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**

THIRD 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 three 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 the first of 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, "Supplemental Declaration"); Gordon Kromberg, Second Supplemental Declaration in Support of Request for Extradition of Julian Paul Assange ¶ 1 (Mar. 12, 2020) (hereafter, "Second Supplemental Declaration").

2. This declaration responds to certain of the defense's "Zakrzewski abuse" allegations raised before this Court at the hearing on February 25, 2020, 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 "Zakrzewski Abuse" Arguments Improperly Seek to Litigate the Merits of the Allegations at the Extradition Stage.

3. At the hearing on February 25, 2020, Assange's counsel made a series of highly charged accusations that the United States knowingly made false allegations in its extradition request. Assange's counsel, for example, described various allegations as "a knowingly false account," "utter rubbish," and "lies, lies and more lies." Transcript of Extradition Hearing, at 7-8 (Feb. 25, 2020) (hereafter, "Extradition Hr'g Tr."). I categorically reject such accusations. As a federal prosecutor on the case, I affirm that, to my knowledge and belief, the United States has not made any knowingly false allegations to support its extradition request.

4. The accusation that a lawyer, and a federal prosecutor in particular, knowingly made a false allegation is a serious one in the American legal system. The Virginia Rules of Professional Conduct—the ethical rules that govern the practice of law in the Commonwealth of Virginia—expressly prohibit lawyers from knowingly making false statements or introducing false evidence.[1] These ethical rules, moreover, impose additional responsibilities on prosecutors.

[1] *See* Va. Rules of Prof'l Conduct r. 3.3(a)(1) ("A lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal."); *id.* r. 3.3(a)(4) ("A lawyer shall not knowingly . . . offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures."); *id.* r. 4.1(a) ("In the course of representing a client a lawyer shall not knowingly . . . make a false statement of fact or law."); *id.* r. 8.4(c) ("It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.").

Id. r. 3.8. A prosecutor, for example, "shall . . . not file or maintain a charge that the prosecutor knows is not supported by probable cause." *Id.* r. 3.8(a). Federal prosecutors are subject to sanction by the courts, governing bar authorities, *and* the Department of Justice if they violate these Rules of Professional Conduct.[2]

5. Federal prosecutors have abided by these ethical guidelines when preparing its extradition request. The United States' extradition request faithfully and accurately reflects its case against Assange. Each allegation is premised upon the evidence identified in the request. As demonstrated below, Assange has not shown that any of the allegations are false.

6. Instead, in his "Zakrzewski abuse" submissions, Assange essentially argues that the United States should have anticipated the defenses and theories of the case that he might raise and included them in its extradition request or in the indictment itself. But that is the purpose of a trial on the merits, not the function of an extradition request or charging document. As demonstrated in the Superseding Indictment, as well as the affidavit and declarations previously filed on behalf of extradition by the United States, Assange's arguments are contested issues of law and fact that will be addressed at trial in front of an independent judge and jury in the United States.

7. At trial in the United States, Assange will have a constitutional right to present evidence, call witnesses on his behalf, confront and cross-examine the government's witnesses,

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[2] *See, e.g.*, E.D. Va. Local Rules, Appendix B, FRDE Rule IV(B) ("Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Virginia Rules of Professional Conduct adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of any attorney-client relationship."); Office of Professional Responsibility, U.S. Department of Justice, *available at* https://www.justice.gov/opr/professional-misconduct (last visited Mar. 22, 2020) (describing the role of the Department of Justice's Office of Professional Responsibility in investigating allegations of professional misconduct by federal prosecutors).

and assert his defenses. *See, e.g.*, U.S. Const. amend. VI (guaranteeing criminal defendants the rights, among other things, "to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence"); *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (recognizing that the U.S. Constitution "guarantees criminal defendants 'a meaningful opportunity to present a complete defense'" (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984))); *Strickland v. Washington*, 466 U.S. 668, 684-85 (1984) (recognizing that the U.S. Constitution guarantees criminal defendants the right to a fair trial).[3]

II. Assange Has Failed to Show that the United States Made Any Misrepresentations in Its Extradition Request.

8. In the following section of the declaration, I refute a number of particular arguments that Assange's counsel made in arguing that the United States knowingly made false allegations to support its extradition request. As I stated at the beginning of this declaration, I do not attempt to respond to every single accusation, and my failure to address a particular accusation does not signify that the United States accepts the accusation as true or meritorious. *See infra* ¶ 2.

