

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

UNITED STATES OF AMERICA

v.

JULIAN PAUL ASSANGE,

Defendant.

CRIMINAL NO.: 1:18-CR-111

**SECOND SUPPLEMENTAL DECLARATION IN SUPPORT OF
REQUEST FOR EXTRADITION OF JULIAN PAUL ASSANGE**

I, Gordon D. Kromberg, being duly sworn, depose and state:

1. I have made two previous declarations in support of the request for extradition of Julian Paul Assange, and incorporate here the description of my background and qualifications that I included in those previous declarations. *See* Gordon Kromberg, Declaration in Support of Request for Extradition of Julian Paul Assange ¶¶ 1-4 (Jan. 17, 2020) (hereafter, “First Declaration”); Gordon Kromberg, Supplemental Declaration in Support of Request for Extradition of Julian Paul Assange ¶¶ 1-3 (Feb. 19, 2020) (hereafter, “Second Declaration”).

2. This declaration responds to certain of the defense’s allegations raised before this Court, but it does not respond to all of them. I understand that a number of the defense’s allegations can be answered by reference to matters that have already been decided as a matter of extradition law in the United Kingdom or by argument from facts in the record before the Court. If I have not addressed a matter in this declaration, it should not be regarded as an acceptance of its accuracy or its truthfulness. The statements in this declaration are based on my experience, training, and research, as well as information provided to me by other members of the U.S.

government, including members of the Federal Bureau of Investigation ("FBI"), the United States Department of Justice, and other federal agencies.

I. Assange's Claims of Prejudicial Delay Because of Political Motivation Are Meritless.

3. I am aware that Assange and his legal team have claimed that the political motivations of the current administration drove the decision to charge him, representing a reversal of course from an alleged decision in 2013 by a prior administration, and that this delay has prejudiced his ability to defend himself. Specifically, I am aware that Assange and his legal team assert that the alleged delay prejudices Assange's ability to defend himself because, had he known about the charges earlier, he could have retained evidence and undertaken investigation into the allegations.

A. Assange and His Legal Team Have Presented No Evidence to Overcome the United States' Representation that Its Charges Are Not Politically Motivated.

4. As I have previously emphasized, the superseding indictment does not reflect political bias or motivation. *See* First Declaration ¶ 11. As explained, federal prosecutors are forbidden from taking into account such considerations when making charging decisions. *See id.* ¶¶ 10-13. As I have represented, the superseding indictment against Assange is not based on Assange's political opinions, but, instead, on the evidence and the rule of law. *See id.* ¶ 17.

5. Assange and his legal team's arguments—and the affidavits filed in support—primarily rely on a select number of news articles. Based on those articles and the hearsay within them, they invite the Court to infer that the decision to prosecute was politically motivated. As a prosecutor involved in this case, however, I reemphasize that this prosecution is founded on objective evidence of criminality, and focused upon Assange's complicity in

criminal conduct and his dissemination of the names of individuals who provided information to the United States. *See id.* ¶¶ 6, 13, 17.

B. Assange Cannot Be Prejudiced By Delay Because He Knew of the Nature of the Criminal Investigation that Transferred from One Administration to Another.

6. **Assange's arguments are contradicted by judicial findings, made in the U.S.**

