UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
	*	
v.	*	
	*	**MAGISTRATE NO. BPG-16-2254**
HAROLD T. MARTIN, III,	*	
	*	
	*	
Defendant	*	
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GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR A DETENTION HEARING

For over two decades, the Defendant, Harold T. Martin, III, was entrusted to work at multiple government agencies dealing with highly classified information, including the National Security Agency ("NSA"). Throughout his government assignments, the Defendant violated that trust by engaging in wholesale theft of classified government documents and property—a course of felonious conduct that is breathtaking in its longevity and scale. The Defendant's decades of criminal behavior were in flagrant violation of his many promises and oaths, as well as the law. The case against the Defendant thus far is overwhelming, and the investigation is ongoing. The Defendant knows, and, if no longer detained may have access to, a substantial amount of highly classified information, which he has flagrantly mishandled and could easily disseminate to others. The government intends to file additional serious felony charges as described herein. After betraying the most important trust the United States can grant, the Defendant presents a high risk of flight, a risk to the nation, and to the physical safety of others. After twenty years of violating the nation's trust and its laws, the Defendant now asks the Court to place similar trust in him to remain in the United States and abide by any conditions of release set by the Court. The Court should deny that request.

I. PROCEDURAL POSTURE

On August 27, 2016, the Defendant was arrested during the execution of several search warrants, one of which was for his residence. On August 29, 2016, the Defendant was charged by criminal complaint with Theft of Government Property, in violation of Title 18, United States Code, Section 641, and Unauthorized Removal or Retention of Classified Documents or Materials by Government Employee or Contractor, in violation of Title 18, United States Code, Section 1924. The complaint and supporting affidavit were filed under seal, pursuant to Court order.

On August 29, 2016, the Court held an initial appearance on the complaint. The courtroom was closed at the time of the hearing, on motion of the government and with the consent of the Defendant. At the initial appearance, the Court appointed the office of the Federal Public Defender to represent the defendant. The government moved for detention, and the Defendant consented to detention without prejudice to seeking a detention hearing at a later date.

On September 8, 2016, the Defendant submitted a written waiver of preliminary hearing. On September 13, 2016, the government filed a consent motion to extend the period within which an indictment or information must be filed. The same day, the Court entered an order extending the period within which an indictment or information must be filed to March 1, 2017.

On October 5, 2016, the government moved to unseal the case, and the Court granted the government's motion. On October 17, 2016, the Defendant filed a motion seeking a detention hearing. A detention hearing is currently scheduled for 2:15 p.m. on Friday, October 21, 2016, before United States Magistrate Judge A. David Copperthite.

As set forth below, the government seeks the Defendant's continued pretrial detention based upon the grave danger his release would pose to the community and the serious risk that he may fail to appear as required.

II. RELEASE OF THE DEFENDANT WOULD POSE A DANGER TO THE NATION'S SECURITY

At the hearing, the government will proffer evidence demonstrating that each of the factors to be considered under the Bail Reform Act supports detention of the Defendant pending trial in this case. The evidence will make clear that the nature and circumstances of the offenses, the history and characteristics of the Defendant, and the overwhelming weight of the evidence all support detention of the Defendant pending trial. Most important, however, is the grave and severe danger that pretrial release of the Defendant would pose to the national security of the United States.

A. The Offenses are Extremely Serious and Merit Pretrial Detention

The evidence provides ample probable cause to believe that the Defendant has committed extremely serious offenses against the United States and should be detained. *See* 18 U.S.C. § 3142(g)(1). The pending charges are very serious. During execution of the search warrants, investigators seized thousands of pages of documents and dozens of computers and other digital storage devices and media containing, conservatively, fifty terabytes of information. The seized hard copy documents that were seized from various locations during the search comprise six full bankers' boxes worth of documents. Some of the documents are marked "Unclassified/For Official Use Only," and many are marked "Secret" and "Top Secret." Many of the documents marked "Secret" and "Top Secret," also bear special handling caveats. The information stolen by the Defendant also appears to include the personal information of government employees. The seized digital media included computers, external hard drives, optical discs and a number of USB thumb drives.

The Defendant stole from the government and hid at his residence and in his vehicle a vast

amount of irreplaceable classified information. His thefts involved classified government materials that were dated from 1996 through 2016, spanning two decades' worth of extremely sensitive information. For example, the search of the Defendant's car revealed a printed email chain marked as "Top Secret" and containing highly sensitive information. The document appears to have been printed by the Defendant from an official government account. On the back of the document are handwritten notes describing the NSA's classified computer infrastructure and detailed descriptions of classified technical operations. The handwritten notes also include descriptions of the most basic concepts associated with classified operations, as if the notes were intended for an audience outside of the Intelligence Community unfamiliar with the details of its operations.