A. The nature and purpose of the hash-cracking agreement

9. During the February 25, 2020 hearing, the defense argued that the United States' allegations concerning the hash-cracking agreement between Assange and Manning were "provably wrong" and "a knowingly false account of the conduct that occurred." Extradition

[3] As discussed in paragraph 67 of the First Declaration, Assange will also have a right to appeal his conviction and sentence if he believes the trial court committed any error. *See Coppedge v. United States*, 369 U.S. 438, 441-42 (1962) (recognizing that "a defendant has a right to have his conviction reviewed by a Court of Appeals").

Hr'g Tr. 7. As demonstrated below, the defense's arguments are misleading regarding the nature of the United States' allegations, and fail to show that the allegations are false.

i. State Department cables

10. The defense asserted that the Superseding Indictment alleged that the hash-cracking agreement was for the specific purpose of gaining anonymous access to the Net Centric Diplomacy database from which Manning stole the State Department cables. *See* Extradition Hr'g Tr. 10-11. According to the defense, the purpose of the hash-cracking agreement could not possibly have been to gain anonymous access to the Net Centric Diplomacy database, because the database tracked access by IP address rather than username. *Id.* at 11. This argument, however, is misleading, because it does not accurately describe the nature of the United States' allegations.

11. Contrary to the defense's assertion, the United States has not alleged that the purpose of the hash-cracking agreement was to gain anonymous access to the Net Centric Diplomacy database or, for that matter, any other particular database. Instead, Count 18 of the Superseding Indictment generally alleged that the "primary purpose of the conspiracy was to facilitate Manning's acquisition and transmission of classified information related to the national defense of the United States so that WikiLeaks could publicly disseminate the information on its website." The Superseding Indictment further asserted that "had ASSANGE and Manning successfully cracked [the password hash], Manning may have been able to log onto computers under a username that did not belong to her" and "[s]uch a measure would have made it more difficult for investigators to identify Manning as the source of disclosures of classified information." Superseding Indictment ¶ 18. As this language plainly reflects, the United States alleged that the purpose of the hash-cracking agreement was to facilitate the acquisition and

transmission of classified, national defense information generally, not to access a particular database or set of documents.

12. Cracking the password hash could have furthered the alleged goals of the conspiracy in many ways that have nothing to do with how the Net Centric Diplomacy database (or any other of the particular databases) tracks access. Stealing hundreds of thousands of documents from classified databases, as Manning did, was a multistep process. It required much more than simply gaining access to the databases on which the information was stored. For example, Manning had to extract large amounts of data from the database, move the stolen data onto a government computer (here, Manning's SIPRNet computer), exfiltrate the stolen documents from the government computer to a non-government computer (here, Manning's personal computer), and ultimately transmit the stolen documents to the ultimate recipient (here, Assange and WikiLeaks). Each step in this process can leave behind forensic artifacts on the computers or computer accounts used to accomplish the crime. Therefore, the ability to use a computer or a computer account not easily attributable to Manning could be a valuable form of anti-forensics. Put another way, Manning needed anonymity not only on the database *from which* the documents were stolen (e.g., the Net Centric Diplomacy database), but also on the computer *with which* the documents were stolen (e.g., the SIPRNet computer). The hash-cracking agreement, at a minimum, could have furthered the latter goal.

