

Charging Julian Assange With Espionage Could Make His Extradition to the U.S. Less Likely

Sweden Reopens Investigation of Julian Assange for Rape, Complicating U.S. Extradition

Tuesday 28 May 2019, by [MACKEY Robert](#) (Date first published: 24 May 2019).

BY CHARGING Julian Assange with 17 violations of America's [World War I-era Espionage Act](#) on Thursday, federal prosecutors in Virginia might have undermined their own chances of securing the extradition of the WikiLeaks founder from the United Kingdom.

That's because [the new charges](#) relate not to any arcane interpretation of computer hacking laws, but to WikiLeaks' publication of hundreds of thousands of American military reports and diplomatic cables provided by the former Army intelligence analyst Chelsea Manning in 2010.

The fact that WikiLeaks published many of those documents in collaboration with [an international consortium](#) of leading news organizations — including [The Guardian](#), [the New York Times](#), Le Monde, [El País](#), and [Der Spiegel](#) — ensured that the charges against Assange were immediately denounced by journalists and free speech advocates as an unconstitutional assault on press freedom guaranteed by the First Amendment.

The uproar could make it easier for Assange's lawyers in the U.K. — where he is currently serving a 50-week jail term for violating bail — to argue that he is wanted in the United States primarily for embarrassing the Pentagon and State Department, by publishing true information obtained from a whistleblower, making the charges against him political in nature, rather than criminal.

That would make his transfer to Virginia at the end of his jail term in London unlawful, since Article 4 of [the U.S.-U.K. extradition treaty](#), signed in 2003, clearly states that “extradition shall not be granted if the offense for which extradition is requested is a political offense.”

In what could be an attempt by prosecutors to distinguish Assange's publication of those documents from their use by news organizations, the indictment focuses on cases in which WikiLeaks published military intelligence files that were not redacted to remove the names of Iraqis and Afghans who had provided information to U.S. forces.

34. The significant activity reports from the Afghanistan and Iraq wars that ASSANGE published included names of local Afghan and Iraqi who had provided information to U.S. and coalition forces. The State Department claims that WIKILEAKS published included names of persons throughout the world who provided information to the U.S. government in circumstances in which they could reasonably expect that their identities would be kept confidential. These names included journalists, religious leaders, human rights advocates, and political dissidents who were living in repressive regimes and reported to the United States the abuses of their own government, and the political conditions within their countries. At great risk to their own safety, by publishing these documents without redacting the human sources' names or other identifying information, ASSANGE caused a grave and imminent risk that the innocent people he named would suffer serious physical harm under arbitrary detention.

According to Declan Walsh, who was The Guardian's Pakistan correspondent at the time, Assange was indifferent to the harm he might cause by revealing those names, but, as the journalist [Alexa](#)

[O'Brien has reported](#), there appears to be no evidence that any of those individuals were killed as a result of the online disclosures.

British authorities are already faced with a competing extradition request from Sweden, where prosecutors have [reopened](#) an investigation of Assange for rape in response to a complaint filed in 2010. That case has already been [adjudicated in England's High Court](#). After Assange lost his final appeal against extradition to Sweden in 2012, he [took refuge in Ecuador's Embassy in London](#), where he lived until [his asylum was revoked](#) this year.

A British judge will issue a preliminary decision on whether to grant priority to the Swedish request or the American one, but the ultimate decision on Assange's extradition will be made by a politician, the U.K. home secretary.

That process could be intensely political, given that Prime Minister Theresa May [announced her imminent resignation](#) on Friday, and one of the leading contenders to replace her is Sajid Javid, the current home secretary.

The disarray in Britain over the country's stalled exit from the European Union could incline Javid, or his successor at the Home Office, to seek closer ties with the U.S. and expedited trade talks with U.S. President Donald Trump by sending Assange there, but there is also pressure on Javid to consider the Swedish request seriously in the wake of the #MeToo movement.

Last month, more than 70 British lawmakers signed [a letter to Javid from Stella Creasy](#), a member of Parliament for the opposition Labour Party, urging him to give priority to an extradition request from Sweden. "We must send a strong message of the priority the U.K. has in tackling sexual violence and the seriousness with which such allegations are viewed," Creasy wrote. "We urge you to stand with the victims of sexual violence and seek to ensure the case against Mr. Assange can now be properly investigated."

