

# M.E.P. BRIEFING:

# WHY OPPOSING JULIAN ASSANGE'S EXTRADITION TO THE U.S. MATTERS FOR EUROPEAN DEMOCRACY

February 2019

### Summary

The Trump Administration has confirmed that the US government has charged WikiLeaks' publisher Julian Assange and that it seeks his extradition from the UK.<sup>1</sup> In the US, he faces life in prison. The US actions are a serious threat to European freedom of expression and sovereignty.

- The United Nations has repeatedly called for Assange to walk free.
- Amnesty International, Human Rights Watch and other leading human rights organisations have released statements categorically opposing Assange's extradition.
- The city of Geneva recently passed a resolution calling for Assange to be granted asylum.

This year already, 36 MEPs and MPs have written to UN Secretary-General Antonio Guterres and UK Prime Minister Theresa May calling on them to find a solution to this matter.<sup>2</sup>

#### **MEPs should:**

- Oppose Assange's extradition to the US.
- Press the UK government to find the solution to this matter that already exists - to provide a diplomatic assurance against extradition to the US.
- Raise the vital issues at stake in this case in European parliamentary debates and processes
- Add their names to the MEPs letter to Guterres and May.

The Swedish "preliminary investigation" was closed without charge.<sup>3</sup>

# The case raises a number of fundamental issues for European democracy.

The UK and other European states have clear obligations under international law to protect the rights of refugees and asylum seekers. Assange's asylum status requires that he not be transferred to the persecuting state (i.e., the country that he was given asylum in relation to, the US).

The extradition of Julian Assange is for *publishing* and confronts fundamental issues:

- The extradition by the Trump Administration of a publisher in Europe for the "crime" of publishing truthful information, would set a very dangerous precedent for the extra-territorialisation of state secrecy laws and interference in the right to publish and media freedom in Europe.
- It cannot be the case that the Trump Administration be permitted to dictate what can and cannot be published in Europe.
- An extradition would post an invitation to other states to follow suit, severely threatening the ability of journalists, publishers and human rights organisations to safely reveal information about serious international issues.

Julian Assange has exposed serious US spying and economic sabotage against the EU and its member states, including Germany, France and Italy. He has spoken at the European Parliament on numerous occasions in relation to freedom of expression and the fight against corruption.

WikiLeaks has always published from EU and EEA member states: France, Germany, Netherlands, Sweden, UK, Norway and Iceland.

Mr Assange was living in France until he was detained when visiting the UK to assist the Guardian publish "Cablegate". His young children are in France.

"Brexit" will prevent him using the Court of Justice of the European Union and other EU mechanisms to secure his freedom.

Mr Assange's freedom is not simply a matter for the courts in the United Kingdom but for the government. The UK government has a simple solution available to this matter:

• It can provide a substantive diplomatic assurance (to the UNHCR, EU, France, Ecuador or Australia) that Assange would not be extradited to the United States (the state in relation to which he has refugee status). Such assurances are <u>standard practice</u> in the transfer of refugees or persons involved in legal processes, from one jurisdiction to another (i.e., if Ecuador hands him over to the UK, to resolve any remaining legal issues in the UK). The very foundation of the international refugee system is that refugees cannot be transferred to the state in relation to which they have refugee status.

## **Main briefing**

- **1. US charges and extradition**. On 15 November last year, the US Department of Justice inadvertently revealed that "Assange has been charged" under seal and that the US seeks his extradition from the UK. 4 These charges have been confirmed to various media, including Associated Press, the Washington Post and the New York Times. 5 In the US, Assange faces life in prison for publishing truthful information. The charges relate to WikiLeaks' 2010-2011 joint publications on war, diplomacy and rendition with a range of media organisations Der Spiegel, Le Monde, La Repubblica, Espresso, The Guardian, Liberation, Mediapart, The Telegraph, The Independent, Channel 4, the Bureau of Investigative Journalism, Reuters, and others. (At no time has WikiLeaks or Julian Assange been contacted by the "Mueller investigation" which is looking into the 2016 US election.)
- **2. Threats against Assange**. High ranking US officials have issued a series of threats against Assange and WikiLeaks to "take down" the organisation, asserting that "Julian Assange has no First Amendment privileges. He is not a US citizen" (then CIA director Mike Pompeo 6) and stating that arresting Assange is a "priority" for the US (then US Attorney General Jeff Sessions7). The key reason for this approach is WikiLeaks' release of thousands of files on the CIA in 2017 "the largest leak of CIA documents in history" which revealed the CIA's efforts to infest computers, smartphones, TVs, routers and even vehicles with CIA viruses and malware. The US government arrested a young US intelligence officer as WikiLeaks' source who now faces 160 years in prison and is being held in harsh conditions. The media reported in 2017, just after the Vault 7 publications, that the US was expanding the investigation against Assange and had prepared charges against him. All the while, it has never been questioned that WikiLeaks simply published truthful information.
- **3. Granting of refugee status**. Julian Assange was granted asylum by Ecuador in 2012, including under the 1951 Refugee Convention, to which all EU states are party, owing to his well-founded fear of persecution. <sup>10</sup> Asylum was granted after the UK and Swedish governments refused to give Ecuador diplomatic assurances that they would not extradite him to the US over WikiLeaks' publications. The risk of extradition to the US is the only reason he sought and received asylum by Ecuador. It is the only reason in his asylum application and the only reason in Ecuador's asylum determination.

