STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 27.2;

Criminal Justice Act 1967, s. 9, Magistrates' Courts Act 1980, s.5B)

FOURTH STATEMENT OF ERIC L. LEWIS

Age of witness (if over 18, enter "over 18"): Over 18

This statement (consisting of 29 pages) **is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.**

1. This statement responds to the Second Supplemental Declaration of Gordon D. Kromberg (GK-Supp. 2), filed on March 12, 2020, and also updates my first Declaration, submitted on October 18, 2019, in respect of prison conditions and treatment for individuals with mental health problems.

I. The Long Delay in Bringing Charges Is Not Explained by Mr Kromberg and Nothing Cited by Him Constitutes Earlier Notice of Possible Charges

2. Mr Kromberg's Second Supplemental Declaration asserts that Mr Assange will not be prejudiced by the nearly decade-long delay in bringing charges against him. Mr Kromberg knows whether a decision was taken not to prosecute Mr Assange in 2013, because of constitutional infirmities or otherwise, as has been confirmed in numerous outlets, including directly by the Department of Justice's chief spokesman at the time, and at the least, indirectly, by the then-Attorney General, Eric Holder. Mr Kromberg can confirm or deny that such a decision was made. But he does not. Mr Kromberg instead responds to that evidence by raising arcane evidentiary objections concerning the newspaper articles in which those confirmations were made. Mr Kromberg appears to assert that Mr Assange is not prejudiced because he has had notice of continued jeopardy, based not on the actual position of the DOJ, but rather on Mr Assange's lawyers' advocacy and on several of his tweets that asked for further clarity on the issue. (GK-Supp. 2 at ¶¶ 8-12). Neither is probative of the Department's decision-making or the possibility that it would decide to charge Mr Assange in 2018 for activities that transpired in 2010, especially after corroboration by senior Department of Justice officials in multiple public statements in 2013 and thereafter that a decision had been taken on constitutional grounds not to bring charges.

3. It is my opinion that, in keeping with precedent and its own public statements, the DOJ took the decision to decline to prosecute Mr Assange in 2013 based upon its conclusion that Mr Assange had engaged in

protected constitutional activity indistinguishable analytically from that of investigative journalists , and there remained an abandonment of intent to charge him until President Trump took office, when a highly politicized Department of Justice decided that there was advantage to prosecuting Mr Assange based upon a radically changed ideological agenda. Mr Kromberg certainly knows the entire chronology here and he could say otherwise, but he does not. The Trump administration's sudden and belated decision to prosecute, and then to greatly amplify the charges and Mr Assange's jeopardy, was, in my view, political and unconstitutional, and Mr Kromberg's statement does not adduce specific evidence to the contrary. General statements that the Department of Justice is apolitical, even if accepted-- and I would suggest that this important tradition has been and continues to be tragically eroded, are not probative of the specific issue presented in this Court.

II. Mr Kromberg Fails to Rebut Evidence That the Charges Against Mr Assange Are Politically Motivated

4. Mr Kromberg ipse dixit denial that the prosecution of Mr Assange is politically motivated is not supported by the facts of record and the inferences reasonably drawn therefrom, as set forth below.

A. Mr Kromberg Does Not Explain the DOJ's Departure From Decades of Precedent Protecting Publishers of Information From Prosecution Under the Espionage Act.

5. Mr Kromberg fails to address why the DOJ departed from its previous position that Mr Assange's prosecution would be unconstitutional given the "New York Times problem," that is, if the Department prosecuted Mr Assange, then it would have to prosecute newspapers like the New York Times for publishing leaked information, like the Pentagon Papers. For this reason, third party publishers of classified information, like Mr Assange, have *never* been punished under the Espionage Act in the more than a century since its enactment. Mr Kromberg does not dispute that the Espionage Act has never been used in this manner before; nor does he explain this departure. It is my view that the "New York Times problem" remains an insuperable bar to prosecution and that the initial decision was correct as a matter of both law and policy.

Mr Kromberg does not comment on the impact of the aggressive public campaign by senior members of the Trump administration, including the President, to attack publishers of leaked information, including news outlets like the New York Times, as treasonous, in the run-up to the indictment of Julian Assange. Nor does he address why a sitting Congressman and a "right-wing internet troll" who is also a close Trump associate, would fly to London and visit Mr Assange in the Ecuadorian Embassy and offer him a

pardon, before he was even charged, if he would make a statement that Russia was not involved in the 2016 Democratic National Committee hacking. To be sure, the President has claimed through his press secretary that he did not authorize such an offer, but by that point (shortly before the commencement of Mr Assange's extradition hearing in February), the meeting had already occurred and Mr Assange had given no indication that he would co-operate with this request to make such a statement. Thereafter, Mr Assange, having failed to show interest in such a quid pro quo, was criminally charged. While President Trump, not surprisingly, would want to maintain "plausible deniability," with respect to this offer, I would find it implausible that a Congressman and a prominent Trump operative would have made such an effort and offer in these circumstances completely on their own without an indication that such an offer was viable.

B. The Prosecution Is Attributable to a Change in Political Leadership, Which is Supported by Valid, Unambiguous Evidence

i) The DOJ Under President Obama Decided Not to Prosecute and Announced This Decision

6. Not only did the Obama administration not bring an indictment against Mr Assange during its entire 8-year term, it granted Chelsea Manning a Presidential commutation at its conclusion. Mr Kromberg concedes that Department of Justice officials made unequivocal statements to the media that it did not intend to press charges against Mr Assange. It is notable, and quite unusual, for there to have been so many public statements by DOJ officials that Mr Assange's case, and cases like his, should not be prosecuted. The Department of Justice well understood that this was a case that presented important constitutional issues and that its decision was properly explained to the public. The Washington Post reported that US officials explained —on the record—the decision not to prosecute: "although Assange published classified documents, he did not leak them, something [the officials] said significantly affects their legal analysis."[1] These were authorized comments and were admissions as a matter of evidence; the DOJ did not demand a retraction or otherwise seek to correct the statements made in the article. Nor did DOJ ever state that the decision not to prosecute Mr Assange was reconsidered or reversed or that the investigation into the Manning leaks was ever reopened during the Obama years from 2010 to January 2017. Indeed, the clear import of the statements of former Attorney General Eric Holder, in a 2019 interview, that Mr Assange might have been at risk if there was evidence that he cooperated with a

[1] Sari Horwitz, Julian Assange Unlikely to Face Charges Over Publishing Classified Documents, NY Times, Nov. 25, 2013, at https://www.washingtonpost.com/world/national-security/julian-assange-unlikely-to-face-us-charges-over-publishing-classified-documents/2013/11/25/dd27decc-55f1-11e3-8304-caf30787c0a9_story.html

foreign government to undermine the integrity of the 2016 US presidential elections, is that his leak of the 2010 information of which DOJ was aware, would not itself support a prosecution.[2]

7. Mr Kromberg denigrates these sources as "news articles" (GK-Supp. 2 at 5) comprising hearsay, but he does not say that they are not accurate or reliable and the U.S. evidentiary rules are irrelevant to the inquiry before this Court. Reliance on publicly available information is not a legitimate criticism of the factual showing. Since no one on his team or his experts has access to the internal deliberations of the Department of Justice (although Mr Kromberg does), the information relied upon in my statement with respect to the decision not to prosecute is necessarily based on publicly available information.

8. The DOJ does not ordinarily explain its thinking on a potential prosecution if it intends to actually file charges. The DOJ's customary policy is to announce neither investigations nor their closure.[3] Although a good lawyer will press the DOJ for information about the status of any investigation involving or related to her client, as counsel to Mr Assange did here, the DOJ generally says nothing at all. Here, however, the Department of Justice *did* offer public statements about its intention not to prosecute in a case of public attention and doctrinal importance.

