

Assange plea came after warning that U.S. would lose extradition fight

After years of Justice Department efforts to bring the WikiLeaks founder to the United States to stand trial, the near-collapse of the case in a British court sent prosecutors hurtling toward a plea deal.

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WikiLeaks founder Julian Assange arrives at U.S. District Court in Saipan, Northern Mariana Islands, on June 26. (Kim Hong-Ji/Reuters)

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On April 4, a Justice Department attorney in Europe sent a dire message to colleagues back home: Their five-year battle to bring Julian Assange from Britain to the United States to stand trial for publishing hundreds of thousands of secret diplomatic and military files was likely to fail.

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If a deal was not made with the WikiLeaks founder before a U.K. court's April 16 deadline to provide assurances related to free

speech, they would lose all their leverage and possibly their British attorneys, who increasingly saw the case as unwinnable.

“The urgency here has now reached a critical point,” the Justice Department trial attorney wrote, in an email reviewed by The Washington Post. “The case will head to appeal and we will lose.”

For months, according to multiple people familiar with the case, the U.S. trial team attorneys had been pushing senior officials at the Justice Department to approve a deal that would have involved Assange pleading guilty to multiple misdemeanors, which he could do remotely, rather than in the Virginia court where he had been charged in 2018. A WikiLeaks representative would then appear in court and plead guilty to a felony on behalf of the nonprofit organization.

But top officials in the Justice Department did not act on the idea.

“Time is short and my understanding is that the present plea proposal is currently on the [deputy attorney general’s] desk,” another member of the trial team emailed to leaders at the Justice Department’s counterintelligence and export control unit on April 4.

Forced into action, the United States managed to stave off Assange’s appeal for two more months. In the end, the plea agreement allowed Assange to return home to Australia after he admitted on a remote Western Pacific island to a felony violation of the Espionage Act.

The near-collapse of his prosecution for the 2010 and 2011 exposures of American actions overseas shows how the case was troubled from beginning to end by the implications for free-speech rights at home and by fraught interactions with foreign courts. And it fractured an already contentious relationship between prosecutors on the case, who had been pushing for a plea deal for the past year, and senior officials in the Justice Department who held out for a felony conviction for Assange.

This account is based on interviews with eight people familiar with the negotiations who spoke on the condition of anonymity to describe sensitive conversations.

The Justice Department declined to comment. “We don’t discuss internal deliberations,” Attorney General Merrick Garland said at a news conference Thursday. “The Justice Department reaches resolution in plea matters when the Justice Department believes it can reach a resolution that serves in the best interests of the United States.”

The Assange case had challenged U.S. government officials across three administrations since WikiLeaks published reams of documents revealing U.S. military and diplomatic secrets in 2010. The leaks prompted a long-running internal Justice Department debate about whether to charge Assange or whether his organization’s actions — which included accepting leaked government documents and publishing them — were similar enough to traditional newsgathering that a prosecution would violate First Amendment protections for press freedoms. Ultimately, he was indicted in 2018 and arrested in Britain, where he had since 2012 taken shelter in the Ecuadorian Embassy as a fugitive from allegations of sexual assault in Sweden.

In December 2023, attorneys in the Justice Department working on the Assange case alerted superiors to a milestone that had just passed. Assange had spent more time fighting extradition from a London prison than he would probably be sentenced to had he come to the United States and pleaded guilty. While Assange and his supporters frequently suggested he was facing life in prison or even the death penalty, the government lawyers involved in the case had worked out that his recommended punishment would be about 55 months. It was time to resolve the case, they argued.

Discussions of a plea with Assange’s legal team had been underway since August. Assange had two nonnegotiable demands. One was that he would not set foot in the continental United States, where he was convinced he would be charged with new

crimes or shipped to military prison at Guantánamo Bay, Cuba. Second was that if he pleaded guilty, his sentence would not exceed time already served in London's Belmarsh Prison.

Assange's lawyers proposed he admit to misdemeanors for mishandling classified material, which unlike a felony plea could be handled remotely by video. (The crime is a felony now, but it was classified as a misdemeanor at the time of the leaks.) Prosecutors were open to that if a WikiLeaks representative appeared in the Eastern District of Virginia, where Assange was charged, and pleaded guilty to a felony of behalf of the nonprofit. To sweeten the deal, Assange would agree to take questions through British or Australian intermediaries about what information WikiLeaks still had and where he had shared it.

