

Snowden Becomes Eighth Person to Be Charged with Violating the Espionage Act Under Obama

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A criminal complaint indicates former NSA contractor and whistleblower Edward Snowden has been charged with three felonies. Two of the felonies are charges under the Espionage Act.

The [complaint](#), filed on June 14, shows he was charged with “unauthorized communication of national defense information”—an Espionage Act violation—and “willful communication of classified communications intelligence information to an unauthorized person,” a violation of United States Code 798 [prohibiting](#) the disclosure of classified information and an offense under the Espionage Act.

Each charge carries a ten-year maximum sentence if convicted.

The Washington Post further [reports](#) that the complaint was filed in the Eastern District of Virginia. Not only is this jurisdiction where Snowden’s former employer, Booz Allen Hamilton, happens to be headquartered, but it is also where key prosecutions for espionage have been filed under President Barack Obama.

Snowden is the eighth person to be charged under the Espionage Act under Obama. This is more than all previous presidential administrations combined.

NSA whistleblower Thomas Drake was [charged](#) for espionage in April 2010 after he communicated information on surveillance programs to a Baltimore Sun reporter.

For disclosing classified information on FBI wiretaps to a blogger, FBI translator named Shamai Leibowitz was [charged](#) under the Espionage Act.

Pfc. Bradley Manning was charged with multiple violations of the Espionage Act in July 2010 after disclosing US government information to WikiLeaks.

Stephen Kim, a former State Department contractor, was [charged](#) in August 2010 for revealing classified information on North Korea to Fox News reporter James Rosen. (Rosen was labeled an “aider, abettor and co-conspirator” in the leak.)

In December 2010, a former CIA officer, Jeffrey Sterling, was [charged](#) under the Espionage Act after he communicated with New York Times reporter James Risen about Iran’s nuclear program in the 1990s. (The Obama Justice Department has fought in the courts to have a judge require Risen to testify against Sterling.)

John Kiriakou, a former CIA officer, was charged under the Espionage Act in January 2012

[after he shared information](#) related to a rendition operation with reporter Matthew Cole.

A [much lesser-known individual](#), James Hitselberger, a former Navy linguist, was charged with violating the Espionage Act for providing classified documents to the Hoover Institution at Stanford University.

The Espionage Act charges were dropped in the cases of Drake, Kiriakou and Leibowitz. Manning has pled guilty to lesser offenses but not the espionage charges. Hitselberger, Kim and Sterling's cases are all still pending. [Kiriakou's serving a 30-month sentence in a prison in Loretto, Pennsylvania, after pleading guilty to violation of the Intelligence Identities Protection Act.]

Both Drake and Kiriakou's cases went through the Eastern District of Virginia. Sterling's case is pending in the same jurisdiction.

"The Eastern District of Virginia is the most conservative court in the country," according to Jesselyn Radack, a director of the Government Accountability Project's national security and human rights division who has defended national security whistleblowers. "My experience with espionage cases there is that, even if you get assigned a progressive judge, the deck is still stacked against you."

This jurisdiction is also where a grand jury investigation into WikiLeaks has been [empaneled](#). The investigation has been broad and, as Sam Knight reported for The Nation, it has used "subpoena powers rarely wielded against bloggers and journalists."

The Espionage Act is a law from 1917 that was intended to criminalize individuals who engaged in spying, not leakers or whistleblowers. It was not initially used to prosecute government employees who passed on information to a reporter or a media organization. But, under Obama, the Justice Department has exercised wide discretion and interpreted the law as one that can be used to criminalize government employees who blow the whistle on corruption or share information on operations, policies or programs with the press. They have used to prosecute them as if they are "insiders," "informers," or "spies."

President Barack Obama came into office committed to "protecting" whistleblowers.