9. The apparent existence of confidential investigations in 2015 and 2016 somehow regarding WikiLeaks does not undermine these statements. The DOJ conducts investigations through grand juries. The purpose of grand juries is for "the investigation of crime and the initiation of criminal prosecution."[4] Federal grand juries serve a term of 18 months. Given that the DOJ admitted that it began its investigation in 2010 and that there were active grand juries, apparently, through at least 2016, there are four possible conclusions to be drawn. First, one could speculate that the DOJ sought an indictment, and at least four grand juries declined to return one, against Mr Assange. Given the well-known pliability of grand juries, I view this possibility as quite doubtful, especially crediting the multiple statements of senior DOJ officials that a decision had been taken years before *not* to charge Mr Assange. Second, it is possible that the DOJ and FBI were conducting much broader investigations into Wikileaks and others. Keeping an active grand jury investigation open allowed the DOJ and FBI to preserve its ability to issue subpoenas to persons of interest in relation to whatever investigative interests they had relating to

[2] Andrew Blake, Eric Holder Revisits Wikileaks Probe as DOJ Continues Obama-era Investigation, The Washington Times, Apr. 2, 2019, at https://apnews.com/db42a0a6edb82cc75295030b4299df1f.

[3] "When Does the Division Announce Investigations?", Department of Justice Website, https://www.justice.gov/crt/when-does-division-announce-investigations.

[4] Justice Manual, Title 9-11.000, at https://www.justice.gov/jm/jm-9-11000-grand-jury.

Wikileaks. Third, it is possible that the ongoing investigation continued as an official matter, i.e., it was not formally closed, and, as one would expect, conduct which resulted in a conviction six years earlier was no longer being investigated, but rather was identified as technically an active investigation in order that the DOJ and FBI would not have to disclose files to Ms Manning or to confirm to Mr Assange or others that there was a formal closing of the investigation. Finally, it is possible, at least in 2016, that there was an investigation of connections between Russia, Wikileaks and the Trump campaign. All of these are plausible explanations, but none is germane to the question of political motivation with respect to Mr Assange in 2018 and 2019, and the resulting prejudice of the delay to Mr Assange. Nor is it likely to suggest that the decision taken by DOJ not to prosecute Mr Assange in 2013 regarding the 2010 publication had been reconsidered or overruled later during the Obama Administration. Again, Mr Kromberg would know the answer to this question and it seems significant that he does not say that the grand juries were reconsidering prosecution of Mr Assange for the 2010 publication of documents.

10. In an ordinary circumstance, and indeed in this case until March 2018, the absence of charges in any case so many years after the conduct at issue would in itself be a clear signal that a decision had been made not to prosecute Mr Assange, just as Attorney General Holder explained that the DOJ would not prosecute Glenn Greenwald for publishing the information that Edward Snowden leaked of a far higher classification than the Manning leaks. That same reasoning by the same former responsible official appeared to have resulted in the same outcome here until Mr Trump's administration took power and began to use the DOJ to further a political agenda, first under Attorney General Sessions, and accelerating under Attorney General Barr.

ii) Mr Kromberg offers no legal basis for the reversal of the DOJ's position

11. Mr Kromberg points to no new facts and no change in the governing law to explain this decision. He makes a reference to two legal opinions—without specific citation—issued by the Office of Legal Counsel ("OLC") of the Department of Justice, some forty years ago in 1980 and 1981 on the constitutionality of punishing the disclosure of intelligence identities (GK-Decl. 1; ¶ 9); these appear to address a different statute and there is no indication that they restrict the media or third party publication. In any event, the OLC represents the views of the DOJ at a particular time and is not an authoritative statement of the law. Mr Kromberg does not address legal analyses in the ensuing nearly forty years, including, presumably, extensive legal analysis that led to Attorney General Holder's decision. He does not address the fact that the Espionage Act had never been used in over a century to prosecute the publication of information by a person other than the leaker. Instead, Mr Kromberg speaks of people

who may have been endangered and had to be notified or moved. If true, this is unfortunate, but it does not distinguish what Mr Assange is charged with doing from numerous other publications that have published sensitive information. And in any event, this exposure happened in 2010 and the facts did not change in the ensuing years.

12. Mr Kromberg simply repeats statements made in Department of Justice press releases that Mr Assange is not a journalist. But that is a tautology. Mr Assange received confidential documents of public interest regarding such matters as Guantanamo Bay, bombing of civilians, military operations in Afghanistan, and he reviewed them and published what he believed the public had a right to know. This is what investigative journalists do every day. Whether he would have made the same decisions as the Telegraph or the Guardian does not decide whether he is a journalist or not, as the Obama Administration—no friend of leakers to be sure—apparently decided was the law.

13. Mr Assange has, by contrast, provided ample US legal precedent against prosecuting publishers, and shown that until President Trump took office, that bedrock legal analysis of not applying the Espionage Act to publishers rather than leakers remained intact. As explained in my third affidavit, the upheaval of established First Amendment jurisprudence coincided with the ascension of a President preoccupied with leakers and seeking to obtain political advantage by criminalizing the conduct of unpopular figures, including, prominently, Mr Assange. That decision was consistent with the numerous accusations of treasonous or criminal conduct leveled by senior members of the Trump Administration against Mr Assange.

14. If the US government wishes to provide comfort to the Court that the reversal of decades-long precedent on the prosecution of publishers did not have a political motivation, then it readily has the ability to produce evidence demonstrating that proposition. Presumably, the United States could produce legal memoranda concerning its 2013 decision to prosecute or not prosecute Mr Assange; memoranda concerning the reversal of that decision and the legal rationale for doing so; and the scope and targets of the investigation that allegedly took place 2010 through at least 2016. The affidavits submitted on behalf of the DOJ in its opposition to producing these documents in the two Freedom of Information Act cases cited by Mr Kromberg, while submitted privately to the judge, are readily accessible to the US government and can be shared with this Court. Indeed, Mr Kromberg could have suggested that such a paper trail existed, even if he did not wish to produce any documents. Mr Kromberg also could have attempted to refute the statements of Mr Matthew Miller, a former senior DOJ official and chief spokesperson, who was quoted in the media as saying that the DOJ had decided not to prosecute Mr

Assange because of First Amendment or "New York Times problem" concerns. Mr Miller commented on the record in 2013 with the Washington Post, and then tweeted confirmations in 2016, 2017, 2018 *and* 2019 that "the DOJ couldn't indict Assange in the Manning leaks b/c he was a publisher, not hacker."[5] He also could have engaged with the comments regarding Attorney General Holder, who has recently given television interviews on this subject. But it does not appear that Mr Kromberg did—or could—entreat either former official to clarify or refute their remarks on this matter. Instead Mr Kromberg simply asks the Court to accept his unsupported statement of the idea that the Department of Justice is immune from politics in the face of detailed evidence to the contrary, a body of evidence which continues to grow.

III. Mr Assange Is Likely to Suffer Profound Harm to His Mental Health If Incarcerated in a US Prison

A. Mr Assange Faces a Potentially Egregious Sentence of Incarceration

15. Mr Kromberg attempts to minimize the potential sentence that could be imposed on Mr Assange but admits that it is too early to know whether Mr Assange will receive an extremely harsh sentence or not. (GK-Decl. 1; ¶ 188). Certainly, he does not deny that this is legally possible, and he has offered no undertakings to the contrary. But the evidence to date demonstrates that the DOJ has every intention of punishing Mr Assange as harshly as possible and that it has the power to do so. The DOJ initiated a single five-year maximum charge against Mr Assange over seven years after the alleged offense (an indictment which remained under seal until April 2019), and thereafter it added 17 counts of violations of the Espionage Act for the same underlying conduct as the original single charge. Indeed, just in the last month, the DOJ filed a Second Superseding Indictment which added new conspiracy allegations. Presumably such information to buttress the non-Espionage Act counts was included to have additional "relevant conduct" (see below) that could be used to enhance sentencing on counts on which Mr Assange may be convicted, even if he is acquitted on others.

