

MEDIA ADVISORY: JULIAN ASSANGE LEGAL HEARING: FEBRUARY 20-21, 2024

Why is the US trying to extradite Julian Assange?

The US is pursuing Assange over the material he published in 2010, which was provided by US army whistleblower Chelsea Manning. Those publications revealed war crimes, torture, assassinations, the list of prisoners at Guantanamo Bay, and the US rules for air strikes. Chelsea Manning was pardoned by Obama and released after 7 years in prison. The Obama administration decided not to proceed with charges against Assange, but they were revived under President Trump.

What's at stake?

The US government is attempting to use its 1917 Espionage Act against a journalist and publisher for the very first time. Assange is not a US citizen and his publications occurred in the United Kingdom.

If the US is successful, it will have redefined investigative journalism as 'espionage'. It will have extended its judicial reach internationally and applied it to a non-US citizen without a corresponding extension of First Amendment rights, which prosecutors maintain does not apply to Mr Assange as a non-US citizen publishing from the UK.

This will pose an existential threat to the free press as other countries will be able to argue that they too should be allowed to extradite journalists and publishers from the United Kingdom for breaking their censorship or secrecy laws.

Who is supporting the campaign against extradition?

Every human rights organisation and journalists' union of note, including: Amnesty International, Human Rights Watch, the American Civil Liberties Union, Reporters Without Borders, the National Union of Journalists, the International Federation of Journalists, PEN International.

The Guardian, The New York Times, Le Monde, El Pais, and Der Spiegel, which published the Wikileaks revelations, have signed an open letter opposing his extradition.

Politically, his extradition is opposed by Parliamentary groups in a dozen countries, including eight in Europe; the Australian government and the Australian opposition; and seven heads of state in the Americas. The Pope has also expressed his opposition.

What will happen at the hearing?

A panel of two judges will hear Assange's final bid to appeal against extradition. He is seeking leave to appeal against the Secretary of State's decision and the decision of the District Judge at Westminster Magistrates Court in January 2021 when his extradition was blocked on medical grounds, subsequently successfully appealed by the US government, but not on the other grounds argued (see Appendix below for more detail).

Will Assange be present at the hearing?

Assange has made an application to attend the hearing in person so he can communicate with his legal team.

Will there be an immediate decision?

It is not known for certain whether the judges will make an immediate decision at the conclusion of the two-day hearing or reserve their judgement.

What will happen if Assange wins the case?

A date will be set for a full appeal hearing.

What happens if Assange loses the case?

If he is denied the right to appeal there are no further appeal avenues at the domestic level.

Can Assange apply to the European Court of Human Rights?

Yes. The UK is part of the ECHR and it is within the court's power to order a stay on the extradition of Assange. It can do this by issuing a Rule 39 instruction. Assange's lawyers can request such a ruling if all avenues in UK courts are exhausted. Rule 39 instructions are only given in "exceptional circumstances".

Could the UK government circumvent a Rule 39 instruction?

Some uses of Rule 39 have been contentious in British politics and the UK government could attempt to facilitate Assange's immediate extradition prior to a Rule 39 instruction being issued or subvert the Rule 39 instruction after the fact. However, this would be highly controversial in a case that involves press freedom, and which has global ramifications. It would also be a violation of international law.

What will happen to Assange if he is extradited?

He will be committed to a US high security prison awaiting trial. Originally, the District Judge refused his extradition on the grounds that the harsh isolation conditions he would face in the US prison system would put his life at risk. This ruling was only overturned on appeal after the US offered conditional assurances, which Amnesty International called "deeply flawed" as "the fact that the US has reserved the right to change its mind at any time means that these assurances are not worth the paper they are written on".

Amnesty also raised concerns that, if extradited to the US, Julian Assange would face “a real risk of serious human rights violations due to detention conditions that could amount to torture or other ill-treatment.”

Assange would go on trial in the Eastern District of Virginia court where the jury pool relies heavily on employees or family members of employees of the CIA, the NSA, the Pentagon and other national security institutions.

What abuses have there been in the Assange case so far?

The security firm previously employed to guard Julian Assange when he sought asylum in the Ecuadorean Embassy has been exposed for spying on Assange and his lawyers on behalf of the CIA, and media reports have revealed that the CIA was planning to kidnap and assassinate Assange.

- For more on the CIA operations against Assange see:
<https://english.elpais.com/international/2023-07-18/spanish-company-that-spied-on-assange-allegedly-informed-cia-about-meetings-held-by-latin-american-leaders.html> and
<https://uk.news.yahoo.com/pompeo-sources-for-yahoo-news-wiki-leaks-report-should-all-be-prosecuted-234907037.html>

See below for more information on the legal significance of the abuses in the case.

