

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

UNITED STATES OF AMERICA

v.

JULIAN PAUL ASSANGE,

Defendant.

CRIMINAL NO.: 1:18-CR-111

**SUPPLEMENTAL DECLARATION IN SUPPORT OF REQUEST FOR
EXTRADITION OF JULIAN PAUL ASSANGE**

I, Gordon D. Kromberg, being duly sworn, depose and state:

1. I am a citizen of the United States.

2. I am an Assistant United States Attorney in the Eastern District of Virginia, and have been so employed since 1991. I received my Bachelor's degree from Princeton University in 1979, and a Juris Doctor degree from New York University School of Law in 1982. Before joining the United States Attorney's Office, I served as a trial attorney in the United States Department of Justice, and as a defense attorney in the United States Army's Judge Advocate General's Corps. My duties as an Assistant United States Attorney include the prosecution of persons charged with violations of the criminal laws of the United States, including laws prohibiting computer intrusion and mishandling of national security information. For my work as an Assistant United States Attorney, I have received various awards, including the Attorney General's Award for Excellence in Furthering the Interests of U.S. National Security, and, on three separate occasions, the FBI Director's Award for Outstanding Counterterrorism Investigation. Based on my training and experience, I am an expert in the criminal laws and procedures of the United States.

3. In the course of my duties as an Assistant United States Attorney, I have become familiar with the evidence and charges in the case of *United States v. Julian Assange*, Case Number 1:18-cr-111, pending in the United States District Court for the Eastern District of Virginia. I make this declaration for the limited purpose of providing additional information relevant to several objections that Assange has made to this U.S. request for his extradition. The statements in this declaration are based on my experience, training, and research, as well as information provided to me by other members of the U.S. government, including members of the Federal Bureau of Investigation (FBI), the United States Department of Justice, and other federal agencies.

4. This declaration does not respond to every assertion or allegation made in the defense case. I understand that a number of the defense's allegations can be answered by reference to matters which have already been decided as a matter of extradition law in the United Kingdom. If I have not addressed a matter in this declaration, it should not be regarded as an acceptance of its accuracy or its truthfulness.

I. There Has Been No Abuse of Process

5. I understand that attorneys for Julian Paul Assange (hereinafter, "Assange") have made a number of claims alleging that privileged communications have been collected by the United States. As I stated in my previous declaration, paragraph 175, no privileged conversations between Assange and his lawyers or doctors will be used against him. I add that to the best of my knowledge, information, and belief, the allegations in the superseding indictment and the affirmations made in the affidavits or declarations submitted by the United States in support of this extradition request contain no legally privileged material, and were not derived from legally privileged material. I make this statement, however, above what the law requires. While privileged evidence cannot be introduced against Assange at any trial, the suppression of evidence

derived from privileged information is proper only if the privilege is constitutionally based and not a testimonial or evidentiary privilege. *United States v. Squillacote*, 221 F.3d 542, 560 (4th Cir. 2000). Assange is not, therefore, entitled to a hearing to require the government to establish an independent legitimate source for any disputed evidence.

6. In an unsigned statement submitted on or around January 13, 2020, Gareth Peirce alleged that materials belonging to Assange were taken from the Ecuadorian Embassy in London at the time of Assange's arrest, and that some of those materials were privileged and/or necessary to assist Assange in defending against the superseding indictment. *See* Second Statement of Gareth Peirce ¶¶ 6-12. I can again assure the Court that, as required by American law, no privileged materials will be used against Assange during criminal proceedings in the United States. Moreover, as I noted in paragraph 177 of my previous declaration, pursuant to established U.S. Department of Justice procedures, any potentially privileged materials in the possession of the Department of Justice are reviewed by a team of lawyers and investigators, separate from the prosecution team. This separate team, known as a "filter" team, is responsible for resolving questions of potential privilege through discussions with Assange's lawyers or litigation before an impartial judge and for creating a record to establish the steps taken with respect to any materials deemed to be privileged.