16. Mr Kromberg indicated that the Department of Justice not infrequently files superseding indictments suggesting that it sometimes finds new evidence or new witnesses after the first phases of an investigation. But that surely is not what happened here with respect to either Superseding Indictment. The evidence had been in place; the facts clear for more than eight years when the first single count was

[5] E.g., Matthew Miller, Twitter, Oct. 19, 2016, https://twitter.com/matthewamiller/status/788900103239135232.

brought. Mr Assange was originally facing a felony charge with a maximum five-ten year sentence. Then nothing but the Attorney General changed, from Sessions to Barr, and the very same alleged leaks of the very same evidence from 2010 were now fit into the frame of the Espionage Act, which had been around for 100 years and never used in this way before. Now Mr Assange is now facing a potential 175years in prison. It is very clear that the government intends to—and is—pursuing Mr Assange with the intent to impose as severe a punishment as it can convince a Court to impose.

17. Mr Kromberg concedes that I am correct in attesting that 175 years is the maximum available sentence under this indictment if Mr Assange is convicted on all counts. While defendants do not usually receive the maximum sentence, grave crimes are an exception. Many espionage cases fall under such a description. First, it is important to note that the Government has the power to seek and the Court to impose such a sentence. Under US federal sentencing law, a court is allowed to consider "relevant conduct" in deciding what sentence to impose on a defendant after conviction by plea or trial. Relevant conduct is not restricted to conduct alleged in the indictment. It can include uncharged crimes and even conduct for which the defendant was acquitted at trial. United States v. Muir, 710 F. App'x 510 (2d Cir. 2018) (citing United States v. Vaughn, 430 F.3d 518, 527 (2d Cir. 2005)). The government is not required until after trial to identify what relevant conduct they may ask a sentencing court to consider, and so accordingly, we do not know at this juncture what the government might seek to introduce at the sentencing phase of the proceedings. However, other Wikileaks' publications could form part of this "relevant conduct" including the publication of the Detainee Policies in 2012, revelations of US espionage against European leaders including Chancellor Merkel and President Sarkozy, the 2015 revelations of espionage against the European Commission, the European Central Bank and French industry, and the 2017 publication of US spying during the French presidential election campaign. The publication of the DNC emails during the 2016 US presidential election may also be considered. If the US government believes that publishing leaked documents is a crime, as is evident from its indictment of Mr Assange, then it seems reasonably likely that it will seek to enhance his sentence with evidence of similar conduct.

18. Second, as noted in my earlier statement, espionage cases, especially high-profile cases where the national security apparatus is making accusations of treason and calling Wikileaks a non-state hostile agency, are generally treated as unusually severe. Chelsea Manning was sentenced to 35 years in prison. Mr Kromberg notes that, unlike the federal systems there is parole available in the military system after a person has served one third of the sentence (11 2/3 years), but there was no reason to assume that she would receive parole then or ever. President Obama commuted her sentence; it is doubtful that President

Trump would have done similarly in this context (his commutations and pardons have been idiosyncratic to say the least). Trump tweeted an attack on the decision to free Manning and called her a traitor and had previously called for the death penalty. In fact, the President himself and other key figures in the Trump administration have said such conduct is deserving of the death penalty. Other espionage cases have resulted in extreme sentences —from the Rosenbergs (execution) to Aldrich Ames (life sentence without parole) to Jonathan Pollard (life sentence). The US Government has stated repeatedly that it regards the leaks in Mr Assange's case as extremely severe, and we can expect the DOJ's sentencing recommendation will reflect this view if Mr Assange is convicted. Had the Department of Justice wanted to proceed on the basis that it was not seeking a long custodial sentence, there would have been no reason to use its vast charging power to slice up the facts and add 17 separate counts—and potentially 170 years—to the case after the first indictment. This was a conscious decision which had the unmistakable purpose of increasing the gravity and the jeopardy of the case.

19. Mr Kromberg could state that in the event of conviction, the Government will not seek a sentence above guidelines range or limited to a certain term or only with respect to a single count with cumulation, but he has not. Similarly, he has not stated that Mr Assange will not be subject to Special Administrative Measures, a Communications Management Unit, isolation or other extreme conditions either before trial or post-conviction. Nor has he said Mr Assange will not be sent to Super Max in ADX Florence Colorado, where prisoners live underground for 23 hours per day. Rather, he actively asserts in his sworn affidavit that the Government may indeed apply the harshest of options to him.. (GK-Decl. 1; ¶¶ 95, 102-103). His failure to make any commitment at all to this Court is, in my view, extremely concerning with respect to DOJ's probable intentions in this case.

B. US Prisons Provide Inadequate Mental Health Treatment

20. Mr Assange will not receive adequate mental health care in a US prison. As I understand, Mr Assange is facing an array of mental health problems, including serious depression and suicidal tendencies, and may suffer from Asperger's Syndrome. US prisons are woefully understaffed, especially with respect to quality mental health services, even with respect to high-profile prisoners. Mr Kromberg recites the protocol for dealing with suicidal prisoners, but does not, and cannot, vouch for its efficacy. That is not surprising. While he acknowledges that suicidal prisoners are to be guarded at all times, this operating procedure has failed. Jeffrey Epstein, then one of the highest profile prisoners in the US prison estate who was famously accused of sex trafficking and awaiting trial, committed suicide while ostensibly being guarded continuously in the Metropolitan Correctional Center in New York; the *two* cameras that

were supposed to be filming his cell malfunctioned the night he did so. Mr Epstein was reported to have private, compromising information on many powerful people, just as Mr Assange likely does. My confidence that he will be safe from harm—whether inflicted by himself or others—is low.

21. Mr Kromberg's statement once again offers the aspirational talking points but does not offer a full and accurate picture of what mental health care is actually like at the BOP. Mr Kromberg does not reference that even the BOP admits that it cannot accurately determine the number of inmates who have mental illnesses, because staff do not always document mental illnesses, and accordingly it is "unable to ensure that it is providing appropriate care to them."[6] Estimates suggest that the current care is woefully inadequate. In 2017, the Department of Justice released a report indicating that the BOP's Chief Psychiatrist estimated that as many as 40% of inmates had significant, diagnosable mental illness; only three percent of prisoners were being regularly treated for mental illness.[7]

22. It is important to note that, while these studies are illuminating, they are based on old data. While the BOP has, at times, promised to upgrade, and has purported to implement different policies, it has never been given the proper resources. Mental health is a significant societal problem in the US and not surprisingly, there is little public support for diverting scarce resources to prisoners. Public records obtained by experts indicate that, although the BOP in 2014 implemented a new mental health care policy, it administered it by "lower[ing] the number of inmates designated for higher care levels by more than 35 percent. Increasingly, prison staff are determining that prisoners—some with long histories of psychiatric problems—don't require any routine care at all."[8] But wishing away prevalent mental illness, while perhaps creating less alarming statistics, does not address the actual problem.

23. Cutting corners led to predictable results. According to the respected Marshall Project, which analyzed records obtained from the BOP, "[t]he combined number of suicides, suicide attempts and self-inflicted

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[6] US Department of Justice, Office of Inspector General, Review of the Federal Bureau of Prisons' Use of Restrictive Housing for Inmates with Mental Illness, July 2017, at ii, https://oig.justice.gov/reports/2017/e1705.pdf.

[7] Id.

[8] Christie Thompson and Taylor Elizabeth Eldridge, 'No One to Talk You Down': Inside federal prisons' dangerous failure to treat inmates with mental-health disorders, WASHINGTON POST (Nov. 21, 2018), available at https://www.washingtonpost.com/news/national/wp/2018/11/21/feature/federal-prisons-weretold-to-improve-inmates-access-to-mental-health-care-theyve-failedmiserably/?noredirect=on&utm_term=.173379d6b7d9.

injuries have increased 18 percent from 2015—when the bureau began tracking such figures—through 2017."[9]

24. I would expect the present-day situation to be even worse given that President Trump has made dramatic cuts to the Bureau of Prisons budget. In January 2017, a hiring freeze went into effect, which was later made permanent. Between 2017 and 2018, "the bureau has eliminated 6,000 positions nationwide, a 14 percent staffing decrease from the 43,000 positions in the system."[10]

25. As noted above, with regard to Mr Epstein, even with the full battery of precautions in place, suicide is still a real possibility. And given the ever-decreasing resources of the BOP, and the already-deficient mental health treatment, extradition to the US into the custody of the BOP poses especially grave risks to Mr Assange. Further the means to reduce suicide risks would significantly reduce his ability to prepare for his trial.

