

Actual Changes in Department of Justice Rule

Comparing Web Postings on 2015/09/14 and 2016/04/30

9-90.010 - National Security

A. Introduction and Scope.

Protecting our national security is the Department's top priority. National security encompasses the national defense, foreign intelligence and counterintelligence, international and internal security, and foreign relations. This includes countering terrorism; combating espionage and economic espionage conducted for the benefit of any foreign government, foreign instrumentality, or foreign agent; enforcing export controls and sanctions; and disrupting cyber threats that are perpetrated by nation states, terrorists, or their agents or proxies.

When national security issues arise during a criminal prosecution, they must be resolved through careful coordination by the Department of Justice (Department) with high level officials from the intelligence, military and foreign affairs communities. In addition, the Attorney General, or the Attorney General's designee, has certain statutory authority and obligations related to national security prosecutions. That authority and those obligations may be properly exercised and met only with appropriate coordination with within the Department by the respective United States Attorneys' Offices (USAOs). A list of all prior approval, consultation and notification requirements related to national security can be found in USAM 9-90.020, below. The Counterintelligence and Export Control Section (CES) of the National Security Division has supervisory authority over all offenses in this chapter.

~~9-90.020 - National Security Matters - Prior Approval, Consultation, and Notification Requirements~~

This chapter applies to national security matters other than counterterrorism matters; counterterrorism matters are covered principally by USAM 9-2.136 et seq. In addition, this chapter does not apply when a matter's sole nexus to national security is foreign relations (e.g., international extradition; indictment of a high ranking foreign official for a non national security crime; and other treaty-related issues). Coordination of such matters will be handled by the Criminal Division, Office of International Affairs (OIA). See USAM 9-2-400 for circumstances requiring prior consultation with or approval from OIA.

Formatted

Formatted: Line spacing: At least 16.8 pt

Formatted

Formatted

Formatted

Formatted: Line spacing: At least 16.8 pt

Formatted

Formatted

Formatted

Formatted

Formatted

Formatted: Line spacing: At least 16.8 pt, Pattern: Clear (White)

Formatted: Font: Georgia, 10.5 pt, Font color: Custom Color(RGB(36,36,36)),

Formatted

Formatted: Line spacing: At least 16.8 pt

- ☞ 18 U.S.C. § 791 et seq. (Espionage; Unauthorized Disclosure of Classified Information)
- ☞ 18 U.S.C. § ~~954~~~~951~~ et seq. (Neutrality Laws)
- ☞ 18 U.S.C. § 1030(a)(1) (Computer Espionage)
- ☞ 18 U.S.C. § ~~1542~~~~1542~~ et seq. (Passport Violations Related to National Security)
- ☞ 18 U.S.C. § 1924 (Unauthorized Removal and Retention of Classified Documents or Material)
- ☞ 18 U.S.C. § 1831 (Economic Espionage)
- ☞ 18 U.S.C. § ~~2381~~~~2381~~ et seq. (Sabotage)
- ☞ 18 U.S.C. § ~~2381~~~~2381~~ et seq. (Treason, Sedition and Subversive Activities)
- ☞ 22 U.S.C. § 611 et seq. (Foreign Agents Registration)
- ☞ 22 U.S.C. § 2778 (Arms Export Control Act)
- ☞ 42 U.S.C. § 2274 to 2278, 2284, and other Atomic Energy Violations that Affect National Security (Atomic Energy Act)
- ☞ 50 U.S.C. § ~~421~~~~421~~ (Intelligence Identities Protection Act)
- ☞ 50 U.S.C. § 782 et seq. (Communication of Classified Information by Government Officer or Employee)
- ☞ 50 U.S.C. § ~~851~~~~851~~ et seq. (Registration of Person Who Has Knowledge Concerning Espionage Activities)
- ☞ 50 U.S.C. § ~~1701~~~~1701~~ et seq. (International Emergency Economic Powers Act)
- ☞ 50 U.S.C. § ~~2401~~~~2401~~ et seq. (Export Administration Act)
- ☞ 50 U.S.C. App. § 5(b) (Trading With the Enemy Act)

- Formatted
- Formatted
- Formatted
- Formatted
- Formatted
- Formatted
- Formatted

- Formatted
- Formatted
- Formatted
- Formatted
- Formatted

2. Other Matters that Affect the National Security

A variety of other Federal statutes may also be used to prevent, disrupt, and prosecute national security threats. Thus, prosecutions pursuant to criminal statutes other than those set forth in 9-90.020(A)(1) may also affect national security (e.g., a case involving wire fraud or hacking by or on behalf of a foreign government in which 18 U.S.C. § 1831 or 18 U.S.C. § 1030(a)(1) are not specifically included as charges).

