

Assange granted leave to appeal before UK's High Court against extradition to the US

Thomas Scripps
20 May 2024

Two British judges today granted WikiLeaks journalist Julian Assange the right to appeal his extradition to the United States. He has spent the last five years resisting extradition to face charges under the Espionage Act, which carry a potential life sentence, while held in London's Belmarsh maximum security prison.

An original decision to bar extradition on mental health grounds, given January 2021, was overturned by the High Court in December that year. Assange's legal team then mounted an appeal on numerous points, including his rights to life, due process of law and freedom from cruel, inhuman and degrading treatment.

These were whittled down by the High Court this March to risks that he might face the death penalty, be prejudiced at trial by his (non-American) nationality and denied recourse to his right to freedom of expression—all bars to extradition under UK law. The High Court gave the US government the opportunity to issue assurances alleviating these concerns, provided this April 16.

In court today, Assange's lawyers accepted the assurance given that the death penalty would not be imposed as satisfactory, but challenged those relating to his right to invoke the First Amendment, guaranteeing free speech, in his defence. The lead US prosecutor Gordon Kromberg has indicated publicly that Assange could be denied this protection at trial in the US since he is not a US national.

Representing Assange, Edward Fitzgerald KC noted of the "blatantly inadequate assurance" provided by the US that it "does not commit the prosecution not to take the point which gave rise to this court's concerns, i.e., the point that as a foreign citizen he is not entitled to rely on the first amendment... at least in relation to a national security matter."

Simply "a specific promise or undertaking by the prosecutor [Kromberg] would be a first step," but "even that first step has not been undertaken."

The "real risk" identified by the High Court in its previous judgment of a denial of Assange's rights "survives the equivocal, at best, and downright inadequate assurance."

Pinned to the weasel formulations of the assurances, the lawyer for the US, James Lewis KC, was forced to advance entirely new arguments, not raised in previous hearings in the case, that only served to make plain Washington's intention to deny Assange any free speech protections. Unable to claim that the US assurance of free speech protections was anything of the sort, Lewis essentially argued that no such assurance was warranted in any case.

He insisted that Assange would not be unfairly discriminated against by virtue of his nationality in being denied first amendment protections; he was simply, as a non-US citizen, "not a person who, as a matter of law or scope, the First Amendment of the US Constitution covers."

From this he concluded, "He will not be discriminated against because of his nationality. He can and will be able to raise all those arguments [regarding freedom of speech] ... he will be able to rely on them."

This is not true, as Fitzgerald later pointed out. The wording of the assurance only guarantees that Assange can "seek to rely" on first amendment protections, with "a decision as to the applicability of the First Amendment" left "exclusively within the purview of the US Courts."

Lewis then acknowledged and justified this fact by claiming that Assange's alleged conduct did not necessarily fall within the protection of the First Amendment, "not by reason of his nationality but because, potentially, as a matter of law, he is a foreigner carrying out acts on foreign soil concerning national security."

Here is US imperialism's case stripped bare: That it can use the Espionage Act to seize journalists it deems a threat to its national interests and try them without key legal and democratic protections.

Summarising Assange's response to these arguments, Fitzgerald told the court:

There are too many issues of fact which remain unanswered; what is the position of the prosecution? There are too many issues of law which have just

been introduced for the first time, which are unresolved, to take the irrevocable step of refusing permission [for an appeal].

In a short ruling, Dame Victoria Sharp and Mr Justice Johnson sided with Assange's legal team, granting him the right to appeal.

The judgement is a victory, both for blocking what could otherwise have been Assange's immediate transfer to the America—barring any successful intervention by the European Court of Human Rights—and for further exposing the reactionary nature of the US prosecution. It was seized upon by campaigners for Assange's freedom to demand the Biden administration drop the charges entirely.

Assange's wife Stella told reporters outside the court:

The United States should read the situation and drop this case now... Just abandon this shameful attack on journalists, on the press and the public that has been going on for 14 years.

This case is shameful, and it is taking an enormous toll on Julian. He is under enormous pressure. He has been in Belmarsh prison for over five years... This case should just be abandoned. The Biden administration should have dropped it from day one.

This was echoed by WikiLeaks Editor-in-Chief Kristinn Hrafnsson:

It shouldn't have taken more than five minutes in this courtroom for the judges to see that the United States was not going to give Julian any assurances, and they would discriminate against him, they would not give him first amendment protections.

It took a couple of hours, but the judges did come to a just and right conclusion. Julian Assange now has the right to appeal. And that in itself should send the right message across the sea to the Biden administration. You're on losing ground. You're losing this case. If you want to save any form of face, drop the case against Julian Assange, drop it right now.

The Biden administration should drop the case. But to

ensure that it does so requires more than legal arguments and moral pressure. Careful political calculations are at work behind the scenes.

The last time a decision went in Assange's favour against the grain of the case was the initial refusal of extradition on January 4, 2021. At that time, the future of the US government was in turmoil, with Biden's replacement of Donald Trump challenged by an attempted coup and the storming of the Capitol building just two days later.

Another political crisis is raging now. Biden is haemorrhaging support over his backing of the Gaza genocide, ahead of another presidential election contest with Trump in November. There will be a faction of opinion in the White House happier to see a delay in proceedings against Assange rather than the rapid arrival of another potentially explosive political issue for the Democrats, as the WikiLeaks founder is dragged through the US courts.

However, such considerations grant nothing more than a delay—and a prolonged detention under intolerable conditions in Belmarsh. Nor are they a guarantee against sections of the US state as happy to trample publicly over Assange's democratic rights as they are the rights of students protesting the slaughter of the Palestinians.

Securing Assange's freedom means coupling the powerful legal case mounted with a resolute mass movement of the working class in his defence in Britain, the United States and internationally. A date for the full appeal is yet to be decided. The time between then and now must be spent organising that movement.



To contact the WSWs and the Socialist Equality Party visit:

wsws.org/contact