



CREATING  
LAW  
ENFORCEMENT  
ACCOUNTABILITY &  
RESPONSIBILITY

## Stranded Abroad: Americans Stripped of Their Passports in Yemen

A report to the Office of the Inspector General requesting investigation of the U.S. State Department and the U.S. Embassy in Sana'a for confiscating and revoking U.S. passports contrary to regulations, policies, and guidelines.

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## I. Introduction<sup>1</sup>

In a democratic society, the government must follow the law when enforcing the law. This report documents incidents where personnel at the U.S. Department of State (“the Department”) and the U.S. Embassy in Sana’a (“the Embassy”) engaged in mismanagement and abuse during investigations of possible immigration or naturalization fraud at the Embassy. Put simply, Department and Embassy personnel did not follow the law, including the Department’s regulations, policies, and internal guidelines, during their investigations. We request the Office of the Inspector General (OIG) investigate these incidents and determine whether sufficient corrective action has been taken to address such misconduct.

As media outlets like *The New York Times*,<sup>2</sup> *The Guardian*,<sup>3</sup> *National Public Radio*,<sup>4</sup> *The San Francisco Chronicle*,<sup>5</sup> and others<sup>6</sup> have reported, these abuses appear to be part of a widespread pattern. This report demonstrates that the pattern was not the doing of a few rogue officers at the Embassy in Sana’a, but, rather, stemmed from a systemic lack of accountability and a failure of leadership and oversight from Sana’a to D.C.

During their investigations, Embassy personnel questioned the immigration background of American citizens who came to the Embassy seeking consular assistance. They accused Yemeni-Americans of using “false” names when they or their parents emigrated from Yemen to the United States decades prior. Although these individuals never faced challenges to their citizenship in a denaturalization proceeding, the Embassy nevertheless confiscated their passports and revoked them as “fraudulently” procured based on the same questionable evidence.<sup>7</sup>

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<sup>1</sup> The authors would like to thank Shirin Sinnar, Assistant Professor of Law and John A. Wilson Distinguished Faculty Scholar at Stanford Law School, for her valuable feedback and suggestions.

<sup>2</sup> Liz Robbins, *Yemeni-Americans, Thrust Into Limbo, Say U.S. Embassy Unfairly Revokes Passports*, NY TIMES, May 27, 2015, <http://www.nytimes.com/2015/05/28/nyregion/yemeni-americans-thrust-into-limbo-say-us-embassy-unfairly-revokes-passports.html>.

<sup>3</sup> Smitha Khorana, *US citizens in Yemen accuse American embassy of confiscating passports*, THE GUARDIAN, Jul. 22, 2014, <http://www.theguardian.com/world/2014/jul/22/yemeni-americans-us-embassy-sanaa-passports>.

<sup>4</sup> Richard Gonzales, *U.S. Citizen Stranded in Yemen Sues State Department*, NATIONAL PUBLIC RADIO, May 28, 2015, <http://www.npr.org/2015/05/26/409672017/u-s-citizen-stranded-in-yemen-sues-state-department>.

<sup>5</sup> Bob Egelko, *S.F. man says U.S. fraudulently kept him from leaving Yemen*, SF CHRONICLE, Apr. 20, 2015, <http://www.sfgate.com/bayarea/article/S-F-man-says-U-S-fraudulently-kept-him-from-6212229.php>.

<sup>6</sup> Matt O’Brien, *Oakland man stuck in Yemen fights to return*, OAKLAND TRIBUNE, Jan. 31, 2014, [http://www.mercurynews.com/breaking-news/ci\\_25030451/oakland-man-stuck-yemen-fights-return.html](http://www.mercurynews.com/breaking-news/ci_25030451/oakland-man-stuck-yemen-fights-return.html).

<sup>7</sup> See 8 U.S.C. § 1504 (authorizing the Secretary to “cancel” any passport that was “illegally, fraudulently, or erroneously obtained from, or was created through illegality or fraud practiced upon, the Secretary”); 22 C.F.R. 51.62(a)(2) (authorizing the Department to revoke a passport when it has been “obtained illegally, fraudulently or erroneously” or “was created through illegality or fraud practiced upon the Department”).

The investigations were plagued by numerous forms of misconduct. Mohammed's story demonstrates the problems clearly.<sup>8</sup> Mohammed is an American citizen. He was in Yemen in 2012 for a short visit with his family when his wife gave birth to their daughter early. He went to the Embassy in January 2013 with his infant daughter to obtain a Consular Report of Birth Abroad and U.S. passport so that he could take her to the United States where her siblings would return to school.

Instead, a Special Agent in the Diplomatic Security Service (the law enforcement arm of the State Department) took Mohammed into a secure interrogation room and detained him an entire day without food or water while Mohammed carried his crying infant daughter in his arms. The Agent threatened to put him in jail if he did not provide a name that was different than the name on his passport. After hours of threats and repetitive questioning in custody, with his infant daughter crying and hungry, Mohammed believed his only way out was to provide a false name. He was presented with a document in English, which was not completely translated for him, and instructed to sign. Later, the paper turned out to be a "confession" that he had used a false name to immigrate to the United States in the 1990s and to naturalize in 2002. His passport was confiscated without explanation and his application for a CRBA was denied.

Mohammed was summarily banished to Yemen after nearly 20 years in the United States. For a year, Mohammed contacted the Embassy pleading for help to return home. But Mohammed did not receive any response explaining what had happened to his passport. Indeed, it was not until thirteen months later, in February 2014, that the Embassy finally provided Mohammed a temporary passport to fly back home. And it was not until December 2014, 709 days after his passport had been confiscated and only following his attorney's intervention that the Department provided Mohammed formal written notice that his passport had been revoked.

What is perhaps most striking about Mohammed's story is its ending. Mohammed challenged the revocation of his passport at an administrative hearing. To make its case, the Department relied solely on the confession Mohammed was forced to sign at the Embassy, even though he had signed it using the allegedly "false" name, Mohammed. The confession purported to claim that the man who brought Mohammed to the United States was not actually his biological father. As part of Mohammed's submission to the hearing officer, Mohammed's lawyers at CLEAR presented DNA evidence found in Mohammed's immigration file proving to a scientific certainty that he was indeed his father's son. The DNA evidence established beyond any doubt that Mohammed's "confession" could only have been coerced.

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<sup>8</sup> Mohammed is a CLEAR client who wished only to be identified by his middle name.

Faced with this evidence, the Department offered to reinstate Mohammed's passport if he agreed to withdraw his request for a formal decision. But Mohammed wanted justice and finality, so he declined the offer and maintained his request for a decision. Ultimately, pursuant to the hearing officer's recommendation, the Department issued a final decision vindicating Mohammed and granting him issuance of a passport in his true name nearly three years after it had been originally confiscated, severely disrupting his family and professional life.

The Department's case against Mohammed rested solely on a confession he signed at the Embassy, similar to confessions used against other affected individuals. Mohammed was lucky enough to recover incontrovertible proof in his immigration file that the statement could only have been involuntary. Mohammed's case casts doubt on the reliability of *all* the interrogation statements signed at the U.S. Embassy in Sana'a and calls into question the entire practice of passport revocations affecting U.S. citizens in Yemen. Indeed, a federal court raised questions whether another Yemeni-American man understood the document he signed because he used the very name that was allegedly false to sign it.<sup>9</sup>

Taken together with other documented cases, the need for an investigation could not be more pressing. Yet, despite public interest and several requests from advocacy groups, the Department has refused to shed light on how many individuals were affected, why they were singled out in this way, or what measures it has taken to prevent similar misconduct in the future. Advocates believe that at least several dozen American citizens were caught up in this pattern of misconduct, but the Department has refused to identify the number of affected persons. Moreover, the Department has not clarified whether any of its personnel have ever been held accountable for this misconduct. The lack of evident Departmental action highlights the need for a comprehensive and transparent OIG investigation.