Among the many other classified documents found in the Defendant's possession was a document marked as "Top Secret/Sensitive Compartmented Information" ("TS/SCI") regarding specific operational plans against a known enemy of the United States and its allies. In addition to the classification markings, the top of the document reads "THIS CONOP CONTAINS INFORMATION CONCERNING EXTREMELY SENSITIVE U.S. PLANNING AND OPERATIONS THAT WILL BE DISCUSSED AND DISSEMINATED ONLY ON AN ABSOLUTE NEED TO KNOW BASIS. EXTREME OPSEC PRECAUTIONS MUST BE TAKEN." The Defendant was not directly involved in this operation and had no need to know about its specifics or to possess this document.

A conservative estimate of the volume of the digital information seized from the Defendant is approximately 50,000 gigabytes.[1] This information must be fully reviewed by appropriate authorities to determine its source and classification level, as well as the extent to which it

[1] A gigabyte (GB) is sufficient storage space for approximately 10,000 pages of documents containing images and text.

constitutes "national defense information." The investigation into the Defendant's unlawful activities is ongoing, including review of the stolen materials by appropriate authorities. The government anticipates that much of this material will be determined to be national defense information that the government goes to great expense to protect.

The improper retention and transmission of national defense information is prohibited under the Espionage Act. *See, e.g.,* 18 U.S.C. § 793 (Gathering, Transmitting or Losing Defense Information). Information about sources and methods of the Intelligence Community, such as the information in the documents described above, and in the criminal complaint, is classic national defense information. *See Gorin v. United States*, 312 U.S. 19, 28 (1941) (information relating to the national defense is "a generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness."). In this case, when an indictment or information is filed, the government anticipates that the charges will include violations of the Espionage Act, an offense that carries significantly higher statutory penalties and advisory guideline ranges than the charges listed in the complaint.

Congress has recognized the seriousness of compromising the security of classified information through substantial criminal penalties. *See* 18 U.S.C. §§ 641, 793. Moreover, the Defendant's alleged crimes, and the anticipated additional charges, are extremely serious within the meaning of the Bail Reform Act. The Defendant's crimes reflect a willingness to routinely betray the trust of the nation, and there is no reason to believe that, if released, the Defendant will have any greater regard for any trust placed in him by the Court.

B. <u>The Evidence of the Defendant's Guilt is Overwhelming</u>

The weight of the evidence against the Defendant is overwhelming. *See*

18 U.S.C. § 3142(g)(2). The Defendant was in possession of an astonishing quantity of marked classified documents which he was not entitled to possess, including many marked TS/SCI, that appear to contain national defense information. Many of the marked documents were lying openly in his home office or stored in the backseat and trunk of his vehicle.

In his non-custodial interview, the Defendant initially lied to investigators and denied taking classified information from his work assignments, notwithstanding the documents left lying about in his vehicle and home. When confronted with specific marked documents he had stolen, only then did the Defendant begin to admit that: (1) he had taken documents and digital files that he knew were classified from his work assignment to his residence and vehicle, and (2) he knew such actions were unauthorized and wrong. He also admitted that he had committed these crimes regularly over many years. If the Defendant had not been arrested, it is clear that he would have kept these classified materials to use as he saw fit.

The Defendant had access to classified information, including Top Secret information, beginning in 1996. His access to classified information began during his service in the U.S. Naval Reserves, and continued as he worked for seven different private government contracting companies. Access to classified information was critical to the Defendant's employment in his field. He worked on highly classified, specialized projects and was entrusted with access to government computer systems, programs and information.

Over his many years holding a Top Secret security clearance, the Defendant had been trained on the proper handling and storage of classified materials. He signed a number of Non-Disclosure Agreements over two decades that reiterated the need to handle classified information appropriately, including documents that listed the potential criminal penalties for failing to do so.