7. Finally, as discussed in Section IV of my prior declaration, Assange and his lawyers will have access to information in the possession of the prosecution team as required by the rules, laws and constitution of the United States, including evidence relevant and material to Assange's defense. *See, e.g.*, Fed. R. Crim. P. 16, Fed. R. Crim. P. 26.2; 18 U.S.C. § 3500; *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *United States v. Abu Ali*, 528 F.3d 210, 248 (4th Cir. 2008) ("[T]he government may protect classified information from

disclosure, but if the district court determines, in the exercise of its discretion, that an item of classified information is relevant and material to the defense that item must be admitted unless the government provides an adequate substitution.”) (internal quotations omitted).

II. *Zakrzewski Abuse of Process*

8. In his affidavit, Patrick Eller, a forensic examiner retained by lawyers for Assange, faults the United States for stating in the superseding indictment, “Manning provided ASSANGE with part of a password hash stored on United States Department of Defense computers connected to the Secret Internet Protocol Network.” Superseding Indictment, Count 18, Overt Act 2. Eller asserts that this falsely implies, “the password hash itself is broken up and split between the SAM and system file,” whereas, in fact, the password hash “is stored in full in the SAM file, but encrypted with a key (which is not part of the hash) generated from data in the SAM file and system file.” Eller Aff. ¶ 32. Thus, Eller believes it is more accurate to say that Manning provided Assange with an “encrypted hash” rather than “a portion of a hash.” Eller ¶ 65. Eller is correct that password hashes stored on the Security Accounts Manager (SAM) file are encrypted and that what Manning provided Assange was the hash as stolen from a SAM file. The superseding indictment used the term “portion of a hash” to make clear that—ordinarily—one would need more than what Manning gave Assange in order to derive the password hash. *See* Superseding Indictment ¶ 18 (“Had Manning retrieved the full password hash and had ASSANGE and Manning successfully cracked it, Manning may have been able to log onto computers under a username that did not belong to her.”).

9. It is not clear that anything turns on whether one calls what Manning gave to Assange a “part of a password hash” or an “encrypted hash.” It appears that Eller’s point is to suggest that it was not possible for Assange and Manning’s hash-cracking agreement to succeed.

Although we do not concede that the success of the conspiracy was impossible, I again note that impossibility is not a defense to conspiracy. See *United States v. Jimenez Recio*, 537 U.S. 270, 272, 275 (2003).

10. In the “Summary of Issues” submitted to this Court on December 17, 2019, Assange’s attorneys asserted, “Under US law, receipt/publication of classified information is lawful (*Bartnicki v Vopper* (2001) 532 US 514) and illegality only arises if the publisher actually participated in illegality in obtaining the material.” Assange Statement of Issues ¶ 12. But *Bartnicki* - - the authority upon which Assange relies for this assertion - - had nothing to do with the publication or receipt of classified information. In *Bartnicki*, the United States Supreme Court held that the First Amendment protected a publisher’s disclosure of the contents of an illegally intercepted telephone conversation. See *id.* at 535. The illegally intercepted telephone conversation at issue in that case related to a dispute between a teachers’ union and a school board. See *id.* at 518-19. *Bartnicki* did not involve classified information, much less classified information that is related to the national defense of the United States - - and that discloses the names of sources - - which the United States has charged Assange with disclosing. As I explained in paragraphs 8 and 9 of my previous declaration, the First Amendment generally does not protect the intentional outing of classified intelligence sources.

11. *Bartnicki* is distinguishable from this case in another important respect. As the Supreme Court observed in *Bartnicki*, the publisher at issue in that case “played no part in the illegal interception.” *Id.* at 525. Instead, the publisher “found out about the interception only after it occurred” and “never learned the identity of the person or persons who made the interception.” *Id.* Moreover, the publisher’s “access to the information was obtained lawfully,” *id.*, that is, no law prohibited the publisher from receiving the intercept. In fact, the Supreme Court emphasized

that its “holding . . . does not apply to punishing parties for obtaining the relevant information unlawfully.” *Id.* at 532 n.19. In contrast, as alleged in the superseding indictment, Assange was complicit in the illegal acts to obtain or receive the classified documents, and he agreed and attempted to obtain classified information through computer hacking. As I explained in paragraph 7 of my previous declaration, the First Amendment did not protect Assange in engaging in such conduct.