Julian Assange has always been willing to face any outstanding bail issue in a UK legal process but not at the expense of facing extradition to the United States. No charges were ever brought against Assange in Sweden, which closed its investigation in 2017. Emails released under a tribunal challenge following a Freedom of Information Act request revealed that the Swedish authorities wanted to drop the arrest warrant for Assange as early as 2013 – it was the UK government that improperly insisted it continue.<sup>11</sup>

**4. Obligations under international law**. Julian Assange is protected under international refugee law and cannot be returned to the persecuting state. The core principle of the 1951 Convention is non-refoulement "which asserts that a

refugee should not be returned to a country where they face serious threats to their life or freedom". <sup>12</sup> Asylum was granted to Assange by Ecuador citing a "threat to his life, personal safety and freedom" and the torture, cruel and degrading treatment of his alleged source under US custody. <sup>13</sup>

- **5.** United Nations call on the UK to uphold international law. The UN Working Group on Arbitrary Detention (WGAD), the supreme international body scrutinising this issue, has repeatedly called on the UK government to end Assange's "arbitrary detention". <sup>14</sup> In December 2018, it "repeated a demand that the UK abides by its international obligations and immediately allows Wikileaks founder Julian Assange to walk free from the Ecuadorian embassy". <sup>15</sup> The UN states that WGAD determinations are legally-binding. <sup>16</sup> The latest UN statement was also reiterated by the UN Special Rapporteur for Human Rights Defenders Michel Forst. <sup>17</sup>
- **6. Human rights organisations oppose extradition**. Amnesty International and Human Rights Watch, among other human rights organisations, have released statements categorically opposing Assange's extradition. Amnesty states that it "believes that Julian Assange should not be extradited or subjected to any other transfer to the USA, where there are concerns that he would face a real risk of serious human rights violations due to his work with Wikileaks". Human Rights Watch has stated: "UK should reject extraditing Julian Assange to US". Julian Assange to US".
- 7. The Trump administration should have no right to prosecute a journalist in the UK, operating from the UK and the rest of Europe, over claims under US laws. This would open the flood gates to an extremely dangerous precedent that everyone should be worried about. Julian Assange's copublishers at Der Spiegel, Le Monde, La Repubblica, Espresso, the Guardian, Telegraph, Independent and Channel 4, among others, all risk prosecution if the US is allowed to prosecute a non-US publisher or journalist for revealing information it says is secret. If the US government can prosecute a non-US journalist publishing from the UK for revealing secrets about the US, why can't Russia prosecute a British journalist in London for revealing secrets about Moscow, or Saudi Arabia do the same for revealing secrets about the Khashoggi murder?
- **8. Deteriorating health**. Julian Assange has been unable to leave the embassy for over six years for fear of being arrested and then extradited to the United States. During this time, medical assessments show that his health has deteriorated. <sup>20</sup> The United Nations has stated that it is "concerned that the modalities of the continued arbitrary deprivation of liberty of Mr. Assange is undermining his health, and may possible endanger his life given the disproportionate amount of anxiety and stress that such prolonged deprivation of liberty entails". <sup>21</sup>
- **9.** A solution to the issue. The UK government has a simple solution available to this matter: It can provide a diplomatic assurance (to Australia or to Ecuador) that it will respect its refugee obligations and not extradite Assange to the United States (the state in relation to which he has refugee status). Such assurances are

standard practice in the transfer of refugees in legal processes from one jurisdiction to another (i.e., if Ecuador hands him over to the UK, to resolve any remaining UK domestic legal issues). The UK itself insists that other states provide "no secondary purpose" guarantees for *all* extraditions *from* the UK.<sup>22</sup> Interpol also forbids arrest notices for refugees from the states in relation to which they have refugee status.<sup>23</sup> The very foundation of the international refugee system is that refugees cannot be transferred to the state in relation to which they have refugee status.

There is real urgency about Julian Assange's situation given the confirmation of the existence of US charges against him and credible reports that the Ecuadorian government has caved in to pressure and may imminently expel him from the embassy.

For more information, contact: <a href="mailto:courage.contact@couragefound.org">courage.contact@couragefound.org</a>

The Courage Foundation – <u>www.couragefound.org</u> - is an international organisation that supports those who risk life or liberty to make significant contributions to the historical record. It campaigns and fundraises for the legal and public defence of specific individuals such as Julian Assange who are subject to serious prosecution or persecution.

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