

IN THE WESTMINSTER MAGISTRATES' COURT  
BETWEEN:

GOVERNMENT OF THE UNITED STATES OF AMERICA

Requesting State

v

JULIAN ASSANGE

Defendant

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**RENEWED APPLICATION TO ADJOURN  
HEARING FIXED FOR 18 MAY 2020**

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**Introduction**

1.1. By written submissions dated 6 April 2020, and oral application made on 7 April 2020,<sup>1</sup> the defence applied to adjourn the extradition hearing in this case, currently fixed for 3 weeks commencing on 18 May 2020. It was respectfully submitted that the hearing is no longer feasible for the following reasons:

- i) First, it is currently not possible to complete the preparation of this case. It is not possible to take Mr Assange's instructions in order to respond to the recently served declarations of Mr Kromberg, the US Attorney presenting the case for the US. Those representing Mr Assange are unable to fulfil their professional obligations to him in the circumstances and he is deprived of equality of arms with the prosecution (application, §2).

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<sup>1</sup>. A hearing conducted by telephone in the absence of the defendant, who was unwell.

- ii) Secondly, a full extradition hearing cannot take place in May in a manner that is fair to Mr Assange and ensures that he is able to participate effectively in the hearing (application, §3).
  - iii) Thirdly, it is impossible to ensure open justice at the hearing on 18 May by providing for the press and the public to attend and follow the proceedings (application, §4).
  - iv) Fourthly, the high degree of stress and pressure under which Mr Assange is at present operating, in the light of current circumstances at HMP Belmarsh and his particular vulnerabilities, mean that he could not fairly be expected to participate in a full evidentiary hearing in May. Nor could he do so with any semblance of equality of arms (application, §5).
- 1.2. The Court is respectfully referred to the full text of the written application to adjourn, which basic reasons still apply. The position is now clearer in light of the Senior District Judge's position and the extension of the Government's lockdown on 16 April.
- 1.3. The US Government did not oppose the application made originally. Its position was that it '*...recognises there are considerable difficulties for the defence and considerable practical difficulties...*' for conducting the hearing. By contrast the US Government now supports this application in the light of further developments and fuller '*deliberation on all the circumstances*' [see §5.1, below].
- 1.4. This Court ruled on 7 April that:
- i) The hearing will be able to proceed in person on 18 May 2020. Indeed, '*...contested extradition hearings at this court house, these are expected and intended to resume from 20 April with Requested Persons attending at their hearings in person... At the hearing in May, it is anticipated that the prison authorities will be able to produce Mr. Assange before the court and that lawyers will be able to attend in*

*person to represent him...instructions from Government are...likely to change...there is to be a review as early as 13 April. I cannot make any assumptions about the future. As I have said, it is intended that contested extradition hearings will be resumed at Westminster Magistrates' court in two weeks...'*

- ii) To permit defence preparation for that hearing (and to facilitate service of its reply evidence), the case would be listed '*...to provide an opportunity for instructions to be taken in the cells...at Belmarsh Magistrates court, to ensure instructions can be taken. The first of these hearings could take place in the week beginning 20 April...'*

1.5. Regrettably, the parties were not able to deal with the feasibility of these proposals. That was due to the fact that the learned judge did not indicate during the course of submissions that she was proceeding on the basis of these assumptions, and so received no submissions on the feasibility of the proposals.

1.6. However, following representations made after the decision, the Court '*...agreed to keep this decision under review. In particular, if the contested extradition hearings do not go ahead as anticipated from 20 April, then the defence can renew their application to this court...'*

1.7. It is respectfully submitted that (whatever the position on 7 April), it is now clear that the court's original proposals for maintaining this hearing in May cannot in fact be made to work. Therefore, since the Court agreed to keep the matter under review in the light of developments and government clarifications, the Court is now asked to review the situation on the basis that:-

- i) A hearing which the Defendant and all lawyers attend in person, and where witnesses attend if necessary, is impossible for the week beginning May 18.
- ii) In any event, there will not be sufficient time and facilities for his lawyers to take proper instructions from Mr Assange on the evidence

that has come in from the United States, to prepare the necessary evidence in response and take his instructions on that, to prepare the submissions and present the case, in the present temporary crisis situation.

### **The hearing**

- 2.1. It is submitted that the Court can no longer proceed on the basis, that, by 18 May 2020 it would be possible to conduct a normal (physical) extradition hearing at Belmarsh Magistrates' Court, with the judge present and presiding, counsel and solicitors (including the US Attorneys) present in Court, Mr Assange present in Court, and witnesses either attending in person or where that was not necessary in the interests of justice, attending by video link. That is for the following reasons:-
- i) No official statement from the Ministry of Justice has ever contemplated such a return to full extradition hearings conducted as before by 18 May 2020 (much less by 20 April).
  - ii) Bringing the defendant daily from the prison to the Court would be dangerous both for him and the relevant prison staff.
  - iii) Counsel and solicitors could not reasonably be expected to attend a hearing in Court where they would necessarily have to sit in close proximity, in breach of government guidelines, which have been reaffirmed for three more weeks, without any certainty that they will then cease to have effect.
  - iv) There is still no adequate means to address the problems of how the press and the public, who were entitled to be present at such a physical hearing, would practically be able to attend.
  - v) Moreover, it is now even clearer, that in the present and continuing lockdown situation, it would be oppressive to require Mr Assange to

undertake a three week hearing in his current physical and mental condition.