13. Manning's trial itself illustrates the point. Army forensic investigators were able to find important forensic evidence on the **Bradley.Manning** user account contained on the SIPRNet computers that Manning used (that is, on Manning's assigned SIPRNet account). This evidence, which was introduced at Manning's trial, included files that Manning viewed and/or saved, and scripts that Manning stored while signed into an Army SIPRNet computer under

Manning's own username. *See, e.g.*, Manning Court-Martial Tr. 8347 ("Within the user profile **Bradley.Manning** there was a folder called bloop and within there, there was files.zip. The files.zip contained over 10,000 complete Department of State cables."); *id.* at 8355 ("[W]ithin the Windows temp folder there were two files, both have the SID, the security identifier of the user profile **Bradley.Manning** and these two files each contain several hundred complete Department of State cables."); *id.* at 9168 ("Within the **Bradley.Manning** user profile, that video was present."); *id.* at 9190 ("Within .22, in the **bradley.manning** user profile, files with [the] name [redacted] appeared in several locations."); *id.* at 10635 ("Within the . . . .22 computer on the **bradley.manning** user profile, I examined the NTuser.dat. In there it maintained the last ten batch files which would have been accessed.").

14. To give just one example, Manning used a custom script, created with a program called Wget (the "Wget script"), to download the State Department cables from the Net Centric Diplomacy database (exfiltrating 250,000 State Department Cables manually would likely have been prohibitively time-consuming). At Manning's trial, the Army introduced forensic evidence showing that the Wget script had been stored on a SIPRNet computer under the **Bradley.Manning** user profile. *See id.* at 8354 ("Q. What other Wget related information did you find on this computer? A. Within Windows prefetch files there showed . . . prefetch files where I captured Wget being run from the **Bradley.Manning** user profile on several occasions."); *id.* at 10608 ("Wget.exe was run from documents and settings bradley.manning/mydocuments/yada, folder 060000 . . . ."); *id.* at 10638 ("Q. [D]id you find a folder on Private First Class Manning's SIPRNet computer that contained a batch file and the associated files pulled using Wget? A. I did. Q. And where did you find that? A. Within the **bradley.manning** user profile . . . ."). If Assange had successfully cracked the password hash to

the FTP account, however, Manning could have used that account for the theft and Army investigators might have missed such forensic artifacts or, even if they found them, might not have been able to attribute them to Manning.

15. This is simply one way that the hash-cracking agreement may have contributed to the broad criminal purpose of the conspiracy alleged in Count 18 in the Superseding Indictment. There may be others, and the Superseding Indictment does not limit the prosecution to proving any one particular theory at trial. I simply raise these points to make clear that efforts by the defense to knock down a particular theory are misleading, when such a theory was never raised by the United States in the first place.

ii. Significant activity reports, detainee assessment briefs, and Iraq Rules of Engagement

16. At the February 25, 2020 hearing, the defense also claimed that the Superseding Indictment alleged that the purpose of the hash-cracking agreement was to allow Manning to gain anonymous access to the Guantanamo Bay detainee assessment briefs, the Iraq Rules of Engagement, and the Afghanistan and Iraq war-related significant activity reports. *See* Extradition Hr'g Tr. 31-34, 41-42. After characterizing the allegations in this way, the defense then argued that the purpose of the hash-cracking agreement could not possibly have been to gain anonymous access to these documents, either because Manning had already provided them at the time of the agreement (in the case of the significant activity reports), *see id.* at 41-42, or because Manning could not access them from the FTP user account (in the case of the rules of engagement), *see id.* at 32-34, or because access to the documents were tracked by IP address and not user names (in the case of the detainee assessment briefs and the significant activity reports), *see id.* at 31, 41.

