



NEW: Assange Wins Very Partial Victory in UK Court, w/ Stella Assange

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Glenn Greenwald (GG): In 2019, Ecuador, upon immense pressure applied by the United States, by the British government and by the Government of Spain, lifted the grant of asylum that they had given to Julian Assange back in 2012, which they gave him as protection against what they knew, the Ecuadorian government knew, would be the persecution of Assange by the United States government; the attempt by the United States government to get Assange to bring him to the United States and imprison him for life, for the journalism that he had been doing. That was not just the right of the Ecuadorian government, but under human rights conventions, its duty to protect Assange from that kind of persecution through the grant of asylum. But a combination of Mike Pompeo, who at the time was Trump's CIA director and obsessed with destroying Julian Assange and Wikileaks, combined with the British government and the government of Spain angry at Assange for his journalism, bullied the Ecuadorians, coerced them, cajoled them into lifting their asylum. And the minute they did in 2019, the London police went in and arrested Julian Assange. He was already seven years inside this little tiny embassy in the middle of London, some place where I had visited him and I had seen him. There was no light in there. He was already suffering physically and mentally from this asylum, knowing that he had to stay there and the minute he left, he would be picked up by the British police, which he was when he finally had his asylum lifted. And he's ever since, now in his fifth full year, been in a high security prison, called Belmarsh, which the BBC calls the British Guantanamo. It's the place where terrorism suspects go, people who have committed the worst crimes. And Assange's doctors have said that he is rapidly declining, both physically and mentally. And the amazing thing about the fact that Julian Assange has now been in prison for almost five years is that the only thing he was convicted of was a misdemeanour crime of bail jumping. Which is how the British government understood his application for asylum, that he didn't show up for his bail hearing, and instead he got asylum from the Ecuadorian government when they arrested him. They charged him and convicted him with bail jumping, which was a misdemeanour that gave him the full prison term, which was 11 months in prison. He long ago served those 11 months, and right as he was about to get out, after that 11 month term, that was when the US government unveiled this indictment in 2018 and then immediately sought his extradition. And ever since he's been contesting this extradition, and it's been making its way through the British court

system. And this entire time, the British courts have kept him in a prison, in a high security prison, just pending a resolution in the courts of his extradition. Obviously, there are all kinds of measures they could have taken, including ankle monitoring and all sorts of things that are done to some of the people charged with the worst crimes who haven't yet been convicted, but they refuse to give any of those measures to Julian Assange, while awaiting his extradition hearing. They instead insisted on keeping him in a high security prison. Back in 2021, the very first British court, this is more than three years ago now, in January 2021, heard Julian Assange's arguments about why extradition to the United States would be illegal under British law and European law, including the fact that it was a crime punishing him for his journalism, that it violated the free speech and free press guarantees of the European Human Rights Convention, to which the UK is bound, that it's a political crime of the kind for which the UK cannot extradite defendants, a whole array of arguments, including that it was designed to be political persecution. And the British court rejected every one of those arguments in the first instance. But nonetheless, rejected the American extradition request on one ground, namely that Assange's health had deteriorated to such an extent and that the conditions under which he would be kept in United States in a high security prison are so repressive and burdensome and abusive that he would be very unlikely to survive the extradition and the imprisonment in the United States, and for that reason rejected the American extradition request. The US government appealed that and then has been winning ever since.

The courts have been repeatedly rejecting Assange's request, have been accepting the arguments for extradition and today, the highest court possible, the UK High Court, the highest court that Assange could appeal to, issued a ruling after hearing his appeal, an oral argument several months ago, and they issued what in effect is a partial victory for Julian Assange. Had the court ruling today rejected Assange's arguments and ruled in favour of the government it likely would have meant that Assange would have been on a plane to the United States within hours upon issuance of this ruling. He still had a right to appeal to a European court and claim that the UK was violating European conventions, but it's very possible the British government might have acted as quickly as possible to send him on a plane to the United States to prevent that appeal from being heard. Instead, the British High Court said that three different grounds that Julian Assange presented as to why the US extradition request is very plausibly illegal, were actually valid. And as a result of the possible validity of these problems with the US extradition request to these legal problems, the court said, we're not going to order him extradited. We're going to give the U.S. government until April 16th to submit documentation to see if they can address our concerns, and then if they can, we'll rule in May and if they can't, we very well might then end up just rejecting the extradition request.