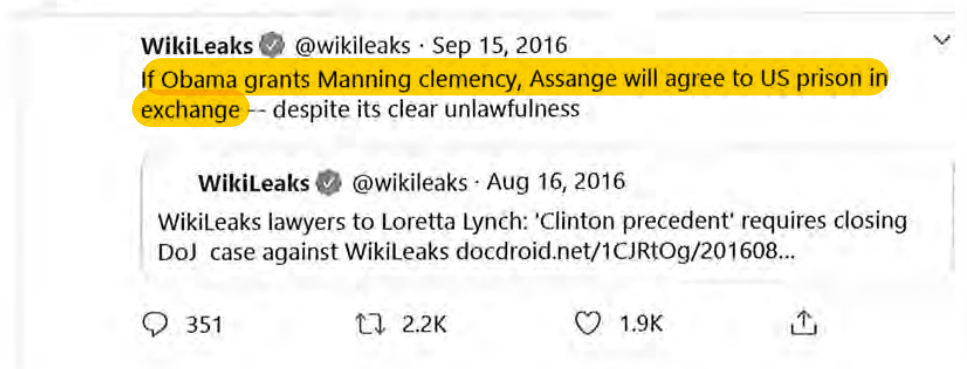
District Court of the District of Columbia, that the investigation into the unauthorized disclosure of classified information on the WikiLeaks website remained ongoing when the present administration came into office. On March 4, 2015, **United States District Judge Barbara J. Rothstein** wrote that she was “persuaded that there is an ongoing criminal investigation. . . . Defendants [the United States Department of Justice] have provided sufficient specificity as to the status of the investigation, and sufficient explanation as to why the investigation is of long-term duration.” *Electronic Privacy Information Center v. Department of Justice Criminal Division*, 82 F. Supp. 3d 307, 322 (D.D.C. 2015) (involving a lawsuit over a Freedom of Information Act request). Then, on the basis of two declarations submitted by an FBI official (the latter of which was made on May 17, 2016), **United States District Judge Amit P. Mehta** found “no reason to doubt that there is an ongoing investigation of individuals other than” Chelsea Manning. *Manning v. U.S. Department of Justice*, 234 F. Supp. 3d 26, 35 (D.D.C. Jan. 11, 2017) (involving a lawsuit over a Freedom of Information Act request by Chelsea Manning). Judge Mehta further wrote that the “government repeatedly and explicitly states that an investigation is pending. . . . Nor has there been such a protracted passage of time since the government first learned of WikiLeaks’ publication of classified material for the court to doubt whether any investigation of others might still be ongoing.” *Id.*

7. Not only have U.S. courts made findings as to the existence of an ongoing investigation, but Assange and his representatives have publicly indicated their understanding

that the investigation continued from 2010—and well after 2013—through the end of the previous administration in 2017.

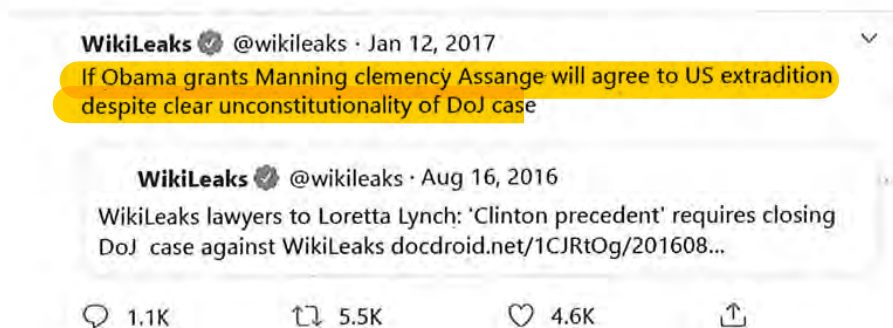
8. For purposes of these extradition proceedings, Assange has placed heavy emphasis on news reports claiming that a decision was made not to prosecute him in 2013. *See, e.g.,* Transcript of Proceedings in the Crown Court at Woolwich, at 54 (Feb. 24, 2020). At the time, however, Assange’s representatives expressed skepticism of those news reports, noting that Assange was never notified of any decision not to prosecute. *See* Sari Horwitz, *WikiLeaks Publisher Unlikely to Face U.S. Charges*, Washington Post (Nov. 26, 2013) (“WikiLeaks spokesman Kristinn Hrafnsson said last week that the anti-secrecy organization is skeptical ‘short of an open, official, formal confirmation that the U.S. government is not going to prosecute WikiLeaks.’”); *id.* (“‘We have repeatedly asked the Department of Justice to tell us what the status of the investigation was with respect to Mr. Assange,’ said Barry J. Pollack, a Washington attorney for Assange. ‘They have declined to do so. They have not informed us in any way that they are closing the investigation or have made a decision not to bring charges against Mr. Assange. While we would certainly welcome that development, it should not have taken the Department of Justice several years to come to the conclusion that it should not be investigating journalists for publishing truthful information.’”).

9. Indeed, in 2016, WikiLeaks tweeted that “precedent” required the Department of Justice to close the case against WikiLeaks, and that, in exchange for the then-administration’s grant of clemency to Chelsea Manning (with whom a grand jury has charged Assange for conspiring to commit the criminal offenses alleged in the superseding indictment at issue in these extradition proceedings), Assange would agree to U.S. prison. Here is the tweet:



@wikileaks, Twitter (Sept. 15, 2016) (8:09 AM), <https://twitter.com/wikileaks/status/776437869376262144?lang=en>.