17. Again, however, the defense's arguments are misleading, because they do not accurately describe the allegations made by the United States. The Superseding Indictment does

not allege that the purpose of the hash-cracking agreement was to gain anonymous access *to those particular documents* (i.e., the detainee assessment briefs, the significant activity reports,[4] or the Iraq Rules of Engagement). Rather, the purpose of the agreement was to gain access to the FTP account, which could have been used for Manning's ongoing theft of classified information generally. For the reasons stated above, such anonymous access could assist Manning in preventing investigators from learning of any future activities conducted on Manning's SIPRNet computer. This could include activities related to the theft and transmission of the State Department cables and any other theft and/or transmission of classified information that Manning might have committed in the future, but for the arrest in May 2010.

B. The "Most Wanted Leaks" list

18. Next, I address three particular arguments that the defense made with respect to Assange's use of the "Most Wanted Leaks" list to solicit classified, national defense information of the United States.

19. First, the defense argued that the "Most Wanted Leaks" webpage was collaborative and allowed anyone to edit it. *See* Extradition Hr'g Tr. 12-13. Even assuming that is true, it is irrelevant. The United States never alleged that Assange drafted all of the items on the Most Wanted Leaks list. Rather, the United States has maintained that Assange used the list to encourage and cause individuals to illegally obtain and disclose information to WikiLeaks. Whether the preparation of the list was collaborative makes no difference to that allegation. What matters is that Assange posted the list on WikiLeaks, and personally solicited and encouraged others to break the law to obtain and provide responsive information.

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[4] As the defense points out (at 41-42), such an allegation would not have made sense with respect to the detainee assessment briefs and significant activity reports, because Manning transmitted those document sets to Assange before they entered into the hash-cracking agreement.

20. The extradition request contains specific examples of when Assange actively encouraged others to obtain information on the Most Wanted Leaks list. For example, as outlined in the extradition request, Assange spoke at a "Hack in the Box Security Conference" in 2009 in Malaysia, where he encouraged people to search for the Most Wanted Leaks list and for those with access to obtain and give to WikiLeaks information responsive to that list. *See* Affidavit in Support of Request for Extradition of Julian Paul Assange ¶ 16 (June 4, 2019) (hereafter, "Extradition Aff."). As another example, the extradition request notes that, under the general category "Bulk Databases," the Most Wanted Leaks list specifically sought the "Central Intelligence Agency (CIA) Open Source Center database." *Id.* ¶ 15(a). As alleged, when Manning brought up the Open Source Center database in a chat with Assange on March 8, 2010, Assange informed Manning "that's something we want to mine entirely, btw." *Id.* ¶ 31(b). As these examples reflect, regardless of who drafted the information listed on the Most Wanted Leaks list, Assange actively encouraged others to obtain and provide it.

21. Second, the defense repeatedly argued that certain materials that Manning provided—namely, the Afghanistan and Iraq war-related significant activity reports, the Guantanamo Bay detainee assessment briefs, and the U.S. Department of State cables—were not specifically listed on the Most Wanted Leaks. *See* Extradition Hr'g Tr. 8, 14, 30-31, 41. But the United States never alleged that the Most Wanted Leaks specifically listed these documents.

22. Instead, the United States alleged generally that the WikiLeaks website solicited "*classified*, *censored*, or otherwise *restricted* material of *political, diplomatic, or ethical significance*." Extradition Aff. ¶ 12. Further, the United States alleged that the Most Wanted Leaks list included broad categories of information, such as "bulk databases and military and intelligence categories." *Id.* ¶ 21. As alleged, Manning acted consistent with the list in

downloading "four nearly complete databases from departments and agencies of the United States," including "approximately 90,000 Afghanistan war-related significant activity reports, 400,000 Iraq war-related significant activities reports, 800 Guantanamo Bay detainee assessment briefs, and 250,000 U.S. Department of State cables."[5] *Id.*

23. These allegations were—and remain—accurate. Assange has not shown that they were false. If Assange wants to contest whether the Most Wanted Leaks list solicited these databases because it did not specifically list them, he is free to make those arguments to the jury at trial. But the United States did not misrepresent the facts in its extradition request.

