

New indictments set up a confrontation between the US and Julian Assange

Written by Holly Cullen, Adjunct professor, University of Western Australia

Australians woke to the news on Friday that the United States had unveiled new charges against Wikileaks co-founder Julian Assange.

The [indictment](#) , issued by the US Department of Justice, includes 17 charges of [espionage](#) :

- one count of conspiracy to receive national defense information
- seven counts of obtaining national defense information
- nine counts of disclosing national defense information.

These charges are in addition to the charge of conspiracy to commit computer misuse contained in the initial US request for extradition in April.

Here's what the new charges mean for Assange, how he could fight them, and what's likely to happen next.

Read more: [Julian Assange on Google, surveillance and predatory capitalism](#)

What factors will affect whether the UK approves extradition to the US?

Extradition includes a mixture of judicial and political processes. Assange could plead a number of legal objections to his extradition, including human rights concerns. This could see the case go through all levels of the English court system, as [happened in 2011-12](#) . The charges could also be challenged in the European Court of Human Rights.

Assange's main legal objection to extradition is likely to be that the offences charged are political offences, and therefore not extraditable offences under the treaty.

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In addition to the American extradition request, the Swedish prosecutor has announced she is reopening the investigation of a rape accusation against Assange. She [has applied to the Swedish courts](#) for a detention order, which is the first step towards the issuing of a European Arrest Warrant (EAW).

Both the EU's [Framework Decision on the European Arrest Warrant](#) and the US-UK extradition treaty allow the UK to decide which of the two competing extradition requests to prioritise. There's a good chance that the UK would decide to prioritise the Swedish request because the rape prosecution must be brought by August 2020, at the latest. It's likely that the English courts would expedite any legal challenges to prevent time running out.

If the UK decides to prioritise the American request, it would effectively prevent the Swedish prosecution being brought in time.

Read more: [Chelsea Manning and the rise of 'big data' whistleblowing in the digital age](#)

If he goes to Sweden first to face the rape charges, would Sweden be more or less favourable on the US indictment?

The [US-Swedish extradition treaty](#) appears to be stricter than the US-UK treaty. It only allows extradition for listed offences, and espionage is not listed.

Given that the treaty was adopted in 1961, computer crimes are not listed, although they might be understood to be included in one of the forms of fraud listed in the treaty.

The US-Swedish treaty also prohibits extradition for political offences or when the death penalty is imposed.

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The Swedish government [declares that it will not extradite](#) :

if there is reason to fear that the person whose extradition is requested runs a risk – on account of his or her ethnic origins, membership of a particular social group or religious or political beliefs – of being subjected to persecution threatening his or her life or freedom, or is serious in some other respect.

Do these charges attract the death penalty?

These offences could lead to a long prison sentence, but do not attract the death penalty.

Like the US-Swedish treaty, the [US-UK extradition treaty](#) also allows the UK to refuse extradition if the accused is likely to face the death penalty, unless the US gives assurances that the death penalty will not be imposed.

Could Assange be protected under the US constitution?

Civil liberties groups and journalists in the United States argue that the charges in the new indictment are unconstitutional. The First Amendment of the American Constitution guarantees freedom of expression, and American courts have historically provided strong protection for journalism.

Many argue that what Assange and Wikileaks did in obtaining information from Chelsea Manning about the detainees at Guantanamo Bay and rules of engagement in Iraq, and disseminating it, is not meaningfully different from what news outlets do on a regular basis. American officials who worked for the Obama administration [say their decision](#) not to pursue Assange was based on concerns that such a prosecution would be contrary to the First Amendment.

Assange's legal team are likely to argue that extradition to the US would constitute a violation of Assange's right to freedom of expression under international law. If the extradition occurs, it's likely they would seek to have the charges thrown out by American courts as unconstitutional.

Read more: [Is part of Chelsea Manning's legacy increased surveillance?](#)

Will these new charges change the way the Australian government treats the case?

The new charges are much more serious than the computer misuse charge in the initial extradition request. The total sentence could be up to 175 years in jail – effectively a “whole of life” sentence, which some human rights advocates consider to be a form of cruel and inhumane treatment.

Australian government support for its nationals caught up in criminal proceedings overseas is largely negotiated out of the public eye. Nonetheless, there have been cases, such as the recent campaign to bring [Hakeem al-Araibi](#) back to Australia from Thailand, where the government was a [public advocate](#) .

Assange’s Australian legal adviser [Greg Barns](#) has called on Foreign Affairs Minister Marise Payne and Prime Minister Scott Morrison to raise his case personally with the US and UK governments.

Assange’s case is certainly exceptional, and the human rights concerns over US extradition could justify exceptional intervention.

Holly Cullen does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

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Read more <http://theconversation.com/new-indictments-set-up-a-confrontation-between-the-us-and-julian-assange-117741>