David Miranda challenges his detention under Terrorism Act at High Court

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The High Court in London concluded a two-day hearing Thursday after David Miranda, the Brazilian partner of the former *Guardian* journalist Glenn Greenwald, challenged his nine-hour detention under anti-terror legislation at Heathrow Airport on August 18 as unlawful.

The detention of Miranda and subsequent criminal investigation into him is historic (See: "The NSA spy scandal and the attack on press freedom"). His possessions were confiscated by the police, the first time journalistic materials have been seized under the pretext of the Terrorism Act. Miranda was then described as being involved in terrorist activity in papers prepared by the police, in league with the UK government and its intelligence agencies.

Lord Justice Laws, Mr Justice Ouseley and Mr Justice Openshaw have said a ruling would be deferred with a date to be arranged.

Greenwald is a close associate of Edward Snowden, the US whistle-blower who has revealed massive and systematic surveillance of the world's population by the US National Security Agency (NSA) and Britain's Government Communications Headquarters (GCHQ).

When stopped in London Miranda was travelling from Berlin, where he had met with filmmaker Laura Poitras, another close associate of Snowden. He was carrying materials from Poitras to the home in Rio de Janeiro, Brazil he shares with Greenwald.

In court lawyers for the Home Office cited a document from the Metropolitan Police internal port circulation sheet (PCS). The PCS document was drawn up in consultation with the intelligence services. It states, "Intelligence indicates that Miranda is likely to be involved in espionage activity which has the potential to act against the interests of UK national security... We assess that Miranda is knowingly carrying material, the release of which would endanger people's lives."

"Additionally the disclosure, or threat of disclosure, is designed to influence a government, and is made for the purpose of promoting a political or ideological cause. This therefore falls within the definition of terrorism and as such we request that the subject is examined under schedule 7."

The judges heard a written submission, handed to the court from Oliver Robbins, the deputy national security adviser for intelligence, security and resilience at the Cabinet Office. The nine-page statement said the British government was "extremely concerned about damaging reporting attributed to the highly classified material stolen by Edward Snowden."

It said, "There was and continues to be great concern about the potential harm which could result from the publication of the material appropriated by Mr Snowden and held by others at the time of Miranda's stop."

The exposures revealed by Snowden, claimed Robbins, allowed "terrorists to evade detection" and for "hostile foreign states to identify our intelligence officers and take steps against them."

Every attempt was made to slur Snowden as a thief and criminal, and by association to tar Greenwald, Miranda and the *Guardian*. Robbins claimed, without citing any evidence, that the disclosures risked making it easier for "paedophiles to cover their tracks online."

In declaring Miranda a major threat to "national security", nothing was too outlandish—with Stephen Kovats QC, for the Home Office, telling the judges, "You are putting lives in danger [carrying the material] if there's a risk that a member of al Qaeda will relieve Mr Miranda of his hard drive and then use it for… malevolent purposes. We would say that for the purposes of schedule 7 that [makes Miranda] a person of concern."

He added, "We now do not deny that amongst material that Mr Miranda was carrying is journalistic material… material that has been worked upon by a journalist with a view to publication." He then added that any material

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originating from Snowden had nothing to do with journalism, stating, “We do not understand that raw ‘Snowden data’ is journalistic material.”

The submission from Jason Beer QC, representing the Metropolitan Police, emphasised that Miranda’s detention was solely to stop the publication of material, whether in part or on the same scale as that carried out by WikiLeaks.

Beer stated, “[They] may have [been considering] to do as Mr [Julian] Assange has done and upload all the material on to a blog.” He stated they wanted to know which material was going to be published and if any would not be, stating, “It was a legitimate concern to see whether the material was arranged in that way.”

Beer said that the seizure of documents leaked by Snowden was essential, and utilised the standard government lie that “the danger was of endangering lives.”

The government was fully aware of the unprecedented nature of stopping Miranda and seizing his possessions. Beer disclosed, “The police had received a request from the security services to make the stop seem as routine as possible.”

Beer acknowledged that the UK government can now term whatever activity it wants as terrorism under draconian legislation in place. Defining terrorism he said, “The definition of section one [of the Terrorism Act] is exceptionally broad… Terrorism is terrorism, whatever the motives.”

So blatant was this statement, insisting that anybody, at any time can potentially be deemed a terrorist that Justice Ouseley intervened stating, “Just as well it was not in force during World War Two, it might have applied to the French Resistance.”

Representing Miranda, Matthew Ryder QC said the government and the police unlawfully used Schedule 7 of the Terrorism Act 2000 to detain the Brazilian. The seizure by the police of Miranda’s possessions including computer equipment was a “disproportionate interference with his right to freedom of expression.”

“The exceptional nature of this case insofar as it involves the use of Schedule 7 powers to obtain highly controversial journalistic material should not be underestimated,” he said.

Ryder said the responsible disclosure of such material by the *Guardian* and other newspapers internationally “is not and cannot be terrorism.”

There is every likelihood that the judges will support the government/police detention of Miranda as lawful. Following the detention of WikiLeaks founder Julian Assange in London in December 2010, the British courts issued a succession of anti-democratic rulings trampling on his basic democratic rights and international law, resulting in his seeking asylum in the Ecuadorian Embassy.

In his argument Ryder pointed to documents passed to the court showing that police officers apprehending Miranda had briefly speculated there might have been some kind of Russian plot based on the fact that Snowden has been given asylum in Moscow!

In response Lord Justice Laws said what was in individual officers’ minds at any one time was not as significant as the overall purpose of the police operation. Echoing the government’s position, he said, “The security service had a clear desire to get that material to stop its use by the newspapers. The government wanted that material back. The dominant purpose here [was] to ascertain whether Mr Miranda was in possession of what the security service feared and, if he was, to get hold of it and neutralise [it].”

Laws also intervened supportively in response to a statement from Kovats who argued that some of the material carried by Miranda could assist terrorism. Kovats said, “In broad terms there is more to terrorism than letting off bombs”, adding that a person describing themselves as a “responsible journalist” did not mean they understood the significance of the material in question.

Laws replied, “I don’t really know what is meant by the term ‘responsible journalist’. It doesn’t make a journalist omniscient in security matters. It’s just rhetoric really.”

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