10. Moreover, on January 12, 2017 (eight days before the transition to the current administration), WikiLeaks tweeted that, in exchange for the then-administration's agreement to grant clemency to Manning, Assange would agree to extradition to the United States. Here is that tweet:



@wikileaks, Twitter (Jan. 12, 2017) (11:40 AM), <https://twitter.com/wikileaks/status/819630102787059713?lang=en>.

11. Attached to both of these tweets was a letter from Assange's lawyer to Attorney General Loretta Lynch, concerning public acknowledgements by the Department of Justice of the ongoing criminal investigation of Assange between 2010 and 2016. This lawyer requested

closure of the then six-year investigation, into the very charges at issue in this extradition. The letter stated, in relevant part, as follows:

Dear General Lynch:

As you are aware, on November 29, 2010, the United States Department of Justice announced it was commencing an investigation of potential crimes committed by WikiLeaks and its founder, Julian Assange. As recently as March 15, 2016, the Department of Justice in a publicly filed court document confirmed that this "investigation continues to this day." See Defendants' Motion for Summary Judgment, *Manning v. U.S. Department of Justice and the Federal Bureau of Investigation*, 15-cv-01654-APM (D.D.C.), DE 12 at 1, 11. On May 19, 2016, in a subsequent publicly filed pleading, the Department reiterated the on-going nature of the investigation. See Defendants' Reply in Support of Motion for Summary Judgment and Opposition to Plaintiff's Cross-Motion for Summary Judgment, *Manning v. U.S. Department of Justice and the Federal Bureau of Investigation*, 15-cv-01654-APM (D.D.C.), filed May 19, 2016, DE 16 at 1 ("[T]he FBI's ongoing investigation is focused on any civilian involvement in Manning's leak of classified records published on WikiLeaks, and not on an investigation of Manning herself."). There are three distinct components of the Department currently conducting the investigation(s): the Criminal Division, the National Security Division, and the Federal Bureau of Investigation. See, e.g., *Electronic Privacy Information Center v. Department of Justice, Criminal Division*, et al., 12-cv-127 BJR (D.D.C.), Memorandum Opinion dated March 4, 2015, DE 40, at 1, 4.

As Mr. Assange's criminal defense counsel in the United States, I have repeatedly sought information from the Department of Justice regarding this now nearly-six-year-old investigation. Despite the fact that the Department has continually publicly confirmed through court filings and statements to the press that it is conducting an on-going criminal investigation of Mr. Assange, the Department has provided me no substantive information whatsoever about

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the status of the investigation. Two developments during the pendency of this investigation cause me to write to you to ask that you publicly announce the closure of the criminal investigation with no criminal charges.

See Letter from Barry J. Pollack to Loretta E. Lynch, Attorney General of the United States (Aug. 16, 2016), available at <https://www.docdroid.net/1CJRtOg/20160816-letter-to-us-attorney-general-loretta-e-lynch.pdf> (last viewed Mar. 10, 2020).

12. In essence, Assange has known of and followed this investigation for almost a decade. As early as 2010, the media was publicly reporting that the Department of Justice had confirmed it was investigating Assange for his acts in connection with the Manning disclosures.¹

¹ See, e.g., Luke Harding et al., *The US Embassy Cables, Behind the Leak: Julian Assange: Interpol Puts WikiLeaks Founder on Wanted List as Legal Threats Mount*, The Guardian (Dec. 1,

Further, the specific concerns of the United States that Assange's publications endangered the lives of innocent informants and sources were well publicized.²

13. Contemporaneous news reports reflect statements Assange made in response to the announcements of the investigation into him in 2010.³ Moreover, through the years, Assange

2010) ("WikiLeaks founder Julian Assange was last night facing growing legal problems around the world, with the US announcing that it was investigating whether he had violated its espionage laws."); Charlie Savage, *U.S. Weighs Prosecution of WikiLeaks Founder, but Legal Scholars Warn of Steep Hurdles*, N.Y. Times (Dec. 2, 2010) ("Attorney General Eric H. Holder Jr. has confirmed that the Justice Department is examining whether Mr. Assange could be charged with a crime . . ."); Charlie Savage, *Building Case for Conspiracy by WikiLeaks*, N.Y. Times (Dec. 16, 2010) ("Federal prosecutors, seeking to build a case against the WikiLeaks leader Julian Assange for his role in a huge dissemination of classified government documents, are looking for evidence of any collusion in his early contacts with an Army intelligence analyst suspecting of leaking the information.").