That view was echoed on Friday by Christian Christensen, a professor of journalism at Stockholm University.

Mark Klamberg, a professor in public international law at Stockholm University, argued last month that Assange might even have more legal protection against extradition to the U.S. if he is sent to Sweden, since Swedish law also bars extradition for political offenses, and any decision to send him to the U.S. would require the assent of the U.K. too.

Robert Mackey

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Sweden Reopens Investigation of Julian Assange for Rape, Complicating U.S. Extradition

SWEDEN'S PROSECUTION AUTHORITY reopened an investigation of Julian Assange for rape on

Monday and will seek his extradition from Britain, the country's deputy director of public prosecution, Eva-Marie Persson, [told reporters](#) in Stockholm.

The Swedish request will force British authorities to decide whether to send the detained WikiLeaks founder to Sweden or the United States, or neither, at the end of his [50-week jail sentence](#). He is currently serving for violating bail conditions in 2012, when he took refuge in Ecuador's London embassy [after losing his final appeal](#) against extradition to Sweden.

"On 20 August 2010, a police report was made regarding a suspected rape in Enköping, Sweden on 17 August 2010. The alleged offender was reported as being the Australian citizen, JA, born 3 July 1971," the prosecution authority said in [a written explanation of the decision](#). "The courts in Sweden have, on several occasions during the preliminary investigation, considered the decision to detain JA in his absence, and on each occasion found there exists probable cause for JA to be suspected of rape."

At a news conference on Monday, [Persson said](#), "After reviewing the preliminary investigation in its current state, my assessment is that there is still probable cause that Mr. Assange committed rape."

Elisabeth Massi Fritz, a lawyer for Assange's unidentified Swedish accuser, said that her client welcomed the reopening of the investigation, despite the "[great deal of hate](#)" she has faced from supporters of the WikiLeaks founder who have cast doubt on her claims.

While the Obama administration had reportedly contemplated but decided against charging Assange with a crime related to [the 2010 publication](#) of troves of Pentagon and State Department documents provided by Chelsea Manning, the Trump administration [secretly filed criminal charges against him](#) last year related to that leak.

Those charges were filed despite the fact that WikiLeaks had [secretly offered help to Donald Trump's 2016 campaign](#), in a series of private Twitter messages sent to the candidate's son Donald Trump Jr., and the candidate had repeatedly praised the group for releasing emails stolen by Russia from Hillary Clinton's campaign chairman. In one post-election message to Trump Jr., WikiLeaks even suggested that, as a form of payback, it would be "helpful for your dad to suggest that Australia appoint Assange ambassador to DC."

A British judge gave the U.S. [a deadline of June 12](#) to make its case for the extradition of Assange, who has denied both the rape allegation in Sweden and conspiring with Manning to break U.S. law.

Persson, the Swedish prosecutor, said that her office will issue a European Arrest Warrant immediately, seeking to question and possibly charge Assange based on a rape complaint from a woman in 2010. The investigation had been suspended in 2017 when it appeared unlikely that Assange could be extradited due to his political asylum in Ecuador's embassy in London.

"I am well aware of the fact that an extradition process is ongoing in the U.K. and that he could be extradited to the U.S.," Persson said. "In the event of a conflict between a European Arrest Warrant and a request for extradition from the U.S., U.K. authorities will decide on the order of priority."

The competing extradition requests will be evaluated by a British judge, but the ultimate decision could be made by the U.K. Home Secretary, Sajid Javid, a Conservative politician.

Last month, more than 70 British lawmakers [signed a letter to Javid](#) from Stella Creasy, a member of Parliament for the opposition Labour party, urging their government to give priority to any extradition request from Sweden, over the one filed by the U.S. "We must send a strong message of the priority the U.K. has in tackling sexual violence and the seriousness with which such allegations

are viewed," Creasy wrote. "We urge you to stand with the victims of sexual violence and seek to ensure the case against Mr. Assange can now be properly investigated."

One of the lawmakers who signed that letter, Jess Phillips, wrote on Monday that giving priority to the Swedish extradition request would demonstrate that the British government takes its responsibility to ensure women's safety seriously.