12. In the same “Statement of Issues,” Assange’s attorneys asserted, “[t]he allegations that Manning’s disclosures were connected to the WikiLeaks ‘most wanted list’ is again flatly contradictory to the evidence,” and “Manning’s ultimate transmission of data does not, in fact, correlate to any suggested agreement, nor does what was sent by Manning correlate to what Assange is alleged to have sought.” Assange Statement of Issues ¶ 12. To the contrary, as summarized in the affidavit of Kellen S. Dwyer in support of extradition, dated June 4, 2019, Manning searched classified databases for information responsive to Assange’s solicitations contained in WikiLeaks’s “Most Wanted Leaks”:

- a. According to forensic evidence obtained from U.S. DoD computers, beginning in at least November 2009, Manning responded to ASSANGE’s solicitation of classified information made through the WikiLeaks website. For example, WikiLeaks’s “Military and Intelligence” “Most Wanted Leaks” category, solicited CIA detainee interrogation videos. On November 28, 2009, according to forensic evidence obtained from U.S. DoD computers, Manning searched “Intelink,” a classified U.S. DoD network search engine, for “retention+of+interrogation+videos.” The next day, Manning searched the classified network for “detainee+abuse,” which was consistent with the “Most Wanted Leaks” request for “Detainee abuse photos withheld by the Obama administration” under WikiLeaks’s “Military and Intelligence” category. *See* Dwyer Aff. ¶ 19.
- b. On December 8, 2009, according to forensic evidence obtained from U.S. DoD computers, Manning ran several searches on Intelink relating to Guantanamo Bay detainee operations, interrogations, and standard operating procedures or “SOPs.” These search terms were yet again consistent with WikiLeaks’s “Most Wanted

Leaks,” which sought Guantanamo Bay operating and interrogation SOPs under the “Military and Intelligence” category. *See* Dwyer Aff. ¶ 20.

13. Moreover, many of the classified document sets that Manning in fact stole from the U.S. government and provided to Assange were consistent with the materials Assange solicited through the WikiLeaks website and its “Most Wanted Leaks.” For instance, consistent with WikiLeaks’s “Most Wanted Leaks” solicitation of “Iraq and Afghanistan U.S. Army Rules of Engagement 2007-2009 (**SECRET**),” Manning stole and transmitted to Assange multiple rules of engagement files. Dwyer Aff ¶ 33. Similarly, consistent with WikiLeaks’s solicitation of bulk databases of “classified, censored, or otherwise restricted material of political, diplomatic, or ethical significance,” between on or about March 28, 2010, and April 9, 2010, Manning used a United States Department of Defense computer to download over 250,000 U.S. Department of State cables, which she subsequently provided to Assange. Dwyer Aff. ¶ 12.

III. Response re: Wiley Declarations Regarding Prison Conditions

14. I have reviewed three different declarations signed by R. Wiley. At the time he signed these affidavits, Mr. Wiley was the Warden at the United States Department of Justice, Federal Bureau of Prisons (“BOP”) facility known as the United States Penitentiary, Administrative Maximum (“ADX”), which is located in Florence Colorado. These declarations were filed in the following extradition matters: *United States v. Abu Hamza* (Magistrate Court at Westminster Oct. 3, 2007); *United States v. Syed Talha Ahsan*, 3:06CR194(JCH) (D. Conn. May 11, 2009); and *United States v. Khalid Al Fawwaz*, S(10) 98 Cr. 1023(KTD) (S.D.N.Y. Dec. 6, 2009) (collectively, the “Wiley Declarations”). In sum and substance, these affidavits described the facilities, policies, and procedures at the ADX.

15. My understanding is that, in large part, the Wiley Declarations continue to describe accurately the conditions at ADX. Of course, the statistics regarding staffing numbers,

inmate numbers, and inmate designations have changed. The overall structure of the ADX is largely unchanged, but enhancements outlined below have since been put in place.