Although many of the coercive interrogations and passport revocations appear to have taken place from 2012-2014, several Americans continue to suffer the consequences today. Many remain stranded abroad. A significant number of those who have returned to the United States have not received new passports, limiting their ability to visit children and spouses who are still in Yemen. Indeed, most disturbingly, the indirect victims of the Department's behavior are young children who have claims to American citizenship through their parents but who have been denied passports based on the aforementioned "confessions." At a time of humanitarian crisis and violent chaos in Yemen, it is unacceptable for the Department to leave these American children in mortal danger.

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<sup>9</sup> Order Granting Plaintiff's Motion for Preliminary Injunction at 4, *Omar v. Kerry*, No. 15-cv-01760-JSC, 2015 WL 5964901 (N.D. Cal. Oct. 13, 2015) ("It is puzzling, to say the least, why someone who understood that he was signing a confession that his true name is something other than Omar would sign the so-called confession under the allegedly false name Omar. Thus, the signature is consistent with Plaintiff's testimony and further supports a finding that the statement was unknowing and involuntary.").

The temporary closure of the U.S. Embassy in Sana'a for security reasons should not impede the OIG's ability to conduct a successful investigation. Many, if not all, of the personnel previously assigned to the Embassy in Sana'a and implicated in this program of passport revocations are still employed by the Department. The Department's D.C. headquarters—where the administrative revocation of passports occurs—should possess records of the passports that were confiscated in Yemen and subsequently revoked. To the extent affected individuals were able to request and participate in administrative hearings the Department should also have records of their testimony concerning the circumstances of their interrogation. And the Department should have access to all electronic communications—including Embassy cables, e-mails to American Citizen Services, and other resources—without physical access to the Embassy in Sana'a.

Finally, this report focuses on the confiscation of passports from Yemeni-Americans. But this community has also expressed concern about other aspects of the Embassy's performance with respect to Immigrant Visa and American Citizen Services, reporting long processing delays, impossible burdens of proof, and difficulty navigating the Embassy to assist U.S. citizen children or to assist spouses or non-citizen children in petitioning for immigration benefits.

## II. The Inspector General's Duty and Authority to Investigate Systemic Abuses and Administrative Misconduct

Inspectors General play a crucial oversight role in the context of civil rights and liberties.<sup>10</sup> Increasingly, Inspectors General across several federal agencies have focused on systemic civil rights and civil liberties issues, often effectuating important policy reforms, improving public awareness, and responding to the public's concerns.<sup>11</sup> For example, the Department of Justice's Inspector General has investigated the treatment of "9/11 Detainees" and the use of National Security Letters,<sup>12</sup> and the Department of Homeland Security's Inspector General reviewed redress procedures for travelers on terrorist watchlists.<sup>13</sup>

The State Department OIG is similarly authorized by the Inspector General Act and the Foreign Service Act to conduct audits, inspections, and investigations into the U.S. Department of State.<sup>14</sup> Specifically, the Inspector General is authorized to review and evaluate the administration of activities and foreign posts and other units within the Department to examine whether they comply with applicable laws and regulations and "whether there exist instances of fraud or other serious problems, abuses, deficiencies...."<sup>15</sup>

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<sup>10</sup> See Shirin Sinnar, *Institutionalizing Rights in the National Security Executive*, 50 HARV. C.L.-C.R. L. REV. 289 (2015) (analyzing the role of Offices of the Inspector General across several federal agencies in investigating abuse of civil rights and civil liberties, particularly in the counter-terrorism context). See also, Shirin Sinnar, *Protecting Rights from Within? Inspectors General and National Security Oversight*, 65 STANFORD L. REV. 1027, 1031 (2013) (analyzing how "IGs played a surprisingly significant role in protecting rights" by "provid[ing] impressive transparency..., identify[ing] violations of the law that had escaped judicial review, and even challenged government conduct where existing law was ambiguous or undeveloped").

<sup>11</sup> See, 50 HARV. C.L.-C.R. L. REV, *supra* at 311 (explaining how the U.S. Department of Justice's OIG "issued two highly critical reports concluding that federal officials had indiscriminately labeled detainees as terrorism suspects, held many under harsh conditions, and physically abused some detainees," and that the reports "attracted tremendous public and congressional attention, triggered the disciplining of federal prison guards, and assisted some former detainees in obtaining compensation"); *id.* (explaining that the DOJ OIG's "three damning reports on the FBI's use of National Security Letters" which "concluded that the FBI had circumvented the law" eventually "led the FBI to terminate the use of exigent letters and significantly reform internal procedures").

<sup>12</sup> OFFICE OF THE INSPECTOR GEN., DEPARTMENT OF JUSTICE, THE SEPTEMBER 11 DETAINEES: A REVIEW OF THE TREATMENT OF ALIENS HELD ON IMMIGRATION CHARGES IN CONNECTION WITH THE INVESTIGATION OF THE SEPTEMBER 11 ATTACKS (2003); OFFICE OF THE INSPECTOR GEN., DEPARTMENT OF JUSTICE, A REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION'S USE OF NATIONAL SECURITY LETTERS (2007).

<sup>13</sup> OFFICE OF THE INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC., EFFECTIVENESS OF THE DEPARTMENT OF HOMELAND SECURITY TRAVELER REDRESS INQUIRY PROGRAM (2009).

<sup>14</sup> See 22 U.S.C. § 3929(b).

<sup>15</sup> *Id.* at § 3929(b)(4); see also 1 F.A.M. § 053.1-1(a)(2) ("Conduct investigations and prepare reports relating to the administration of the programs and operations of the Department, the BBG, the USIBWC, and any other

The Inspector General is authorized to examine “whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.”<sup>16</sup>

Moreover, the Office of Investigations (OIV) within the OIG is authorized to conduct investigations into violations of law or regulations and abuse of authority. OIV has authority to “review complaints and information concerning the possible existence of activities constituting a (1) violation of a law or regulation; (2) mismanagement, gross waste of funds, or abuse of authority.”<sup>17</sup> And the newly established Office of Evaluations and Special Projects (ESP) is tasked with “reviewing allegations of administrative misconduct by senior officials,” and “developing a capacity to focus on broader, systemic issues.”<sup>18</sup>

As described below, the pattern of passport revocations at the U.S. Embassy in Sana’a involved violations of applicable regulations and laws, including abuses of authority. In addition, these cases raise “other serious problems, abuses, deficiencies....”<sup>19</sup>

We have identified the following potential violations:

- Failure to provide written notice and opportunity for hearing when passport is revoked<sup>20</sup>
- Failure to issue passports to citizens who submit a valid certificate of citizenship or naturalization<sup>21</sup>
- Failure to provide citizens with a limited validity passport to travel home to the United States upon passport revocation/confiscation<sup>22</sup>

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organization for which the OIG has oversight responsibility that the Inspector General determines are necessary.”).

<sup>16</sup> 22 U.S.C. § 3929(b)(5).

<sup>17</sup> 1 F.A.M. § 057.1(a)(1)-(2).

<sup>18</sup> See Office of Evaluations and Special Projects, U.S. Dep’t of State, <https://oig.state.gov/esp>.

