



Frequently Asked Questions about the Julian Assange Charges

Stephen P. Mulligan
Legislative Attorney

Updated June 7, 2019

UPDATE: On May 23, 2019, a grand jury returned a [superseding indictment](#) adding 17 charges against Assange for allegedly violating the Espionage Act. While the new counts arise out of the same underlying factual events as the original indictment, charging Assange under the Espionage Act implicates complex questions over the relationship between the First Amendment and the government’s ability to restrict disclosure of national defense information—an issue discussed in this [CRS Report](#).

The original post from April 22, 2019, follows below.

After spending [nearly seven years](#) in the Ecuadorian embassy in London, Julian Assange was [arrested](#) by British police, was [convicted](#) for violating the terms of his bail in the U.K., and had an [indictment](#) against him unsealed in the United States—all in a single day. Despite the swiftness of the recent action, the charges against Assange raise a host of complex questions that are unlikely to be resolved in the near future. This Sidebar examines the international and domestic legal issues implicated in the criminal cases against Assange.

Background on Julian Assange

An Australian national, Julian Assange is the founder of the Wikileaks website, which states that it “specializes in the analysis and publication of large datasets of censored or otherwise restricted official materials.” In one of its many mass disclosures, in 2010, Wikileaks published a cache of hundreds of thousands of State Department cables, Guantanamo Bay detainee assessments, and U.S. military reports related to the wars in Afghanistan and Iraq. While the United States did not publicly pursue criminal charges against Assange for the disclosure at the time [as it did](#) with Chelsea (formerly Bradley) Manning, Assange did not avoid legal entanglements. In 2010, a Swedish prosecutor issued a [European arrest warrant](#) for Assange in connection with rape and sexual misconduct allegations unrelated to Wikileaks.

Congressional Research Service

7-5700

www.crs.gov

LSB10291

Assange, who was living in the U.K. at the time, denied the charges, but turned himself into the British police in response to the warrant. A U.K. court later [released](#) him on bail while the courts considered whether he should be extradited to Sweden. After the Supreme Court of the United Kingdom [rejected](#) Assange's objections to extradition, Assange breached his bail conditions and entered the embassy of Ecuador in London in June 2012—where he remained until his arrest on April 11, 2019.

Why Was Assange in the Ecuadorian Embassy?

Upon entering the embassy in 2012, Assange requested “[diplomatic asylum](#)” from Ecuador—meaning he sought the international legal protections associated with the embassy's premises. According to a [2012 statement](#), Ecuador granted the request because it agreed with Assange's belief that he was subject to “political persecution” as a result of Wikileaks' disclosures. Ecuador and select [other nations](#) in the Americas subscribe to certain treaties that [provide](#) the right to grant asylum on their diplomatic properties to “persons sought for political reasons or for political offenses.” But the right to diplomatic asylum is [not universally recognized](#), and the United Kingdom is not a party to this treaty-based regime (nor is the United States). Nevertheless, the U.K. and [nearly all](#) other nations are parties to the 1964 Vienna Convention on Diplomatic Relations (VCDR), which provides that diplomatic missions are “[inviolable](#)” and cannot be physically [entered or searched](#). Thus, while international law did not compel the U.K. to recognize Assange's claims to asylee status, the VCDR's rule of inviolability prevented U.K. officials from entering the embassy to apprehend him without Ecuador's permission.

Why Did Ecuador Withdraw its Embassy's Protection?

Several events appear to have led Ecuador to withdraw its VCDR protections and permit U.K. officials to arrest Assange in April 2019. Following [revelations](#) that Russian intelligence officials and affiliates used Wikileaks in their effort to influence the 2016 presidential election, Ecuador temporarily [restricted](#) Assange's internet access in 2016. Assange [reportedly](#) signed an agreement with the Ecuadorian embassy in late 2017 in which he made certain pledges not to interfere in the internal affairs of foreign nations. But Ecuadorian officials [again suspended](#) his internet access in 2018 after Assange discussed international diplomatic issues on social media. According to a [statement](#) from Ecuadorian President Lenín Moreno, Ecuador chose to withdraw its embassy's protections on April 11, 2019 because Assange continued to violate his obligation not to interfere in the domestic affairs of foreign nations. Moreno also [contends](#) that Assange blocked security cameras, installed “electronic and distortion equipment,” mistreated guards, and accessed the embassy's security files without permission. Wikileaks [counters](#) that the decision was politically motivated retribution for its release of documents related to corruption charges involving Moreno.

Ecuador previously had been unsuccessful in its attempts secure arrangements for Assange to leave the embassy through legal channels. In 2017, the country [made](#) Assange an Ecuadorian citizen. Later that year, Ecuador's foreign minister [designated](#) Assange as a diplomat in what [observers interpreted](#) to be an [effort](#) to confer the VCDR's personal diplomatic protections on Assange, allowing him to leave the embassy and take up a diplomatic post in Russia without fear of arrest during his travel. But U.K. officials [denied](#) Assange diplomatic accreditation, and Ecuador withdrew its diplomatic designation shortly thereafter. Ecuador also [suspended](#) Assange's citizenship as part of its decision to allow his arrest.

