

US Supreme Court rejects appeal by New York Times reporter James Risen

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The US Supreme Court on Monday decided not to intervene in the case of James Risen, an author and reporter who is facing imprisonment for refusing to reveal the identity of one of his sources to the government. The court, in line with the recommendation of the Obama Justice Department, rejected Risen's petition, upholding a ruling by the Fourth Circuit Court of Appeals.

Risen is a leading investigative journalist who has exposed various illegal activities carried out by the US government. His recent work includes a piece for Sunday's *New York Times*, based on documents leaked by Edward Snowden, in which he documents the National Security Agency's use of facial recognition technologies to compile facial images of hundreds of millions of people in the US and around the world.

In his book, *State of War: The Secret History of the CIA and the Bush Administration*, Risen cites information from an unnamed intelligence agent about a Central Intelligence Agency (CIA) operation, codenamed Operation Merlin, which sought to disrupt Iran's nuclear program.

Responding to the publication of Risen's book, the Justice Department filed ten criminal counts against Jeffrey Sterling, believing him to be the source of the leaks. Risen was listed as an intervener in the ensuing case, *United States v. Jeffery Sterling*.

In July 2013, the appeals court in Richmond, Virginia ruled 2-1 that Risen could be ordered to testify in the case, claiming that Sterling's disclosures constituted "criminal conduct." The court wrote, "There is no First Amendment testimonial privilege, absolute or qualified, that protects a reporter from being compelled to testify by the prosecution or the defense in criminal proceedings about criminal conduct."

In his petition to the Supreme Court challenging the

ruling, Risen argued that investigative reporting on security issues would become impossible if reporters were forced to reveal the identity of their sources. Risen has categorically refused to testify about Sterling and insisted that he will accept imprisonment before violating the confidentiality of his source.

A brief filed by Risen with the Supreme Court argued that the Richmond court's decision overturns well established rights of journalists to protect their sources. "Spurning the definitive holdings of no less than six other circuit courts and six state courts of last resort, the Fourth Circuit is now the first court of appeals to hold that no qualified First Amendment privilege exists for journalists subpoenaed to testify regarding confidential information in a criminal trial," said the brief, filed last month.

The Supreme Court's refusal to hear Risen's case amounts to a stamp of approval for US government prosecutions that flagrantly violate the First Amendment. Unlike lower appeals courts, which are required to hear the cases that come before them, Supreme Court procedures allow the court to refuse to review cases without offering any explanation or details about the positions of the various justices. (A decision to hear an appeal requires agreement from at least four of the nine members of the court). In this way, decisions made by lower courts can be tacitly upheld by the Supreme Court without the court directly intervening in the case.

Numerous reactionary rulings have been approved over the past decade through this method, which enables the justices on the high court to avoid issuing opinions and exposing themselves to criticism. Indefinite detention of prisoners without trial at the US military base in Guantanamo Bay, for instance, has been upheld by the Supreme Court using such one line

denials of judicial review.

The Risen case is only the latest in a series of attacks on democratic rights launched by the Obama Justice Department, which has brought more cases against so-called “leakers” and whistle-blowers than all previous administrations combined. As was revealed in May of 2013, the Justice Department secretly subpoenaed telephone records of Associated Press editors and journalists and tracked calls placed on at least 20 AP telephone lines. Just months earlier, in January, the Justice Department successfully prosecuted former CIA agent John Kiriakou for admitting in televised interviews that the US government used torture against alleged terrorists.



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