<sup>19</sup> 22 U.S.C. § 3929(b)(4).

<sup>20</sup> 22 C.F.R. § 51.65(a); 8 U.S.C. § 1504(a).

<sup>21</sup> 7 F.A.M. § 1381.2(d)(1) (“Certificates of Naturalization or Citizenship are proof of United States citizenship. Accordingly, an individual remains eligible for a U.S. passport until his/her Certificate of Naturalization or Certificate of Citizenship is revoked by U.S. Citizenship and Immigration Services (USCIS) or a U.S. District court, or unless he/she is ineligible for passport services for reasons other than non-citizenship.”); 7 F.A.M. § 1230 Appendix D, Revised INA 340 (f) (“U.S. passports cannot be revoked until the individual’s U.S. naturalization is revoked.”); 7 F.A.M. § 1381.2(d)(3) (an embassy must issue a full validity passport to an individual who presents either a certificate of naturalization or citizenship); 22 C.F.R. § 51.43(b)(1)(i) (certificate of naturalization is documentary evidence of U.S. citizenship); 22 C.F.R. § 51.43(b)(1)(ii) (certificate of citizenship is documentary evidence of U.S. citizenship).

<sup>22</sup> 22 C.F.R. § 51.60(a) (providing that a passport for “direct return” to the United States may be issued upon revocation of a passport or denial of a passport application).



- Failure to guarantee that statements provided during or subsequent to an interrogation are voluntary, as Diplomatic Security agents allegedly used improper threats or promises to obtain involuntary confessions, failed to advise individuals about their rights, and failed to fully translate written statements

### III. Three Years Without Reform: An Overview of Misconduct at the U.S. Embassy in Sana'a

Civil rights groups initially received reports about the confiscation of U.S. passports from concerned Americans in spring 2013. Individuals reported that their relatives had been stranded in Yemen after the U.S. Embassy in Sana'a confiscated their passports, usually several months to a year earlier. Without exception, these American citizens claimed they were subjected to interrogations at the Embassy lasting nearly a full day until they finally signed involuntary confessions that they had used false names to immigrate to the United States. The Embassy subsequently refused to return their U.S. passports, but also failed to provide them with any formal notice explaining the confiscation or how to appeal, nor an alternative means to return to the United States without their passports.

The Asian Law Caucus' first client was Rayman Hussein, an American citizen and Oakland resident who traveled to Yemen in 2012 to help his young child obtain a U.S. passport so he could move his then-pregnant wife (also an American citizen) and the child back to California with him. In November 2013, the Caucus wrote Deputy Assistant Secretary for Passport Services Brenda Sprague to protest the confiscation of Hussein's passport after a coercive interrogation in January 2013, and to demand re-instatement of his passport because the Department had failed to provide him with notice or a hearing. DAS Sprague did not respond to the Caucus' letter. However, Hussein—apparently along with dozens of other Yemeni-Americans—was suddenly summoned to the Embassy in mid-December 2013 and provided, for the first time, a formal notice of revocation. The Caucus' outreach to Sprague appears to have forced the Department to issue the revocation notices to Americans whose passports had been confiscated at the Embassy up to a year prior. Further, in approximately February 2014, the Embassy began issuing limited validity passports for return to the United States.

During this period, a national coalition of civil rights groups, including the authors of this report, published a Know Your Rights document in Arabic and English to inform Yemeni-Americans whose passports were seized that they had the right to return to the United States and to demand a hearing about the confiscation of their passports. The document also explained that American citizens had the right to remain silent and to request an attorney before participating in an Embassy interrogation, and that they could refuse to sign involuntary confessions until they sought the advice of an attorney. The document is available at <http://myembassyrights.org/>.

In January 2014, *Al Jazeera America* published a groundbreaking investigative report that featured a State Department whistleblower's claim that "[v]irtually all of the statements say that the individual naturalized under a false identity" and "[t]hey appear to be

involuntary.”<sup>23</sup> The journalist reported that, “[a]ccording to the official, an internal investigation determined that the statements those revocations were based on were obtained under ‘confrontational ‘ circumstances, with individuals alone in an interview room with an investigative officer and an interpreter who, the official said, treated their subjects ‘aggressively.’”<sup>24</sup> The whistleblower stated, “[w]e’re talking about an inherently coercive and intimidating environment, without any independent supervision of the interrogator and his translator.”<sup>25</sup>

In July 2014, the coalition, including the authors of this report, submitted a Shadow Report to the U.N. Committee on the Elimination of Racial Discrimination.<sup>26</sup> The report summarized the pattern of passport confiscations, explained their illegality under U.S. and international law, and made a series of recommendations to the U.S. State Department.

Later that month, *The Guardian* newspaper published an article featuring another Yemeni-American man who, similar to Rayman, had been coerced into signing an involuntary confession after a full day of interrogation.<sup>27</sup> The reporter corroborated these claims by identifying several other Americans who had been subjected to similar treatment and who were represented by Jan H. Brown, a private practice immigration attorney in New York.

From mid-2014 onwards, a number of Americans whose passports had been confiscated in Yemen, but who had been issued travel documents to return to the United States, requested and participated in administrative hearings at the U.S. Department of State to contest the revocation of their passports. As explained below, these hearings were fundamentally unfair and were defective in many respects. This and other egregious aspects of the practice were criticized by legal scholars who examined the spate of passport revocations and their potential illegality as early as 2014.<sup>28</sup>

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<sup>23</sup> See Amel Ahmed, *Yemeni Americans Cry Foul Over Passport Revocations*, AL JAZEERA AMERICA, Jan. 21, 2014, <http://america.aljazeera.com/articles/2014/1/21/yemeni-americanscryfouloverpassportrevocations.html>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See Asian Americans Advancing Justice – Asian Law Caucus et al., *Shadow Report – Prepared for the Committee on the Elimination of Racial Discrimination in connection to its review of the United States’ periodic report under the International Convention on the Elimination of All Forms of Racial Discrimination*, July 2014, available at [http://tbinternet.ohchr.org/Treaties/CERD/SharedDocuments/USA/INT\\_CERD\\_NGO\\_USA\\_17797\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/SharedDocuments/USA/INT_CERD_NGO_USA_17797_E.pdf).

<sup>27</sup> See *supra* note 2.

<sup>28</sup> See Ramzi Kassem, *Passport Revocation As Proxy Denaturalization: Examining the Yemen Cases*, 82 *FORDHAM L. REV.* 2099 (2014), <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4978&context=flr>; Patrick Weil, *Citizenship, Passports, and the Legal Identity of Americans: Edward Snowden and Others Have a Case in the Courts*, 123 *YALE L.J. F.* 565 (2014), <http://yalelawjournal.org/forum/citizenship-passports-and-the-legal-identity-of-americans>.

The authors of the report are aware of only *one* case in which a passport was returned *after* a hearing: Mohammed, mentioned above, had signed an involuntary confession stating his father, who brought him to the United States, was not his father. However, CLEAR obtained his Alien file from U.S. Citizenship and Immigration Services where they located a copy of a DNA test confirming the paternal relationship between him and his father. Presented with this clear evidence, the Department offered to issue Mohammed's passport in exchange for a withdrawal of his request for administrative review, even though it had filed a written submission arguing the involuntary confession was a sufficient basis on which to revoke his passport. Seeking justice and finality, Mohammed declined that offer, insisting that the Department take a formal final decision based on the administrative hearing. Mohammed ultimately prevailed: the Department recently notified him of its final decision "on review" of the full record by the Deputy Assistant Secretary for Passport Services that he is entitled to a passport in his true name.<sup>29</sup>

Mohammed's case alone casts doubt on all of the involuntary confessions obtained at the Embassy. That the Department relied on Mohammed's signed "confession," which was proved false by incontrovertible scientific evidence, raises serious questions about how Embassy personnel procured these confessions.