What Were the Bases for Assange's Arrest and Conviction in the U.K.?

London's Metropolitan Police Service arrested Assange based upon two warrants. The [first warrant](#), which had been outstanding since 2012, was based upon Assange's failure to appear before a U.K. court during the Swedish extradition proceedings. Even though Swedish prosecutors [discontinued](#) their rape investigation of Assange in 2017, a U.K. court [concluded](#) that the outstanding warrant remained in force

because Assange was subject to criminal prosecution for the separate [offense](#) of “absconding by a person released on bail”—also known as failure to surrender. On the same day of his arrest, the United Kingdom [charged and convicted](#) Assange with failure to surrender in violation of the [Bail Act of 1976](#). He now faces up to 12 months in prison for this offense. His sentencing date has not yet been set.

The [second warrant](#) was issued at the request of the United States. U.K. law permits a justice of the peace to issue a “[provisional warrant](#)” at the request of a foreign government when there are reasonable grounds to believe an individual has committed an extraditable offense, among other conditions. On the same day as Assange’s arrest, the United States unsealed a March 2018 [indictment](#) against Assange, which appears to form the basis for the U.S. extradition request.

What are the United States’ Charges?

The United States’ [indictment](#) alleges that Assange committed one count of conspiracy ([18 U.S.C. § 371](#)) to commit computer intrusion in violation of the Computer Fraud and Abuse Act (CFAA) ([18 U.S.C. § 1030](#)). While Assange and Wikileaks are responsible for a host of disclosures involving the U.S. government, the indictment and supporting [affidavit](#) focus solely on the 2010 disclosures of material received from Chelsea Manning. The indictment alleges that, in March 2010, Assange agreed to assist Manning in “cracking” a password stored on Department of Defense computers in order to access classified records. The purpose of the alleged agreement and conspiracy, according to the indictment, was to facilitate Manning’s acquisition of classified information so that Wikileaks could publicly disclose that information.

The CFAA portion of the indictment is divided into two subsets. (For more detailed analysis of CFAA offenses, see this comprehensive [CRS Report](#) and this [CRS sketch](#) of the statute.) These sections charge Assange with conspiring to obtain information from a computer without authorization or in excess of authorization:

- with reason to believe that the information, which is protected from disclosure for reasons of national defense or foreign relations, could be used to the injury of the United States or to the advantage of a foreign nation, and when such information was transmitted to a person not entitled to receive it ([18 U.S.C. § 1030\(a\)\(1\)](#)); or
- when the information was obtained from a department or agency of the United States ([18 U.S.C. § 1030\(a\)\(2\)](#)).

DOJ [seeks](#) a maximum penalty of five years in prison.

Is the United States Prosecuting Assange for Newsgathering Activities?

[Commentators have long debated](#) whether charges against Assange would criminalize routine newsgathering or whether there is a meaningful distinction between Wikileaks’ disclosures and traditional journalism. Prior to the unsealing of the indictment, the discussion of Assange’s potential criminal liability often [centered](#) on the [assumption](#) that he would be charged under the [Espionage Act](#) for Wikileaks’ publication of classified material. As discussed in this [CRS Report](#), the Espionage Act is written in such a way that the United States potentially could bring charges against a news organization that receives and publishes leaked national defense information—although the government has never done so. [Some commentators](#) contend that, by bringing password-hacking charges under the CFAA rather than publication-related charges under the Espionage Act, the Department of Justice (DOJ) effectively distinguished Assange’s behavior from standard press activity. [Others argue](#) that the indictment still implicates routine journalism because it does not focus solely on the attempted password hack. It also references more common press behavior—such as using a secure online drop box or protecting the identity of a source—as part of the “manner and means of the conspiracy.”

DOJ's news media policy (28 C.F.R. § 50.10) calls for special analysis before bringing legal action against "members of the news media" for their "newsgathering activities." Among other things, the policy requires the Attorney General to "strike the proper balance among several vital interests": national security, public safety, law enforcement and the fair administration of justice, and the role of the free press. While the Attorney General has not publicly explained the role of the news media policy in his decision to indict Assange, several factors may have been relevant to this issue.

For instance, the Attorney General's interpretation of "newsgathering activities" and "members of the news media"—which are not defined in the policy—may have influenced his decision. Media outlets [reported](#) that the Obama Administration decided not to bring Espionage Act charges against Assange because officials believed they could not do so without also prosecuting traditional news organizations and journalists. The Trump Administration may have taken different view with regard to computer hacking charges. In April 2017, then-Attorney General Sessions discussed making Assange's arrest a "[priority](#)" in response to a reporter's questions. The same month, then-CIA Director Pompeo [publicly described](#) Wikileaks as a "non-state hostile intelligence service often abetted by state actors like Russia," suggesting that the current Administration does not view it as a journalistic organization entitled to the news media policy's protections.

