Publishing About UAP: Prepublication Review, Prior Restraint, and the Espionage Act

Version 1.10 · October 2026 · nhilaw.com/issues/b4.html

Version 1.10, October 2026. Legal information, not legal advice. Published by the Emergent Frontiers Institute (NHI Law is not a law firm). Citations checked in October 2026; check every citation before relying on it.

Key points

- Cleared personnel must submit everything touching their former duties for prepublication review; courts enforce the agreements, and the review regimes survived facial challenge (*Snepp*; *Edgar v. Haines*).
- A former employee may repeat what the agency itself officially disclosed, but not classified facts that became public some other way (*Wilson v. CIA*).
- Publishers are protected from prior restraint (*Pentagon Papers*) and from civil liability for truthful information lawfully obtained (*Bartnicki*), but 18 U.S.C. §§793(e) and 798 reach recipients who retain or pass on national defense information.
- Websites holding UAP material are covered by the Privacy Protection Act, and DOJ's 2025 news-media rule again allows process against reporters in leak cases.
- Released DOPSR files show short items cleared in weeks and a book-length UAP manuscript taking about nine and a half months; submit early and ask for itemized reasons (Form B4-1).

1. Summary

Two groups need different advice.

Current and former cleared personnel (service members, civilian employees, contractor employees) are bound by nondisclosure and prepublication review agreements. Courts enforce them. A former official who publishes without required review can lose all profits even if nothing classified appears, *Snepp v. United States*, 444 U.S. 507 (1980) (per curiam), and the Fourth Circuit has held that employees who signed the agreements knowingly waived First Amendment objections to the review regimes. *Edgar v. Haines*, 2 F.4th 298 (4th Cir. 2021), cert. denied (2022). The safe path for these clients is to submit everything to review (for DoD and Department of War personnel, the Defense Office of Prepublication and Security Review, DOPSR), to keep a record, and to challenge specific redactions if necessary. Statutory disclosure channels (50 U.S.C. §3373b; the PURSUE

waiver) authorize disclosures to designated government recipients. None of them authorizes disclosure to the public.

Journalists, authors, filmmakers, researchers, and websites that receive UAP material have strong protection against prior restraint, *New York Times Co. v. United States*, 403 U.S. 713 (1971), and against liability for publishing truthful information of public concern that they lawfully obtained, *Bartnicki v. Vopper*, 532 U.S. 514 (2001). Their exposure lies elsewhere: 18 U.S.C. §793(e) reaches anyone with unauthorized possession of national defense information who willfully retains or communicates it, and a district court has applied it to non-government recipients who passed the information on, *United States v. Rosen*, 445 F. Supp. 2d 602 (E.D. Va. 2006). The 2024 plea agreement in *United States v. Assange* (one count under §793) shows that the Department of Justice will charge a publisher, though it produced no judicial ruling.

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2. Cleared personnel

2.1 The obligation

- **Agreements.** SF-312 (Classified Information Nondisclosure Agreement), SF-4414 (SCI), and Special Access Program indoctrination agreements require prepublication review of material that may contain classified information and create lifetime obligations. DoD Instruction 5230.09 and DoD Instruction 5230.29 govern DOPSR review (DoDI 5230.09, *Clearance of DoD Information for Public Release* (Jan. 25, 2019, Change 1 effective Feb. 9, 2022); DoDI 5230.29 governs the security and policy review process itself). The instruction distinguishes current from former personnel. Official DoD information receives "security and policy review," and clearance of academic work by current personnel requires that "the author accurately portrays official policy" (¶1.2.f(2)). Retired and separated service members and former employees and contractors, by contrast, "will use the DoD prepublication review process to ensure that information they intend to release to the public does not compromise national security as required by their nondisclosure agreements" (¶1.2.g).
- **Remedies.** *Snepp*: a constructive trust over all proceeds for breach of the review obligation, regardless of whether the publication contained classified information. *United States v. Marchetti*, 466 F.2d 1309 (4th Cir. 1972), and *Alfred A. Knopf, Inc. v. Colby*, 509 F.2d 1362 (4th Cir. 1975): injunctions enforcing review and deletion of classified material.
- **Constitutional challenges.** In *Edgar v. Haines*, former officials of the CIA, DoD, NSA, and ODNI challenged the review regimes facially. The Fourth Circuit found standing and ripeness but held that by voluntarily signing nondisclosure agreements the plaintiffs "knowingly waived" their First Amendment rights to challenge prepublication review, and that the regimes were not overbroad, vague, without adequate deadlines, or lacking in notice. 2 F.4th 298. Certiorari was denied (No. 21-791, May 23, 2022).