24. Finally, the defense argued that the "Most Wanted Leaks" had been shortened significantly by May 2010. *See* Extradition Hr'g Tr. 13. But that was after Manning had already supplied troves of responsive classified information to Assange and around the time of Manning's arrest. *See* Superseding Indictment ¶¶ 12-13.

C. Risk to the safety of sources by Assange's dissemination of documents

25. During the February 25, 2020 hearing, the defense argued that the United States knowingly made "obviously and provably false" allegations that Assange's publication of the Afghanistan and Iraq war-related significant activity reports and State Department cables put human sources as risk. *See* Extradition Hr'g Tr. 8. The United States, however, has offered evidence of the risk to sources caused by Assange's publication of these documents. *See* First Declaration ¶¶ 25-65; Extradition Aff. ¶¶ 38-45. As explained below, Assange's arguments do not establish that these allegations were knowingly false. Instead, Assange's arguments reflect,

[5] I also observe that the United States has not charged Assange with aiding and abetting Manning's theft or transmission of the Iraq and Afghanistan significant activity reports. Rather, the aiding and abetting and knowing receipt charges were explicitly limited to the detainee assessment briefs, the State Department cables, and the rules of engagement. *See* Superseding Indictment, Counts 2-4, 6-14.

at most, his defenses to contested issues of law and fact, which he will have an opportunity to litigate in the United States.

i. Significant activity reports

26. At the hearing, the defense argued that the court-martial evidence established that the significant activity reports did not contain any "sensitive names." Extradition Hr'g Tr. 42. Specifically, the defense pointed to the testimony of two witnesses called by Manning in the court-martial—Captain Steven Lim and Chief Warrant Officer 2 Joshua Ehresman—who testified that significant activity reports did not contain the names of "key sources." *Id.* at 42-43. Neither Captain Lim nor Chief Warrant Officer Ehresman, however, testified that the significant activity reports did not contain the names of *any* sources. Instead, Captain Lim and Chief Warrant Officer Ehresman testified only as to whether significant activity reports contained the names of "*key*" sources. The defense ignored that important qualification.

27. The United States has not alleged that the significant activity reports revealed the names of "key sources." As reflected in the extradition request, the United States has alleged that "[t]he significant activity reports from the Afghanistan and Iraq wars that ASSANGE published included names of local Afghans and Iraqis who had provided information to U.S. and coalition forces." Extradition Aff. ¶ 39; *see also id.* ¶ 82 ("These reports contained the names, and in some cases information about the locations, of local Afghans and Iraqis who had provided information to American and coalition forces."). The public outing of such local Afghans and Iraqis put them in danger, regardless of whether they were considered "key" sources. Nor does 18 U.S.C. § 793(e)—the statute that the United States has charged Assange with violating by publishing these documents—require the prosecution to prove that the disclosed sources were "key." Because the United States did not, and was not, required to limit its charges to the

identification of "key" sources, the testimony of the two witnesses highlighted by the defense in no way suggests that the allegations were inaccurate.

28. In fact, other testimony from Manning's court-martial supports the United States' allegations in this case. Most notably, Brigadier General Robert Carr, who oversaw the Information Review Task Force (IRTF), testified about how the significant activity reports included the names of local nationals who provided U.S. soldiers with information. *See, e.g.*, Manning Court-Martial Tr. 11337 ("Q. And, sir, that example you gave, would those reports sometimes include those local nationalist names? A. In many cases they were."); *id.* at 11348 ("When this data all came out and the hundreds of names that were in there, they were not necessarily -- not all of these names were legitimate intelligence sources that were committed to operating on our behalf. They were relationships of local villagers that were cooperating with patrols and Soldiers as they went through as they talked from the police chief to the captain so that they would begin to work together in a security operation."); *id.* at 11372 ("First, let's talk about these conversations with local nationals that show up in the CIDNE reporting, both CIDNE-I and CIDNE-A, right? So, sir, there were names listed in those reporting? A. In some of the reporting, yes."). General Carr further described the extensive efforts that the U.S. Department of Defense undertook to notify such individuals of their disclosure to mitigate the risk of harm. *See id.* at 11348-50, 11370, 11384-86, 11402-04. As this testimony reflects, the issue of source safety was not, as the defense has wrongly suggested, uncontested at Manning's court-martial trial.