Now, there are certain parts of this ruling that decided in favour of Assange, or at least said there's problems with the extradition request that the Biden administration might very easily be able to fix. But there's other parts of it that they very well might not be able to fix to the satisfaction of the British court and this could really throw a huge wrench into the attempt by the US government to bring Assange to the United States to stand trial on espionage charges,

where he would almost certainly be found guilty. The Espionage Act is a very strict law where you can't even raise First Amendment defences, such as, you are justified in doing what you did. It was written in 1917 to criminalise dissent under Woodrow Wilson's policy of involving the U.S. in World War One, and people actually went to prison under the Espionage Act of 1917 for opposing the US involvement in World War One. They made it a crime, an Espionage act to oppose US national security. That's the law that Donald Trump is currently being prosecuted under, that Edward Snowden is being prosecuted under, that Daniel Ellsberg was prosecuted under and that all kinds of whistleblowers have been prosecuted under and that they're using now against Assange.

Now, here is the High Court ruling today. There you see the UK High Court of Justice. And there you see the caption of the case, it's Julian Paul Assange versus the United States government. The government of the United States and the Secretary of State for the Home Department. And as I said, there were, I think 13 or 14 total grounds raised by Assange as to why the extradition request should be rejected. The court went through them one after the next, just like every other part of the British court system has done, and just rejected them, saying this isn't a political crime. It doesn't violate your free press rights. It's not punishment without law. All sorts of valid arguments that the British courts have just been completely unwilling to accept. But there were three grounds that the court said might actually have validity. The first of which was this, this was ground five. "Whether the applicant might be prejudiced at his trial by reason of his nationality". And this is part of what the court said, quote, "On this issue, we consider that the applicant has identified a properly arguable ground of appeal. The applicant wishes to argue, at any trial in the United States, that his actions were protected by the First Amendment. He contends that if he is given First Amendment rights, the prosecution will be stopped. The First Amendment is therefore of central importance to his defence to the extradition charge... It follows that it is arguable that the applicant might be treated differently at trial on the grounds of his nationality. Subject to the question of whether this could be addressed by means of an assurance from the respondent, we would grant leave to appeal on ground v)."

Now, this is the one that I think really complicates things for the United States. All along, Julian Assange has been arguing that his prosecution as a journalist in the United States is barred under the First Amendment. And one of the arguments the US government has made, and they might have really shot themselves in the foot with this, is that they have argued that Julian Assange has no right to invoke his First Amendment rights because he's not an American citizen and he's not on American soil, nor was he at the time of the crime and therefore the First Amendment doesn't apply to people like Julian Assange. It only applies to American citizens. As it turns out, under British extradition law, if a person whose extradition is sought might be prejudiced at his trial by reason of his nationality, that is grounds for refusing to send him to that country. In other words, if that country's going to treat him differently because of his nationality, then that is a reason why the British court is barred from extraditing him to the United States. And so the argument is that the US government itself has said the First Amendment is only for Americans. It doesn't apply to people like Julian Assange. And in fact, when Mike Pompeo in 2017, as Trump's CIA director, gave a

speech which at the time I reported on and described as incredibly disturbing and creepy, he stood up and he vowed to destroy Wikileaks and he said they keep acting as though the First Amendment applies to them, and it does not. Assange lawyers have cited those statements of Mike Pompeo and others inside the US government, saying Julian Assange has no First Amendment rights, that's for Americans only. And so the court is saying, this seems like a good argument, that Assange will be treated differently by virtue of his nationality. If he goes to the United States and tries to argue the First Amendment as a reason why you can't prosecute a journalist, the government might say this is for Americans only, not for Australians, and therefore that's discrimination based on nationality and it would prevent the UK government from extraditing him there.

Now what they've essentially given the United States government the chance to do by April 16th is try and give assurances to the court, that no, don't worry, Assange won't be treated differently by virtue of his nationality. He will be able to invoke the same First Amendment right as Americans. The problem is that they have been arguing the opposite for many years. And the bigger problem, I think, is that ultimately, whether Assange has the right to invoke the First Amendment, and in general it is well established, the First Amendment, that the constitution of the United States is not only for American citizens, it's for anybody who is within the grasp of the American government. For example, in 2004, the US Supreme Court ruled that detainees at Guantanamo have the right of habeas corpus, the right to ask a court to release them on the grounds that they're being unlawfully detained. And, of course, the detainees at Guantanamo are not American citizens. They weren't American citizens. But the court found that Guantanamo was American territory. And because it was American territory, the Constitution applies to everything the government does to anybody. The problem for the US government here is that the alleged crimes that Assange is said to have committed were committed not only when he was not an American citizen, but also not on American soil. And it's very difficult to understand how the government will be able to give assurances to the British court that an American court, for whom the US government does not speak, will allow Assange to invoke the same First Amendment rights as any American would.