One of the many trainings on protection of national security and classification included the following information:

> At any given moment, there are numerous countries spying against the United States—from our most dangerous enemies to our closest allies. They want our information. Our technology. Our deepest secrets. And while many of these threats come from the outside, perhaps the greatest security concern facing the nation today comes from within our most trusted circles.
>
> This concern is often, and correctly called . . . The Insider Threat. Millions of people are trusted with America's most important secrets. Vetted personnel who've made promises to protect this information at all costs. Millions of cleared people—but it takes just one person to undo it all. To waste years of research . . . to squander millions of dollars in technological innovation . . . to put thousands of people in harm's way.
>
> Our information is valuable and the economics of espionage are simple. Why spend billions developing a military program when you can spend a fraction of the cost to simply steal it? But beyond money, imagine how the United States' critical information could allow adversaries to exploit our weaknesses—discovering holes in our defenses . . . and providing those who would do us harm an increased advantage to steal the liberty and lives of our fellow citizens and allies.
>
> Whether intentional or not, when someone fails to safeguard critical information or protect our computer networks from the ever-present threat, the impact can be felt for decades. It's your duty to protect the information you have access to. And if you believe someone else is placing that information—or themselves—in danger, it's your responsibility to say something. It only takes one person to betray a nation . . . or to save it.

As a trusted insider, the Defendant was able to defeat myriad, expensive controls placed on that information. The evidence is overwhelming that the Defendant abused this trust and chose to repeatedly violate his agreements, his oaths and the law—and to retain extremely sensitive government information to use however he wished.

C. The Defendant's Technical Knowledge and History of Criminal Behavior Warrant Pretrial Detention

The Defendant's history and characteristics also demonstrate that he should be detained. *See* 18 U.S.C. § 3142(g)(3). The Defendant has obtained advanced educational degrees and has taken extensive government training courses on computer security, including in the areas of encryption and secure communications. He has attended a number of prominent computer hacking conferences. The Defendant was enrolled in a Ph.D. program in information security management at the time of his arrest, and was engaged in research for his doctoral dissertation. His doctoral studies were in the same general subject area in which he worked as a private contractor assigned to the government.

Examination of the digital media seized from the Defendant indicates extensive use of sophisticated encryption, anonymization, and virtual machine technologies. There is evidence that he has remote data storage accounts and has engaged in encrypted communications. The Defendant also had encrypted communication and cloud storage apps installed on his mobile device. The Defendant has the knowledge and training to house some or all of the stolen digital information in cyberspace, where he could easily access or transfer it, were he to have access to the internet. The Defendant was in possession of a sophisticated software tool which runs without being installed on a computer and provides anonymous internet access, leaving no digital footprint on the machine. The Defendant's internet activity also suggests that he was attempting to locate anonymous internet access and to run operating systems on his machines that would not leave any forensic evidence of his computer activities. In July 2016 he watched a video about how individuals who attempt to remain anonymous on the internet are caught by authorities. He has a demonstrated ability to conceal his online communications and his access to the internet.

D. Pretrial Release of the Defendant Poses a Grave Danger to the Nation

Most importantly, the nature and severity of the danger that release of the Defendant would pose to the community can only be mitigated by pretrial detention. *See* 18 U.S.C. § 3142(e)(1) and (g)(4). In late July 2016, the Defendant traveled to Connecticut to purchase a "Detective Special" police-package Chevrolet Caprice. During execution of the search warrants, law enforcement officers recovered ten firearms, including an AR-style tactical rifle and a pistol-grip shotgun with a flash suppressor. Only two of his firearms were registered, although three others may have required registration depending on their date of purchase. The Defendant's wife was very upset to learn about the Defendant's arsenal, as she had only been aware of the Defendant possessing one or two of the firearms which were found in the home. In addition, a loaded handgun was found in a case lying on the rear driver's side floorboard of the Caprice, in apparent violation of Maryland law. If the Defendant stole this classified material for his own edification, as he has claimed, there would be no reason to keep some of it in his car, and arm himself as though he were trafficking in dangerous contraband. Prior to the Defendant's arrest, his wife asked law enforcement officers to remove the firearms from the home because she was afraid that he would use them to kill himself if he "thought it was all over." With her consent, all of the weapons were taken into the custody of the FBI.

The fact that digital and hard copy materials containing highly classified information were found in the Defendant's vehicle demonstrates that the materials were being transported and were available to anyone who may have gained access to his vehicle. The Defendant admitted that he regularly was transporting this material in his vehicle. The Defendant did not have an enclosed garage, and his vehicle was routinely parked in the driveway of his home, including when the

search warrants were executed.

