

# Julian Assange Is Free, But Curly Legal Questions About His Case Remain

By [Prof. Holly Cullen](#)

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[The Conversation](#)

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Today **Julian Assange** walked out of the Federal Court Building in Saipan, North Marianas Islands, a free man. He [pleaded guilty](#) to one count of breaching the US Espionage Act.

With the court accepting his 62 months already spent in Belmarsh Prison as a sufficient sentence, he has no more case to answer, and no more sentence to serve.

However, this case leaves behind it a trail of unanswered legal questions and unresolved controversies. In particular, there are questions of fundamental human rights that can only now be addressed in future cases, if ever.

## Julian Assange's Path to Freedom

Since founding WikiLeaks 18 years ago, Julian Assange has endured legal wranglings, arrest warrants, political asylum, incarceration and the **threat of extradition to the US**. Here's a timeline of the major events.

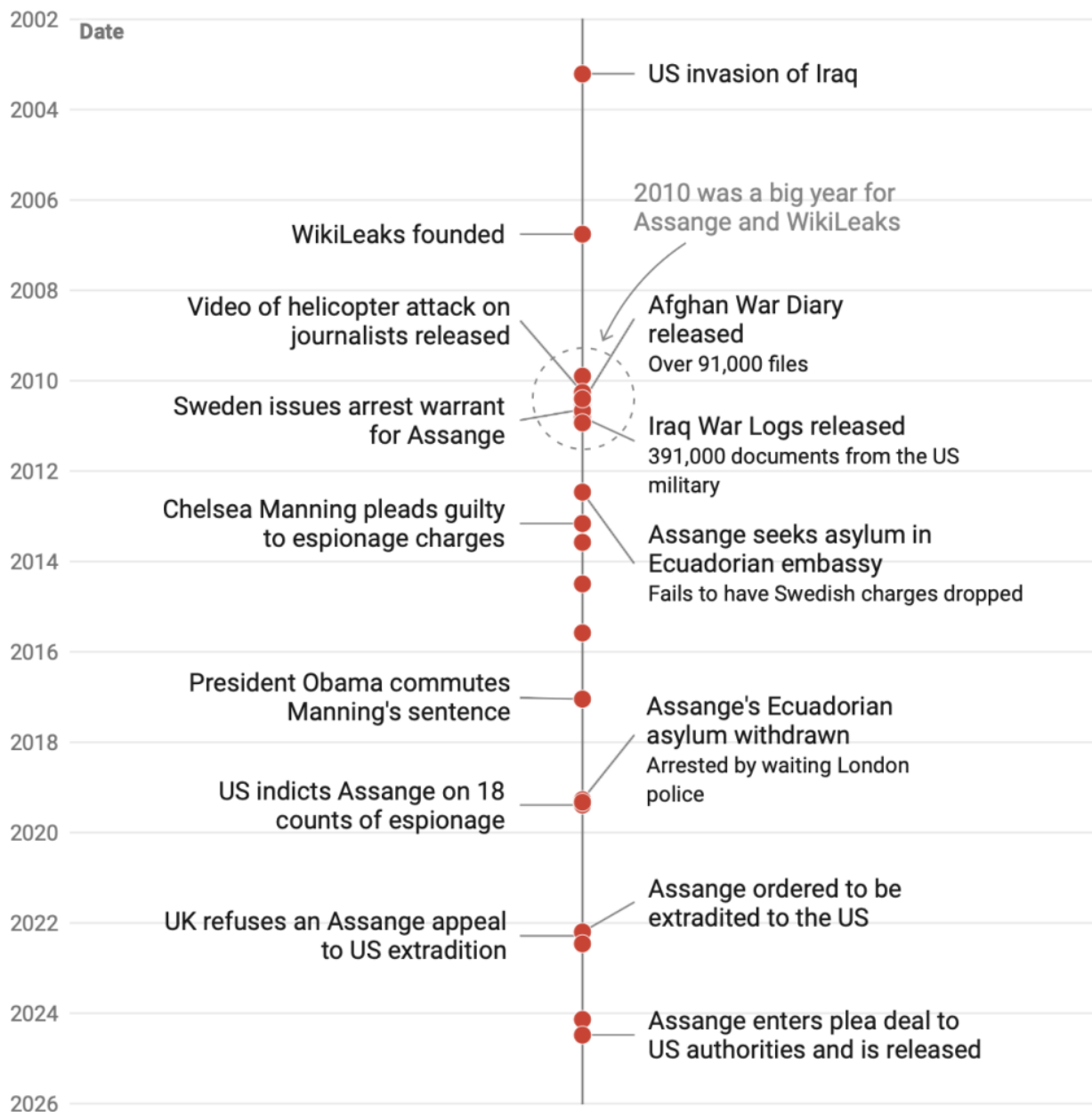


Chart: The Conversation

## Can Freedom of Speech Concerns Stop Extradition?

Once Assange had formally pleaded guilty, the US government's lawyers [announced](#) they would immediately withdraw the request to extradite Assange from the UK.

That means the [appeal](#) that would have been heard later this year will not go ahead.

To recap, in May the UK High Court gave Assange the right to appeal the UK Home Secretary's order for his extradition. This was granted on two grounds, both related to free speech.

The first ground of appeal accepted by the court was that extradition would be incompatible with Assange's right to freedom of expression, as [guaranteed](#) in the European Convention on Human Rights.

The second ground, related to the first, is that he would be discriminated against on the basis of his nationality because he could, as a non-citizen of the US, be unable to rely on First Amendment freedom of speech rights.

But as this appeal is no longer proceeding, the issue of whether a threat to the accused's freedom of expression can stop extradition will therefore not be argued or decided. The European Court of Human Rights and other human rights bodies have never addressed this point. It's unlikely to arise again soon.

## **An Espionage Precedent?**

Also on freedom of expression, the relationship between the US Espionage Act and the First Amendment of the US Constitution remains an open question.

In today's pleadings, Assange and the US government [took different views](#) on whether the exercise of freedom of expression should constitute an exception to the offences under the Espionage Act. Nonetheless, Assange [accepted](#) that no existing US case law established such an exception.

This leads to the question of whether today's guilty plea establishes a precedent for prosecuting journalists for espionage.