Yet, despite these serious questions, the Department has, after an administrative hearing, affirmed most of the passport revocations arising out of the Embassy in Sana'a on the basis of the involuntary confessions alone.<sup>30</sup>

This defective process prompted the first lawsuit challenging the Department's behavior in court, brought in April 2015 by the Asian Law Caucus on behalf of Mosed Shaye Omar, a 64-year-old man who had also been held for a full day of interrogation without his medication, food, or water, until he signed an involuntary confession that he used a "fraudulent" identity to immigrate to the United States in 1972 and to naturalize as a U.S. citizen in 1978. The case, *Omar v. Kerry*, is still pending, but Mr. Omar prevailed on a motion for preliminary injunction—a form of relief rarely granted by federal courts—and expects resolution of his motion for summary judgment in the near future.<sup>31</sup> In its order, the

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<sup>29</sup> In some cases, such as Rayman Hussein's, the Department has unilaterally returned a U.S. passport after the individual requested a hearing but before the hearing was convened and before the petitioner submitted any rebuttal evidence to the signed confessions. The Department's behavior in these cases might also be taken as acknowledgement that some confessions are unreliable, though the basis for the Department's behavior in such cases is not clear.

<sup>30</sup> In some cases, individuals have waited—and continue to wait—for unreasonably long periods of time for the Department to make a final decision after the administrative hearing.

<sup>31</sup> Mr. Omar's lawsuit should not be an obstacle to an OIG investigation because it deals with his individual case alone, while the OIG would focus on systemic issues that are not addressed or resolved through individual litigation. Moreover, other agency OIGs have successfully conducted investigations on particular issues despite pending litigation. *See, e.g.*, OFFICE OF THE INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC., THE REMOVAL OF

court raised questions about the Embassy confession, saying it was “puzzling” Mr. Omar would sign the confession with the allegedly fraudulent name if he understood it, and thus a sign the confession was “unknowing and involuntary.”<sup>32</sup> Because of the preliminary injunction, Mr. Omar was subsequently able to travel to Yemen for a brief visit with his youngest daughter, and then to return to the United States.

In May 2015, *The New York Times* reported on several additional Yemeni-Americans whose passports had also been confiscated in a questionable manner, including CLEAR client Mohammed and Asian Law Caucus client Mr. Omar.<sup>33</sup>

In addition to the investigative reporting by The New York Times, *Al Jazeera America*, and *The Guardian*, the Asian Law Caucus has filed two Freedom of Information Act requests with the Department seeking additional background information about the scope of pattern of passport revocations in Yemen, the supposed internal investigation reported by Al Jazeera America, and other aspects related to Department policy on this matter. Despite the fact that these requests were filed in February 2013 and July 2013, the Department has yet to provide information in response to the requests.

Although the Embassy has been closed since February 2015, and it appears that passport confiscation based on coerced confessions had likely ended by then, the practice has continuing consequences. Indeed, despite being on notice for more than two years about serious questions regarding the reliability of these confessions, the Department continues to use and defend them in administrative and judicial proceedings. Moreover, the Department has not limited itself to revoking the passports of those who signed involuntary confessions, but has also begun to revoke the passports of some of those citizens’ relatives on the basis of those same involuntary confessions.

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CANADIAN CITIZEN TO SYRIA (2008) (report about the extraordinary rendition of Maher Arar, who simultaneously filed a lawsuit against U.S. government officials); OFFICE OF THE INSPECTOR GEN., U.S. DEP’T OF JUSTICE, A REVIEW OF THE FBI’S HANDLING OF THE BRANDON MAYFIELD CASE (2006) (report about the FBI’s handling of man falsely accused of Madrid bombings despite pending litigation for same case).

<sup>32</sup> See *supra* note 10 (“It is puzzling, to say the least, why someone who understood that he was signing a confession that his true name is something other than Omar would sign the so-called confession under the allegedly false name Omar. Thus, the signature is consistent with Plaintiff’s testimony and further supports a finding that the statement was unknowing and involuntary.”).

<sup>33</sup> See *supra* note 1.

## IV. Anatomy of Passport Confiscations at the U.S. Embassy in Sana'a

As explained above, the pattern of misconduct occurred in several phases. Interrogations and revocations occurred from at least mid-2012 to mid-2013. Notices of revocation were not provided until December 2013. Limited validity passports were not provided until February 2014. From March 2014 onward, the Department has convened administrative hearings in Washington D.C. to review the Sana'a revocations. In rare cases, passports have been returned, but it appears that the Department has refused to return the overwhelming majority of passports. To date, the Department has refused to issue "limited validity" passports to some individuals who remain stranded abroad. This section explains each phase in more detail.

The information below is based on information provided to the Asian Law Caucus and CLEAR by individuals who sought legal assistance. In some cases, these individuals have submitted declarations under penalty of perjury to the Department or filed lawsuits recounting their allegations. In other cases, individuals may be available for interviews with OIG, provided sufficient guarantees against government retaliation.

### A. Coercive Interrogations (2012-2013)

Many of the cases we documented occurred between September 2012 and June 2013 when American citizens visited the Embassy for routine consular appointments, such as filing a passport application for a child, an application for a Consular Report of Birth Abroad (CRBA), or an immigration visa for a relative. At the time, the Department had been urging U.S. citizens to evacuate the country for security reasons. Many families were thus desperate to secure travel documents for their families so they could leave the country before the situation deteriorated.

When these Americans appeared for their appointments, Embassy personnel took all their paperwork from them, including their passports and other proof of citizenship. Embassy officials then escorted the individuals outside of the consular building to a separate, secure area that is not accessible without an escort.<sup>34</sup> In the secure building, individuals were taken to a small room. There, Department officials, including at least one Diplomatic Security Service agent, subjected the citizens to coercive interrogations, often spanning several hours. Individuals were not informed of their rights to remain silent or to consult attorneys for legal advice; nor were they informed that they were free to leave the Embassy. Rather, Embassy officials alleged the name on the individual's Certificate of Naturalization or Citizenship or U.S. passports was "false" or "fraudulent."

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<sup>34</sup> It is unclear what the Embassy's basis was for flagging or selecting particular individuals for this treatment.

Individuals report varying types of treatment by the interrogator. Some alleged overt hostility, such as yelling and slamming on the table. Others stated that the interrogator threatened they would be sent to jail or prosecuted if they did not confess to the alleged fraud. Others were promised their pending consular applications would be approved if they simply told the interrogator what he or she wanted to hear. After multiple hours without an end in sight, many citizens succumbed to the pressure and signed the statements presented by the interrogators, believing it was the best hope for them and their families.

Clearly, interrogators took advantage of the fact that the subjects were entirely at their mercy. The subjects were in an unstable foreign country, and the government officials had already taken their passports and other proof of citizenship. The fate of their spouses and children were entirely in the interrogator's hands, because the interrogator could make the difference between approval and rejection of the applications. Many individuals were totally ignorant of their legal rights and were pressured to cooperate with the interrogators to avoid harm to their families. Finally, many individuals reported that the written statements were not fully translated to them or explained before they signed. A number were thus later surprised to learn what the statements alleged.