² See, e.g., Greg Jaffe & Joshua Partlow, *Mullen Says Leak Put Troops and Afghans in Danger; WikiLeaks Documents Include Names of Informants Helping U.S.*, Washington Post (July 30, 2010) ("The U.S. military's top officer charged Thursday that WikiLeaks founder Julian Assange, in releasing tens of thousands of secret documents, had endangered the lives of American troops and Afghan informants who have assisted U.S. forces. . . . A Washington Post search of the 76,000 reports released by WikiLeaks turned up at least 100 instances dealing with Afghan informants. In some of the reports the informants' names and villages are listed along with the names of the insurgent commanders that they had discussed with U.S. and Afghan officials."); Scott Shane, *WikiLeaks Leaves Names of Diplomatic Sources in Cables*, N.Y. Times (Aug. 30, 2011) ("In a shift of tactics that has alarmed American officials, the antisecrecy organization WikiLeaks has published on the Web nearly 134,000 leaked diplomatic cables in recent days, more than six times the total disclosed publicly since the posting of the leaked State Department documents began last November. A sampling of the documents showed that the newly published cables included the names of some people who had spoken confidentially to American diplomats and whose identities were marked in the cables with the warning 'strictly protect.' State Department officials and human rights activists have been concerned that such diplomatic sources, including activists, journalists and academics in authoritarian countries, could face reprisals, including dismissal from their jobs, prosecution or violence.").

³ See, e.g., Ravi Somaiya, *From WikiLeaks Founder, a Barrage of Interviews*, N.Y. Times (Dec. 18, 2010) ("In a series of media appearances Thursday and Friday the WikiLeaks founder Julian Assange railed against what he called an 'illegal' and 'aggressive' investigation of him and his Web site by the United States and dismissed accusations of sexual misconduct in Sweden as 'politically motivated.' Free on bail after nine days in prison in Britain, where he is fighting extradition to Sweden, Mr. Assange said a United States espionage indictment against him was imminent. In earlier comments, he and his supporters had called the Swedish extradition proceeding a 'holding' action intended to keep him within the law's grasp while the United

continued to make public statements reflecting that he was tracking the ongoing criminal investigation. Two of Assange's books—*Cyberpunks: Freedom and the Future of the Internet*, first published in 2012, and *When Google Met WikiLeaks*, first published in 2014—contain subchapters in which Assange acknowledged that the WikiLeaks investigation continued. See Julian Assange, *Cyberpunks: Freedom and the Future of the Internet*, at 13-19 & n.16 (2012) (citing an investigative timeline that is available at http://www.alexao'Brien.com/timelineus_versus_manning_assange_wikileaks_2012.html); Julian Assange, *When Google Met WikiLeaks*, at 220-23 & n.311 (2014/2016) (ebook) (citing, in relevant part, *Electronic Privacy Information Center v. Department of Justice Criminal Division*, No. 1:12-cv-00127, the same Freedom of Information Act case, in the U.S. District Court for the District of Columbia, that I referenced above, in Paragraph 6).

14. I do not vouch for the accuracy of descriptions by Assange, his legal team, or the media, but note only that these public accounts demonstrate that he knew of the existence and ongoing nature of the investigation by the United States into his alleged criminal activities.

C. Assange Cannot Complain About Prejudice Because He Actively Attempted to Evade Justice.

15. Assange's conduct in staying in the Embassy of Ecuador to avoid U.S. prosecution plainly corroborates that he understood that he continued to face prosecution.

States completed its investigation.”); Charlie Savage, *U.S. Prosecutors, Weighing WikiLeaks Charges, Hit the Law Books*, N.Y. Times (Dec. 8, 2010) (“After WikiLeaks released a batch of government documents concerning Iraq and Afghanistan in July, Mr. Holder and the director of the Federal Bureau of Investigation, Robert S. Mueller III, both said the leaks were being investigated, and Mr. Assange said United States officials had previously warned his organization that there had been ‘thoughts of whether I could be charged as a co-conspirator to espionage, which is serious.’”).

