

Assange, CIA Surveillance and Spain's Audiencia Nacional

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The sordid story on the CIA-backed operation against the WikiLeaks publisher Julian Assange during his time cramped in London's Ecuadorian Embassy continues to froth and thicken. US officials have persisted in their reticent attitude, refusing to cooperate with Spain's national high court, the Audiencia Nacional, regarding its investigation into the Agency's espionage operations against the publisher, spearheaded by the Spanish security firm Undercover (UC) Global.

Since 2019, [requests for assistance](#) regarding the matter, including querying public statements by former CIA director Mike Pompeo and former head of counterintelligence, William Evanina, along with information mustered by the relevant Senate Intelligence Committee, have been made to US authorities by judges José de la Mata and Santiago Pedraz. These have been treated with a glacial silence.

On December 12, 2023, the General Subdirectorate of International Legal Cooperation furnished the US authorities "an express announcement" whether such judicial assistance would be denied.

Spain's liaison magistrate in the US, María de las Heras García, duly revealed that the tardiness to engage had been occasioned by ongoing legal proceedings being conducted before the US District Court of the Southern District of New York. As Courtney E. Lee, trial attorney at the US Justice Department's Office of International Affairs [explained](#), supplying Spain's national high court with such information would "interfere" with "ongoing US litigation". Hardly a satisfactory response, given requests made *prior* to the putative litigation.

The litigation in question involved a legal suit filed in the US District Court of the Southern District of New York by civil rights attorney Margaret Ratner Kunstler, media lawyer Deborah Hrbek, and journalists John Goetz and Charles Glass.

In their August 2022 action, the complainants alleged that they had been the subject of surveillance during visits to Assange during his embassy tenure, conduct said to be in breach of the Fourth Amendment. The plaintiffs accordingly argued that this entitled them to money damages and injunctive relief from former CIA director Mike Pompeo, the director of the Spanish security firm Undercover (UC) Global David Morales, and UC Global itself.



On December 19, 2023 District Judge John G. Koeltl [granted](#), in part, the US government's motion to dismiss while denying other portions of it. The judge accepted the record of hostility shown by Pompeo to WikiLeaks openly expressed by his April 2017 speech and acknowledged that

“Morales was recruited to conduct surveillance on Assange and his visitors on behalf of the CIA and that this recruitment occurred at a January 2017 private security industry convention at the Las Vegas Sands Hotel in Las Vegas, Nevada.”

The litigants found themselves on solid ground with Koeltl in the finding that they had standing to sue the intelligence organisation. “

In this case, the plaintiffs need not allege, as the Government argues, that the Government will imminently use their information collected at the Ecuadorian Embassy in London.”

The plaintiffs would “have suffered a concrete and particularized injury fairly traceable to the challenged program and redressable by favorable ruling” if the search of the conversations and electronic devices along with the seizure of the contents of the electronic devices were found to be unlawful.

The plaintiffs also convinced the judge that they had “sufficient allegations that the CIA and Pompeo, through Morales and UC Global, violated their reasonable expectation of privacy in the contents of their electronic devices.” But they failed to convince Koeltl that they had a reasonable expectation of privacy regarding their conversations with Assange, given the rather odd reasoning that they were aware the publisher was already being “surveilled even before the CIA’s alleged involvement.” Nor could such an expectation arise given the acceptance of video surveillance of government buildings. Problematically, the judge also held that those surrendering devices and passports at an Embassy reception desk “assumed the risk that the information may be conveyed to the Government.”

Sadly, Pompeo was spared the legal lash and could not be held personally accountable for violating the constitutional rights of US citizens.

“As a presidential appointee confirmed by Congress [...] Defendant Pompeo is in a different category of defendant from a law enforcement agent of the Federal Bureau of Narcotics.”

In February this year, US Attorney Damian Williams and Assistant US Attorney Jean-David Barnea clarified the Agency’s line of response in a [submission](#) to Judge Koeltl.

“Any factual inquiry into these allegations – whether they are true or not – would implicate classified information, as it would require the CIA to reveal what intelligence-gathering activities it did or did not engage in, among other things.”

As the agency could not “publicly reveal the very facts over which it is seeking authorization to assert the State Secrets Privilege, it is not able to respond to the relevant allegations in the complaint or to respond to any discovery requests pertaining to those allegations.”

Richard Roth, an attorney representing the four litigants, found this reasoning bemusing in [remarks](#) made to *The Dissenter*.

“From our vantage point, we cannot imagine how there is any privilege at all that relates to proprietary information of American citizens who visited the Ecuadorian embassy.”

In April, CIA director William J. Burns sought to further draw the veil in [submitting](#) a “classified declaration” defining “the scope of the information” concerning the case, claiming it satisfactorily explained “the harm that reasonably could be expected to result from the unauthorized disclosure of classified information.” For those in such lines of work, alleged harm has no quantum or sense of proportion.

Again, Roth was unimpressed, [issuing a reminder](#) that this case had nothing to do with “terroristic threats to destroy America that were uncovered through technology or a program that must never be disclosed or else the threat will succeed.” The case, importantly, concerned the CIA’s search and seizure of cell phone and laptop devices in the possession of “respected American lawyers and journalists, who committed no crime, and who have now stood up against the loss of liberties and the government’s intrusion into their private lives by copying the contents of their cell phones and laptops.”

As long as the Agency stifles and drags out proceedings on the grounds of this misused privilege, the Justice Department is bound to remain inert in the face of the Spanish investigation.

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