



Restrictions on the Use of Journalists for Intelligence Purposes

May 30, 2024

This CRS Insight provides background and issues facing Congress concerning U.S. restrictions on the use of journalists for intelligence purposes. Congress may examine whether existing statutory provisions sufficiently protect overseas U.S. journalists and others from a perception by adversarial governments of an individual's affiliation with the U.S. intelligence community.

Background

Wall Street Journal reporter Evan Gershkovich continues to be held by Russian authorities more than a year after being arrested in late March 2023 on charges of espionage. The U.S. Department of State [determined](#) that Gershkovich is “wrongfully detained” and that the U.S. government will provide all appropriate support to secure his release.

Prior to the mid-1970s, [reportedly](#) it had been a [practice](#) of the Central Intelligence Agency (CIA) to use American journalists for intelligence collection purposes. These reports raised questions about whether such practices violated the rights of Americans (including to a free press) or unnecessarily endangered American journalists abroad. Following [investigations](#) into U.S. intelligence activities by two congressional select committees (chaired by Senator Frank Church and Representative Otis Pike), Congress made a number of recommendations for reforming intelligence policy and oversight, including the recommendation to establish a permanent [congressional oversight framework](#) for intelligence activities. It has since been the policy of the intelligence community not to use journalists, clergy, or Peace Corps volunteers for intelligence purposes, other than in exceptional circumstances. The agency's declassified implementing regulations for [E.O. 12333](#), *United States Intelligence Activities*, state the agency would not use accredited U.S. or foreign journalists, clergy, or Peace Corps workers for intelligence purposes. Open, acknowledged relationships with the clergy and journalists for conducting translation or training services, or (for clergy) religious services, were [permitted](#). The agency also disallowed the use of congressional employees for intelligence purposes without approval from the individual's Member or committee chair.

John Deutch, then-Director of Central Intelligence (DCI), described an exception to this policy in [July 1996 testimony](#) for the Senate Select Committee on Intelligence. Deutch expressed reluctance to ever use

Congressional Research Service

<https://crsreports.congress.gov>

IN12369

journalists but defended maintaining an exception in “extremely rare...highly improbable circumstances” that could result in intelligence enabling disruption of an “extreme threat to the Nation.”

As the Director of Central Intelligence, I must be in a position to assure the President and the members of the National Security Council and this country, that there will never come a time when the United States cannot ask a witting citizen, knowledgeable citizen, to assist in combating an extreme threat to the Nation. So I, like all of my predecessors for the last 19 years, have arrived at the conclusion that the Agency should not be prohibited from considering the use of American journalists or clergy in exceptional circumstances. (S.Hrg. 104-593, pp. 6-7)

Journalists testifying at the same hearing, citing the CIA’s previous record of using journalists for intelligence purposes, expressed the opinion that allowing any exception potentially casts suspicion on anyone working overseas as a journalist, aid worker, or member of the clergy, and puts them at risk of detention or other adverse action by hostile governments. (S.Hrg. 104-593, p. 16)

Legislation

Shortly after this July 1996 hearing, Congress included language in the FY1997 Intelligence Authorization Act (P.L. 104-293 §309, codified as [50 U.S.C. §3324](#)) addressing the use of journalists in intelligence activities. The provision states that it is the “policy of the United States that an element of the Intelligence Community may not use as an agent or asset for the purposes of collecting intelligence any individual who (1) is authorized by contract or by the issuance of press credentials to represent himself or herself, either in the United States or abroad, as a correspondent of the United States news media organization; or (2) is officially recognized by a foreign government as a representative of a United States media organization.”

Waiver and Congressional Notification Provision

The statute permits the President to establish procedures ([50 U.S.C. §3324\(b\)](#)) for the President or Director of National Intelligence to waive the policy with respect to an individual upon making a written determination that a waiver is “necessary to address the overriding national security interest of the United States.” In the event of a waiver, the Administration is to provide notification to the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence.

Voluntary Cooperation of “Any Person”

The statute allows for the voluntary cooperation by “any person” who is aware he or she is cooperating with the U.S. intelligence community. A former Inspector General of the CIA [has maintained](#) that the wording of the provision—specifying “any person” knowingly volunteering information to U.S. intelligence—effectively includes members of the clergy and Peace Corps, in addition to journalists. Current CIA regulations do not allow for such relationships with Peace Corps volunteers.

Other Factors

The U.S. Department of State has issued travel advisories for some countries (including, for example, [Russia](#), [China](#), and [North Korea](#)) where it assesses U.S. citizens face heightened risk of harassment, detention, and arbitrary enforcement of the law. Hostile foreign governments may particularly target journalists (such as [Michael Kovrig](#) and [Michael Spavor](#), in China), clergy or missionaries ([Kenneth Bae](#), North Korea), or other individuals in sensitive positions to gain leverage in negotiating concessions from the United States or other nations, or for domestic reasons. Similarly, the cases of basketball player

[Brittney Griner](#) (Russia) and former U.S. Marine [Paul Whelan](#) (Russia) suggest that U.S. citizens who are high-profile or from military or intelligence backgrounds may face additional risk.

Potential Issues for Congress

- Congress may consider whether the restrictions on intelligence community use of accredited U.S. journalists as agents or assets should extend to overseas non-credentialed U.S. journalists.
- Congress may consider whether U.S. members of the clergy, Peace Corps, and other individuals at heightened risk from hostile governments warrant similar explicit statutory protections.
- Congress may consider whether the waiver provision in 50 U.S.C. §3324(b) provides a pretext for a foreign government to detain U.S. citizen journalists, clergy or Peace Corps volunteers on suspicion of being associated with U.S. intelligence.
- Congress may consider whether its oversight bodies, particularly the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, have appropriate access, tools, and authorities to conduct robust and timely oversight of intelligence activities.

Author Information

Michael E. DeVine
Analyst in Intelligence and National Security

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.