As digital technology has proliferated, extremely small devices can be used to store or access digital information. Currently, the Defendant has no access to digital devices or unmonitored communications (except for communications with counsel). If he is released, he will have the ability to access and transmit any stolen classified information he may still have hidden or stored online. As a practical matter, should he be released, there is no way to prevent him from obtaining access to an internet-enabled device or from contacting another individual willing to assist him. Any order from this Court prohibiting this conduct could only be enforced after it is violated, and our nation's security has already been irrevocably compromised.

As a result of the extensive publicity this case has received, it is readily apparent to every foreign counterintelligence professional and nongovernmental actor that the Defendant has access to highly classified information, whether in his head, in still-hidden physical locations, or stored in cyberspace—and he has demonstrated absolutely no interest in protecting it. This makes the Defendant a prime target, and his release would seriously endanger the safety of the country and potentially even the Defendant himself.

In a review of the digital information seized from the Defendant, the government found a letter, apparently created in 2007, which was addressed to government employees with whom he worked, and signed "Hal." In the letter, the Defendant refers to his co-workers as "clowns" and criticizes the government's digital security measures:

> Well, for one thing, I've seen pretty much all your tech secrets wrt [sic] regard to compusec [computer security]. Thanks. You made me a much better infosec [information security] practitioner. In exchange, well, I gave you my time, and you failed to allow me to help you . . .
>
> You are missing most of the basics in security practice, while

> thinking you are the best. It's the bread and butter stuff that will trip you up. Trust me on this one. Seen it. . . .
>
> Dudes/Dudettes, I can't make this any plainer . . . Listen up . . . 'They' are inside the perimeter. . .
>
> I'll leave you with this: if you don't get obnoxious, obvious, and detrimental to my future, then I will not bring you 'into the light', as it were. If you do, well, remember that you did it to yourselves.

The antipathy demonstrated in this letter raises grave concerns about the Defendant's intentions and potential actions should he be released.

III. THE DEFENDANT POSES A SUBSTANTIAL RISK OF FLIGHT

The Defendant's behavior and characteristics also demonstrate that he is a significant flight risk. His incentive to escape the jurisdiction of this Court is in no way substantially limited by his apparent lack of a valid United States passport. Given the nature of his offenses and knowledge of national secrets, he presents tremendous value to any foreign power that may wish to shelter him within or outside of the United States. Should the Defendant flee to the "protection" of a foreign power, there is no guarantee that he would not ultimately come to harm. The severity of the potential penalties the Defendant faces, and will probably face should additional charges be filed, provides further incentive to flee the country and never return, or to seek refuge with a foreign government willing to shield him from facing justice in this Court in exchange for access to information that he knows or possesses. The Defendant has also communicated online with others in languages other than English, including in Russian, and in June 2016 downloaded information regarding the Russian language as well as other foreign languages.

The Defendant is the subject of an ongoing investigation, and the government intends to file additional charges against him prior to the expiration of the Speedy Trial Act deadline.

His wife indicated that he had previously told her that he would take his own life "if he thought if it was all over." The Defendant has lost his security clearance and his career, and is facing the loss of his freedom. He appears to have nothing left to lose, and every reason to attempt to evade the criminal consequences of his actions.

IV. CONCLUSION

The evidence demonstrates that the Defendant poses a danger to the community and to the national security of the United States, and is a substantial risk of flight. At this stage in the proceedings, no condition or combination of conditions will reasonably assure either the appearance of defendant at trial or the safety of the community and the nation. The Defendant should be ordered detained pending trial in this case.

Respectfully submitted,

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October 20, 2016

The Honorable A. David Copperthite
United States District Court
for the District of Maryland
101 West Lombard Street
Baltimore, Maryland 21201

Re: United States v. Harold T. Martin, BPG-16-2254

Dear Judge Copperthite:

As the Court is aware, a detention hearing will be held in this matter tomorrow at 2:15 p.m. The government has submitted a detailed memorandum identifying grounds for detention. See ECF 21. The government focuses almost exclusively on the potential danger that might result if Mr. Martin is released. We disagree with this as a factual matter. More importantly, the government overlooks a critical and dispositive fact: the Bail Reform Act provides no legal basis under which the government may seek Mr. Martin's detention based on danger.

As a secondary ground for detention, the government claims that Mr. Martin is a flight risk. For reasons that will be discussed in detail at the hearing, Mr. Martin does not pose a serious risk of flight. To the extent the Court has any concerns about ensuring his future appearance in Court, conditions of release may be fashioned to allay those concerns.