26. Mr Assange has a reasonable likelihood of being subjected to Special Administrative Measures; Mr Sickler addresses how these conditions may affect Mr Assange's mental health. However, having reviewed the limitations on solitary confinement pronounced by the European Court in Ahmad & Ors. v. UK, I believe that the SAMs imposed on Mr Assange would not be compliant with the Ahmad Court's requirements. The Ahmad Court determined that solitary confinement must be "accompanied by procedural safeguards guaranteeing the prisoner's welfare and the proportionality of the measure." Ahmad, ¶ 212. These include, in relevant part, articulable, substantive reasons for such confinement and any extension of the duration of that confinement. The decision to so confine a prisoner must, at each extension thereof, address the prisoner's circumstances and behavior, in increasing detail as time goes by. Monitoring of the prisoner's physical and mental health must be in place, and the prisoner must have recourse to an "independent judicial authority [to] review the merits of and reasons for a prolonged measure of solitary confinement." Id.

27. First, although the European Court found that solitary confinement is permissible, it rendered its decision in 2012, and has not had the benefit of recent studies to inform its opinion on whether solitary confinement is truly a safe form of punishment or prison population management. According to a study by Cornell University, an analysis of the Danish prison system found that 4.5% of former inmates who

[9] Id.

[10] Taylor Dolven, Trump's cuts to federal prison system "decimates" jobs, Vice News, Feb. 13, 2018, https://www.vice.com/en_ca/article/wj4jbm/trumps-cuts-to-federal-prison-system-decimates-jobs

had spent time in solitary confinement died within five years of being released. That was a 60% higher rate than those who were not placed in solitary.[11] The study involved 14, 000 prisoners; of the nearly 1,700 inmates who experienced solitary confinement, the average total stay was nearly nine days, but half spent fewer than five days and two-thirds less than a week. The authors of this study drew their conclusions only from prisoners who were placed in solitary confinement as a punishment; in a later update, they acknowledged that the correlation between early death and all forms of solitary confinement—including administration segregation—was likely much higher than their study concluded.[12]

28. Separate and apart from recent medical studies, the system of segregating prisoners—whether as a means of punishment or for their own purported safety—falls far short of what the European Court insisted upon in Ahmad. Segregation in the US is more prevalent, less closely monitored and imposed for vastly longer periods of time than envisaged by the European Court.

29. A comprehensive report[13] on solitary confinement establishes that the manner in which the United States implements programs of solitary confinement violates human rights and rises to the level of torture. Inmates may be placed in solitary confinement for years without meaningful review, as required by the court in Ahmad. This includes detention before trial takes place which is "meant to bludgeon people into cooperating with the government, accepting a plea, or breaking their spirit."[14]

30. The United States has lax requirements for articulating reasons why SAMs might continue to be imposed on a prisoner. Unlike in Ahmad, where the Court conveyed that the original circumstances should still exist, and there should be increasing detail provided over time, "in the post-9/11 era, the DOJ must only

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[11] Christopher Wildeman, PhD, Lars Andersen, PhD, *Solitary confinement placement and post-release mortality risk among formerly incarcerated individuals: a population-based study*, The Lancet, Vol. 5, Issue 2 (Feb. 5, 2020) available at https://www.sciencedirect.com/science/article/pii/S2468266719302713.

[12] Christopher Wildeman, Lars HøjsgaardAndersen, Even better data on solitary confinement are needed, The Lancet (Apr. 27, 2020) https://www.sciencedirect.com/science/article/pii/S2468266720300578

[13] Allard K. Lowenstein International Human Rights Clinic and The Center for Constitutional Rights, "The Darkest Corner: Special Administrative Measures and Extreme Isolation in the Federal Bureau of Prisons", September 2017, p 6-10, https://ccrjustice.org/sites/default/files/attach/2017/09/SAMs%20Report.Final_.pdf.

[14] Id. at 14.

demonstrate that some reason exists for the continued imposition of SAMs – even if that reason has nothing to do with the original reason for their imposition."[15] The DOJ justifies the imposition of SAMs with boilerplate language, never bothering to explain with specificity why, for instance, a prisoner must be restricted from access to media, only that his are "the most egregious circumstances," every time.[16]

31. The US has not imposed administrative segregation sparingly. A 2013 Government Accountability Office report found that seven percent of the BOP's 217,000 prisoners were held in solitary confinement.[17] A newer study showed that as of 2018, roughly 4.5% of federal prisoners were kept in solitary confinement, or nearly 61,000 people.[18] All 400 prisoners at ADX Florence live in a form of solitary confinement; in seven of the nine units, they are kept in separate cells, confined for 22-23 hours per day.[19] Administrative segregation denies an inmate any interaction at any time with other inmates. Meals are all taken in cells and exercise periods are also taken alone. The decision of whether or not to place Mr Assange under a SAMs regime will be taken at the executive level. The likely decision-maker is the current head of the CIA, Gina Haspel, who was implicated in the destruction of the CIA's "torture tapes." Mr Assange has called for whistleblowers to come forward with those tapes and he campaigned against Gina Haspel's nomination by Trump, even referring to her as the "torture queen".

32. There is no maximum limit on the amount of time that a prisoner may be kept in solitary confinement in a Special Housing Unit, nor does the BOP always track the total amount of time spent in isolation.[20] A prisoner is entitled to review of segregation after 3 days, 7 days, and then every 30 days. 28 C.F.R. §

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[15] Id. at 4.

[16] Id. at 10.

[17] GAO, Report to Congressional Requesters, Improvements Needed in Bureau of Prison's Monitoring and Evaluation of Impact of Segregated Housing, May 2013, https://www.gao.gov/assets/660/654349.pdf.

[18] Reforming Restrictive Housing: The ACSA-Liman Nationwide Survey of Time-in-Cell, Oct. 2018, https://law.yale.edu/sites/default/files/documents/pdf/Liman/asca_liman_2018_restrictive_housing_revised_sept_25_2018_-_embargoed_unt.pdf

[19] Susan Greene, The ADX, the Federal Super Max Prison in Colorado, is Force-Feeding Hunger Strikers, The Colorado Independent, June 17, 2019, https://www.coloradoindependent.com/2019/06/17/adx-supermax-colorado-force-feeding/; see also District of Columbia Corrections Information Council, USP Florence Administrative Maximum Security (ADX) Inspection Report, at 10, Oct. 31, 2018, https://cic.dc.gov/sites/default/files/dc/sites/cic/publication/attachments/Florence%20ADMAX%20Inspection%20Report%20and%20BOP%20Response%20-%2010.31.18.pdf

[20] Id. at 59.

541.26. There is no requirement that the Segregation Review Official articulate findings justifying continued detention. Mental health care is not contemplated except that every 30 days, someone from "mental health staff" will conduct a "personal interview." 28 C.F.R. § 541.32.

33. During the course of solitary confinement, inmates suffer psychological damage that often results in an inability to communicate meaningfully or effectively with other people, including and especially his or her lawyers, which inhibits a prisoner's meaningful participation in his own defense (or appeal).[21] And because SAMs prohibit prisoners from writing to anyone who is not on their list of approved contacts, it can be nearly impossible to find a lawyer to help them apply for a meaningful administrative remedy or judicial review.[22] Those who do manage to get through to a court find that judges are too willing to defer to vague claims of "national security interests" and will uphold the imposition of SAMs.

34. Mr Kromberg suggested that Mr Assange may be placed in SAMs for national security reasons, which is an example of how the government invokes "national security" in a way that deprives people of their human rights. (GK-Decl. 1, ¶ 95). Mr Kromberg cites 28 CFR § 501.2, which authorizes segregation of a prisoner to prevent the disclosure of classified information that poses a threat to national security. [But Mr Assange is not privy to any classified information that he has not published], and thus there could be no reasonable grounds to aver that his repetition of that information, published in 2010, poses a threat to anyone, much less the national security of the United States in the year 2020. Yet Mr Kromberg still reserves the possibility of segregation based on his possession of old information already in the public domain.

