

February 14, 2024

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Merrick Garland,

The undersigned law professors strongly urge the Department of Justice to end its efforts to extradite Wikileaks founder Julian Assange to the United States and to drop the charges against him under the Espionage Act.<sup>1</sup>

Our personal views on Assange and WikiLeaks vary, and we are not writing to defend them in the court of public opinion. But when it comes to courts of law, we are united in our concern about the constitutional implications of prosecuting Assange. As explained below, we believe the Espionage Act charges against him pose an existential threat to the First Amendment.

“[A] free press cannot be made to rely solely upon the sufferance of government to supply it with information.”<sup>2</sup> Accordingly, the Supreme Court has correctly and repeatedly held that journalists are entitled to publish true and newsworthy information even if their sources obtained or released the information unlawfully.<sup>3</sup> Journalists have relied on sources who broke the law to report some of the most important stories in American history.<sup>4</sup> An application of the Espionage Act that would prohibit them from doing so would not only deprive the public of important news reporting but would run far afoul of the First Amendment.<sup>5</sup>

That is why last November, editors and publishers of The New York Times, The Guardian, and other international news outlets wrote in an open letter about the Assange case that “[o]btaining and disclosing sensitive information when necessary in the public interest is a core part of the daily work of journalists. If that work is criminalised, our public discourse and our democracies are made significantly weaker.”<sup>6</sup> Additionally, top editors at the Washington Post, Wall Street

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<sup>1</sup> 18 U.S.C. §§ 792-798.

<sup>2</sup> *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 104 (1979).

<sup>3</sup> *See, e.g., Bartnicki v. Vopper*, 532 U.S. 514 (2001); *Florida Star v. B.J.F.*, 491 U.S. 524, 536 (1989); *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 830 n.1, 832 (1978); *Okla. Publ'g Co. v. Okla. Cnty. Dist. Ct.*, 430 U.S. 308 (1977).

<sup>4</sup> *See, e.g., N.Y. Times Co. v. United States*, 403 U.S. 913 (1971) (per curiam).

<sup>5</sup> *Jean v. Mass. State Police*, 492 F.3d 24, 31 (1st Cir. 2007) (*Bartnicki* barred liability for knowingly receiving illegal recording under criminal wiretapping statute).

<sup>6</sup> Charlie Savage, [Major News Outlets Urge U.S. to Drop Its Charges Against Assange](#), N.Y. Times, Nov. 28, 2022.

Journal, USA Today, and more have unequivocally condemned the charges against Assange as a direct threat to their own journalists' rights.<sup>7</sup>

The Obama/Biden DOJ recognized as much in declining to prosecute Assange, reportedly due to “the New York Times problem,” i.e., the lack of a legal basis to prosecute Assange that could not also be used to prosecute the nation’s most recognizable newspaper.<sup>8</sup> That was, unfortunately, less of a worry for the Trump DOJ, but should deeply concern your office.

The current indictment against Mr. Assange contains 17 counts of alleged Espionage Act violations, all based on obtaining, receiving, possessing and publishing national defense information.<sup>9</sup> The indictment accuses Assange of “recruit[ing] sources” and “soliciting” confidential documents merely by maintaining a website indicating that it accepts such materials.

Award-winning journalists everywhere also regularly “recruit” and speak with sources, use encrypted or anonymous communications channels, receive and accept confidential information, ask questions to sources about it, and publish it. That is not a crime — it’s investigative journalism. As long as they don’t participate in their source’s illegality, their conduct is entitled to the full protection of the First Amendment.<sup>10</sup>

The fallout from prosecuting Assange could extend beyond the Espionage Act and beyond national security journalism. It could enable prosecution of routine newsgathering under any number of ambiguous laws and untested legal theories. We’ve already seen prosecutors test the outer limits of some such theories in cases against journalists.<sup>11</sup>

The Justice Department under your watch has spoken about the importance of newsgathering and ensuring the First Amendment rights of reporters are protected, even when stories involve classified information. You have also strengthened the Justice Department’s internal guidelines in cases involving reporters.<sup>12</sup> We applaud these efforts. But a prosecution of Assange under the Espionage Act would undermine all these policies and open the door to future Attorneys General bringing similar felony charges against journalists.

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<sup>7</sup> Camille Fassett, [Press Freedom Organizations and News Outlets Strongly Condemn New Charges Against Julian Assange](#), Freedom of the Press Foundation, May 24, 2019.

<sup>8</sup> Hadas Gold, [The DOJ’s ‘New York Times’ problem with Assange](#), Politico, November 26, 2013.

<sup>9</sup> 18 U.S.C. §§ 793; [WikiLeaks Founder Charged in Superseding Indictment](#), Office of Public Affairs, U.S. Department of Justice, June 24, 2020.

<sup>10</sup> *Bartnicki, supra; Democratic Nat’l Comm. v. Russian Fed’n*, 392 F. Supp. 3d 410, 436 (S.D.N.Y. 2019) (“Journalists are allowed to request documents that have been stolen and to publish those documents.”).

<sup>11</sup> Steven Lee Myers & Benjamin Mullin, [Raid of Small Kansas Newspaper Raises Free Press Concerns](#), N.Y. Times, Aug. 13, 2023

<sup>12</sup> Charlie Savage, [Garland Formally Bars Justice Dept. from Seizing Reporters’ Records](#), Oct. 26, 2022.

We respectfully urge you to uphold the First Amendment and drop all Espionage Act charges against Julian Assange.

Sincerely,

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Michael Avery, Professor Emeritus, Suffolk Law School

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*\*Signatories to this letter have signed in their individual capacities. Institutions are named for identification purposes only.*