If a particular matter affects the national security, or if there is a reasonable question about whether a particular matter affects the national security, the USAO shall consult with CES to discuss how the matter should be treated. If the USAO is coordinating with another component of Main Justice, the USAO shall consult directly with CES unless the other component of Main Justice has agreed to facilitate this required consultation.

B. Consultation and Approval Requirements.

Prosecution of a case involving a national security statute set forth in 9-90.020(A)(1) shall not be instituted without the express approval of the National Security Division or higher authority. In addition, in such cases, CES shall be consulted before:

- an arrest is made,
- a search warrant is obtained,

- Formatted: Font color: Custom Color(RGB(70,70,75)),
- Formatted: Font color: Custom Color(RGB(49,52,56)),
- Formatted: Font color: Custom Color(RGB(36,36,36)),
- Formatted: Font color: Custom Color(RGB(36,36,36)),

- o a grand jury investigation is commenced,
- o immunity is offered,
- o an indictment is presented,
- o an information is filed,
- o a civil injunctive action is filed,
- o a prosecution is declined,
- o a count is dismissed,
- o a plea agreement is filed,
- o a sentencing commitment or other disposition is made,-
- o or an adverse ruling or decision is appealed.

Formatted: Font color: Custom Color(RGB(36,36,36)),

Formatted: Font color: Custom Color(RGB(36,36,36)),

Formatted: Font color: Custom Color(RGB(36,36,36)),

Formatted: Font color: Custom Color(RGB(36,36,36)),

Formatted: Font color: Custom Color(RGB(36,36,36)),

In any other prosecution that affects the national security, regardless of the specific statute(s) implicated, or if there is a reasonable question about whether a particular matter affects the national security, the USAO shall consult with CES to discuss how the matter should be treated and whether the above prior approval or consultation requirements should apply. If the USAO is coordinating with another component of Main Justice, the USAO shall consult directly with CES unless the other component of Main Justice has agreed to facilitate this required consultation.

~~B:~~ Consultation with ~~the~~ CES is also required in all cases in which classified information plays a role in the prosecutive decision, and all cases that require the protections afforded by the Classified Information Procedures Act, 18 U.S.C. app. §§ ~~1-163~~, i.e., cases in which classified information may be disclosed during the pretrial, trial ~~and/or~~ appellate ~~stages~~stage of the litigation.

Formatted: Font color: Custom Color(RGB(23,30,36)),

Formatted: Font color: Custom Color(RGB(23,30,36)),

Formatted: Font color: Custom Color(RGB(23,30,36)),

Formatted: Font color: Custom Color(RGB(23,30,36)),

~~Before~~ Finally, before initiating a prosecution under 2 U.S.C. § ~~441e~~, Campaign Contributions by Foreign Nationals, the Registration Unit of ~~the Counterintelligence and Export Control Section~~ CES, (202) 233-0986, ~~should~~ shall be consulted.

Formatted: Space Before: 0 pt, After: 12 pt, Line spacing: At least 16.8 pt, No bullets or numbering

~~[cited in USAM 9-2.111; USAM 9-90.010; USAM 9-90.300; USAM 9-90.400; USAM 9-90.500; USAM 9-90.550; USAM 9-90.600; USAM 9-90.610; USAM 9-90.620; USAM 9-90.640; USAM 9-90.700; USAM 9-90.720; Criminal Resource Manual 2049]~~

Formatted: Font color: Custom Color(RGB(23,30,36)),

Formatted: Font color: Custom Color(RGB(23,30,36)),

[cited in USAM 9-2.111; USAM 9-90.010; USAM 9-90.300; USAM 9-90.400; USAM 9-90.500; USAM 9-90.550; USAM 9-90.600; USAM 9-90.610; USAM 9-90.620; USAM 9-90.640; USAM 9-90.700; USAM 9-90.720; Criminal Resource Manual 2049]

Formatted: Font color: Custom Color(RGB(23,30,36)),

Formatted: Font color: Custom Color(RGB(23,30,36)),

Formatted

Formatted

Formatted: Line spacing: At least 16.8 pt

Formatted

[updated March 2016]