

# Reality Winner isn't a whistleblower — or a victim of Trump's war on leaks

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Opposing Trump doesn't mean disclosing classified information is okay.



By **Mark S. Zaid** June 8

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When Reality Winner was arrested last week under the Espionage Act for allegedly removing classified information from a government facility and mailing it to a news outlet, opponents of the Trump administration were quick to be alarmed. The 25-year-old federal contractor had been critical of President Trump on social media, and the document she allegedly leaked to the Intercept contained details of Russian attempts to hack into state and local election systems last fall — details that get to the heart of what Trump calls the “fake news” investigation into whether his campaign colluded with Russian intelligence.

“Donald Trump’s frequent threats against leakers paved the way for Reality Winner’s arrest,” HuffPost wrote. “The crackdown on leaks has begun in earnest,” a New York Times national security reporter said on Twitter. Organizers of a rally in New York called the arrest “the opening salvo in the Trump Administration’s self-described war on leaks” and said Winner “deserves widespread support.” Edward Snowden said the law under which Winner was charged “must be resisted.” On social media, people called Winner a “hero” and a “whistleblower” and began raising money to support her and her family.

But put aside Trump’s vows to crack down on leakers amid a steady stream of embarrassing revelations. There is nothing surprising or unusual about the criminal charges against Winner. Nor is there any indication that the White House had any involvement in this matter. The fact that Trump wants to silence leakers does not turn Winner into a whistleblower or a martyr of “the resistance,” no matter how much some may wish to applaud her actions. In our system, someone doesn’t earn the title whistleblower just because her actions might support a particular ideological agenda. The classified document Winner allegedly revealed was obviously newsworthy, but nothing in it exposes any type of fraud, waste or abuse — or, most important, any unlawful conduct by the U.S. government. If she was, indeed, the source of the Intercept’s reporting, Winner failed to blow the whistle on anything.

As a matter of law, no one who leaks classified information to the media (instead of to an appropriate governmental authority) is a whistleblower entitled to legal protection. That applies to Winner, Snowden and Chelsea Manning, no matter what one thinks of their actions. The law appropriately protects only those who follow it. Anyone who acts contrary does so at their own peril.

When representing national security whistleblowers, my job is to ensure the fullest protection possible for those with a story to tell. And as a person authorized by the government to have access to classified information, Winner had a lawful obligation to protect any such material from unlawful disclosure to third parties, including news outlets. The Trump administration did exactly what the Obama administration would have done — and did do, at least nine times under the Espionage Act, when faced with an obvious apparent violation of well-settled law.

If Winner believed that the information she allegedly purloined revealed something that was being ignored or misused, she could have legitimately pursued any number of avenues to bring attention to the document within the system, such as complaining to an office of inspector general, an independent counsel or government lawyers; submitting her written views to the National Security Agency for review to attempt to create an unclassified document that she could distribute; or even creating legal claims to take her before a federal judge. Of course, having represented national security whistleblowers for more than two decades, I will be the first to admit that the system has serious flaws that demand strengthening, especially in ways that reassure whistleblowers that their concerns are actually being addressed. But that does not relieve the legal, and frankly moral, obligation for Winner to make every possible effort short of unlawful disclosure before crossing that dangerous line of leaking.

Few individuals other than the president have the legal right to decide unilaterally what constitutes the national security interests of the United States, and Winner was certainly not one of them. In fact, the argument can be made that every time a leaker illegally discloses classified information, even if the motive is sincere, it causes the government to cast a wider net to identify and prevent perceived insider threats, i.e., leakers. The repercussion is that true whistleblowers are deterred from coming forward while other innocent individuals have their careers derailed or ruined. Sadly, I have encountered this numerous times within the intelligence community, as agencies desperately seek to use sledgehammer approaches where laser precision is required to try to prevent another Snowden breach — or another Aaron Alexis, the Navy Yard shooter, whose colleagues had many security concerns about him that were either ignored or unreported.

There was one surprise in Winner's case, however, and perhaps this really should serve as a warning to would-be leakers in the Trump era: the speed at which criminal charges were brought. It took the FBI just days to identify and apprehend Winner. In fact, the Justice Department's announcement of the charges coincided nearly simultaneously with the Intercept's publication of a redacted version of the leaked document, which the outlet said arrived anonymously via U.S. mail.

Partly because the case was made so quickly, critics have accused the Intercept's reporters of burning their source by failing to take proper operational security precautions. They point to the claim in the FBI's affidavit that government investigators took note of the folds in the document shown to them by the Intercept and speculated that it had been printed by the leaker, a lucky guess on their part (especially since the folds could have been created instead by the journalists). In any event, that led the government to determine that only six individuals had printed this specific document, and only one — Winner — had been in

contact with the Intercept from her personal email account, which she had accessed from her work computer. The case could not have been handed more easily to the government on a silver platter.

That ease is the new norm in the world of classified leakers. The Obama administration was roundly condemned for prosecuting more leakers of classified information than all prior administrations combined. Some styled it a “war against whistleblowers,” but in reality, it was nothing of the sort, and that criticism is unfair. The Obama administration was able to prosecute more leakers because technology is a double-edged sword, making it both easier to leak vast amounts of classified information and to trace those leaks directly to their sources. This, combined with often poor tradecraft by leakers or journalists, means it is now much simpler for the government to collect tangible evidence permitting prosecution in ways that were previously unavailable.

It is a fact that the Trump administration has been besieged by leaks — some of which were clearly themselves illegal in releasing classified information — at a level that far exceeds that of previous presidencies within the first 130 days. To many, this is to be applauded, and one day history will judge the consequences of these actions. To be sure, we absolutely need whistleblowers. Whether the Trump administration ultimately survives or fails, however, should be determined by lawful oversight and accountability, rather than by selective leaks of classified information that could harm our national security interests.

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