



UNITED STATES MISSION
TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA
December 2, 2015

OHCHR REGISTRY

04 DEC 2015

Mr. Michel Forst
Special Rapporteur on the situation of human rights defenders
Geneva, Switzerland

Recipients :.....*SPB*.....
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Dear Mr. Forst:

Thank you for your inquiry of October 14, 2015, expressing concern about information you have received regarding the situation of Mr. Edward Snowden.

As your letter observes, Mr. Snowden is accused of unlawfully disclosing certain classified information and faces felony charges in the United States. Mr. Snowden has been charged by criminal complaint in the Eastern District of Virginia with violations of 18 U.S.C. 641 (Theft of Government Property), 18 U.S.C. 793(d) (Unauthorized Communication of National Defense Information), and 18 U.S.C. 798(a)(3) (Willful Communication of Classified Communications Intelligence Information to an Unauthorized Person). 18 U.S.C. 793(d) and 798(a)(3) are violations of the Espionage Act of 1917, as amended. The maximum penalties that can be imposed under each of these statutes are 10 years imprisonment, a fine of not more than \$250,000, and a term of supervised release of up to five years. The actual sentence that Mr. Snowden would receive, if convicted, would be determined by an independent judge after Mr. Snowden's counsel has an opportunity to present evidence and make arguments on his behalf, and Mr. Snowden, himself, has an opportunity to speak. As I trust you will appreciate, the United States cannot comment further on a pending criminal matter.

Whistleblowers can play an important role in exposing waste, fraud, and abuse. There are a number of options short of stealing and making public highly classified intelligence documents for raising these concerns through legitimate channels, including with the United States Congress, in a way that protects U.S. national security interests. U.S. laws protecting classified information from disclosure, such as the Espionage Act, do not unduly interfere with freedom of expression and are consistent with international obligations of the United States on freedom of expression in Article 19 of the International Covenant on Civil and Political Rights because, consistent with a purpose for legitimate restriction recognized in Article 19, these laws are necessary to protect national security. Unauthorized disclosures of classified information harm U.S. and allied efforts to identify, track, and disrupt the activities of our adversaries, including terrorists. Many of these efforts are borne of years of carefully managed intelligence efforts. As a result of these disclosures, our adversaries, including terrorists and their support networks, now have a better understanding of our collection methods and are taking countermeasures. These adversaries are located not only in Afghanistan, Pakistan, Iraq, Yemen, and Somalia, but some groups and networks also have footprints across Europe, Africa, Asia,

and in the Western Hemisphere. In addition to revealing classified capabilities that were classified for good reason, the placement of highly technical and classified documents into the public sphere without the proper context and understanding of them has in many cases resulted in inaccurate press reporting.

The United States continues to maintain that Mr. Snowden should return to the United States as soon as possible. Under the Constitution of the United States, no person can be deprived of life, liberty, or property without the due process of law. This guarantee applies to Mr. Snowden, and should he return to the United States, he will be accorded the same due process rights and protections given to all persons facing federal criminal charges. These include, inter alia, the right to an indictment by a grand jury; the right to be fully informed of the charges against him; the right to a speedy and public trial by an impartial jury; the right to the assistance of counsel at all phases of the criminal process, without cost should he be unable to afford an attorney; the right to see, hear, and cross-examine all witness against him; the right to invoke the power of the court to subpoena witnesses for his defense; the presumption of innocence at trial; the right against self-incrimination; the requirement that the prosecution to prove each of the charges against him beyond a reasonable doubt; and the right to appeal any conviction and sentence to a higher court.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith M. Harper", with a long horizontal flourish extending to the right.

Keith M. Harper
Ambassador
U.S. Representative to the Human Rights Council