29. Most importantly, the United States has previously described the IRTF, its duty-to-notify efforts, and the evidence of the potential harm to sources caused by Assange's disclosures. *See* First Declaration ¶¶ 27-29, 36-43.

30. Relying on Manning's plea statement, the defense also argued that Manning included a message that *Manning* had sanitized the reports of source-identifying information before uploading them to WikiLeaks. *See* Extradition Hr'g Tr. 43. The defense advanced this argument to suggest that Assange thought the significant activity reports had been stripped of identifying information that would put the lives of informants at risk. *See id.* This argument is misleading.

31. The evidence shows that Assange was concerned with protecting the identity of *WikiLeaks'* sources—in this case, Manning. WikiLeaks publicly stated it sanitizes documents of metadata that would reveal a source who wants to remain anonymous. WikiLeaks also said that none of what it does is possible without sources, described as those who come forward and leak information, noting that WikiLeaks had never lost a source and none of its sources had been prosecuted. *See, e.g.*, Wikileaks vs. The World | Julian Assange Speech at 25C3 (2008), *available at* https://videogold.de/wikileaks-vs-the-world-julian-assange-speech-at-25c3-2008, at 5:39-6:08, 52:30-53:20. Indeed, Assange has stated that redacting for "harm minimization" is "disturbing" as it is "a very, very dangerous slippery slope."[6] Julian Assange, When WikiLeaks Met Google, at 177 (2014/2016).

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[6] Assange stated the following:

> We have all sorts of other projects about syndicating our submission system to third parties. It disturbs me that we are redacting at all. It is a very, very dangerous slippery slope. And I've already said that we go through this not merely to minimize harm but for political considerations, to stop people distracting from the important part of the material by instead hyping up concerns about risks . . . . It's a pragmatic, tactical, decision to keep the maximum impact there, instead of having to be distracted. But here we are already engaging in a rather dangerous compromise, although not nearly to the same degree as the newspapers do. We have collaborated with them and seen that some of them are just appalling. We released an analysis of their redactions versus what actually needed to be redacted, and it is extremely interesting.

Julian Assange, When WikiLeaks Met Google, at 177 (2014/2016).

32. The defense also selectively quoted from Manning's statement, presumably to try to prove its point. In Manning's plea statement, Manning quoted the message as stating the following: "It's already been sanitized of any source-identifying information. You might need to sit on this information, perhaps 90 to 100 days, to figure out how to best release such a large amount of data and to protect the source. This is possibly one of the more significant documents of our time, removing the fog of war and revealing the true nature of 21st-century asymmetric warfare. Have a good day." Manning Court-Martial Tr. 6760. When read in full, it is obvious that the "source" to be protected was *Manning,* and that the reports supplied to WikiLeaks had been sanitized to remove any information that would identify Manning as the source from whom they were received. That explains why Manning referred to "source" in the singular, and urged Assange to wait a few months before disclosing the documents.

33. Finally, the defense argued that Assange undertook "harm minimization" and redaction efforts to protect sources before publishing the reports. Extradition Hr'g Tr. 43-44. This, again, is misleading. It does not matter if Assange took measures to protect sensitive information in some of the documents. As alleged in the extradition request, he still published the names of local Afghans and Iraqis who provided information to U.S. and coalition forces, which created a grave and imminent risk that the individuals he named would suffer serious physical harm and/or arbitrary detention. *See* Extradition Aff. ¶ 39. The United States has described evidence showing that Assange *knew* that dissemination of the documents naming the sources endangered those individuals. *See id.* ¶¶ 44-45. If Assange wants to defend against these allegations by offering evidence of efforts he undertook to protect other sources, he is free

to raise this issue in United States courts. But his evidence of those efforts does not suggest that the United States' allegations were false.

ii. State Department cables

34. The defense also challenged the United States' allegation that Assange put human sources at risk by disseminating the State Department cables. *See* Extradition Hr'g Tr. 15-28.

