

The vanishing options for Julian Assange



Any chance that the United States would drop the extradition request for Julian Assange has most likely been further diminished by the separate charges that have now been brought against Donald Trump (Simona Granati/Corbis via Getty Images)

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The weekend, AUSMIN talks in Brisbane have highlighted that Julian Assange's ongoing legal and political battle challenging his extradition to the United States is about to reach some critical pivot points. In June, Assange lost his latest bid to halt his extradition after an appeal to the UK High Court was dismissed. Further appeals before the UK courts and the European Court of Human Rights are afoot, but their prospects of success would appear low. The reality is that all of Assange's legal options are now running out.

The only realistic chance that Assange has to avoid extradition is some form of political intervention. The AUSMIN talks suggest that the prospects of a political breakthrough are also slim. Foreign Minister Penny Wong made clear the Albanese government's view that Assange's case has "dragged on for too long", but acknowledged there are limits to what Australia can do until Assange's legal processes have concluded.

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Of more significance were statements made alongside Wong by Antony Blinken, the US Secretary of State. Blinken is the most senior US government official to speak about Assange for some time. He acknowledged that Wong had made representations and indicated he "understood" the views of Australians. But significantly, Blinken added:

"I think it's very important that our friends here understand our concerns about this matter ... Assange was charged with very serious criminal conduct in the United States in connection with his alleged role in one of the largest compromises of classified information in the history of our country. The actions that he is alleged to have committed risked very serious harm to our national security to the benefit of our adversaries and put named human sources at grave risk."

The status quo therefore remains, and for the time being, there is no change in the US pursuit of Assange.

There is significant misunderstanding that somehow Australia can magically resolve Assange's plight. Assange may well be an Australian citizen, however legally Australia is not a part of any of his legal proceedings and never has been. Sweden originally sought Assange's extradition in 2010 over sexual assault charges. Assange challenged Sweden's extradition request in the United Kingdom, before in 2012 claiming asylum at the Ecuadorian embassy in London. He stayed there until 2019 when he was effectively evicted by the Ecuadorians, arrested by the London Metropolitan Police for breaching his 2010 bail conditions, and after serving 50 weeks in gaol, was then subject to the US extradition request.

None of these matters involved Australia, and at times Assange refused any consular assistance offered to him by the Australian High Commission in London. Only recently has the new High Commissioner, Stephen Smith, been able to establish physical contact with Assange following a consular visit in April.

The quickest solution to Assange's legal woes would be for the United States to drop its extradition request. The US Department of Justice has been investigating Assange's deeds with WikiLeaks as far

back as 2010 and investigations have continued under the Obama, Trump and Biden administrations. There was hope among Assange's supporters that the pursuit would end after Donald Trump won the presidency – even urging for Trump to suggest that Australia appoint Assange as ambassador to Washington – and again some false hope in 2021 that Joe Biden would withdraw the extradition request on becoming president, but this did not occur.

Any chance that the United States would drop the extradition request has most likely been further diminished by the separate charges that have now been brought against Trump. The Department of Justice, following a joint investigation with the FBI, has laid 37 charges against Trump relating to documents and materials that were seized at his Florida residence. The charges include unauthorised retention of classified documents and conspiracy to obstruct justice after he left the White House in 2021, and 31 charges under the Espionage Act.

Somewhat remarkably, both Assange and Trump are now the most prominent Espionage Act cases in the United States. Assange for gaining access to classified US national security documents and publishing some of that material on WikiLeaks, and Trump for retaining national security documents after he left the White House. Given the developments in the Trump case, it is highly unlikely and politically would be very damaging for the Biden administration if a decision was made to discontinue its pursuit of Julian Assange, while at the same time continuing its pursuit of Donald Trump.

Only two political options remain that may bring about a resolution for Assange. The first is that concern over his health reaches such a dire state that UK Home Secretary Suella Braverman reverses a June 2022 UK decision to extradite Assange in response to the US extradition request. Such a decision would be made purely on humanitarian grounds that Assange was no longer capable of being physically moved from the United Kingdom to the United States without his life being imperilled. There is some precedent for extradition being halted on these grounds in the past and it would only be exercised in the most exceptional of cases. Australia would have a view on this and could legitimately make direct representations to the Sunak government.

The final roll of the dice may arise when Albanese makes his Washington trip, anticipated for later this year, following Biden's decision in May to cancel a visit to Australia. Albanese's talks would present an opportunity for a direct plea to Biden to drop the extradition request. Once 2024 is reached and the US presidential election cycle ramps up, Biden would not risk the political backlash such a decision would generate.

Albanese has made clear his position on Assange. He has bipartisan support in Australia. The prime minister is now facing the prospect of having to make a direct and personal pitch for Assange's release when he visits the White House. How that is received will invariably be judged as a test of Australian influence in Washington.



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