Attorneys for the government were concerned that they might not be able to win a conviction at trial over conduct that occurred 14 years prior. No one had ever before been found guilty under the Espionage Act for publishing — rather than leaking — government information. The Obama administration never filed charges against Assange, and early on in the Trump administration, some federal lawyers in the Virginia office opposed the prosecution altogether on free-speech grounds.

From August of last year through this winter, plea discussions went nowhere.

Then, in March, a British court ruled that it was preparing to send Assange to the United States — if the Americans affirmed he was entitled to the same free-speech protections as a U.S. citizen. Otherwise, the judges said, Assange could argue he was being discriminated against based on his Australian nationality.

The U.S. prosecutors said they could not and would not make that commitment. In a 2020 civil case, the Supreme Court said that “foreign organizations operating abroad have no First Amendment rights.” Rulings from the high court in other cases have held

that foreign nationals do not have the same free-speech rights as U.S. citizens.

That dilemma spurred the April 4 warning that without an immediate deal, the extradition effort might collapse. Without the First Amendment assurance, one trial attorney said in an email, the British lawyers representing the U.S. government concluded they would run into “an ethical obligation to drop the case” because of “their duty of candor” — they could no longer argue for extradition when a condition required by the court had not been met.

The U.S. trial lawyers on April 4 pleaded with their superiors to get Deputy Attorney General Lisa Monaco to approve the deal, multiple people said. If they missed the deadline in 12 days, one attorney told leaders in the counterintelligence and export control section of the department by email, they would “face a situation where we lose our leverage and the UK potentially abandons us.”

Frustrated by the delays and disagreements, the entire team from Virginia disengaged from the case, a highly unusual move. Attorneys from the Justice Department’s National Security Division picked up the negotiations with Assange’s lawyers.

To meet the April 16 deadline, U.S. Embassy officials sent a letter to the British court promising Assange could “raise and seek to rely on” the First Amendment at trial but saying “a decision as to the applicability of the First Amendment is exclusively within the purview of the U.S. Courts.” The British judges were unimpressed and, in May, let Assange pursue his appeal. For the Justice Department’s British representatives, it was game over.

“They asked for an assurance the United States government couldn’t give,” said Nick Vamos, former head of extradition for the Crown Prosecution Service. “It could have gotten really messy.”

The Americans argued that the constitutional issue boiled down to a question of legal residency, not nationality. But had the extradition failed for that reason, it could have set a precedent for other foreign criminal targets to similarly argue they were discriminated against by being refused the same rights as Americans.

With a possibly disastrous result looming, direct talks sped up.

The May ruling in Britain was the “tidal turn” in the plea discussions, WikiLeaks editor in chief Kristinn Hrafnsson said on a podcast Tuesday. “That pushed the thing in the right direction; the communication between the negotiating parties got quicker,” he said.

Over the next few weeks, lawyers from the Justice Department and Assange’s team hashed out the details.

Because Assange was adamant about avoiding the continental United States, Justice Department officials and Assange’s lawyers came up with a novel idea: Find a place that is about as remote and distant from the U.S. mainland as possible while still being U.S. territory. They agreed on a court in one of the territories in the Western Pacific captured by the United States during World War II.

The Justice Department agreed that Assange could plead only to his involvement in procuring and publishing war logs and diplomatic cables given to him by Chelsea Manning, an Army private and intelligence analyst. As a concession, U.S. officials agreed that Assange would never be charged for any other conduct up to the time of the plea — including WikiLeaks’ release of Democratic emails in 2016 and CIA hacking tools in 2017.

Assange did not have to pay any restitution; while the indictment against him focused heavily on the impact the disclosures had on people whose names were exposed, as part of the plea, the government stipulated that it had identified no victims.

The plea deal also put all the risk on the United States. It said explicitly that if the judge didn't accept it and tried to detain him any longer, the charge would be dropped and Assange would walk free. So the Justice Department picked the court, settling on Saipan, and by extension the district judge — the only one in the courthouse.

Assange is required to pay one debt: \$520,000 to the Australian government for the jet that took him from London to Saipan and then on to Canberra. The U.S. government wasn't willing to go as far as releasing him onto a commercial flight, and Assange wasn't willing to let U.S. Marshals escort him. So a compromise was struck: Assange would take a private plane to and from the island, escorted by an Australian ambassador.

Assange's brother, Gabriel Shipton, credited the Australian government with helping figure out the logistics. "The Australian government and its willingness to really represent Julian diplomatically was key," Shipton said, praising them for a solution that would "make the DOJ happy and secure Julian's freedom."

The Assange team agreed to the deal earlier this month; on Wednesday he landed back in Canberra.

Devlin Barrett, Shane Harris and Aaron Schaffer contributed to this report.