Public-domain information is not a defense for the employee. A former employee may publish information the agency itself has officially disclosed, but not classified information that entered the public domain some other way. *Wilson v. CIA*, 586 F.3d 171, 183-84, 186, 191-92 (2d Cir.

2009) (former officer barred from publishing her dates of service although the same facts appeared in the Congressional Record and the press). UAP authors who were cleared should therefore cite official sources (statutes, AARO and ODNI reports, Department of War releases) for every fact they want to keep, and should not rely on what other insiders, journalists, or former officials have said. That includes the accounts of other former officials published since 2023.

2.2 Challenging specific redactions

Review decisions are reviewable in court for whether the redacted material is properly classified. *McGehee v. Casey*, 718 F.2d 1137 (D.C. Cir. 1983) (deferential but meaningful review; agency must give reasons); *Stillman v. CIA*, 319 F.3d 546 (D.C. Cir. 2003) (court should first decide whether material is classified, and consider counsel access only if necessary). *Edgar* does not foreclose as-applied challenges to particular redactions. Practitioners should:

1. submit everything that touches the client's former duties, including screenplays, podcasts, and social-media posts on UAP (DOPSR reviewed Luis Elizondo's 2020 screenplay submission, FOIA release 22-F-1178);
2. request itemized reasons for each redaction;
3. propose rewording that removes classified detail while preserving the point;
4. cite official acknowledgments (statutes, AARO reports, released records) to show that redacted material is already officially public; and
5. appeal administratively, then file suit challenging specific redactions.

2.3 Statutory disclosure channels

- **50 U.S.C. §3373b** authorizes disclosures to AARO's reporting mechanism and provides that such a disclosure is not subject to an NDA, is deemed to comply with EO 13526 and Atomic Energy Act rules, and is not a violation of 18 U.S.C. §798 or other disclosure laws (Issue A3).
- **PURSUE waiver** (Department of War, Sept. 14, 2026) supersedes civil and administrative enforcement of NDAs and SAP agreements for communications to PURSUE representatives (Issue C2).
- **Congress.** Disclosures to the intelligence committees through the IC whistleblower channels (50 U.S.C. §3033(k)(5); §3234) are protected; disclosures of classified information to individual members outside those channels are not clearly protected (Issue C1).

None of these authorizes public disclosure. A client who wants to speak publicly must go through prepublication review for anything related to classified duties.

2.4 David Grusch as an example

Grusch's written statement and talking points were cleared by DOPSR "for open publication" in April 2023 before his public interviews and July 2023 House testimony. His experience shows the workable sequence: statutory disclosure to an inspector general and Congress through protected channels, then DOPSR review of what he intended to say publicly, then publication within the cleared scope.

2.5 What the released DOPSR files show

DoD has released, through FOIA, its prepublication review files for several UAP authors. They give practitioners a realistic picture of timing and process (the files are posted in the DoD FOIA reading room):

