

**IN THE CITY OF WESTMINSTER MAGISTRATES' COURT**

**THE UNITED STATES OF AMERICA**

**-v-**

**JULIAN ASSANGE**

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**ADDENDUM OPENING NOTE**

**ON BEHALF OF THE UNITED STATES OF AMERICA**

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**I. INTRODUCTION**

1. On 24 June 2020 a Second Superseding Indictment was issued by the US District Court for the Eastern District of Virginia. This Second Superseding Indictment was issued because continued investigation into the criminal activities of the defendant disclosed further particulars of the conspiracies he was engaged upon. This further investigation and amendment of the particulars in the Indictment, after arrest but before trial, is common practice in the United States of America (and indeed the United Kingdom)
2. This Second Superseding Indictment does not add or remove any counts against the defendant nor does it increase the maximum penalty to which the defendant was already subject under the prior Superseding Indictment. The same offences are charged, but as a matter of fairness to the defendant, the Second Superseding Indictment includes further particulars of the alleged crimes so the defendant knows what he has to meet.
3. On 2 July 2020 the Second Superseding Indictment was formally served on the defence (they had prior knowledge through press publication) by the CPS who wrote to the defence in the following terms:

“Please find attached by way of notice and service the Second Superseding Indictment dated June, 24 2020 against Julian Paul Assange. We are presently considering whether to treat the Second Superseding Indictment as additional information to the extant request or whether to ask the Secretary of State to issue a new section 70 certificate based on this Second Superseding Indictment, necessitating withdrawal of the current request and re-arresting Mr Assange.

Accordingly we invite your views as to the most appropriate course of action that promotes the overriding objective in Part 1 of the Criminal Procedural Rules.”

4. The defence were asked for their views because there are no hard edged rules as to whether a new request is required in these circumstances. The prosecution was mindful that the defence might have a preferred course for reasons of convenience and costs. Notwithstanding their duty under the overriding objective in Part 1 of the Criminal procedural Rules to deal with the case efficiently and expeditiously the defence refused to answer the question in a timely manner and the Requesting State, determined to avoid any complications or legal arguments as to amendment, proceeded by way of new request. The only response by the defence was on 21 July 2020, a day after the formal request was made, deflecting the question by asking for the “rationale for each stage of the processes involved, past, present and intended future” before they could make a decision.

## **II. THE NEW REQUEST**

5. The Secretary of State has issued a new section 70 certificate. It follows there are new extradition procedures. The defence have already accepted in their Note to the Court dated 14 August 2020 that:

“17. The defence agree that the openings and legal arguments heard during the week of 24 February 2020 can be read into the proceedings on the new request, and indeed oppose the prosecution being given the opportunity to open their case again.”

6. It follows the court can deal with the formalities under section 78 of the 2003 Act very shortly and can also incorporate and adopt all the submissions made in the week of 24 February 2020.
7. The Requesting State does not seek to re-open its case, it adopts in whole its previous opening, but does seek to open the addendum particulars which form the Second Superseding Indictment.
8. The defence submission that the court can in some way exclude the new particulars in the Second Superseding Indictment is completely misconceived. The court has no discretion in the matter. Section 137(7A) of the 2003 Act requires the court to consider when determining extradition offence: “the conduct specified in the request for the person's

extradition”. The request is the request dated 20 July 2020. The previous request has fallen away. Contrary to the submission of the defence in its note of 14 August 2020 the addendum particulars in the Second Superseding Indictment are not mere narrative. If this was the defence view, it is surprising that it did not express the view that a further request was not required when given the opportunity. These particulars constitute the conduct upon which this court is entitled, and indeed must now, determine that an extradition offence is made out under sections 78 and 137 of the 2003 Act.

9. There is no issue as to defence costs. The previous evidence and submissions are subsumed in this request. By adopting them, the defence has not incurred any additional expenses. The defence would have incurred the costs of dealing with the conduct specified in this request had it been included in the first superseding indictment. Moreover, the defence was given an opportunity to suggest or discuss course with the prosecution so as to obviate the need for a second request. They are not entitled to any costs at all on the first request, which would be technical in any event. The issue of costs will be settled by the final outcome of this request.

### **III. ADDENDUM OPENING**

10. The material effect of the Second Superseding Indictment is set out at, page 5, paragraph 11 (a) to (e) of the affidavit of Gordon D. Kromberg dated the 14 July 2020.
11. For ease of reference an amended copy of the original opening note is attached to this document which thereby contains the addendum information.
12. A key to the anonymised victims will be provided with this document to the court and the defence on a confidential basis pending any determination by the court as to its use or disclosure. It is submitted it should be kept confidential and if any third party or media organisation requests access to it the court can deal with such application on its merits at the time.

**James Lewis QC**

**Clair Dobbin**

**Joel Smith**

21 August 2020