35. The fact that Mr Kromberg raises national security as a justification for SAMs given the obviously attenuated nexus, raises concerns that national security is being used without real analytical scrutiny of actual risk to lay the foundation for the most restrictive and severe conditions possible for Mr Assange, reflecting the level of animus and punitive motivation with respect to Mr Assange that has been reflected throughout this administration.

36. I should also add with respect to SAMs that Mr Kromberg stated that Mr Assange would be held at the Alexandria City Truesdale Detention Center to await trial in federal court nearby and so if SAMs were imposed, would be subject to the SAMs regime at that facility. I am very familiar with that facility and the implications of SAMs, as I and my firm represented Ahmad Abu Khatallah, who was accused of

[21] Id. at 16.

[22] Id. at 18.

murdering the US Ambassador to Libya and three others and was kidnapped in Libya and brought to the US for trial (where he was acquitted on 14 of 18 counts, and all four homicide counts).

37. Mr Khatallah was confined to a small, spare cell for some 23 hours per day. Because SAMs prisoners are isolated from all other prisoners at all times, he was only permitted to leave his cell for meetings with counsel (when the floor was cleared for his transport in leg and arm shackles from his cell to a dedicated room where he was subject to surveillance at all times) or for exercise, which generally took place in the middle of the night when all other prisoners were asleep and the exercise area was empty. He frequently declined exercise rather than be awakened to walk around a darkened empty area. He was not permitted to retain any documents in his cell. Counsel visits were limited and needed to be scheduled in advance and only if consistent with staffing capacity. I should note that in my experience, the issue was not the guards; it was structural isolation and restrictions on the ability to prepare a defense.

C. US Federal Prisons Are Failing to Protect Inmates From Covid-19

38. The recent outbreak of coronavirus deserves mention. I should note that the figures are constantly evolving, but what is clear is that risk to Mr Assange's health is especially acute now, during the Covid-19 crisis. It has been widely reported that federal prisons have failed to take precautions to prevent the spread of the deadly virus throughout the prison population. As of early July, the Bureau of Prisons has reported that 6,343, or nearly 4.7%, of its prison population has tested positive for Covid-19; this figure excludes the additional cases reported by privately managed federal prisons.[23] These numbers are likely to be significantly higher and to continue to climb, but there has been very limited testing done in prisons due to unavailability of testing equipment and resources While some of these prisoners are reported to have recovered, there is no way of knowing what is meant by "recovered." Persons who have contracted the novel coronavirus experience relapses and symptoms may persist for months, even though the individual may test negative.[24] It is not merely the old or infirm who suffer from a prolonged or

[23] Bureau of Prisons Website, https://www.bop.gov/coronavirus/; https://www.bop.gov/coronavirus/docs/private_prisons_covid_data.pdf

[24] Ed Yong, COVID Can Last for Months, The Atlantic, June 4, 2020, https://www.theatlantic.com/health/archive/2020/06/covid-19-coronavirus-longterm-symptoms-months/612679/; see also An Analysis of the Prolonged COVID-19 Symptoms Survey by Patient-Led Research Team, May 11, 2020, available at https://docs.google.com/document/d/1KmLkOArlJem-PArnBMbSp-S_E3OozD47UzvRG4qM5Yk/edit#heading=h.6k6pzd4mpduo

recurring affliction; in a study led by individuals experiencing protracted COVID-19 infections, 3 out of 5 of them were between the ages of 30 and 49.

39. There is no evidence that federal prisons are being given adequate resources to protect their wards. Well into the pandemic in April, a letter from the top official in the federal prison in Manhattan, New York, informed a federal judge that the jail has no Covid-19 tests, and thus cannot test sick or high-risk inmates.[25] As of April 3, 2020, they had only tested five inmates; four of them were positive for the virus.[26] In the weeks that have followed, conditions have not improved. As of April 22, as infections were peaking, only 19 inmates across the entire federal prison system in New York City had been tested, of which 11 were positive, and the numbers of prison staff who had been confirmed positive had continued to rise. One federal public defender reported that "inmates call me from both jails every day short of breath and coughing, begging the corrections officers to be tested, only to be placed in solitary confinement."[27]

40. A recent investigative report in The New Yorker, "Punishment by Pandemic", confirms what many advocates have feared: prisons have neither the resources nor the will to protect inmates from this virus. The pandemic has created a domino effect—in one prison in Arkansas, an inmate suffering from Covid-19 was placed in the "Hole", and despite the pleas of his fellow inmates, the guards did not check on him. A former prison nurse commented "[i]t's a pride issue. The mentality of the infirmary is: these individuals are worthless." Guards came by the Hole only to move the man back to the general population. He collapsed, was handcuffed, and then died.[28]

41. The defense bar has filed petitions for compassionate release, highlighting the rapid spread of Covid-19 in the prisons, as there is nowhere within the prisons to take sick and infected prisoners. Nonetheless,

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[25] James Hill and Luke Barr, No COVID-19 tests available for prisoners at center of New York outbreak, court documents show, ABC News, Apr. 4, 2020, https://abcnews.go.com/Health/covid-19-tests-prisoners-center-york-outbreak-court/story?id=69969077.

[26] Noah Goldberg and Stephen Rex Brown, Federal jails in NYC have only tested a handful of inmates for coronavirus: report, NY Daily News, Apr. 3, 2020, https://www.nydailynews.com/coronavirus/ny-coronavirus-federal-jails-mdc-mcc-report-testing-numbers-20200403-wz2rm2xrivfyzmmgb66tbt77oi-story.html.

[27] Noah Goldberg, Coronavirus testing at New York's federal jails comes to standstill even as guards continue to come down with virus, NY Daily News, Apr. 22, 2020, https://www.nydailynews.com/coronavirus/ny-coronavirus-federal-jails-mdc-mcc-no-new-tests-20200422-ozsitxee4ba2lceexrebwx4n4e-story.html

[28] Rachel Aviv, Punishment by Pandemic, The New Yorker, June 15, 2020, https://www.newyorker.com/magazine/2020/06/22/punishment-by-pandemic.

prosecutors continue to request preventative detention and to oppose petitions for pretrial release. There is no reasonable prospect that Mr Assange would receive compassionate release either pre-trial or post-conviction.

42. There is evidence that some wardens are using administrative segregation as a means to deal with inmates suffering from Covid-19. One woman was moved from the infirmary to solitary confinement, during which time she was locked in a shower and died.[29]

43. I would also note that if extradited, Mr Assange's ability to meet with his attorneys in person will likely be impacted for as long as the Covid-19 crisis persists. According to the website of the Alexandria Detention Center, inmates may only meet with their counsel via videoconference.[30] The pandemic naturally impairs the ability of society to function as usual; for most of us, it does not abridge the fundamental right to be free from incarceration without due process or meaningful access to counsel. For Mr Assange, the persistence of the pandemic may very well impair his due process rights and right to counsel. This is especially true given that he will have no assurance that the videoconferences are not monitored (as were his conversations with counsel at the Ecuadorian Embassy, which were then shared with the US Government). The US government has also listened in on conversations between counsel and their clients when national security is at issue in the case. For instance, in the Guantanamo cases, which I have actively litigated, counsel have found—numerous times—recording devices and microphones in meeting rooms with their clients. The prosecution did not deny listening in on the meetings, but cited national security as a justification, and averred only that no one in a prosecutorial or law enforcement role had heard them.[31] The widely shared inference was that the CIA and other intelligence agencies were listening in. It is highly unlikely that Mr Assange is going to be able to form a relationship of trust with his attorneys—which is essential to his defense—if he can only speak with them via videoconference with the reasonable fear that these communications are all monitored.

IV. Additional Evidence That the Prosecution of Mr Assange Is Driven By Political Motivations

[29] Alice Speri, A woman died of covid-19 in a new jersey prison after begging to be let out of a locked shower, The Intercept, May 11, 2020, https://theintercept.com/2020/05/11/new-jersey-prisons-coronavirus-death/

[30] https://www.alexandriava.gov/sheriff/info/default.aspx?id=4182

[31] Carol Rosenberg, Latest Attorney-Client Privacy Issue at Guantanamo is Called "Unintentional" Listening, Miami Herald, July 2, 2017, http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article159333239.html

44. I set forth at length in my Second Statement why the Department of Justice—under Attorney General Barr especially—has abandoned its political independence in a truly unprecedented manner. In my Third Statement, I opined on why the original charges and the Superseding Indictment showed manifestly political motivations, not reasoned interpretations of law or legitimate concern for national security. Events that have transpired since I submitted my last statement on this issue only further reinforce this point.