Why are Assange’s lawyers appealing against the District Judge’s original decision, which blocked his extradition in January 2021 and the Home Secretary’s decision to approve the extradition in June 2022?

1. Mr Assange should not be extradited to face prosecution and punishment for his political opinions exposing state criminality.

The DJ wrongly rejected the argument that the extradition request was made to prosecute or punish Assange for his political opinions. Assange is being prosecuted for exposing US government criminality including war crimes and torture. There was extensive evidence put before the District Judge about this, including Assange’s political opinions on the importance of transparency in being able to hold governments accountable to deter future abuses.

Extradition for political opinions is not allowed and had the District Judge reviewed the evidence accurately the extradition would have been stopped. The new evidence which emerged since the hearing of the CIA plans to kidnap and/or kill Assange further supports this ground.

2. Mr Assange should not be extradited to face prosecution where the criminal law is being extended in an unprecedented and unforeseeable way, which violates Article 7 of the European Convention on Human Rights (‘ECHR’).

This is the first time in US history that a publisher has been prosecuted for obtaining or publishing (as opposed to leaking) US state secrets. Unchallenged evidence was heard by the District Judge that the drafters of the Espionage Act did not intend for publishers to fall within its ambit, unchallenged expert evidence showed that receipt and publication of state

secrets is routine, and that there was an 'unbroken practice of non-prosecution' of publishers.

Agreed evidence showed that the prosecution 'crosses a new legal frontier' and 'breaks all legal precedents'. Extradition would therefore expose Assange to a novel and unforeseeable extension of criminal law, violating Article 7.

3. Mr Assange should not be extradited because his prosecution amounts to a grave violation of his right to free speech under Article 10 ECHR.

This is an unprecedented prosecution in relation to protected speech, which is a grave violation of freedom of speech under Article 10 of the ECHR and should stop the extradition.

ECHR case law recognises the vital role that publishing state secrets can play in a democratic society and that criminal prosecution and conviction for such publications will deter the press from playing this 'public watchdog' role. The US indictment against Assange criminalises essential journalistic practices and imposes a disproportionate sentence (175 years), which amounts to a grave violation of Article 10 ECHR.

4. Mr Assange should not be extradited when the US is stating that he may not be granted any First Amendment protections at all.

The US said it would argue at trial that Assange would not get First Amendment protection (Free Speech protections) as he is not a US national. In other words, as a defendant he would be prejudiced at a trial as he is not a US citizen.

5. Extradition should be barred because Mr Assange will not receive a fair trial in violation of Article 6 ECHR.

Due to the tradition of coercive plea bargaining and the fact that the jury will be drawn from a pool of people who are connected to US Government agencies and contractors, the jurors are likely to be prejudicial to Julian Assange. They will also be sensitive to public comments made by the US President and CIA Director. This will taint the presumption of innocence.

Evidence obtained through the inhuman and degrading treatment of Chelsea Manning and in the illegal removal of Julian Assange's legal files from the Ecuadorean Embassy may also affect his ability to receive a fair trial in the United States.

6. The US-UK Treaty prohibits extradition for political offences meaning Mr Assange's extradition would violate the treaty, international law and amounts to an abuse of process (including Article 5 ECHR).

The offences with which Assange is charged are all formally "pure political offences" (ie. espionage, the obtaining and publishing of state secrets), which means they are extradition-barred under article 4(1) of the US-UK Extradition Treaty. It is an abuse of

process for the US to make an extradition request which is prohibited under the terms of the Treaty.

7. Renewed application to admit fresh evidence about US plans to kidnap/render/assassinate Mr Assange in 2017 - relevant to his Article 2 and 3 ECHR rights.

The CIA planned to kidnap and assassinate Assange. This indicates that he will be subject to inhuman and degrading treatment if extradited to the US. To extradite Assange would mean delivering him right into the hands of the very people who plotted to assassinate him.

8. The Extradition Treaty would allow the US to amend or add charges which could expose Julian Assange to the death penalty.

Under the same facts alleged in the extradition request, Julian Assange can be recharged under provisions of the Espionage Act which carry the death penalty. It is noteworthy that Chelsea Manning was charged with 'aiding the enemy', which carries the death penalty and US government officials have publicly labelled the allegations against Assange as treason and called for the death penalty.

**For more information, or media interview requests, please contact:
assangetrial@thephagroup.com**

A Foreign Press Association media briefing is taking place on **Thursday February 15th**, at **11am** The Royal Overseas League, 6 Park Pl, St. James's, London SW1A 1LR. Speakers will include Stella Assange, Kristinn Hrafnsson, Wikileaks editor in chief and Jennifer Robinson, WikiLeaks legal counsel. The briefing is open to UK and non-UK journalists.

RSVP to: briefings@fpalondon.org