35. Importantly, the defense did not question the veracity of certain core factual allegations that the United States made. Assange did not dispute that he initially "published some of the cables in redacted form beginning in November 2010." Extradition Aff. ¶ 44. Assange did not dispute that he then "published over 250,000 cables in September 2011, in unredacted form, that is, without redacting the names of the human sources." *Id.* Assange did not even dispute that he knew public release of the unredacted cables put the sources at risk. *See* Extradition Hr'g Tr. 27 (arguing that Assange called the U.S. Government over the telephone prior to release of the information "saying that he feared for the safety of informants").

36. The defense instead argues that Assange was justified in publishing the unredacted cables because others released them a day or two before him. As background, the defense claims that, in the summer of 2010, WikiLeaks shared the unredacted cables with a reporter from the Guardian, David Leigh, by posting an encrypted file containing the cables on the WikiLeaks website. *See* Letter Statement of Christian Grothoff, at 1 (Feb. 12, 2020) (hereafter, "Grothoff Statement"). The defense claims that, in February 2011, Leigh published a book that contained the password to the encrypted file. *See* Extradition Hr'g Tr. 23; Grothoff Statement 3. The defense further asserts that no one connected the password with the encrypted file until August 25, 2011, when Der Freitag announced it had obtained the encrypted file, decrypted the file using a password found on the Internet, and accessed the unredacted cables. *See* Extradition Hr'g Tr. 20, 24; Grothoff Statement 4. According to the defense, Assange called

the State Department the same day, warning that release of the unredacted cables was imminent and that people's lives would be at risk "[u]nless we do something." Extradition Hr'g Tr. 25. The defense argued that other actors—including Cryptome and Pirate Bay—were then able to access the unredacted cables and released them in the August 31, 2011 to September 1, 2011 timeframe. *See* Extradition Hr'g Tr. 26-27; Grothoff Statement 4. Only after that time, the defense claims, did Assange publish the unredacted cables on the WikiLeaks website on September 2, 2011. *See* Grothoff Statement 4.

37. This argument is, at most, a defense theory that Assange can raise in United States courts. It does not establish that the United States made any false allegations in its extradition request. The fact remains that, on his high-profile WikiLeaks website, Assange published unredacted State Department cables that revealed the names of human sources, knowing that the release of such information posed a danger to their safety. While Assange may challenge - - on the basis of an assertion that other actors released the information a day or two before him - - whether his publication of the unredacted cables created such a risk, the relevance and merits of such a defense will be issues for United States courts to resolve. The United States' position is that Assange's dissemination and publication of the unredacted cables placed sources at a risk of harm - - regardless of whether other actors released the information a day or two before him (particularly when Assange is responsible for originally disseminating the file with the unredacted cables that those actors accessed).

38. Publicly available information, moreover, suggests that Assange's defense theory is materially incomplete. On or about August 29, 2011, WikiLeaks posted a statement on its website announcing, "Over the past week, WikiLeaks has released 133,887 US diplomatic cables from around the world – more than half of the entire Cablegate material (251,287 cables)." The

statement noted that "[t]he decision to publish 133,877 cables was taken in accordance with WikiLeaks' commitment to maximising impact, and making information available to all." Soon thereafter, a number of major news outlets expressed alarm that these cables revealed the names of sources. *See, e.g.*, Ken Dilanian, *New WikiLeaks Cables Name Sources; Human Rights Groups and the U.S. Voice Alarm About Safety of Those Who Confided*, L.A. Times (Aug. 31, 2011) ("Previously, cables released by WikiLeaks had the names of [confidential] sources redacted, but analysts who have examined the cables released in recent days say that does not seem to be occurring."); 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.'"). While I cannot vouch for the accuracy of these articles, they indicate that Assange began publishing cables that identified confidential sources before Cryptome, Pirate Bay, and others published unredacted cables.