45. I submit this statement to add to the record further conduct by Attorney General Barr that illustrates, in an unequivocal way, that the DOJ has been transformed into a political apparatus that serves the President's personal whims and prejudices. As this Court may be aware, Mr Barr essentially sought the position of Attorney General by sending an unsolicited memorandum to the DOJ expressing his views on the Russia investigation and his views of the power of the Presidency as effectively unlimited under the controversial unitary executive theory.[32] According to that theory, the Department of Justice is yet another executive agency that is under the plenary control of the President and has no independence or insulation from Presidential preferences or views as to whom he believes should be investigated and prosecuted. Mr Trump embraces that theory, and is on record stating, incorrectly, "I have absolute right to do what I want to do with the Justice Department."[33]

46. Shortly after receipt of the Barr Memorandum, Mr Trump replaced then-Attorney General Sessions with Mr Barr, who has systematically overruled decisions and undermined the department of integrity and accountability in his pursuit of undoing the work of the Russia investigation, and burying and discrediting its meticulous findings. I would respectfully suggest that this is not simply my view, but it has been shared publicly and emphatically by literally thousands of career prosecutors and former senior officials of the Department, who have called for his resignation multiple times, based on his unprecedented interference on behalf of the President's friends and enemies in multiple cases.

47. Since the submission of my last opinion, there have been multiple manifest and unprecedented departures from the rule of law by the Department of Justice that bears upon the issue of whether this prosecution is political in motivation. There is growing consensus that the Department of Justice has

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[32] William Barr Memo, June 8, 2018, available at https://www.lawfareblog.com/document-william-barr-memo-obstruction-investigation

[33] Michael Schmidt and Michael Shear, Trump Says Russia Inquiry Makes US Look 'Very Bad', NY Times, Dec. 28, 2017, https://www.nytimes.com/2017/12/28/us/politics/trump-interview-mueller-russia-china-north-korea.html

been politicized by Mr Barr's egregious actions, and its independence eviscerated. The politicization of the DOJ is so apparent, and of grave concern, that it has become the subject of a congressional investigation. Testimony of former prosecutor Aaron Zelinsky confirmed that Mr Roger Stone's criminal case was treated differently solely because of Stone's relationship to the president.[34] Not only was his admission remarkable, but so too was the fact that Mr Zelinsky testified at all:

> Legal analysts said the hearing itself was remarkable: prosecutors such as Zelinsky are virtually never permitted or willing to speak to Congress at all, let alone to describe the deliberations surrounding a particular criminal case. They negotiated their appearances independently of the Justice Department, but their lawyers conferred with department officials about limits on their testimony.
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> "Mr. Zelinsky's courageous testimony makes more painfully explicit and shocking the brazenness with which the attorney general and other Justice Department officials now readily manipulate cases to serve the president's political ends," said David Laufman, a former Justice Department counterintelligence official now in private practice. "And it also indicates how impervious these officials think they are to any meaningful accountability and consequences for their wrongful conduct."[35]

48. Mr Zelinsky confirmed that there was "heavy pressure from the highest levels of the Department of Justice to cut Stone a break, and that the U.S. Attorney's sentencing instructions to us were based on political considerations."[36] He was informed that "the acting U.S. Attorney was giving Stone such unprecedentedly favorable treatment because he was 'afraid of the President.'" Offering a sense of how extraordinary it was for the DOJ to depart from the Sentencing Guidelines, Mr Zelinsky attested that

> For the Department to seek a sentence below the Guidelines in a case where

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[34] Mary Clare Jalonick and Michael Balsamo, Barr to testify as Democrats examine DOJ politicization, Washington Post, June 23, 2020, https://www.washingtonpost.com/politics/courts_law/prosecutor-trump-ally-roger-stone-was-treated-differently/2020/06/23/fd8e9a8e-b5b2-11ea-9a1d-d3db1cbe07ce_story.html

[35] Matt Zapotosky and Karoun Demijian, Analysts say Barr is eroding Justice Department independence — without facing any real personal consequence, Washington Post, June 24, 2020, washingtonpost.com/national-security/analysts-say-barr-is-eroding-justice-department-independence--without-facing-any-real-personal-consequence/2020/06/24/459778ca-b647-11ea-a8da-693df3d7674a_story.html

[36] Statement for the Record, Assistant US Attorney Aaron S. J. Zelinsky House Judiciary Comm, June 24, 2020, https://judiciary.house.gov/uploadedfiles/zelinsky_opening_statement_hjc.pdf?utm_campaign=4024-519

> the defendant went to trial and remained unrepentant is in my experience unheard of – all the more so given Stone's conduct in the lead-up to the trial. I was told at the time that no one in the Fraud and Public Corruption Section of the United States Attorney's Office in the District of Columbia – which prosecuted the Stone case after the Special Counsel's office completed its work – could even recall a case where the government did not seek a Guidelines sentence after trial.[37]

49. The Trump Administration intervened again to rescue another friend of Trump's from the consequences of his criminal conduct. On May 7, the DOJ announced that it intended to drop the charges against Retired General Michael Flynn despite the fact that Flynn pleaded guilty, twice, to lying to the FBI about his conversations with the Russian Ambassador to the US in late 2016 (before the Trump inauguration) regarding Flynn's representations that the incoming administration would take action to remove sanctions against Russia that President Obama had imposed in reaction to Russian interference in that election. Mr Flynn was a close advisor and surrogate for President Trump during his campaign and was also the National Security Advisor-designate. The National Security Advisor is one of the most powerful advisors in the government, as he is based in the White House and is tasked with coordinating and synthesizing all of the views of the various agencies involved with foreign policy, defense, intelligence and national security and advising the President. His proximity to the President and broad purview make the National Security Advisor the most important advisor and in most ways more influential than Cabinet Secretaries. Unlike Cabinet Secretaries, the National Security Advisor is not confirmed by the Senate, so it is the President's sole choice as to whom should be named.

50. Mr Flynn resigned as National Security Advisor in disgrace after 24 days once allegations surfaced that he had entered into discussions with the Russian Ambassador before President Trump's inauguration and then lied about whether he had done so. Engaging in foreign policy as a private citizen is a violation of the Logan Act under US law. Lying about it to the FBI is a criminal act. Mr Flynn denied to the FBI that he had contact with the Russians during the campaign and transition, and these materially false statements resulted in charges filed against him pursuant to 18 U.S.C. § 1001. Mr Flynn had also lied to Vice President-elect Pence about whether he had such a discussion.

51. As a former head of the Defense Intelligence Agency, Flynn would have known that there would have been surveillance and recording of the Russian Ambassador and so his lie was further troubling as both a

[37] Id. at 7.

legal and national security matter, as he plainly felt a need to lie to prevent disclosure of these contacts even though it was quite likely that the lie would be discovered and that the Russians would know that he had lied to the FBI, thereby making him ripe for compromise. There was no ambiguity about either the materiality or the falsity of the statements made by Flynn to the FBI. They were set out plainly in the indictment filed by Special Counsel Robert Mueller's team.[38] Mr Flynn pleaded guilty to these charges shortly after they were filed, in December 2017, and stipulated that the allegations were accurate. In return, other charges, including failing to register as an agent for the Government of Turkey, were not pursued. He pleaded guilty again at a sentencing hearing in 2018 and stated to the court that he knew that lying to the FBI was a crime and accepted responsibility for his actions. Thereafter, he fired his lawyers, the leading global firm of Covington & Burling, and hired a well-known partisan lawyer and conservative commentator with close ties to the Trump administration.[39]

52. This lawyer then launched multiple attacks on the Mueller probe and the prosecution and claimed that Flynn was somehow lured into a perjury trap because the FBI knew that Flynn had spoken to the Russian Ambassador and, therefore, it argued, it should never have asked him about it.

