow signs for HMP Belmarsh and Courts.
- There is a visitors' car park.