Often the best source of information about waste, fraud, and abuse in government is an existing government employee committed to public integrity and willing to speak out. Such acts of courage and patriotism, which can sometimes save lives and often save taxpayer dollars, should be encouraged rather than stifled. We need to empower federal employees as watchdogs of wrongdoing and partners in performance. Barack Obama will strengthen whistleblower laws to protect federal workers who expose waste, fraud, and abuse of authority in government. Obama will ensure that federal agencies expedite the process for reviewing whistleblower claims and whistleblowers have full access to courts and due process.

However, when Congress passed the Whistleblower Protection Enhancement Act, the White House coordinated with Congress so that employees at national security or intelligence agencies would not be covered. That means, when Obama had the opportunity to make it easier for employees to go through proper channels when exposing corruption or wrongdoing, he did the exact opposite.

Radack and her colleague at GAP, Kathleen McClellan, have written:

These “leak” prosecutions send a chilling message to public servants, as they are contrary to President Barack Obama’s pledge of openness and transparency. The vast majority of American citizens do not take issue with the proposition that some things should be kept secret, such as sources and methods, nuclear designs, troop movements, and undercover identities. However, the campaign to flush out media sources smacks of retaliation and intimidation. The Obama administration is right to protect information that might legitimately undermine national security or put Americans at risk. However, it does not protect national security interests when it brings cases against whistleblowers who divulge information that communicates important information to the public; sparks meaningful dialogue; or exposes fraud, waste, abuse, illegality, or potential dangers to public health and safety. A free and open democratic government welcomes debate. Stifling information violates that democratic principle.

The Justice Department does not have to identify or prove that any harm to national security has occurred. They only have to prove that a person had “reason to believe” information could be used to the injury of the United States.”

The New Yorker’s Jane Mayer [highlighted](#), when Drake was still charged with violating the Espionage Act:

...Because reporters often retain unauthorized defense documents, Drake’s conviction would establish a legal precedent making it possible to prosecute journalists as spies. ‘It poses a grave threat to the mechanism by which we learn most of what the government does,’ [Mort] Halperin [of the Open Society Institute] says...

That shows what these “leak” prosecutions can do to freedom of the press.

Now, the “theft of government property” charge falls under United States Code 641 or [a code](#) against the “embezzlement of government property.” This is also a code that Manning is accused of violating multiple times.

The defense in Manning’s case has [argued](#) that the prosecutors must prove that the information disclosed without authorization was a “thing of value” and Manning intended to deprive the government of the use or benefit of this “property” in order for him to be convicted of this offense.

Snowden is still in Hong Kong. He has reportedly considered seeking asylum and/or citizenship in Iceland. There have been reports about a businessman connected to WikiLeaks being willing to fly Snowden on a private jet to Iceland. However, Icelandic parliamentarian Birgitta Jonsdottir has urged Snowden not to board any private jet to Iceland.

“I have worked with asylum seekers in Iceland. I would not recommend that path for #Snowden. Citizenship offers the only real protection,” she [tweeted](#). She added that Iceland had a “terrible track record when it comes to turning back asylum seekers.” And, “There is much general support for Snowden among the general public in Iceland, thus it is still an option to seek citizenship.” But she hoped he would not take any risks with jets.

Going forward, the US has asked the Hong Kong detain Snowden but a very real problem the United States government may have is that Snowden has been charged with espionage.

The extradition treaty the United States has with Hong Kong happens to have an exception for political offenses. Espionage is considered a political offense. So, Hong Kong is more likely to push back on an extradition request because the charges are not limited to the charges of theft and conversion of government property.

Update

The three individuals charged under the Espionage Act prior to the eight under Obama were Daniel Ellsberg, the Pentagon Papers whistleblower charged under President Richard Nixon, Samuel T. Morison, a Navy civilian analyst who was charged under President Ronald Reagan and Lawrence Franklin, a Pentagon analyst charged under President George W. Bush.

Morison leaked photographs of Soviet ships to alert America to what he perceived as a new threat. Franklin leaked information on Iran to the American Israel Public Affairs Committee.

These are not the only people charged under the Espionage Act under previous presidents. These are just the ones charged with leaking information.

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