Now, the Biden Justice department really wants to get their hands on Assange. They have very smart lawyers working in the Justice Department. They have an unlimited budget. My guess is they'll come up with some theory that will convince the British court, Oh, don't worry, we're going to treat him the same as we treat Americans. He'll be able to invoke all the same First Amendment rights. But at the very least, it does create certain difficulties here because of the fact that the US government has to not only contradict everything it's been saying about Assange's First Amendment rights, but also somehow has to offer an assurance that Assange will be given certain rights, that's not the governments to give, but it's the courts to give. So we'll see whether or not this really complicates the extradition in a meaningful way.

Now, here's the second ground the court cited as to why Assange couldn't be extradited, at least today, until the government gives more assurances. And that is ground number six. "The extradition is barred if there is insufficient protection from the death penalty". And here's

what the court said about that – this is a prohibition in British law on extraditing anybody to a country where they might face the death penalty. European countries are against the death penalty. They don't extradite people if they might be put to death for the crimes with which they're charged. And the US government has already said that the crimes with which Julian Assange is currently charged are not punishable by death. And Assange's argument is, while the crimes that I'm charged with now might not be punishable by death, but once I get there, they have the ability to charge me with more crimes, including some that might be punishable by death. And he cited the fact that there's reporting that the US government already tried to kill him through assassination, explored that possibility, and even though the court refused to accept that evidence, clearly there is a possibility that the US government would want to give Julian Assange the death penalty. And about that, the court said the following. Quote, "The applicant accepts that none of the offences for which extradition is sought carry the death penalty. He contends, however, that the facts which are alleged against him could lead to a charge of aiding and abetting treason under 18 USC paragraph 2381, or espionage under 18 USC 794, both of which are capital offences. Accordingly, subject to the provisions of appropriate assurances, we would grant leave to appeal on this ground."

Now, my guess is all the US government has to do is write a letter to the British court saying, Oh, not only is he not charged now with crimes for which the death penalty is eligible, we promise that even if he is ultimately charged with treason or aiding and abetting treason or other capital offences, we won't seek the death penalty. Now, that may not be enough because the court could still give it, but they could also promise just not to charge him with any crimes for which the death penalty is a possibility. And the court would probably say, Okay, well, we accept your assurances there. Now, I know you're probably thinking assurances of the United States government are worthless. They could just get Assange there and violate them all. And of course, that's true. That would have implications if you just lie to the British court because the US government, the next time they want to extradite somebody from the UK, would not have a lot of credibility. But it's certainly possible, and if I were Julian Assange, that would not give me a lot of comfort and assurance from the Justice Department, that we promise not to do that.

Now, here's the third ground that the court recognises sufficiently valid to, at least for now, up withhold the extradition. "The extradition is incompatible with article 10 of the Convention – the European Convention on Human Rights, which guarantees freedom of expression". Now, Assange's argument was that the free speech and free press rights bar prosecution and the court rejected that. But this argument says that because he's not an American citizen, he may be barred from raising the same free speech rights, as are guaranteed in the EU convention. And if he gets sent to the United States and the United States doesn't give him the same right of free speech as the EU convention, the extradition should not be granted. You can't send a citizen, subject to the European Convention of Human Rights, to a country where the free speech protections are less. And so this is what the court said, quote, "Free speech is a fundamental right recognised by the common law and by international and domestic human rights instruments. We adjourn the renewed application for a leave to appeal on grounds iv), v) and ix). The adjournment is for a period of 55 days until May 20th, 2024, subject to the

following directions. The US government has permission to file any assurances with the court by April 16th, 2024".