- 2.2. For all the reasons detailed at §3.2 – 3.15 of the original application, an evidential hearing in which Mr Assange, all lawyers, and all witnesses, appear **via video** is neither feasible nor in the interests of justice in this matter. This Court did not suggest otherwise in its ruling.<sup>2</sup> Its ruling was premised instead on the expectation and the prediction that ordinary hearings in the presence of all the parties could be resumed by 20 April 2020 and certainly by 18 May 2020.
- 2.3. Thus in giving its reasons on 7 April 2020, the Court referred to the proposed resumption of normal hearings on 20 April 2020. But this overlooked the fact the Senior District Judge Arbuthnot's prior announcement had not contemplated such a resumption of normal extradition hearings in the physical presence of the parties. What Senior District Judge Arbuthnot had stated was : '*...the Court is hoping to start extradition hearings up again for one court each day (on top of Court 3) for one week from 20th April and then two hearings courts a day from 27th April, using whatever technology has been approved by then...*'. What was clearly being contemplated by the SDJ was not physical hearings but the conducting of video hearings, if the technology could facilitate it by then, and only if such a course was required by the interests of justice in any particular case (s..206A(2)).
- 2.4. Moreover, since this Court's decision on 7 April 2020, the First Secretary of State announced (on 16 April 2020) that the current government guidance

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<sup>2</sup>. That position is entirely consistent with the Senior District Judge's revised guidance dated 18 April to the effect that:  
*'...(1) As of [20 April], the Court will be using video link facilities via the common video platform (CVP). The Court's view is that EHS can proceed over CVP but only if parties are in agreement that is appropriate in a given case. The Court welcomes EHS being brought forward or remaining listed where parties consent to using CVP. A very limited number of the full hearings will be able to be accommodated.  
(2) Members are encouraged to liaise with their opponent/CPS to determine whether their upcoming EHS are suitable for CVP, or not, and then to write to the Court updating the Court as to the position. In the event that there is no agreement about the case proceeding over CVP then the case will be adjourned and directions given....'*

(and consequent lockdown) will continue for “at least” a further three weeks (i.e. until “at least” Friday 8 May).

- 2.5. Neither lawyers, witnesses nor the defendant could attend the court in person in this case, while complying with the Government’s guidance, now extended. So the reality is that Westminster Magistrates’ Court will not be re-commencing ‘...*contested extradition hearings...from 20 April with Requested Persons attending at their hearings in person...[and] lawyers able to attend in person to represent...*’.
- 2.6. Neither is it sufficiently foreseeable that this Court will be doing so by 18 May 2020. When the easing of the current lockdown begins (not before ‘*at least*’ 8 May according to the government’s current statements), the government has made it repeatedly clear that (as with other countries) it will be eased in stages, with manufacturing and the economy eased first. There is no reason at all to suppose that this Court will re-commence ‘...*with Requested Persons attending at their hearings in person...[and] lawyers able to attend in person to represent...*’ in the first wave of easing.
- 2.7. Even if the lockdown were (unexpectedly) to be revised to such an extent as to permit court hearings to re-commence in person by 18 May:
  - i) Without disclosing medical issues, there would still be real questions about whether key members of Mr Assange’s legal team would be able to attend in May or June; and
  - ii) It would still not enable the USA lawyers to attend (and thus enable counsel or the US government to undertake cross-examination).

### **Preparation**

- 3.1. This Court had hoped to solve the problems surrounding the taking of necessary instructions and preparation of evidence by making arrangements for Counsel and solicitors to meet Mr Assange in the cells at Woolwich Crown Court. It is respectfully submitted that such a course would have been fraught with immense difficulties and significant health risks to Mr Assange himself

and to his lawyers. But, in any event this proposal has simply been ruled out by the prison authorities.

- 3.2. Thus on 9 April, this Court informed the parties that attending Woolwich Crown Court on 22 April to visit Mr Assange in the cells as directed '*...will not be possible. No prisoners are being physically produced from Belmarsh Prison into Woolwich [Court]. The authorities there are making a strict application of the two meter distancing rule...*'.