Some, like Mohammed, brought young children with them to the Embassy.<sup>35</sup> Mohammed was forced to hold his infant daughter the entire length of the interrogation, while the child's stroller remained in the waiting area. He had no food for the child, who spent at least ten hours without eating as her father was held at the Embassy. Another citizen, Mr. Omar, discussed above, suffered from diabetes, high blood pressure, and other related medical conditions, had no access to food, water, or his medication while being interrogated, and consequently became sick until he finally signed an involuntary confession under duress.

The circumstances overwhelmingly paint a picture of coercive interrogation.

Unsurprisingly, then, some individuals had the means to provide incontrovertible evidence that the involuntary confessions they signed were false. For example, CLEAR's client, Mohammed, mentioned above, was forced to sign a confession that his claimed father was not actually related to him. However, he subsequently located a DNA test in his Alien file affirming a biological relationship with his claimed father. That even one such example exists should call into question *all* the involuntary confessions taken at the Embassy in Sana'a, but that is even more the case considering that the Department has returned passports to other individuals who signed similar confessions.

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<sup>35</sup> The allegations above are based on a sworn declaration submitted to the Department for Mohammed's passport revocation hearing.

Moreover, a federal court has remarked a confession was “puzzling” and likely “unknowing” and “involuntary” because the individual signed it with the same name he supposedly confessed was “false.”<sup>36</sup> That the Department has used these involuntary confessions, despite grave concerns about their unreliability, to revoke the passports of those who signed involuntary confessions and CRBAs and passports of family members is troubling.

Not everyone is able to produce documentary evidence contradicting the involuntary confessions. By taking these involuntary confessions, the Department essentially requires these individuals to re-prove their claims of citizenship. However, the Department’s evidentiary standards are nearly impossible to meet. Several of these individuals trace their citizenship through parents or grandparents that have since passed away. That those parents or grandparents previously demonstrated entitlement to an immigration visa or to citizenship to the satisfaction of a U.S. Embassy official apparently means little to the Department today. Documentary evidence of family relationships, such as a birth certificate, is difficult to obtain because Yemen does not have reliable contemporaneous record-keeping systems,<sup>37</sup> a fact the Department itself recognizes.<sup>38</sup> Thus, many Yemeni-Americans lack contemporaneous documentation of events like birth or marriage not through any fault of their own, but because of the way records are kept in Yemen.

The difficulty of gathering evidence severely prejudices individuals who were forced to sign involuntary confessions. This prejudice stresses the importance of ensuring that the Department does not lightly overturn decisions made by consular officials to grant visas or Consular Reports of Birth Abroad decades ago, particularly where involuntary confessions gathered in the questionable circumstances described above constitute the sole evidence.

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<sup>36</sup> See *supra* note 10.

<sup>37</sup> See, e.g., Bassem al-Khameri, *Majority of Yemeni minors lack birth certificates*, Yemen Times, Mar. 18, 2015, available at <http://www.yementimes.com/en/1869/report/4978/Majority-of-Yemeni-minors-lack-birth-certificates.htm> (reporting that “[i]n Yemen, 83 percent of minors remain without [a birth certificate],” and citing a Civil Registration Authority official saying that “applying for a birth certificate years after a child is born has become the norm in Yemen”). See, also, Yemen Situation Report: Key focus: Birth registration, UNICEF, October 2014, available at [http://www.unicef.org/mena/UNICEF\\_Yemen\\_SitRep\\_October\\_2014.pdf](http://www.unicef.org/mena/UNICEF_Yemen_SitRep_October_2014.pdf) (“Yemen has the lowest birth registration rate in the Middle-East and North Africa region and one of the lowest in the world. Since 2006, birth registration rates have decreased from 22% to 17% in Yemen, meaning that 83% of children under 5 are without a birth certificate, have no legal identity and are therefore invisible.”).

<sup>38</sup> See U.S. Department of State, Yemen Reciprocity Schedule on Birth, Death, and Burial Certificates, available at <http://travel.state.gov/content/visas/en/fees/reciprocity-by-country/YM.html> (stating that “Yemen does not yet have an established system of recording vital statistics” and that “most Yemenis do not register births, marriages, divorces, and deaths when they occur”).



## **B. Forced Exile (January 2013-February 2014)**

The vast majority of Americans who signed such involuntary confessions were not permitted to retrieve their passports after signing despite the promises made to them. Rather, they were left stranded in Yemen. Embassy officials—including both Diplomatic Security and the consular staff—failed to provide any notice of revocation explaining the basis for the confiscation or how to request a hearing. Furthermore, Embassy officials failed to provide these Americans with documentation, like a limited validity passport for direct return that would permit them to travel to the United States.

Dozens of Americans were thus stranded in Yemen for several months, in some cases over a year. That was not for lack of trying. Many attempted to contact the Embassy multiple times, e-mailing American Citizen Services at [SanaaACS@state.gov](mailto:SanaaACS@state.gov). However, they rarely received anything other than an automated form response and, in any event, never a response that explained how to obtain a limited validity passport or how to appeal the passport revocation.

The effect of the Embassy's behavior was summary banishment from the United States: effectively a combination of denaturalization and deportation, even though a passport revocation ought not to affect citizenship status.<sup>39</sup> More troubling, the Embassy interrogators often confiscated other documents along with the U.S. passports: for example, two individuals reported the Embassy confiscated their Certificates of Naturalization and Citizenship along with their passports, returning them only a year later when they Embassy issued them limited validity passports. Withholding these documents was also improper, and suggests Embassy personnel revoked the passports as part of an effort to attack these individuals' citizenship claims while depriving them of the means to challenge the Embassy's conduct.<sup>40</sup>

## **C. Harm to Families (2012-present)**

Banishment did not only harm the individual Americans who lost their passports, but also their families. The Americans stuck in Yemen could not return to the United States to their jobs, and thus suffered financial hardship. Some were separated from their families in the United States. Further, since many of these Americans were at the Embassy to help their relatives apply for visas, passports, or CRBAs, those applications were also summarily denied,

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<sup>39</sup> See 8 U.S.C. § 1504(a) (cancellation of a passport “shall affect only the document and not the citizenship status of the person in whose name the document was issued.”); *Kelso v. U.S. Dept of State*, 13 F.Supp.2d 1, 4 (D.D.C. 1998) (holding that revocation of a passport does not implicate citizenship).

<sup>40</sup> No explanation was ever provided for the seizure of these documents. In several cases, these citizenship documents were returned to individuals when they applied for limited validity passports.

without explanation, when the petitioner's passport was confiscated. In addition to being stranded, these Americans did not know what would become of their relatives if they ever retrieved their own passports.

It is unclear how many Americans have been stranded in Yemen as a result of these practices and the closure of the Embassy in February 2015. In Mohammed's case, discussed above, his application for a Consular Report of Birth Abroad for his infant daughter, who was with him while he was interrogated, was denied on the day her father's passport was confiscated. To this day, she remains in Yemen even though her father was permitted to return to the United States on a limited validity passport. Although his passport was recently issued after a favorable decision, it will have been nearly two years since he last saw his daughter by the time he travels to Yemen.