In the strict legal meaning of precedent in common law, which refers to a binding judicial interpretation, it does not.

The judge made no determination on whether Assange or the US government was legally correct. However, the US government can now point to this case as an example of securing a conviction against a journalist under the Espionage Act.

The question of how much a non-national of the US can rely on the First Amendment likewise continues to be on the table. This issue would also have been addressed in the extradition appeal, as a question of whether Assange would be discriminated against on the basis of his nationality.

Julian Assange walks free.

Photograph: Kim Hong-Ji/Reuters [pic.twitter.com/7S9Vlj9lws](https://pic.twitter.com/7S9Vlj9lws)

— WikiLeaks (@wikileaks) [June 26, 2024](#)

## **Detention or Confinement?**

Finally, today's hearing revived the question of whether the time Assange spent in the Ecuadorian embassy between 2012 and 2019 counts as detention.

As the judge moved to determine whether the sentence of "time served" was a sufficient penalty for his offence, the US government insisted the judge could only consider the 62 months in Belmarsh.

Assange's lawyers argued he had been detained for 14 years, including the period claiming asylum in the Ecuadorian embassy. In 2016, the [UN Working Group on Arbitrary Detention](#)

found Assange was arbitrarily detained in the embassy, largely because of the disproportionate length of time between his initial arrest and the date of the working group's opinion, over five years.

The UK and Sweden both rejected the working group's findings, which they do not regard as binding. Furthermore, the findings went beyond the established case law on arbitrary detention, which usually focus on issues of legality and fair process rather than duration. Only the dissenting member of the Working Group analysed the impact of Assange's voluntary conduct on the length of his stay in the embassy.

In today's hearing, the judge referred to Assange's "[14-year ordeal](#)" but accepted the time in Belmarsh alone was sufficient penalty. The judge considered this period, just over five years, comparable to the seven years served by Chelsea Manning, who had provided the documents to Assange.

It is also worth noting that Australia's Deputy Prime Minister Richard Marles, speaking on ABC Radio National, described Assange as "[confined](#)" in the Ecuadorian embassy, avoiding the legally significant term "detained".

The legal status of Assange's period in the embassy therefore remains ambiguous, despite the UN Working Group's 2016 findings.

Today, the main story is that Assange no longer faces prosecution for espionage and is now free to return to his family. However, some of the legal issues emerging from this case remain tantalisingly unresolved.

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