

Snowden Case Highlights Extradition Treaties Are Not Air Tight

By [Donald Scarinci](#)

Edward Snowden may never return to the United States to face charges that he leaked highly classified government documents. While the United States has extradition treaties with more than 100 countries, they do not guarantee a country will return a suspected criminal to stand trial.

Hong Kong is a classic example. After Snowden fled there, the United States sent an [extradition request](#) and publicly pressured officials to prevent Snowden from fleeing to country. Even though the United States suspended his passport, Snowden boarded a flight to Russia and remains a free man somewhere in Moscow. Since the United States and Russia have no extradition treaty, U.S. officials have applied diplomatic and political pressure.

There are conditions under which countries bound by treaty may deny extradition requests. For instance, Hong Kong maintains that the U.S. extradition request failed to provide the evidence of his [cybercrimes](#) needed to secure a provisional arrest warrant. After the United States accused Hong Kong officials of dragging their feet, Hong Kong's Justice Secretary publicly stated that the U.S. failed to clarify the charges of unauthorized disclosure of national defense information and unauthorized disclosure of intelligence.

"Until the minute of Snowden's departure, the US government had not yet replied to our requests for clarification," he noted. "Any suggestion that we have been deliberately letting Mr. Snowden go away or to do any other things to obstruct the normal operation is totally untrue."

As this case highlights, extradition treaties commonly have detailed exceptions. The two most common are political asylum and dual criminality requirements.

Under the exception for political asylum, countries can refuse to extradite individuals suspected of political crimes. While charges of treason, espionage, and sedition clearly qualify under the exception, the definition of "political offenses" is open to a number of different tests and interpretations. For example, the United States and England follow the "political incidence" test under which courts examine whether the offence is "part of and incidental to a political struggle."

Many extradition treaties also require dual-criminality. As the name suggests, the crimes charged must be illegal in both the country requesting extradition and the country asked to honor the request. In the Snowden case, Hong Kong officials seem to have questioned whether the disclosure of classified information was a crime under Hong Kong law.

Ecuador, Snowden's preferred final destination, has yet to respond to his request for asylum or the United States' request for extradition. Given the extradition treaty between Ecuador and the United States contains exceptions for both dual criminality and political asylum, the country's

leaders have a great deal of discretion in deciding whether to grant the request. Most likely, the decision may come down to whether the country is willing to risk harming its future economic and diplomatic relations with the United States.

[Donald Scarinci](#) is a New Jersey lawyer and managing partner of Scarinci Hollenbeck, LLC a regional law firm with offices in New York, New Jersey and Washington, D.C. His columns feature legal issues in the news and articles about the business and practice of law. He also writes regularly in Politicker NJ and the [Constitutional Law Reporter](#).