In another case, the immediate result of a coercive interrogation was not the confiscation of a passport but a considerable delay in the processing of an application for two minor children's passports. As the applications were not immediately denied, the parents remained in Yemen for another 19 months under the belief the Embassy would eventually process the applications. The Embassy actually assured the parents it would process the applications even a year after the interrogations. The parents eventually returned to the United States without their children, still believing the passport applications would be processed, but the Embassy closed shortly thereafter. It was only after that point, upon prompting by an attorney, that the Department notified the parents that their children's Consular Reports of Birth Abroad had been revoked. If the Department had responded promptly to the parents' requests at any point over the 20 months following the coercive interrogation, the two minor children could have returned with their parents to the United States, avoiding the conflict in Yemen and availing themselves of their right to a hearing. As it stands, the two children remain stranded in Yemen separated from their parents. To seek consular assistance in another country, they would have to find a way to procure Yemeni passports and travel out of Yemen before finally returning home to the United States.

The Department has also separately revoked passports belonging to the family members of citizens who were forced to sign interrogation statements at the Embassy. In one instance known to CLEAR, the son of a citizen who was forced to sign a confession received a notice of revocation approximately 21 months after his father signed the involuntary confession. This citizen had not been in Yemen when the incident occurred, and had no knowledge of the statement his father was forced to sign, but his passport was nevertheless revoked on the basis that he had provided a "false" name when he applied for it. The Department recently upheld the revocation of his passport, solely on the basis of his father's involuntary confession, without even addressing whether his son had knowledge of the alleged fraud.

#### **D. Grounded Back Home (December 2013-Present)**

Hundreds of days after the confiscation of their passports, Americans finally received written notice explaining why their passports were revoked around December 2013. They were also informed that they could apply for limited validity passports to return to the United States. These passports were valid only for return to the United States within a 30-day window, and included a statement that the bearer had not established their identity to the Department. In some cases, Customs and Border Protection agents confiscated the limited validity passports upon return to the United States.

Thus, although many affected Americans were able to fly to the United States, few have retrieved their passports even after the administrative hearing process. They remain American citizens but the Department refuses to issue them passports. This has prevented many citizens from undertaking international travel at a time when their families remain overseas in need of aid.

## V. Potential Abuses of Authority and Violations of Law and Policy

This pattern of interrogation, confiscation, and revocation without due process calls for a thorough and transparent investigation. As explained below, the conduct of Department officials not only violates basic constitutional rights, but also the Department's own policies and procedures. We respectfully request that the OIG focus on these issues during an investigation.

### A. Confiscation and revocation without notice

A passport may only be denied, confiscated, or revoked consistent with due process of law.<sup>41</sup> Due process generally requires notice and a hearing before an individual can be finally deprived of a constitutionally protected interest, such as the liberty interest in international travel.<sup>42</sup> In the context of passports revoked for "fraud," Congress has specifically required the Department to provide "written notice of the cancellation of [a passport], together with the procedures for seeking a *prompt* post-cancellation hearing."<sup>43</sup> The Department's regulations also require the Department to provide written notice with instructions on how to seek an administrative hearing when a passport is revoked.<sup>44</sup>

In the cases reported to the Asian Law Caucus and CLEAR, individuals did not receive a formal notice of revocation until hundreds of days after their passports were seized.<sup>45</sup> The table below demonstrates the severe lag between the time of effective revocation (seizure of the passport) and the time written notice and an opportunity to request review was provided to a number of affected individuals.

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<sup>41</sup> *Kent v. Dulles*, 357 U.S. 116, 125 (1958) ("The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without the due process of law under the Fifth Amendment.").

<sup>42</sup> *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.") (citation and quotation omitted).

<sup>43</sup> See 8 U.S.C. § 1504(a).

<sup>44</sup> See 22 C.F.R. § 51.65(a) ("The Department will notify in writing any person whose application for issuance of a passport has been denied, or whose passport has been revoked. The notification will set forth the specific reasons for the denial or revocation, and, if applicable, the procedures for review...."); 22 C.F.R. § 51.70(a) ("A person whose passport has been denied or revoked... may request a hearing to the Department to review the basis for the denial or revocation within 60 days of receipt of the notice of the denial or revocation.").

<sup>45</sup> Department officials have asserted that they are not required to "revoke" a passport within a certain amount of time after confiscating it. However, this ignores that the deprivation of the right to travel occurs immediately when a passport is seized. *Cf. DeNueva v. Reyes*, 966 F.2d 480, 485-86 (9th Cir. 1992) (failure to offer a hearing upon confiscation of passport violated due process). Thus, due process requires notice and a prompt opportunity for a hearing at the time the liberty interest has been infringed, when the passport is confiscated.

Individual	Confiscation Date	Notice Date	Days Lapsed
Mr. Ahmad <sup>46</sup>	June 9, 2013	Mar. 24, 2014	288 days
Mr. Jamal	Apr. 2, 2013	Dec. 15, 2013	257 days
Mr. Karim	Jan. 27, 2013	Dec. 17, 2013	324 days
Mr. Abdullah	Jan. 23, 2013	Dec. 15, 2013	326 days
Mohammed	Jan. 21, 2013	Dec. 31, 2014	709 days

In court, the Department has taken the surprising position that it may confiscate a passport indefinitely before providing a formal notice of revocation or offering a hearing.<sup>47</sup>

#### Questions for Investigation

- 1) How many passports were confiscated at the U.S. Embassy in Sana'a from 2009-present? In how many cases did the Embassy fail to provide individuals whose passports were confiscated and revoked with prompt notice of revocation or an opportunity for a hearing? What was the reason for these delays?
- 2) Which Department policies, rules, or guidelines were violated when the Department waited hundreds of days to provide notices of revocation to affected individuals?
- 3) Has the Department taken adequate steps to ensure that its consular personnel, including Diplomatic Security agents, are aware that they may not seize a U.S. citizen's passport indefinitely? Are the Department's existing policies, rules, or guidelines sufficient to prevent similar delays in the future?
- 4) Did Embassy personnel have procedures in place for ensuring the presence of a translator during interrogations and for the signing of statements written in English?

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<sup>46</sup> The names above are pseudonyms for individuals whose passports were revoked.

<sup>47</sup> See U.S. Dep't of State's Cross Motion for Summary Judgment at 22, *Omar v. Kerry*, No. 3-15-cv-01760-JSC (N.D. Cal. Nov. 13, 2015) (arguing "[t]he implementing regulation... provides that the Department will provide written notice, but does not contain time limits to issue the notice," and that although the Department "regrets the amount of time it took to provide written notice to Plaintiff that his U.S. passport had been revoked.... [t]he amount of time it took to issue the denial letter... was beyond the scope of the [administrative] hearing... [and the ruling requested on this issue] is outside the scope of relief that a court can order in the APA context.").

What were those procedures and what steps were taken to ensure that they were followed in every case?

- 5) How many CRBA and passport applications were not adjudicated or were subsequently denied in connection with applicants who had signed coerced statements?

**Recommendation:** The Department should adopt clear rules and guidelines that a passport should not be confiscated without immediate provision of a formal revocation notice or an opportunity to request an appeal. The Department should take measures to ensure that all overseas consular personnel, including Diplomatic Security agents, are aware of and actually follow these due process protections.

## **B. Failure to provide direct return passports upon confiscation**

Another aspect of Department misconduct relates to the circumstances of revocation. When a citizen is already in the United States when their passport is revoked, at the very least they are home in their country of nationality. However, if a U.S. citizen is abroad, then a passport revocation effectively constitutes a form of summary exile or banishment because it deprives the citizen of his or her only means to travel back to the United States.