### **Legal visits to Belmarsh**

- 3.3. In the light of this the defence were informed that the Court had '*...been in discussion with Belmarsh...and they can provide a three hour slot at the prison on the morning of 22nd April...*'. As a result the defence were informed that, following this Court's intervention, HMP Belmarsh is extraordinarily prepared to lift its lockdown to permit defence lawyers inside and to waive '*strict application of the two meter distancing rule*'. This appears to be a complete departure from the practice followed in every other case.
- 3.4. However, the fact remains that the government has not altered its guidance to permit this kind of visit. On the contrary it has extended its lockdown measures until "at least" 8 May. For the same reasons detailed above, defence lawyers cannot (because they are not permitted to) now attend HMP Belmarsh on 22 April to visit Mr Assange in the cells. To do so would be (a) contrary to the government's now extended guidance<sup>3</sup> and (b) dangerous.
- 3.5. Neither (for the reasons outlined above at §2.6) is it sufficiently foreseeable that such prison-cell-visits (with multiple people '*ordered*' to travel to prison to congregate in an interview rooms in violation of the two meter distancing rule) will be lawful (in the sense of being in accordance with government guidance) by 18 May 2020.
- 3.6. And even if the lockdown were (unexpectedly) to be revised to permit lawyers to attend prison visits prior to 18 May:

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<sup>3</sup>. <https://www.gov.uk/guidance/coronavirus-covid-19-and-prisons>

- i. It will not happen by 1 May (the deadline for service of defence evidence).
- ii. Or 7 May (the deadline for service of defence submissions).
- iii. Or (even if it happens as soon as 8 May) in sufficient time to conduct (in the single week then available) more than a handful of short visits (patently inadequate preparation time in this case: if and when meetings with Mr Assange re-commence, he will be seeing lengthy documents/reports/other materials for the first time).
- iv. It would remain medically unsafe for certain members of the defence team to attend.

### **Video conferencing**

3.7. Neither, finally, can the proposed prison-visits proceed by means of '*some kind of video conference*' (court email, 9 April 2020):

- i) Although the defence are taking steps to enable prison videolink facilities to be accessed from home in the future, to participate, a Belmarsh prisoner (even one not vulnerable to coronavirus in the way Mr Assange is<sup>4</sup>) has to leave his mandatory cell isolation (24/7 apart from a brief daily exercise slot), walk with prison officer(s) across prison to wait in a videolink holding area with others, then use a small booth repeatedly used by others; all without protective measures (or even antiseptic wipes etc).
- ii) In any event, videolink meetings do not permit the passing/viewing of documents, draft statements, exhibits etc. Especially, for Mr Assange

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<sup>4</sup> See Report of Dr Jonathan Fluxman, served with this application.



who remains (as the court is aware) heavily medicated and who is *still*<sup>5</sup> without access to a computer.

### **Using any of the three weeks currently listed?**

- 3.8. This Court accepted that, for some witnesses at least, attendance in person would be necessary in the interests of justice, and that that is not likely to be possible in the three weeks commencing 18 May. This Court therefore also said: ‘...*If there is the need for a third and final part of this case, this can take place over the summer, likely in July, when I would expect counsel to make themselves available...*’.
- 3.9. First, for all of the reasons detailed above, (a) it is unrealistic to expect an in-person hearing by (even) the week of 1 June, and (b) nether would it be possible to prepare for such a hearing.
- 3.10. In any event, with the possible exception of medical and prisons evidence (which would require the UK medical evidence to be in place and US prisons witnesses to attend court to hear that evidence and give their own), the evidence in this case does not lend itself to compartmentalisation; all informs the remainder. The High Court has repeatedly counselled against truncated or piecemeal evidential hearings: see, amongst many authorities, **USA v Tollman** [2008] EWHC 184 (Admin) per Moses LJ at §119; and most recently **Dempsey v USA** [2020] EWHC 603 (Admin) per Lord Burnett CJ at §§28-31 regarding ‘*piecemeal consideration of issues*’. See also Crim PR Practice Direction §50A.1(ii) (‘*a single, comprehensive and effective extradition hearing*’).

### **Conclusion**

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<sup>5</sup>. The latest position is that the relevant Belmarsh IT officers, when available to do so, have agreed to arrange for a suitable computer to be delivered to Birnbergs for data to be uploaded, and then (somehow) it will need to be delivered by Birnbergs to Belmarsh.

- 4.1. For all these reasons, it is respectfully submitted that it would now no longer be fair or reasonable for the hearing to proceed in the three weeks commencing 18 May as listed. Mr Assange no longer possesses the ability to prepare, communicate with his lawyers, call his evidence, or advance his submissions in a hearing which is fair, and which provides even a semblance of equality of arms. Moreover, there is no realistic prospect of a full evidentiary hearing in the presence of defendant and all lawyers taking place during the three weeks commencing 18 May. Therefore the Court is invited to vacate the 18 May hearing and to adjourn the case until September, when the lawyers for both prosecution and defence would be available for a full 3 week hearing to determine all the issues.

**The US Government supports this application**

- 5.1. The Government of the USA are no longer merely neutral to this application. In light of the developments since 7 April 2020, they now support it. We have spoken to the prosecution about this application for an adjournment and they have replied to us as follows:

“ The prosecution have carefully considered the serious difficulties the defence are encountering at present owing to the extraordinary circumstances of the current Coronavirus pandemic as set out in their draft application dated 20 April 2020. Whilst the prosecution are keen to progress the extradition hearing, upon deliberation of the all the circumstances, our considered view is that the safest course to ensure the defendant has a fair hearing, is to adjourn the current date of the continued extradition hearing in May 2020. And accordingly we support the application. We would be available for the proposed September date.”

Edward Fitzgerald QC  
Mark Summers QC  
Florence Iveson

22 April 2020