Courts across the country, including in this District, have released defendants facing similar charges. Indeed, in every recent case involving allegations of theft of government property, unauthorized removal or retention of classified materials, and other similar charges, the defendant has been released pending trial or sentencing. See Ex. A (chart summarizing recent cases). This Court, too, should release Mr. Martin from custody pending trial.

A. The government has no legal basis under the Bail Reform Act to seek detention based on danger.

The Bail Reform Act specifically identifies the five types of cases in which the government may seek to detain a defendant pending trial. See 18 U.S.C. § 3142(f)(1). The offenses with which Mr. Martin is charged – theft of government property and unauthorized removal or retention of classified materials – do not fall within any of the enumerated categories. See United States v. Byrd, 969 F.2d 106, 109 (5th Cir. 1992) ("[Section] 3142(f) does not authorize a detention hearing whenever the government thinks detention would be desirable, but rather limits such hearings to the [circumstances listed in § 3142(f)]."). The five types of cases

where the government may move for detention based on a risk of danger are: (1) cases that involve a "crime of violence" or an offense listed in section 2332b(g)(5)(B) which carries a maximum term of imprisonment of ten years or more; (2) cases for which the maximum sentence is life imprisonment or death; (3) particular types of drug cases for which the maximum sentence is ten years or more; (4) any felony if the individual has been convicted of two or more offenses previously described in (1)-(3); and (5) any felony that is not otherwise a crime of violence that involves a minor victim or possession of certain kinds of weapons. 18 U.S.C. § 3142(f)(1)(A)-(E). This case obviously does not fit within any of the last four options; the only remaining question is whether it fits within the first. The answer is no.

1. The offenses with which Mr. Martin is charged do not qualify as "crimes of violence."

Mr. Martin's charges do not qualify as "crimes of violence." Section 3156 defines a "crime of violence," in pertinent part, as: "an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another;" or "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." 18 U.S.C. § 3156(a)(4)(A)-(B). The first clause – § 3156(a)(4)(A) – is the "force clause." The other – § 3156(a)(4)(B) – is the "residual clause." Beginning with the "force clause" definition, the Court must apply the categorical approach to determine whether Mr. Martin's charges include an element of physical force – which means "strong physical force," "capable of causing physical pain or injury to another person." See Johnson v. United States, 559 U.S. 133, 140 (2010); see also Descamps v. United States, 133 S. Ct. 2276, 2283 (2013) (explaining that the categorical approach requires courts to "look only to the statutory definitions – i.e., the elements – of a defendant's [offense] and not to the particular facts underlying [the offense]" in determining whether the offense qualifies as a "crime of violence"). Neither offense with which Mr. Martin is charged has an element of the "use, attempted use, or threatened use of physical force against the person or property of another."

Turning to the "residual clause," that clause is void for vagueness in light of the Supreme Court's recent decision in Johnson v. United States, 135 S. Ct. 2251 (2015). Nevertheless, even if this Court determines that the residual clause is not void for vagueness, Mr. Martin's offenses do not qualify under this clause. Applying the categorical approach, there is no risk, let alone a substantial risk, that the defendant would use "strong physical force" in committing theft of government property or unauthorized removal or retention of classified materials. And it makes no matter that another individual might use force upon obtaining national defense information. In other words, to qualify under the residual clause, the risk must be that the defendant himself will be the one to use physical force, not someone else. See Jobson v. Ashcroft, 326 F.3d 367, 373 (2d Cir. 2003) (explaining that 18 U.S.C. § 16(b) – which is materially indistinguishable from the residual clause at issue here – "refers only to those offenses in which there is a substantial likelihood that the perpetrator will intentionally employ physical force" (emphasis added)).

2. The offenses with which Mr. Martin is charged are not listed under 18 U.S.C. § 2332b(g)(5)(B).

As to whether Mr. Martin has been charged with an offense listed under 18 U.S.C. § 2332b(g)(5)(B), the answer is no. None of the offenses with which Mr. Martin is charged is listed in § 2332b(g)(5)(B), which targets terrorist attacks, such as destruction of aircraft and violence at airports. Section 2332b(g)(5)(B) is very specific; it lists more than fifty enumerated offenses, and none of Mr. Martin's charges is on the list. This Court cannot insert an absent term into this unambiguous statute. Cf. United States v. Persico, 376 F. App'x 155, 156 (2d Cir. 2010) (reasoning that the Court may only presume dangerousness under the Bail Reform Act if it finds probable cause to believe that "the defendant has committed various specific listed offenses" (emphasis added)); see also United States v. Sabhani, 493 F.3d 63, 68 & n.5 (2d Cir. 2007) (suggesting that no presumption of dangerousness applied where the defendant was not charged with a crime listed in § 3142(e)). Section 3142(f)(1), in sum, does not encapsulate the offenses with which Mr. Martin is charged. The government lacks any basis under the Bail Reform Act to seek to detain him based on a risk of danger.