Accordingly, when a full validity passport is revoked or denied, Department regulations provide for the issuance of a “limited validity” passport that is good for one flight to the United States.<sup>48</sup> These regulations are a means of guaranteeing the citizen’s absolute constitutional right to return to the United States.<sup>49</sup>

### **Questions for Investigation**

- 1) Does the Department have any policies or guidelines requiring consular officials, including Diplomatic Security agents, to inform U.S. citizens whose full validity

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<sup>48</sup> See 22 C.F.R. § 51.60(a) (“The Department may not issue a passport, *except a passport for direct return to the United States*” where denial of a passport is mandatory) (emphasis added); 22 C.F.R. § 51.62(a)(2) (expressly authorizing the Department to “limit” a passport that has been “obtained illegally, fraudulently or erroneously.”).

<sup>49</sup> See, e.g., *Nguyen v. I.N.S.*, 533 U.S. 53, 67 (2001) (referring to “the absolute right to enter [the United States’ borders]” as a component of citizenship); *Worthy v. U.S.*, 328 F.2d 386, 394 (5th Cir. 1964) (“We think it is inherent in the concept of citizenship that the citizen, when absent from the country to which he owes allegiance, has a right to return, again, to set foot on its soil.”); *Newton v. I.N.S.*, 736 F.2d 336, 343 (6th Cir. 1984) (stating that “American citizens... have the right to return to this country at any time of their liking); *U.S. v. Valentine*, 288 F. Supp. 957, 980 (D.P.R. 1968) (explaining that “[t]he only absolute and unqualified right of citizenship is to residence within the territorial boundaries of the United States; a citizen cannot be either deported or denied reentry.”). See also, Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948), Article 13(2) (“Everyone has the right to leave any country, including his own, and to return to his country.”).

passports have been confiscated or revoked while they are abroad that they have the right to request a limited validity passport good for return to the United States? Is the lack of clear rules or guidelines contrary to the Department's policy and mission?

- 2) Did consular officials at the U.S. Embassy in Sana'a, including Diplomatic Security agents, fail to provide U.S. citizens whose passports had been seized or revoked with timely information about their right to request limited validity passports good for return to the United States?
- 3) Does the Department have any policies or guidelines discussing the propriety of revoking a U.S. citizen's passport while he or she is overseas, rather than within the United States? For example, should the Department take into consideration the potential hardship on the individual by sudden revocation of a passport abroad when determining whether to revoke a passport or await their return to the United States?<sup>50</sup>
- 4) Given the danger revocation of a passport poses to a citizen while overseas, should the Department revoke passports belonging to U.S. citizens while they are overseas in anything other than exigent circumstances?

**Recommendations:** The Department should revise its form revocation letters to inform every individual whose passport has been revoked that they may request a limited validity passport good for return to the United States from any U.S. Embassy or Consulate overseas. Further, consular staff, including Diplomatic Security agents, should make sure to verbally inform individuals whose passports have been confiscated that they have this right, and should provide them with the information they need to exercise it. The Department should not revoke the passports of U.S. citizens who it knows to be abroad except in exigent circumstances. In the alternative, Department officials should be instructed to make a case-by-case evaluation, weighing potential hardship on the individual with the government's need to revoke a passport, before revoking a passport belonging to a traveling citizen.

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<sup>50</sup> For example, in April 2015, the ACLU of Southern California and the Asian Law Caucus represented an American citizen who was escaping the war in Yemen to return to the United States. He was traveling on his American passport through a connecting flight in Dubai. When his flight landed in Dubai, Dubai authorities refused to allow him to board his flight to the U.S. and instructed him to visit the U.S. Embassy. At the Embassy, the individual was provided a notice of passport revocation and his passport was seized. He lost his only proof of identity and his only proof of lawful status within Dubai (a temporary transit visa). The U.S. Embassy ignored his requests for assistance, did not inform him of his right to return to the U.S., and counsel was unable to secure a passport until it filed an emergency lawsuit against the Department. In such circumstances, the Embassy placed the individual at risk of arrest and detention by Dubai authorities for overstaying a transit visa. *See* Complaint, *Hamood Ali Nagi v. Kerry*, No. 5:15-cv-00717-GW-SP (C.D. Cal. Apr. 13, 2015).

### C. Collateral attacks on citizenship/proxy denaturalization

Access to a passport—and the ability to travel internationally that depends on a passport—is a fundamental right of citizenship.<sup>51</sup> Thus, the Department may not deny or revoke a passport unless it has specifically been authorized by Congress to do so.<sup>52</sup> So long as a person is a U.S. citizen, the Department may not deny that person a passport on the basis of suspicion that citizenship was fraudulently procured.<sup>53</sup>

The pattern of passport revocations essentially rests on one allegation: that the individuals in question used a “false” or “fraudulent” name to immigrate to the United States, to naturalize as citizens, or to support a claim of citizenship. Thus, the allegation goes, it was also “fraudulent” to use the name listed on the individual’s Certificate of Naturalization or Certificate of Citizenship to obtain a U.S. passport, even if the certificates of citizenship have never been revoked. By this reasoning, the Department has forbidden individuals from using a valid Certificate of Naturalization and Citizenship to obtain a U.S. passport, even though there have never been judicial or administrative proceedings to cancel those certificates.

This rule amounts to a collateral attack on a Certificate of Naturalization and a Certificate of Citizenship. It is true that mere cancellation of a passport does not alter an individual’s citizenship status,<sup>54</sup> but the Department’s policy is a collateral attack on citizenship because it abrogates a right of citizenship (access to a passport) even though citizenship itself has not been abrogated. Such collateral attacks are explicitly forbidden in well-established judicial precedent and prior opinions of the Attorney General,<sup>55</sup> and also contradict the Department’s own policies, which state:

- “By law (8 U.S.C. § 1443(e)), Certificates of Naturalization are proof of United States citizenship. Consequently, [the State Department is] bound by law to accept

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<sup>51</sup> See *Kent*, *supra* note 47.

<sup>52</sup> *Id.* (narrowly construing restrictions on passports because they are necessary to exercise constitutional right to travel).

<sup>53</sup> *Cf. In re Mendiola*, 647 F. Supp. 839 (S.D.N.Y. 1986) (agency could not deny one of the benefits of citizenship until citizenship had actually been revoked through the appropriate procedure).

<sup>54</sup> See 8 U.S.C. § 1504(a) (cancellation of a passport “shall affect only the document and not the citizenship status of the person in whose name the document was issued.”).

<sup>55</sup> See *Bindczyck v. Finucane*, 342 U.S. 76, 83-84 (1951) (the statutory scheme for denaturalization, which requires the government to petition the federal courts to cancel a naturalization order, “provide[s] a complete and exclusive framework for safeguarding citizenship”); *id.* at 84 (naturalization is “proof against attacks for fraud or illegal procurement based on evidence outside the record, except through” the statutory denaturalization proceeding). See also, 41 U.S. Op. Atty. Gen. 452, 454 (Jan. 19, 1960) (rejecting State Department’s attempt to deny a passport to an individual the INS had determined was a US citizen, because the State Department is not “free for passport purposes to challenge, by way of collateral attack, citizenship evidenced by a certificate of naturalization issued by a competent court” or by an agency authorized to issue such certificates).



them as proof of citizenship and cannot look behind the certificate.” 7 FAM § 1153(d).

- “If a post [i.e., Embassy]... believes that a Certificate of Naturalization was issued fraudulently, the person remains eligible for a U.S. passport until the naturalization certificate is revoked.” 7 FAM § 1153(e) (4).
- “U.S. passports cannot be revoked until the individual’s U.S. naturalization is revoked.” 7 FAM § 1230(f) App. D.