53. On May 7, 2020, Attorney General Barr took the remarkable step of moving to dismiss the charges after the two guilty pleas, the acceptance of those pleas, and with sentencing pending. The DOJ lawyer who prosecuted the case against Flynn resigned from the case and the motion was filed by a Barr ally whom he had appointed as acting US Attorney for the District of Columbia, who had also filed the revised sentencing memo against Trump operative Roger Stone after all the career prosecutors had resigned from that case. After a years-long public campaign by President Trump trying to prevent the prosecution and then decrying its unfairness, the DOJ moved to drop the charges against General Flynn, averring, incredibly, that it could not prove them. It also claimed that the investigation into whether Russia interfered with the US Presidential Election was not legitimate, and so neither was the interview of Mr Flynn. From this unprecedented reasoning, the DOJ concluded that any lies told by Mr Flynn could not have been material, and therefore there was no crime.

54. There is no precedent anywhere in US law for this decision. Former prosecutors came forth immediately

[38] US v. Flynn, Case No. 17-cr-00232 (D.D.C.), Statement of the Offense, https://www.justice.gov/file/1015126/download

[39] Keith Kloor, The #MAGA Lawyer Behind Michael Flynn's Scorched Earth Legal Strategy, Politico, Jan. 17, 2020, https://www.politico.com/news/magazine/2020/01/17/maga-lawyer-behind-michael-flynn-legal-strategy-098712

and attested that this was a political act and nothing more; they could not conceive of this happening in any other case.[40] Two *thousand* former FBI and DOJ officials called on Attorney General Barr to resign on account of the decision to drop the charges.[41] Many of these individuals signed onto an amicus curiae brief filed in the District Court, encouraging the court to deny the DOJ's request as unconstitutional "interference with a law enforcement matter to advance the president's political agenda."[42]

55. As a legal matter, there is no merit whatsoever to the reasons proffered for abandoning its case against General Flynn. It is not difficult to successfully prosecute a count arising under 18 U.S.C. § 1001. As I noted in my own op-ed, published in The Independent: "Lying to the FBI is a crime. There is a materiality requirement; if you tell the FBI that you had cornflakes for breakfast when you had raisin bran, they can't indict you. But as a lawyer who has argued materiality in a number of cases, I can tell you that beyond what kind of cereal you have, there is very little that is not material. A lie is material not only if it is relevant to the investigation but if the FBI says the lie caused the FBI to affect the course or focus of its investigation or fail to pursue certain lines of inquiry."[43]To similar effect, Jonathan Kravis, a prosecutor in the Stone case who resigned from the Department of Justice over the political interference in sentencing, wrote an op-ed after the Flynn motion,[44] noting that serving prosecutors were forbidden, unlike Attorney General Barr, from commenting on the case, but as an ex-prosecutor, he could do so:

> Three months ago, I resigned from the Justice Department after 10 years as a career prosecutor. I left a job I loved because I believed the department had abandoned its responsibility to do

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[40] Charlie Savage, 'Never Seen Anything Like This': Experts Question Dropping of Flynn Prosecution, NY Times, May 7, 2020, https://www.nytimes.com/2020/05/07/us/politics/michael-flynn-case.html

[41] 2,000 former DOJ, FBI officials call on Barr to resign over Michael Flynn case, Pete Williams, NBC News, May 11, 2020, https://www.nbcnews.com/politics/justice-department/2-000-former-doj-fbi-officials-call-barr-resign-over-n1204601

[42] US v. Flynn, Case No. 17-cr-00232 (D.D.C.), Brief of Former Federal Prosecutors and High-Ranking Department of Justice Officials as Amicus Curiae, May 19, 2020, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3605418

[43] Eric Lewis, By dropping Michael Flynn's case, Barr has stripped centuries of credibility from the department of justice, The Independent, May 11, 2020, https://www.independent.co.uk/voices/william-barr-department-justice-michael-flynn-fbi-trump-a9508636.html?fbclid=IwAR3k9y9RIcVBQUQtVt-zxN4X_SVTLSarwJZDjfYNuCJcdMCZF-kLjslqYOQ

[44] Jonathan Kravis, I left the Justice Department after it made a disastrous mistake. It just happened again., Washington Post, May 11, 2020, https://www.washingtonpost.com/opinions/2020/05/11/i-left-justice-department-after-it-made-disastrous-mistake-it-just-happened-again/

justice in one of my cases, *United States v. Roger Stone*. At the time, I thought that the handling of the Stone case, with senior officials intervening to recommend a lower sentence for a longtime ally of President Trump, was a disastrous mistake that the department would not make again.

I was wrong.

Last week, the department again put political patronage ahead of its commitment to the rule of law, filing a motion to dismiss the case against former national security adviser Michael Flynn — notwithstanding Flynn's sworn guilty plea and a ruling by the court that the plea was sound.

56. Judge Emmett Sullivan, who presided over General Flynn's criminal case, dismissed Flynn's arguments—raised belatedly in his case after a change of counsel—that his statements were not material. In a section entitled "Mr Flynn's False Statements Were Material",[45] Judge Sullivan made the unremarkable observation that Flynn "fails to appreciate the FBI's strategic decisions and investigative techniques." The judge continued:

> Mr. Flynn has a fundamental misunderstanding of the law of materiality under 18 U.S.C. § 1001(a)(2), which requires a false statement to be "material." United States v. Stone, 394 F. Supp. 3d 1, 12 (D.D.C. 2019) (materiality is a necessary element to establish a violation of the false statements statute). The Supreme Court has instructed that "[t]he statement must have 'a natural tendency to influence, or [be] capable of influencing, the decision of the decisionmaking body to which it was addressed.'" United States v. Gaudin, 515 US 506, 509 (1995) (quoting Kungys v. United States, 485 US 759, 770 (1988)); accord United States v. Diggs, 613 F.2d 988, 999 (D.C. Cir. 1979) ("Proof of actual reliance on the statement is not required; the Government need only make a reasonable showing of its potential effects."). But "a statement need not actually influence an agency in order to be material."

57. Judge Sullivan refused to grant the DOJ's request to drop the charges and appointed a lawyer—esteemed former federal judge John Gleeson—to present him with the argument against the DOJ's request. His brief, filed on June 10, as amicus curiae argues that the DOJ's proffered reasons are "so irregular, and so obviously pretextual that they are deficient" and represent a "gross prosecutorial abuse" revealing "an unconvincing effort to disguise as legitimate a decision to dismiss that is based solely on the fact that

[45] United States v. Flynn, 411 F. Supp. 3d 15, 41 (D.D.C. 2019), available at https://drive.google.com/file/d/1zOHaoyTTz2gUGcJ1eFY1YTC9aSynAveR/view

Flynn is a political ally of President Trump." Catering to the President's tweeted preferences marks a "severe breakdown in the traditional independence of the Justice Department." It is difficult to overstate how appalling this behavior is coming from the DOJ. Judge Gleeson notes that US law is supposed to "empower[] courts to protect the integrity of their own proceedings from prosecutors who undertake corrupt, politically motivated dismissals," but Mr Flynn has taken the matter to the Court of Appeals, and if Judge Sullivan's decision not to dismiss is reversed, then it will mark the conclusive end of even a pretense of a fair and impartial system of criminal justice in the United States.

58. Both the facts and the law were crystal clear, and still the DOJ sought to drop the charges post-conviction. After the motion was filed, President Trump called Flynn "a warrior" and indicated he would welcome him back into his administration. Judge Sullivan appointed a respected former federal judge and partner at Debevoise & Plimpton, John Gleeson, to argue before the court the issue of whether there was a basis to dismiss the case post-conviction. Flynn has appealed this ruling and has requested the Court of Appeals to disqualify Judge Sullivan whom he claims is "biased."

59. In an unfortunate development, a divided panel of the U.S. Court of Appeals for the D.C. Circuit ruled that Judge Sullivan should *not* have examined the DOJ's decision to drop the charges, meaning that there is effectively no judicial check on the Trump administration's corruption and perversion of justice. It is expected there will be further appeals to the Circuit Court sitting en banc and/or the U.S. Supreme Court.

