

ADX (unless he were to do something subsequent to the offering of these assurances that meets the tests for the imposition of SAMs or designation to ADX). The United States has also provided an assurance that the United States will consent to Mr Assange being transferred to Australia to serve any custodial sentence imposed on him.

Assurances

6. The United States maintains that the District Judge was in error in determining that it would be oppressive to extradite Mr Assange pursuant to section 91. The United States has nonetheless provided four assurances to the United Kingdom. These are responsive to, and have been drafted so as to meet, the specific findings of the District Judge relevant to section 91. These are comprehensive; go beyond meeting the issues identified by the District Judge and are provided given the unique circumstances of this case.
7. Permission to appeal is thus separately sought pursuant to section 106(5)(a). The assurances constitute an issue that was not raised at the extradition hearing and which would have resulted in the judge deciding the relevant question differently. Assurances do not constitute fresh evidence and, may be offered at the appellate stage [see below at §77].
8. These assurances are as follows:
 - (1) The United States will not impose Special Administrative Measures (SAMs) on Mr. Assange, pre-trial or post-conviction. This undertaking is subject to the condition that the United States retains the power to impose SAMs on Mr. Assange in the event that, after entry of this assurance, he was to commit any future act that met the test for the imposition of a SAM pursuant to 28 C.F.R. § 501.2 or § 501.3.
 - (2) Pursuant to the terms of the Council of Europe Convention on the Transfer of Sentenced Persons (COE Convention), to which both the United States and Australia are parties, if Mr. Assange is convicted in the United States, he will be eligible, following conviction, sentencing and the conclusion of any appeals, to apply for a prisoner transfer to Australia to serve his U.S. sentence. Should Mr. Assange submit such a transfer application, the United States hereby agrees to consent to the transfer. Transfer will then follow, at such time as Australia provides its consent to transfer under the COE Convention.
 - (3) The United States undertakes that in the event of extradition, and Mr. Assange being held at any time in custody, it will ensure that Mr. Assange will receive any

such clinical and psychological treatment as is recommended by a qualified treating clinician employed or retained by the prison where he is held in custody.

- (4) The United States undertakes that, pretrial, Mr. Assange will not be held at the United States Penitentiary-Administrative Maximum Facility (ADX) in Florence, Colorado. If he is convicted and sentenced to a term of imprisonment, Mr. Assange will not be held at the ADX save that the United States retains the power to designate Mr. Assange to ADX in the event that, after entry of this assurance, he was to commit any future act that then meant he met the test for such designation.

Issues of principle

9. It is recognised that these assurances, if accepted, may well render the other grounds of appeal academic. That will be a matter for the Court upon any substantive appeal. The prosecution will, if permission is granted on all grounds, nonetheless invite the High Court to consider the correctness of the District Judge's findings in respect of section 91 (irrespective of the assurances). This appeal raises important points of principle as to the correct approach to section 91 and, in particular, where it concerns predictive assessments about an individual's mental health, at a point in the future, post extradition, post -conviction and contingent upon conditions the individual may or may not be held in.
10. Those points of principle are all the more important here given that the defence evidence was that the prison that Mr Assange would be held in pre- trial had a "stellar" record on suicide prevention [Judgment at §353, CAB/1/page 115] and that that the protocols for the prevention of suicide within the Bureau of Prisons (which would apply post- trial) were good [Judgment at §361 CAB/1/page 118]. Moreover, Professor Fazel's evidence on the comparative prevalence of suicide (which was uncontested before the District Judge) was that suicide rates in prisons in England and Wales are substantially higher than in United States prisons [see CAB/12/page 638]. This raises broader, principled issues, as to comity:
 - a. Whether the District Judge's approach in this case was to erect a hurdle to extradition that no state could meet and which the United Kingdom could not meet in equivalent circumstances.
 - b. Whether it was intended that section 91 should operate as such a high barrier to extradition when the law applicable to fundamental human rights does not. The threshold to be met before removal to a foreign state will breach Article 3 Convention rights is significantly higher than the approach applied by the District Judge to section 91. For the reasons set out in this application, it is submitted that there should not be such divergence and that this is contrary to the stringent approach applied in other cases to section 91.