Release	Author and item	Received	Result	Notes
22-F-1178	Luis Elizondo, screenplay "Alone" (DOPSR 20-SB-0149)	Sept. 30, 2020	Cleared; final letter sent Monday, Nov. 30, 2020 per DOPSR email, re-sent Dec. 3, 2020	Fiction drawing on former duties was submitted and cleared
23-F-0946/0958/1317	David Grusch, "Speaker/Author Summary" (23-S-1405) and interview questions (23-S-1707)	Mar. 7 and Apr. 5, 2023	Cleared Apr. 4 and Apr. 6, 2023	Reviewed in house; no outside coordination recorded
25-F-1324	Christopher Mellon, article (22-S-2014)	June 1, 2022	Cleared July 5, 2022	Routed to USD(I) and the Air Force; both "no objection"
25-F-1324	Christopher Mellon, "UAPs and the Extraterrestrial Hypothesis?" (22-S-2643)	Aug. 19, 2022	"Cleared as Amended," Sept. 12, 2022	Worksheet records "In House: as amended, for accuracy"
24-F-1134	Christopher Mellon, "Message to CKM" (24-P-0258)	Jan. 19, 2024	Cleared	Routed to USD(I&S) and AARO; AARO "no objection" Feb. 29, 2024
24-F-0088	James Lacatski, manuscript, *The U.S. Government's Secret UAP/UFO Program: The*	July 11, 2022	Cleared Apr. 24, 2023	DIA cleared its equities effective Apr. 20, 2023, apologizing for the "lengthy

Release	Author and item	Received	Result	Notes
	Beginning (22-SB-0151)			turnaround" because "the sensitive subject content" required "extensive breakdown efforts by DIA subject matter experts"

DIA's acknowledgment in the Lacatski file gives its estimated timelines: up to 3 business days for congressional items, 5-15 for short items, 15-20 for technical items, and 30-90 for manuscripts, subject to workload and coordination. The Lacatski review took about nine and a half months, far beyond that range.

Short items by former officials were cleared in days or weeks, while a book-length manuscript on a UAP program took most of a year; clients planning a book should submit early and document every status inquiry, since an unreasonable delay is the strongest basis for a later as-applied challenge. DoD routes UAP submissions to AARO and to the office that holds the equities (USD(I&S), the Air Force, DIA); counsel should ask DOPSR which offices received the work and follow up with each. The Mellon worksheet shows a reviewer amending a submission "for accuracy." The SF-312 review obligation and the cases enforcing it (*Snepp*, *McGehee*, *Edgar*) rest on the government's interest in protecting classified information, and DoDI 5230.09 ¶1.2.g describes the review of former personnel's work in the same terms (whether it would "compromise national security as required by their nondisclosure agreements"). An amendment made for accuracy therefore has no evident basis as applied to a former employee unless the reviewer also identifies a security concern. Counsel should ask DOPSR to identify the basis for any amendment and to separate security amendments (which bind the author) from accuracy or policy suggestions (which do not), and Form B4-1 asks for itemized reasons for that purpose.

3. Publishers and recipients

3.1 Prior restraint

The government "carries a heavy burden of showing justification" for a prior restraint. *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam). The concurrences differ on what showing would suffice; Justice Stewart's formulation ("direct, immediate, and irreparable damage to our Nation or its people," *id.* at 730) is the common reference. *Near v. Minnesota*, 283 U.S. 697, 716 (1931), recognized a narrow exception for wartime publication of troop movements. The only court to enjoin publication of national security science did so under the Atomic Energy Act's Restricted Data provisions (*United States v. The Progressive, Inc.*, 467 F. Supp. 990 (W.D. Wis. 1979); Issue A5). An injunction against publishing UAP imagery or documents would face the *Pentagon Papers* standard unless the material fell within Restricted Data or another specific statutory scheme.

3.2 Liability for publication

- **Bartnicki.** A publisher who did not participate in an unlawful interception may publish truthful information of public concern without civil liability under the wiretap statute. 532 U.S. at 535. The case concerned a civil damages statute and did not resolve criminal liability for national defense information.