60. The campaign to upend the ordinary administration of justice continues unabated. On June 20, 2020, Mr Barr announced that the US Attorney for the Southern District of New York, Geoffrey Berman, would be stepping down. This was a lie and also unconstitutional: Mr Berman had been appointed by a panel of judges from the Southern District and could not be fired by Mr Barr. Mr Berman oversaw investigations of people close to Trump, including his personal lawyer, Rudolph Giuliani and his previous lawyer, Michael Cohen who conspired with the President (named as "Individual 1") to violate the campaign finance laws by paying hush money to an adult film star with whom the President was said to have had a relationship. Mr Berman responded to the announcement by refusing to resign until the standoff ended with Trump personally firing him at Mr Barr's request. Jay Clayton, a Trump loyalist with no prosecutorial experience, had only expressed interest in the job days beforehand, and had golfed with

Trump on June 13. During a congressional hearing on June 25, 2020, Mr Clayton would not commit to recusing himself from investigations related to Trump,[46] as legal ethics would ordinarily require where personal relationships pose a conflict of interest or give the appearance of partiality.

61. Mr Barr is said to have ordered the violent dispersal of peaceful protesters in front of the White House with teargas and mounted police so that the President could walk across the street and stand in front of a church holding a Bible. If so he had no legal authority to do so.

62. On the evening of July 10, 2020, President Trump commuted Roger Stone's 40-month sentence of imprisonment, which was set to begin on July 15, 2020.

63. The reason for bringing these events to the Court's attention is to stress and confirm that if Mr Assange is extradited, he will be prosecuted by an agency that is led by an Attorney General who has repeatedly ordered prosecutors to follow Mr Trump's personal and political preferences in cases that are politically charged, to lie about his actions and motivations, and to abandon the rule of law when the case implicates the views or interests of the President. As noted in earlier statements, Mr Trump has made clear his strong bias against Mr Assange, once it became clear that Mr Assange would not play ball in denying Russian interference in the 2016 election, when Mr Trump famously said "I love Wikileaks." He has made clear that that is no longer the case.

64. Mr Trump will also dispense with prosecutors who do not adhere to his personal and political agenda. He ousted Jessie Liu, the former US Attorney for the District of Columbia, the prosecutor who had overseen both Roger Stone and General Flynn's prosecutions. Mr Trump induced her to resign from her position of US Attorney—on the promise of a new senior position at the Department of Treasury—and then withdrew that nomination and did not reinstate her. It was widely reported that the decision to fire her was due to dissatisfaction with her handling of the cases arising out of the Mueller investigation.[47] Her dismissal followed the resignation of all four prosecutors in the Stone case upon the DOJ intervening to recommend a lower sentence. Mr Barr's hand-picked interim replacement, Timothy Shea, who was

[46] Betsy Woodruff Swan, Manhattan prosecutor pick ducks questions about Barr's job offer, Politico, June 25, 2020, https://www.politico.com/news/2020/06/25/jay-clayton-sdny-bill-barr-339888

[47] Spencer S. Hsu, Josh Dawsey and Devlin Barrett, Trump withdraws Treasury nomination of former US attorney for D.C. Jessie K. Liu after criticism of her oversight of Mueller prosecutions, Washington Post, Feb. 11, 2020, https://www.washingtonpost.com/local/legal-issues/trump-withdraws-treasury-nomination-of-former-us-attorney-for-dc-jessie-k-liu-after-criticism-of-her-oversight-of-mueller-prosecutions/2020/02/11/d700dc3c-4d3a-11ea-9b5c-eac5b16dafaa_story.html

not submitted for confirmation, has now been replaced by a prosecutor who was serving in Ohio. But before he was, Mr Shea interceded in the Roger Stone sentencing to recommend a lower sentence over the objections of the career prosecutors on the case, three of whom withdrew from the case in protest and one of whom resigned from the Department of Justice outright. As noted above, one of those prosecutors, Aaron Zelinsky, has testified before Congress with respect to this unprecedented interference with the administration of justice.

65. Many career prosecutors have resigned over the politicization of cases by the Attorney General. Mr Kromberg, as is his right, did not.

66. In a recent "Friday night shakeup" this month, the Attorney General also replaced the US Attorney for the Eastern District of New York—which has investigated criminal activity related to the Trump Organization and Ukraine—with a loyalist who has served as Mr Barr's deputy in Washington DC.[48]

67. The Attorney General has shown that he will abandon the rule of law and override the judgment of line prosecutors to help President Trump and his friends; yet President Trump not only feels strongly about helping his friends, he feels even more strongly about hurting his enemies. In the last few weeks, he has pushed "Obamagate," some mis-imagined conspiracy to "get Trump" through the "deep state," traducing a revered former President and calling for a criminal investigation into both the ex-President and Vice President Biden, the presumptive Democratic nominee. He accused President Obama of being guilty of "treason," the only crime referenced in the Constitution and which carries the potential of the death penalty.[49]

68. This is an administration that has made clear it has little regard for the First Amendment, which includes the right to dissent and peacefully protest. As referenced above, in one of the lowest moments reported around the world, on June 1, 2020, Attorney General Barr ordered the violent dispersal of peaceful protesters gathered in front of the White House in order to create a clean backdrop for President Trump's photo opportunity holding an upside down Bible at a nearby church.[50] These protestors were gassed,

[48] Adam Klasfeld, New Friday Night Shakeup Installs Barr Deputy in Brooklyn, Courthouse News, July 10, 2020, https://www.courthousenews.com/new-friday-night-justice-department-shake-up-installs-barr-deputy-in-brooklyn/

[49] Paul Leblanc, Trump falsely accuses Obama of treason in latest unfounded attack on predecessor, CNN, June 22, 2020, https://www.cnn.com/2020/06/22/politics/trump-obama-treason-claim/index.html

[50] Carol D. Leonnig, Matt Zapotosky, Josh Dawsey and Rebecca Tan, Barr personally ordered removal of protesters near White House, leading to use of force against largely peaceful crowd, Washington Post, June 2,

shot with rubber bullets, and dispersed by mounted police. Mr Trump has also accused the protesters against racial injustice of being "thugs," "low lives" and "terrorists."

69. The draconian and unprecedented indictment of Mr Assange, in the face of the Obama Administration's declination on First Amendment grounds, is the flip side of the Stone and Flynn cases and of a piece with this Administration's approach to anyone who tries to express views or provide information that contradicts the Trump narrative. He is retaliating against Mr Assange and at the same time, he is overruling the decisions made during the administration of President Obama, whose achievements and policies, great and small, are targeted if for no other reason than to undo everything he can done by his predecessor.

70. For these reasons, I have serious doubts about the current validity of certain of Mr Kromberg's abstract statements about the DOJ in the current context, as well as his failure to address certain obvious points that are certain to be within his knowledge.

71. Mr Kromberg, having worked at the US Attorney's Office in the Eastern District of Virginia since 1991, is no doubt aware that a decision was made not to prosecute Mr Assange during the Obama administration, and that decision was reversed by Attorney General Sessions, who brought the one count initial indictment and then amplified by Attorney General Barr in bringing the superseding indictment, adding an additional seventeen 10-year counts, then amplified this week with the Second Superseding Indictment. He is also aware that career prosecutors protested the decision to prosecute Mr Assange, on the near-certain premise that has been cited by Justice Department officials from the Obama era, which is that the First Amendment could not countenance such a prosecution.

72. I hope that this supplemental statement aids the Court in evaluating Mr Kromberg's assertions against the unrebutted evidence that Mr Assange is facing a politically motivated prosecution and will endure dangerous and unjust conditions of confinement if extradited.

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2020, https://www.washingtonpost.com/politics/barr-personally-ordered-removal-of-protesters-near-white-house-leading-to-use-of-force-against-largely-peaceful-crowd/2020/06/02/0ca2417c-a4d5-11ea-b473-04905b1af82b_story.html

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Signed: _____ (witness)

Date: …18 July 2020…….

(*To be completed if applicable*: …… ……. being unable to read the above statement I, ……of ……., read it to him/her before he/she signed it.