In other words, on all three of those grounds, that Assange may not have the same rights as an American citizen under the First Amendment, that he may not be able to have the same free speech rights that's guaranteed by the EU Constitution or the EU convention, and that he still might be subject to the death penalty through future charges if the US government does not give the UK court adequate assurances by April 16th to assuage those concerns, it seems like the court is saying they will strongly consider rejecting the extradition request. Now to me, and I think you can say, this seems like lawyer games, the Justice Department will be able to write a letter sufficient to address the court's concern so they could rubber stamp the extradition, but I've always questioned whether the Biden administration, at the end of the day, really wants to bring Julian Assange to prison to stand trial on American soil. Imagine that sideshow that would create, the protest outside the courtroom, the discovery Assange lawyers would have in the classified information, the right of Julian Assange to take the stand and testify. The fact that Joe Biden would be the first ever American president to preside over the imprisonment of somebody for publishing classified information, reporting on the government. I think they're happy with the status quo when he's just in prison, dying, being slowly destroyed with no charges. And what this really has done in some sense is delayed, ultimate exoneration. But if you're Julian Assange and if you're his family, the last thing you want, and I think this is so notable, is extradition to the United States government. Look at how hard they fought to prevent that because nobody trusts a person in the United States government. We sat down with Stella Assange, who is Julian Assange's wife, and she in her own right is a human rights lawyer. He met Stella Assange when he was already in the Ecuadorian embassy. They had two children together, and she has been steadfastly fighting for his freedom. She is, I think, his best spokesperson, his best asset. And we sat down with her just a few minutes ago, and we talked to her about today's ruling and the impact on her family, as well as free speech rights. Here's that interview.

GG: Stella, good evening. It's great to see you. Thank you so much for taking the time to talk to us. I know it's a busy day.

Stella Assange (SA): Thanks for having me.

GG: Absolutely. So I think it's fair to describe the court ruling today as a partial victory. It upheld some of the arguments advanced by Julian's lawyers and rejected others. At the same time, it didn't reject the US extradition. In some sense, it might have just delayed it. How do you see the overall impact of this ruling, and do you consider it a victory?

SA: It's a very strange ruling. I mean, we found out about it just as the rest of the world found out about it at 10:30 London time. And, what it is basically, is that the court identified three issues that Julian should be granted leave for appeal in relation to. And then gave the United States a second bite of the apple to modify its arguments, before the full appeal. So, you know, they had plenty of opportunity to address these issues during the two day hearing. And basically, the court is giving the US another chance to shift things to have a better chance at

winning in a full appeal argument. So it's bizarre. It's also very bizarre that the UK courts have ignored some of the really basic arguments that we presented. But as I said, no one could anticipate this decision. And it's another bizarre turn in this political case.

GG: So I have to say, when I first read it this morning, my immediate reaction was that the court gave the United States, a period of time to basically, in a sense, adjust or fix its extradition request to cure some of the defects that the court had identified as existing within it, such as not giving enough of a guarantee, for example, that Julian won't eventually face the death penalty. And my original thought was, Oh, it's going to be very easy for the Justice Department to just give these kinds of verbal assurances or semantic assurances, and then the court will say, Okay, now we have what we need to extradite him. The more I think about it, though, it's probably true for that example that I gave, that will be easy, but for some of these other demands that the court made to the United States, including a guarantee that Julian will be able to raise the same First Amendment rights that would be available to American citizens as well as in the European court, my sense is it might be very difficult for the Justice Department to offer the court that, because ultimately that's really a decision for the court to make, not for the US government to make. I'm wondering, in this very short period of time that you've had talking to Julian's lawyers and thinking about it yourself, whether you think the US government might have difficulty meeting some of these conditions that the court set for it as a condition for extraditing Julian.

SA: I do think that it poses major difficulties. You know, so just to look back at what the court has identified as the sticking points here. The first is, that he's exposed to the charges shifting once he's on US soil, that he could be exposed to the death penalty, on the same facts. Secondly, though, the US has argued in it's sworn affidavits, that the government could argue that Julian, does not enjoy the constitutional protections because he is not a US citizen and because he was not on US soil, basically acknowledging that they intend to bring an argument that, because he is not a US citizen, he doesn't have constitutional rights. Now, this is a point that the UK courts have said, Well, give us an assurance that he won't be discriminated against on the basis of his nationality. So they're asking the US government to issue assurances contradicting the prosecutors statement that was given under oath. So shifting the case basically, and then, the First Amendment, the ability to invoke the First Amendment and of course, the Espionage Act has no public interest defence. And this is simply, just uncharted ground. So it's a very strange place for the US government now to be in I think, but that's not to say that the US government doesn't have, you know, a big team of lawyers that will craft some so-called assurances that the British courts might accept. This is political. You know, it's basically trying to find a political fix for a legal problem. And the British courts are, it seems, bending over backwards to find a way to make it easier. And I read this decision as a way to pass the buck to the US government to say, Well, eventually, if they do extradite him, if something happens to Julian, then they can blame the US.

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