B. Mr. Martin is not a risk of flight.

Finally, Mr. Martin is not a risk of flight, and the cases included in the attached chart confirm that, to the extent that this is a factor of concern, it may be addressed with specific release conditions. The government concocts fantastical scenarios in which Mr. Martin – who, by the government's own admission, does not possess a valid passport – would attempt to flee the country. Mr. Martin's wife is here in Maryland. His home is here in Maryland. He has served this country honorably as a lieutenant in the United States Navy, and he has devoted his entire career to serving his country. There is no evidence he intended to betray his country. The government simply does not meet its burden of showing that no conditions of release would reasonably assure Mr. Martin's future appearance in court. For these reasons, and additional reasons to be discussed at the detention hearing, Mr. Martin should be released on conditions pending trial.

We thank the Court for its attention to this matter.

Respectfully,

/s/

James Wyda
Deborah L. Boardman

cc: Zachary Myers, AUSA

Defendant	Year Charged	Jurisdiction	Charges	Subject of Leak	Detained Pending Trial?	Conditions of Release	Offenses of Conviction	Sentence
Kenneth W. Ford, Jr.	2005	MD	–Unauthorized possession of national defense information, 18 U.S.C. § 793(e) –Making a material false statement to a government agency, 18 U.S.C. § 1001	Piles of classified documents from NSA, where the defendant worked, kept in his home	No	–Conditions of release unknown, unavailable on Pacer	–Unauthorized possession of national defense information, 18 U.S.C. 793(e) –Making a material false statement to a government agency, 18 U.S.C. § 1001	–72 months in prison as to violation of 18 U.S.C. § 793(e) –36 months in prison as to violation of 18 U.S.C. § 1001, concurrent –3 years supervised release
Samuel "Sandy" Berger	2005	DC	-Unauthorized removal and retention of classified material (Class A misdemeanor, 18 U.S.C. § 1924)	Removed classified documents from National Archives and stored them at his office, destroyed some of the documents	No	–Released on personal recognizance –Report to probation and Pretrial office for PSI, comply with booking order –Any rearrest on probable cause for any subsequent offense may result in revoking present bond and being held without bail	–Unauthorized removal and retention of classified material (Class A misdemeanor, 18 U.S.C. § 1924)	–2 years supervised probation –Shall pay $50,000 and supervision costs of $6,905.52 by COB 09/09/05 –100 hours of community service –Shall have no access to classified material for 3 years

Defendant	Year Charged	Jurisdiction	Charges	Subject of Leak	Detained Pending Trial?	Conditions of Release	Offenses of Conviction	Sentence
Lawrence A. Franklin	2005	EDVA	–Conspiracy to communicate national defense information, 18 U.S.C. § 793(g) –Communication of national defense information, 18 U.S.C. § 793(d) (3 counts) –Conspiracy to communicate classified information, 18 U.S.C. § 371 –Unlawful retention of national defense information, 18 U.S.C. § 793(e)	Classified military information regarding U.S. policy toward Iran disclosed to pro-Israel lobbyists and an Israeli diplomat	No	$100,000 unsecured bond –Conditions of release unknown, unavailable on Pacer	–Conspiracy to communicate national defense information, 18 U.S.C. § 793(g) –Conspiracy to communicate classified information, 18 U.S.C. § 371 –Unlawful retention of national defense information, 18 U.S.C. § 793(e)	–Total term of 151 months in prison, followed by 3 years supervised release –$10,000 fine –Continued on current bond conditions to self-surrender, with delayed reporting date
Steven J. Rosen	2005	EDVA	–Conspiracy to communicate national defense information, 18 U.S.C. § 793(g) –Communication of national defense information, 18 U.S.C. § 793(d)	Pro-Israel lobbyist charged with conspiring to gather and disclose classified national security information to journalists and unnamed foreign power	No	–Released on personal recognizance, $100,000 unsecured bond –Conditions of release unknown, unavailable on Pacer	–None	–Dismissed on motion of the USA