The woman's complaint, Swedish prosecutors [told England's High Court](#) in 2011, was that in her home, "Assange deliberately consummated sexual intercourse with her by improperly exploiting that she, due to sleep, was in a helpless state."

"It is an aggravating circumstance," the prosecutors added, "that Assange, who was aware that it was the expressed wish of the injured party and a prerequisite of sexual intercourse that a condom be used, still consummated unprotected sexual intercourse with her. The sexual act was designed to violate the injured party's sexual integrity."

Since the statute of limitations on the rape allegation in Sweden expires in August 2020, that case would almost certainly end if Assange were to be extradited to the U.S. to face trial on allegations that he tried to help Manning hack into a Pentagon computer system to obtain documents.

"If the U.S. is given priority and the Swedish request delayed, then justice will be denied," David Allen Green, a British legal commentator [argued in The New Statesman](#) on Monday. "The Swedish allegation also does not have any freedom of expression element to it."

It is also possible that, from a legal standpoint, Assange might be better protected from extradition to the U.S. by agreeing to go to Sweden, allowing the rape investigation to proceed.

"Sweden, like the U.K., is party to the European Convention on Human Rights, and so it would not be lawful for him to be extradited to America if there is any risk of torture or the death penalty," Green observed.

Mark Klamberg, a professor in public international law at Stockholm University, agreed that Assange might have more legal protection against extradition to the U.S. if he goes to Sweden. Writing on Twitter, Klamberg pointed out that while there is an exception for political offenses in most bilateral extradition treaties, including the original one between the U.K. and U.S., in 2003 the U.K. "changed its extradition law removing/weakening political offence exception." Swedish law, however, still has that exception.

Persson, the Swedish prosecutor, told reporters on Monday that Assange does have some agency in the process, since he could agree to allow Swedish investigators to conduct a preliminary interview by video-link while he is serving his time in a British jail. "Such an interview, however, requires Julian Assange's consent," Persson said.

A statement from WikiLeaks on Monday restated the group's claim that the Swedish case is political in nature. "Since Julian Assange was arrested on 11 April 2019, there has been considerable political pressure on Sweden to reopen their investigation, but there has always been political pressure surrounding this case," Kristinn Hrafnsson, WikiLeaks' editor-in-chief, said in the statement. "Assange was always willing to answer any questions from the Swedish authorities and repeatedly offered to do so, over six years. The widespread media assertion that Assange 'evaded' Swedish questioning is false."

"This investigation has been dropped before and its reopening will give Julian a chance to clear his name," Hrafnsson concluded.

The woman who brought the complaint still to be investigated has not been identified, but a second woman, whose separate complaint against Assange was dropped when the statute of limitations on her claim elapsed, is Anna Ardin. She [told the Swedish newspaper Aftonbladet in 2010](#) that the complaints were “not orchestrated by the Pentagon,” as some Assange supporters had claimed, but were the result of actions by “a man who has a twisted attitude toward women and a problem taking no for an answer.”

Even if Sweden does not renew its investigation, Assange’s extradition to the U.S. is likely to be challenged by his lawyers with reference to Article 4 of [the extradition treaty](#) between the United States and the United Kingdom signed in 2003, which states that “extradition shall not be granted if the offense for which extradition is requested is a political offense.”

And extradition between the two countries is far from automatic. On at least nine occasions since the treaty was signed, the U.K. has declined extradition requests from the U.S. In 2012, then-Home Secretary Theresa May [decided not to extradite](#) Gary McKinnon, a British hacker with Asperger’s syndrome who admitted to accessing U.S. government computers but claimed he was just looking for evidence of UFOs.

Last year, another alleged hacker with Asperger’s, Lauri Love, [won a High Court appeal](#) against his extradition to the U.S. Love, who allegedly stole troves of data from the U.S. Federal Reserve, the Pentagon, NASA, and the FBI, convinced judges that there was a high risk that he would kill himself if sent to an American prison.

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- The Intercept. May 13 2019, 2:14 p.m:
<https://theintercept.com/2019/05/13/sweden-reopens-investigation-julian-assange-rape-complicates-u-s-extradition/>
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