16. Since the last Wiley declaration, the following Program Statements and Institutional Supplements (the “Policies”), which contain substantive provisions regarding, among other matters, screening and diagnosis of mental illness, provision of mental health care, suicide prevention, and conditions of confinement to reduce the risk of development or exacerbation of mental illness have been updated or revised:

- a. Program Statement, *Treatment and Care of Inmates with Mental Illness* (updated for all BOP facilities);
- b. ADX Institutional Supplement, *Treatment and Care of Inmates with Mental Illness*;
- c. ADX Institutional Supplement, *Suicide Prevention Program*;
- d. ADX Institutional Supplement, *Control Unit Programs*;
- e. ADX Institutional Supplement, *General Population and Step-Down Unit Operations*; and
- f. ADX Institutional Supplement, *High Security Adult Alternative Housing Program*.

17. Since the last Wiley declaration, the following general changes have been made to the ADX:

- a. The ADX no longer operates a Special Housing Unit (Z-Unit). The Z-Unit was recently renamed C-Unit and is now one of five (5) general population units;
- b. There are currently five (5) general population units (C, D, E, F, and G);
- c. The Intermediate step of the Step-Down Program is in J/A Unit;
- d. The Transitional and Pre-Transfer steps of the Step-Down Program are in B/A Unit;
- e. The K/A Unit now houses the Reentry Preparation Program Unit; and

- f. The K/B Unit now houses the High Security Adult Alternative Housing Program.
18. Since the last Wiley declaration, the BOP has developed and activated units for mental health treatment at the following institutions:
- a. A secure mental health unit at the United States Penitentiary in Atlanta, Georgia.
 - b. A second secure mental health unit at the United States Penitentiary in Allenwood, Pennsylvania.
 - c. A secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program at the United States Penitentiary, High Security, in Florence, Colorado, specifically designed for inmates with personality disorders.
19. Since the last Wiley declaration, BOP has undertaken the following initiatives to improve mental health treatment at BOP and, in particular, at the ADX:
- a. Developing and implementing behavior-related incentive programs for inmates housed at ADX;
 - b. Using and enhancing an at-risk recreation program to identify inmates who are not participating in any recreation programs, attempting to educate them on wellness, and encouraging their participation in a structured recreation program;
 - c. Constructing, maintaining, and employing facilities for group therapy at ADX;
 - d. Constructing, maintaining, and employing areas for private psychological and psychiatric counselling sessions in all housing units at ADX;
 - e. Allowing telepsychiatry sessions to take place in private without the presence of correctional officers;
 - f. Screening all inmates housed at ADX as of August 2014, to determine, among other things, whether the inmates have a mental illness. This included a screening record review of all inmates and in-depth clinical interviews of approximately 130 inmates by outside psychiatrists and non-ADX Bureau psychologists;
 - g. Clarifying that psychotropic medications are available to any inmate for whom such medication is prescribed, regardless of the inmate's housing assignment;
 - h. Ensuring that inmates receiving psychiatric medications at the ADX are seen by a psychiatrist, physician, or psychiatric nurse every ninety (90) days, or more often as clinically indicated for, at a minimum, the first year;

- i. Ensuring that during the screening and classification process identifies inmates with mental illnesses, provides accurate diagnoses, and assesses the severity of the mental illness or suicide risk;
- j. Developing and implementing procedures to ensure that Health Services notifies the psychiatrist, psychiatric mid-level provider, psychiatric nurse, or physician and Psychology Services of inmates who refuse or consistently miss doses of their prescribed psychotropic medications;
- k. Requiring Health Services staff to take steps to ensure that psychotropic medications are prescribed so that they are distributed on pill line;
- l. Assessing all inmates at ADX periodically to determine whether mental illness has developed since the last screening;
- m. At the classification stage, using mental health care levels as defined in the Program Statement, *Treatment and Care of Inmates with Mental Illness*;
- n. Excluding certain inmates with a Serious Mental Illness, as defined in the Bureau's Program Statement 5310.16, *Treatment and Care of Inmates with Mental Illness*, from ADX, except when extraordinary security needs exist. When extraordinary security needs exist, ensuring those inmates are provided treatment and care commensurate with their mental health needs, which includes the development of an individualized treatment plan in accordance with the Policies;
- o. Taking steps to ensure the prompt identification of inmates who develop signs or symptoms of possible mental illness while incarcerated at ADX, to permit timely and proper diagnosis, care, and treatment;
- p. Taking steps to ensure the reasonable access to clinically appropriate mental health treatment for all inmates with mental illness at ADX;
- q. Considering a commitment order under 18 U.S.C. § 4245, or other applicable statute or regulation, for inmates who have a need for, but who do not agree to participate in, a Secure Mental Health Unit or for a treatment program at a Medical Referral Center. An inmate's refusal to be designated to a Secure Residential Mental Health Unit or Medical Referral Center, or a court's denial of a commitment order, is not grounds or justification to house an inmate with a Serious Mental Illness at ADX. However, if a court denies commitment or determines that an inmate does not have a Serious Mental Illness, permitting that inmate to be placed at ADX if needed for security and safety reasons and providing treatment commensurate with his mental health care level;
- r. Housing certain inmates in need of inpatient psychiatric care at a Medical Referral Center;
- s. If an inmate with Serious Mental Illness who continues to be housed at ADX due to extraordinary security needs declines treatment consistent with his mental