Defendant	Year Charged	Jurisdiction	Charges	Subject of Leak	Detained Pending Trial?	Conditions of Release	Offenses of Conviction	Sentence
Keith Weissman	2005	EDVA	–Conspiracy to communicate national defense information, 18 U.S.C. § 793(g)	Pro–Israel lobbyist charged with conspiring to gather and disclose classified national security information to journalists and an unnamed foreign power	No	–Released on personal recognizance, $100,000 unsecured bond –Conditions of release unknown, unavailable on Pacer	–None	–Dismissed on motion of the USA
Shamai K. Leibowitz	2009	MD	–Disclosure of classified information, 18 U.S.C. § 798(a)(3)	Leaked classified FBI documents to a blogger	No	–Report on a regular basis to Pretrial Services Supervision –Surrender any passports and obtain no new passports –Travel restricted to Washington, DC metropolitan area and get prior approval for further travel from Pretrial –Do not move without Pretrial permission	–Disclosure of classified information, 18 U.S.C. § 798(a)	–20 months in prison, followed by 3 years supervised release

Defendant	Year Charged	Jurisdiction	Charges	Subject of Leak	Detained Pending Trial?	Conditions of Release	Offenses of Conviction	Sentence
Thomas Drake	2010	MD	–Willful retention of national defense information, 18 U.S.C. § 793(e) (5 counts) –Obstruction of justice, 18 U.S.C. § 1519 –Making a false statement, 18 U.S.C. § 1001(a) (4 counts)	Information regarding NSA waste and mismanagement	No	–Surrender any passport to Clerk's Office –Obtain no passport –Travel restricted to MD, DC, and VA without Pretrial approval –All other travel may be approved in advance by Pretrial	–Exceeding authorized use of a computer (Class A misdemeanor, 18 U.S.C. § 1030(a)(2)(B))	–One year probation –240 hours of community service at Fort Detrick, MD
Jeffrey Sterling	2010	EDVA	–Unauthorized disclosure of national defense information, 18 U.S.C. § 793(d) (3 counts) –Unauthorized disclosure of national defense information, 18 U.S.C. § 793(e) (3 counts) –Unlawful retention of national defense information, 18 U.S.C. § 793(e) –Mail fraud, 18 U.S.C. § 1341	Classified information regarding efforts to sabotage Iranian nuclear research divulged to NYT reporter James Risen	No	–Released on personal recognizance, unsecured bond of $10,000 consigned by third party custodian –Placed in custody of third party custodian –Actively seek employment –Do not depart Washington, DC metropolitan area without preapproval by Pretrial or Court	All counts except one	–42 months in prison as to each count, all to run concurrent –2 years supervised release

Defendant	Year Charged	Jurisdiction	Charges	Subject of Leak	Detained Pending Trial?	Conditions of Release	Offenses of Conviction	Sentence
			–Unauthorized conveyance of government property, 18 U.S.C. § 641 –Obstruction of justice, 18 U.S.C. § 1512(c)(1)			–Avoid all contact and communication with alleged victims or potential witnesses unless in presence of defense counsel –Report to Pretrial –Refrain from possessing a firearm –Refrain from excessive use of alcohol –Undergo psychiatric treatment and take all prescribed medications and waive privacy rights to mental health records –Surrender passport and obtain no new passport –Notify any employer of being under indictment and the charges involved		

Defendant	Year Charged	Jurisdiction	Charges	Subject of Leak	Detained Pending Trial?	Conditions of Release	Offenses of Conviction	Sentence
Stephen J. Kim	2010	DC	–Unauthorized disclosure of national defense information, 18 U.S.C. § 793(d) –False statements, 18 U.S.C. § 1001(a)(2)	Shared classified information from an intelligence report on North Korea with Fox News reporter	No	–Bond in the amount of $100,000 secured by real property –Report weekly by phone to Pretrial –Shall not travel more than 25 miles outside the Washington, DC metropolitan area without pre-approval of Pretrial, except can travel to California for work or to visit his son with advance written notice to pretrial and government –Any rearrest on probable cause for any subsequent offense may result in revoking present bond and being held without bail	–Unauthorized disclosure of national defense information, 18 U.S.C. § 793(d)	–13 months in prison, followed by 12 months of supervised release