- **18 U.S.C. §793(e).** Whoever has "unauthorized possession of, access to, or control over" documents or information relating to the national defense, and willfully communicates or retains them, commits a felony; for intangible information, the person must have "reason to believe [it] could be used to the injury of the United States or to the advantage of any foreign nation." In *Rosen*, Judge Ellis held that §793 applies to orally transmitted information, 445 F. Supp. 2d at 614-17, that its key terms are not unconstitutionally vague as applied, *id.* at 617-27, and that prosecuting persons who obtained information from an official who breached a position of trust does not violate the First Amendment, *id.* at 632-41. The court read the statute narrowly. Information "relating to the national defense" must be closely held by the government, so public-domain information does not qualify, *id.* at 620-21, and for intangible information the "reason to believe" element "requires the government to demonstrate the likelihood of defendant's bad faith purpose to either harm the United States or to aid a foreign government," *id.* at 626. The court also recognized that "the government's closely held assessment or confirmation of certain public domain information" can itself be national defense information. *Id.* at 621. The prosecution was later dismissed. In a later case the same court refused to apply the bad-faith requirement to a government employee trained in classification, so it is most useful to recipients outside government, such as journalists and publishers. *United States v. Kiriakou*, 898 F. Supp. 2d 921, 925-27 (E.D. Va. 2012) (Issue C3).

  Application. The last point matters for UAP. A cleared insider who confirms a publicly reported UAP account, or a journalist who publishes that confirmation, may be dealing in the government's closely held "confirmation" even though the underlying story is public.

- **18 U.S.C. §798** criminalizes knowing and willful publication of classified communications intelligence information, with no requirement of intent to injure. UAP material derived from signals intelligence (as in *Citizens Against UFO Secrecy v. NSA*) falls within it.

- **Assange (2024).** The plea to one count of conspiracy under §793 ended the case without a ruling on the First Amendment questions. Press organizations have treated the charging theory as a warning.

3.3 Searches, subpoenas, and sources

- **Privacy Protection Act.** Federal, state, and local officers investigating a crime may not search for or seize a publisher's "work product materials" or "documentary materials" possessed by a person reasonably believed to have a purpose to disseminate a newspaper, book, broadcast, "or other similar form of public communication," except in narrow cases, including where the possessor is suspected of the crime (42 U.S.C. §2000aa). A website that publishes UAP reporting is covered. The suspect exception, however, expressly allows a search where the publisher is suspected of receiving, possessing, or communicating national

defense, classified, or restricted data information in violation of 18 U.S.C. §§793, 794, 797, or 798 (§2000aa(a)(1)), so the Act gives little protection to a publisher that holds classified UAP material.

- **DOJ news-media policy.** The Department's rules on subpoenas, warrants, and other process directed at members of the news media are at 28 C.F.R. §50.10, last revised May 2, 2025 (90 Fed. Reg. 18786). The revision withdrew protections adopted in 2022, so leak investigations may again seek reporters' records under the conditions the rule sets.
- **No federal reporter's privilege in criminal cases (Fourth Circuit).** The Fourth Circuit held that a journalist had no First Amendment or common-law privilege to refuse to testify about his source at a leak trial. *United States v. Sterling*, 724 F.3d 482 (4th Cir. 2013).
- **California's shield law** (Cal. Const. art. I, §2(b); Evid. Code §1070) protects a publisher, editor, reporter, or other person connected with a newspaper or other periodical publication from contempt for refusing to disclose a source or unpublished information. It is an immunity from contempt in California proceedings and does not protect against federal process.

3.4 Practical guidance for publishers and websites

1. Do not solicit classified material.
2. Treat documents bearing classification markings as potential §793 and §798 material. Consult counsel before retaining, copying, or publishing them.
3. Verify through official sources where possible; seek comment from the agency; consider redacting names, locations, sensor details, and platform data that add little to the story.
4. Record how material was received (to support a *Bartnicki* defense and to show lack of participation in any unauthorized acquisition).
5. Use Form B4-2 (newsroom protocol) and, for research institutions, Form A5-2.
6. Defamation risk from publishing allegations about named officials and contractors is addressed in Issue G1.

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4. After disclosure

Declassification of UAP programs would narrow the scope of material subject to review and of §793 exposure. Until the government formally declassifies particular information, however, insiders remain bound and publishers remain exposed, even if officials speak about the subject generally. *Leopold v. CIA*, 987 F.3d 163 (D.C. Cir. 2021), and *New York Times Co. v. CIA*, 965 F.3d 109 (2d Cir. 2020), held that informal presidential statements did not acknowledge or declassify the information at issue (Issue B1).