The news media policy also provides that it does not apply when there are reasonable grounds to believe that a person is a foreign power, agent of a foreign power, or is aiding, abetting, or conspiring in illegal activities with a foreign power or its agent. The U.S. Intelligence Community's [assessment](#) that Russian state-controlled actors coordinated with Wikileaks in 2016 may have implicated this exclusion and other portions of the news media policy, although that conduct occurred years after the events for which Assange was indicted. The fact that Ecuador [conferred diplomatic status](#) on Assange, and that this diplomatic status was in place at the time DOJ filed its criminal complaint, may also have been relevant. Finally, even if the Attorney General concluded that the news media policy applied to Assange, the Attorney General may have decided that intervening events since the end of the Obama Administration shifted the balance of interests to favor prosecution. Whether the Attorney General or DOJ will publicly describe the impact of the news media policy is unclear.

Will the U.K. Extradite Assange?

Assange's extradition is not guaranteed, and [many observers predict](#) that it will require protracted legal proceedings in the U.K. judicial system. Once the United States submits a full extradition request (Assange was arrested on a [provisional request](#)), the U.K. court must consider whether there are any [statutory bars](#) to extradition. Bars can include the [passage of time](#); a person's [age](#) or [health conditions](#); the rule of [specialty](#) (discussed below); [non-compliance](#) with the [European Convention on Human Rights](#); and potential discrimination based on race, gender, political opinions, or [other factors](#). The British Home Secretary must separately evaluate whether other [factors](#), such as the [possibility](#) of capital punishment, bar extradition. U.K. [law](#) requires extradition proceedings to begin within two months of the date of arrest, and a judge [set](#) Assange's proceedings to start on June 12, 2019.

Restrictions in [U.K. extradition law](#) have blocked some U.S. attempts to extradite individuals accused of hacking-related charges in the past. In 2014, the United States asked to extradite British national Lauri Love for [charges](#) that included hacking U.S. government computers in violation of the CFAA. But a U.K. court [denied](#) the request on the ground that it would be unduly [oppressive](#), cause severe depression, and increase Love's suicide risk. In 2012, then-Home Secretary Theresa May [declined](#) to extradite Gary McKinnon, another British national [accused](#) of hacking U.S. government computers, because of the suicide risk to McKinnon, who had been diagnosed with Asperger's syndrome and depression. Assange, who is not a British national, [claims](#) he was denied proper medical care in the Ecuadorian embassy, and may raise similar health-related arguments.

U.K. law's [restriction](#) on extradition for individuals that may face the death penalty appears less likely to be a factor. The computer intrusion conspiracy charge against Assange is not a capital offense, and [article 7](#) of the [U.S.-U.K. extradition treaty](#) allows the United States to provide assurances that it will not seek the death penalty, which the United States routinely does.

At the same time, the treaty [prohibits](#) extradition for “political offenses” or when the extradition request is “politically motivated.” The political offense exception is an elusive doctrine discussed in this [CRS Report](#) that has been subject to a [variety](#) of evolving interpretations in different nations. Although the outcome of a political offense objection is difficult to predict, [many observers expect](#) Assange to raise it as a defense to extradition.

Will DOJ Bring More Charges?

Some media outlets [have reported](#) that DOJ officials are considering bringing more charges against Assange in the United States. DOJ has not publicly confirmed this reporting. But if it were to seek a superseding indictment with additional charges, the rule of specialty (discussed in this [CRS Report](#)) may restrict its action. Under this rule, as defined in [Article 18](#) of the U.S.-U.K. extradition treaty, the United States may not try Assange for any pre-extradition offense other than the crime for which the U.K. grants extradition, a lesser included offense, or a “differently denominated offense based on the same facts” as the original offense. Because the United States has not submitted its full extradition request, it could amend its charges without triggering this rule. But once the U.K. grants an official extradition request, the rule of specialty will constrain the United States’ ability to expand its charges without British consent.

What Happened to the Rape Investigation in Sweden?

Swedish prosecutors [discontinued](#) their rape investigation in 2017, but they did not absolve Assange of any charges. Rather, Swedish authorities [concluded](#) that, in light of the protection of Ecuadorian embassy in place at the time, prosecutors did not expect extradition to be possible within the foreseeable future. In announcing the decision to suspend the investigation, Sweden’s Director of Public Prosecution [stated](#) that, if Assange became available, authorities could resume the investigation immediately. After London police arrested Assange and removed him from the Ecuadorian embassy, counsel for Assange’s alleged rape victim requested that Swedish prosecutors resume their investigation. In response, Swedish officials released a [statement](#) explaining that they are examining the request, but have not set a timetable on whether to resume the investigation.

Should Sweden re-open the investigation, its request for Assange’s extradition could present its own complications and might be granted before the United States’ request. Sweden previously sought Assange under the European Arrest Warrant system, which utilizes simplified [surrender procedures](#), and [Article 15](#) of the U.S.-U.K. extradition treaty calls for a state receiving multiple extradition requests to consider all relevant factors, including the gravity of the offenses and the chronological order in which it received them.