39. It is also worth observing that, after the extradition hearing, a number of key actors in the defense's account have disputed the veracity of its claims. For example, David Leigh and the Guardian have publicly disputed Assange's attempt to shift blame to them. The Guardian released a statement that "it is entirely wrong to say the Guardian's 2011 Wikileaks book led to the publication of unredacted US government files." Ben Quinn, *Julian Assange Was 'Handcuffed 11 Times and Stripped Naked'; WikiLeaks Founder's Lawyers Complain of*

Interference After First Day of Extradition Hearing, The Guardian (Feb. 25, 2020). The Guardian explained, "'The book contained a password which the authors had been told by Julian Assange was temporary and would expire and be deleted in a matter of hours. The book also contained no details about the whereabouts of the files. No concerns were expressed by Assange or Wikileaks about security being compromised when the book was published in February 2011. Wikileaks published the unredacted files in September 2011.'" *Id.* And David Leigh stated, "'It's a complete invention that I had anything to do with Julian Assange's own publication decisions. His cause is not helped by people making things up.'" *Id.*

40. While I am not in a position to vouch for the accuracy of these statements, I highlight them to note that Assange's account is a subject of dispute. The point is that the defense's arguments merely raise factual disputes of dubious legal significance that should be resolved by the United States courts responsible for addressing the merits of the charges, not in an extradition proceeding.

D. Iraq Rules of Engagement

41. Finally, the defense argued that Manning uploaded the Iraq Rules of Engagement to WikiLeaks at the same time Manning uploaded the so-called "Collateral Murder" video. *See* Extradition Hr'g Tr. at 35-37. The defense made this argument to suggest that Manning obtained the Rules of Engagement on Manning's own, without encouragement, as context for the video. *See id.* In making this argument, the defense relied on Manning's plea statement that the Rules of Engagement were uploaded to WikiLeaks with the "Collateral Murder" video. *See id.* at 35-37.

42. The United States has described at length the circumstances in which Manning made that plea statement. *See* First Declaration ¶¶ 140-44. As previously described, Manning was not subject to cross-examination it. *See id.* ¶ 143. Instead, the military judge engaged in a

limited inquiry to ensure a factual basis for the plea. *See id.* ¶¶ 142-43. In fact, when given the opportunity at the court-martial, Manning elected not to testify. *See* Manning Court-Martial Tr. 10313 ("MJ: All right. PFC Manning, you have not testified, is that your decision? ACC: Yes, Your Honor."). As a result, the United States has never had the opportunity to cross-examine Manning about the offense.[7]

43. The United States disputes the veracity of Manning's account about when the Rules of Engagement were downloaded and uploaded. In Manning's plea statement, Manning stated that the Collateral Murder video and Rules of Engagement were uploaded on February 21, 2010. *See* Manning Court-Martial Tr. 6768. As discussed in the extradition request, however, forensic computer evidence reflects that Manning downloaded the Rules of Engagement on or about March 22, 2010, and then provided them to WikiLeaks. *See* Extradition Aff. ¶ 33. Thus, this evidence shows that Manning did not obtain and provide to WikiLeaks the Rules of Engagement until about a month after Manning claims to have provided to WikiLeaks the "Collateral Murder" video.

[7] I also observe that Manning had reasons to omit relevant facts from the plea statement. Because Manning was not charged at the court-martial with a conspiracy offense, it was unnecessary to disclose the full extent of any agreement with Assange and WikiLeaks. To the contrary, it was in Manning's interest to avoid making any statements that could be used against her in a separate prosecution for conspiracy.

Conclusion

44. 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

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06/30/2020
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