16. As the Court is well aware, Assange fled to, and remained in, the Embassy of Ecuador in London from June 2012 to April 2019. Assange's own lawyers have informed this Court that he hid in the Embassy of Ecuador to avoid prosecution in the United States. *See* Statement of Jennifer Robinson ¶ 3 (Feb. 14, 2019) ("Mr. Assange had been granted asylum by Ecuador because of [the ongoing investigation and reports of a sealed indictment,] and he remained in the embassy to protect himself from US extradition."); Statement of Gareth Peirce ¶ 6 (Oct. 18, 2019) ("Mr Assange on June 19th 2012 took refuge inside the Ecuadorian Embassy in London and applied for asylum. The basis of his application was a fear of his re-extradition from Sweden to the United States, a country from which he feared persecution. He believed that a sealed case against him was prepared in the US, for the organisation of which he was at the time a director, WikiLeaks, having published information on war crimes committed by the US in Iraq and Afghanistan.").

17. Likewise, Assange made public statements that he was remaining in the Embassy of Ecuador to avoid prosecution in the United States. For example, in 2013, the WikiLeaks website posted an affidavit by Assange concerning alleged monitoring of his activities and search and seizure of his property. In this affidavit, Assange acknowledged that he was "granted asylum after a formal assessment by the government of Ecuador in relation to the current and future risks of persecution and cruel, inhuman and degrading treatment in the United States in response to my publishing activities and my political opinions. I remain under the protection of the embassy of Ecuador in London for this reason."

D. Assange Will Be Able to Raise Claims About Prejudicial Delay and Selective Prosecution in the United States.

18. Finally, and importantly, Assange will have an opportunity to raise these exact arguments in the United States. The Fifth Amendment to the U.S. Constitution guarantees that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." U.S.


Const. amend. V. The United States Supreme Court has recognized that a criminal defendant may seek dismissal of an indictment on the ground that the government's delay in bringing the indictment violated his right to due process. *See United States v. Gouveia*, 467 U.S. 180, 192 (1984); *United States v. Lovasco*, 431 U.S. 783, 789-91 (1977); *United States v. Marion*, 404 U.S. 307, 324-25 (1971). To establish such a claim of preindictment delay, the defendant must demonstrate that the delay caused him actual prejudice. *See United States v. Uribe-Rios*, 558 F.3d 347, 358 (4th Cir. 2009). If the defendant demonstrates actual prejudice, courts will then "consider the government's reasons for the delay, balancing the prejudice to the defendant with the Government's justification for the delay." *Id.* (internal quotation omitted). As someone who knew of the investigation and actively took steps to evade prosecution for almost seven years, it will be difficult for Assange to demonstrate this prejudice. *See Barker v. Wingo*, 407 U.S. 514, 536 (1972) ("But barring extraordinary circumstances, we would be reluctant indeed to rule that a defendant was denied this constitutional right [to a Speedy Trial] on a record that strongly indicates, as does this one, that the defendant did not want a speedy trial.").

19. Moreover, as described in paragraph 68 of the First Declaration, Assange can file a pre-trial motion to challenge the superseding indictment on the basis of selective prosecution. To succeed on such a motion, Assange would have to demonstrate that the prosecution "had a discriminatory effect and that it was motivated by a discriminatory purpose." *Wayte v. United States*, 470 U.S. 598, 608 (1985). Meeting this heavy burden requires the defendant to establish "both (1) that he has been singled out while others similarly situated have not been prosecuted; and (2) that the decision to prosecute was invidious or in bad faith, *i.e.*, based upon such impermissible considerations as race, religion, or the desire to exercise his constitutional rights." *United States v. Greenwood*, 796 F.2d 49, 52 (4th Cir. 1986) (internal quotation omitted).

20. In short, Assange will have a forum in the United States courts to raise his allegations of prejudicial delay and selective prosecution. The United States courts—the tribunal responsible for resolving the charges against him—will be best positioned to address whether there has been any such violation.

Conclusion

21. The facts and information contained in this Declaration are true and correct according to the best of my knowledge, information, and belief.


Gordon D. Kromberg
Assistant United States Attorney
Office of the United States Attorney
Eastern District of Virginia

SUBSCRIBED and SWORN to before me
this 12th day of March 2020.


Notary Public

My commission expires May 31, 2021
Alexandria, Virginia