Defendant	Year Charged	Jurisdiction	Charges	Subject of Leak	Detained Pending Trial?	Conditions of Release	Offenses of Conviction	Sentence
James Hitselberger	2012	DC	–Unlawful retention of national defense information, 18 U.S.C. § 793(e) –Unauthorized removal of a public record, 18 U.S.C. § 2071(a)	Classified materials concerning Bahrain to the Hoover Institution	No (released after four and a half months in custody)	–Release to high intensity supervision program with GPS location monitoring –To reside with aunt, may leave only for appointments with doctors, lawyers, or Pretrial Services, or to attend religious services –Prohibited from entering or being in immediate vicinity of Union Station, any other bus or train station that provides service outside of the Washington metropolitan area, or any airport –May not travel further than 25 miles from Washington, DC for any reason –Meet with Pretrial once a week and call officer at designated time every day –Surrender passport and obtain no new passport	–Unauthorized removal and retention of classified documents, 18 U.S.C. § 1924	–Time served –No additional supervision or supervised release shall be imposed –$250 fine

Defendant	Year Charged	Jurisdiction	Charges	Subject of Leak	Detained Pending Trial?	Conditions of Release	Offenses of Conviction	Sentence
John Kiriakou	2012	EDVA	–Disclosure of classified information identifying a covert agent, 50 U.S.C. § 421(a) –Transmission of national defense information, 18 U.S.C. § 793(d) (3 counts) –False statements, 18 U.S.C. § 1001(a)(1)	Disclosing identity of CIA officials involved in interrogation abuse to journalists	No	–Released on personal recognizance, $250,000 unsecured bond –Bond to be signed by wife and brother within 5 days –Do not depart Washington, DC metropolitan area without prior approval of Pretrial or the Court –Prior approval needed from Pretrial to travel outside Metro area –Do not move from residence without prior approval of Pretrial or the court –Avoid all contact with any witnesses –Report on a regular basis to Pretrial –Surrender any passport and obtain no new passport	–Disclosure of classified information identifying a covert agent, 50 U.S.C. § 421(a)	–30 months in prison, followed by 3 years supervised release

Defendant	Year Charged	Jurisdiction	Charges	Subject of Leak	Detained Pending Trial?	Conditions of Release	Offenses of Conviction	Sentence
Donald Sachtleben	2012	SDIN	–Unauthorized disclosure of national defense information, 18 U.S.C. § 793(d) –Unauthorized possession and retention of national defense information, 18 U.S.C. § 793(e) –Distributing child pornography, 18 U.S.C. § 2256(2)(A) –Possession of child pornography, 18 U.S.C. § 2252(a)(4)(B)	Classified information regarding foiled bomb plot in Yemen to the AP	No	–Supervision by Pretrial –Continue or actively seek employment –Surrender any passport and obtain no new passport –Travel restricted to SDIN unless pre-approved by Pretrial –Avoid all contact with any co-defendants or potential co-defendants –Do not possess a firearm –Do not use alcohol and submit to testing –Home detention with location monitoring–may leave only for employment, education, religious services, medical, substance abuse, or mental health treatment, attorney visits, court appearances, or other pre-approved by Pretrial	–Unauthorized disclosure of national defense information, 18 U.S.C. § 793(d) –Unauthorized possession and retention of national defense information, 18 U.S.C. § 793(e) –Distributing child pornography, 18 U.S.C. § 2256(2)(A) –Possession of child pornography, 18 U.S.C. § 2252(a)(4)(B)	–43 months in prison as to Counts One and Two, to run consecutive with 97-month sentence imposed in child pornography case –Total of 7 years supervised release

Defendant	Year Charged	Jurisdiction	Charges	Subject of Leak	Detained Pending Trial?	Conditions of Release	Offenses of Conviction	Sentence
						–Random searches of person, residence, and property by Pretrial and/or any law enforcement officers accompanying them –Special conditions related to child pornography charges–including not possessing any computer		
Bryan Nishimura	2015	EDCA	–Unauthorized removal and retention of classified documents and materials, 18 U.S.C. § 1924	Downloaded and stored classified military records on personal electronic devices, carried classified materials when traveled off base in Afghanistan and brought them back to US at the end of his deployment	No	–Conditions of release unknown, unavailable on Pacer	–Unauthorized removal and retention of classified documents and materials, 18 U.S.C. § 1924	–2 years probation –$7,500 fine –Shall not obtain any new security clearance and shall surrender any security clearances currently held
Gen. David Petraeus	2015	WDNC	–Unauthorized removal and retention of classified material, 18 U.S.C. § 1924	Classified information regarding war strategy, intelligence capabilities, and identities of covert officers to biographer/mistress	No		–Unauthorized removal and retention of classified material, 18 U.S.C. § 1924	–2 years probation $100,000 fine