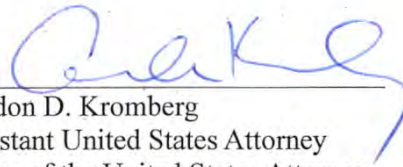
health care level, taking steps to develop and implement a treatment plan that includes regular assessment of the inmate's mental status, rapport-building activities, and other efforts to encourage engagement in a treatment process, and, at a minimum, a weekly attempt to engage the inmate;

- t. Offering inmates with Serious Mental Illness who continue to be housed at ADX due to extraordinary security needs between 10 and 20 hours of out-of-cell therapeutic and recreational time per week consistent with their individualized treatment plan;
- u. Taking steps to support inmates with mental illness through creation of wellness programs and recreational activities, specialized training of staff, and care coordination teams;
- v. Developing procedures for heightened review of requests and referrals for mental health services;
- w. Ensuring that any calculated use of force or use of restraints involving an inmate at ADX with a mental illness is applied appropriately to an inmate with such conditions, as set forth in the Policies;
- x. Excluding mental health clinicians from participation as a use of force team member in a calculated use of force situation, other than for confrontation avoidance.
- y. Merging BOP's Electronic Medical Record (BEMR) and Psychology Data System (PDS);
- z. Staffing and hiring four additional full-time psychologists at ADX, one psychiatric nurse, and one psychology technician, with one of the four additional full-time psychologist positions facilitating trauma-informed psychological programming (Resolve Treatment (Trauma) Coordinator);
- aa. Ensuring that the ADX Care Coordination and Reentry (CCARE) Team meets monthly, pursuant to the applicable section ADX Institutional Supplement regarding *Treatment and Care of Inmates with Mental Illness*;
- bb. Ensuring that a Mental Health Transfer Summary is completed in BEMR/PDS every time an inmate with mental illness (CARE2-MH, CARE3-MH, and CARE4-MH) transfers out of ADX, pursuant to the ADX Institutional Supplement regarding *Treatment and Care of Inmates with Mental Illness*;
- cc. Ensuring the collaboration of Psychology and Health Services staff, beginning no later than 12 months before an inmate's anticipated release with Community Treatment Specialist (CTS) regarding ADX inmates CARE2-MH or higher releasing to an residential re-entry center or home detention, pursuant to the applicable section of the ADX Institutional Supplement regarding *Treatment and Care of Inmates with Mental Illness*;

- dd. Hiring a full-time Social Worker for FCC Florence, whose priority is those inmates housed at ADX and who provides Reentry Planning Services within 1 year of an inmate's projected release date, as appropriate, and pursuant to the applicable section of the ADX Institutional Supplement regarding *Treatment and Care of Inmates with Mental Illness*;
- ee. Taking steps to ensure that discipline is applied appropriately to inmates with Serious Mental Illnesses or Mental Illness, as set forth in the Policies; and
- ff. Enhancing mental health training provided to Bureau staff.

Conclusion

20. The facts and information contained in this Supplemental Declaration are true and correct according to the best of my knowledge, information, and belief.


Gordon D. Kromberg
Assistant United States Attorney
Office of the United States Attorney



Jennie B. Miller
2/19/2020