Thus, through its practices in Yemen, Department officials failed to follow their own internal policies and guidelines, which require a passport to be issued, even when there are suspicions of naturalization fraud, until the certificate of naturalization has been cancelled through the appropriate procedure.

#### **Questions:**

- 1) Did consular officials at the U.S. Embassy in Sana’a violate any Department rules, guidelines, or regulations concerning the revocation of passports for citizens who presented valid Certificates of Citizenship and/or Naturalization?
- 2) Did consular officials at the U.S. Embassy in Sana’a improperly confiscate the Certificates of Citizenship and/or Naturalization of citizens who signed coerced statements?

**Recommendations:** The Department should cease the practice of revoking passports belonging to U.S. citizens who it suspects of having committed some form of immigration or naturalization fraud. Such passports should not be revoked until the Department has received notice the individual’s citizenship has been revoked. Further, the Department should cease of the practice of confiscating Certificates of Citizenship and/or Naturalization from U.S. citizens during investigations.

#### **D. Coercive Interrogations**

The basic promise of the Fifth Amendment guarantee against self-incrimination is that no person can be forced to testify against himself in a criminal trial. Thus, the Supreme Court has required criminal investigators to ensure that any person placed in a custodial interrogation has made a knowing and voluntary waiver of his or her rights before their statements may be used against them.<sup>56</sup> Officers are required to provide *Miranda* warnings before questioning commences. Some agencies, like the U.S. Department of Homeland Security, require *Miranda*-like warnings even when only civil penalties, like deportation, are

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<sup>56</sup> See *Miranda v. Arizona*, 384 U.S. 436 (1966).

contemplated.<sup>57</sup> In virtually all of the interrogations reported to the Asian Law Caucus and CLEAR, the citizens reported that they were *never* informed of their right to an attorney or of their right to remain silent; and they were *never* informed that whatever they said, did, or signed could or would be used against them in possible criminal proceedings or to revoke their passports.

The Fifth Amendment also prohibits the use of any involuntary and coerced statement against an individual for any purpose, civil or criminal, whether or not a *Miranda* warning would have also been required.<sup>58</sup> This basic reason to suppress involuntary statements is “the strongly felt attitude of our society that important human values are sacrificed when an agency of the government... wrings a confession out of an accused against his will,”<sup>59</sup> and from “the deep-rooted feeling that the police must obey the law while enforcing the law.”<sup>60</sup> Importantly, such statements must be suppressed regardless of whether the confessions are true or false.<sup>61</sup>

The statements procured from a number of individuals at the U.S. Embassy in Sana’a appear to have been coerced and involuntary, as suggested by the Department whistleblower discussed in an *Al Jazeera America* report. As mentioned above, there is at least one case where a statement obtained by a Diplomatic Security Service Special Agent was disproved by an already existing DNA test. In a small number of cases, the Department has, without explanation, suddenly returned passports to individuals in their requested names in advance of scheduled administrative hearings; even though they had signed confessions purporting the name was false—shedding more doubt on the reliability of the confessions. Furthermore,

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<sup>57</sup> See, e.g., 8 C.F.R. § 287.3(c) (requiring an alien to be “advised of the reasons for his or her arrest and the right to be represented,” and that “any statement may be used against him or her in a subsequent proceeding”).

<sup>58</sup> See, e.g., *Mincey v. Arizona*, 437 U.S. 385, 398 (1978) (any use of an “involuntary statement is a denial of due process of law” even when *Miranda* rights are not required); *Navia –Duran v. I.N.S.*, 568 F.2d 803, 808 (1st Cir. 1977) (holding that “the use of an involuntary statement” violates due process of law even in non-criminal proceedings); *Choy v. Barber*, 279 F.2d 642 (9th Cir. 1960) (same); *Bustos-Torres v. I.N.S.*, 898 F.2d 1053, 1057 (5th Cir. 1990) (same). See also, *U.S. v. Powe*, 591 F.2d 833, 840 (D.C. Cir. 1978) (“Due process forbids the use of an involuntary confession without regard for its truth or falsity, and even if there is ample evidence aside from the confession to support a verdict.”); *U.S. ex rel. Hudson v. Cannon*, 529 F.2d 890, 892 (1976) (“The use of police coercion to extract an involuntary statement is a violation of due process.”); *U.S. v. Kaba*, 999 F.2d 47, 50 (2d Cir. 1993) (“[A] coerced or otherwise involuntary statement may never be used for any purpose.”).

<sup>59</sup> See *Blackburn v. State of Ala.*, 361 U.S. 199, 206-7 (1960).

<sup>60</sup> See *Spano v. New York*, 360 U.S. 315, 320 (1959).

<sup>61</sup> See *Rogers v. Richmond*, 365 U.S. 534, 544 (1961) (“The attention of the trial judge should have been focused, for purposes of the Federal Constitution, on the question whether the behavior of the State’s law enforcement officials was such as to overbear petitioner’s will to resist and bring about confessions not freely self-determined—a question to be answered with complete disregard of whether or not petitioner in fact spoke the truth.”); *Lisenba v. California*, 314 U.S. 219, 236 (1941) (“The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence whether true or false.”).

many individuals who signed a statement that their name was false nevertheless signed the confession with the allegedly false name, raising questions whether they actually understood the document.

Each interrogation involved a long period of detention at the U.S. Embassy, where individuals were cut off from family and friends and any other way to seek assistance.<sup>62</sup> Some were threatened they would be sent to jail or with other harm; others were told their passports would not be returned, or visas and passports would not be issued to their family members, unless they signed the involuntary confession.<sup>63</sup> They were not informed of their rights before the interrogations.<sup>64</sup> Virtually nobody felt they had the freedom to leave the Embassy and to cease participation in the interrogation, especially since their passports had been seized.<sup>65</sup>

And the statements were written in English by a Diplomatic Security Service Agent, with interrogation subjects reporting that they were never provided with Arabic translations.<sup>66</sup> For example, one citizen identified his date of birth as January 1, 1990, which is the date of birth on all of his identity documents, including his confiscated passport. Incoherently, the involuntary confession reports his admissions that his date of birth is January 1, 1990 and that it is also August 14, 1967, a 23 year difference, shedding serious doubt on the reliability of the statement, and in particular whether it was actually translated for this individual.<sup>67</sup>

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<sup>62</sup> See *Blackburn*, 361 U.S. at 206 (“A number of cases have demonstrated... that the efficiency of the rack and the thumbscrew can be matched, given the proper subject, by more sophisticated modes of ‘persuasion.’ A prolonged interrogation of an accused who is ignorant of his rights and who has been cut off from the moral support of friends and relatives is not infrequently an effective technique of terror.”).

<sup>63</sup> See *Bram v. U.S.*, 168 U.S. 532, 542-43 (1897) (a confession “must not be... obtained by any direct or implied promises, however slight...”).

<sup>64</sup> See *Navia –Duran v. I.N.S.*, 568 F.2d 803, 808 (1st Cir. 1977) (the absence of *Miranda* warnings is “a relevant factor in assessing the question of voluntariness” in the civil context, even when *Miranda* warnings are not required).

<sup>65</sup> Cf. *Florida v. Royer*, 460 U.S. 491, 501-02 (1983) (holding that a defendant had been subjected to a Fourth Amendment seizure where police obtained and retained his airline ticket and driver’s license).

<sup>66</sup> See *Duran v. Miller*, 322 F. Supp. 2d 251, 256 (E.D.N.Y. 2004) (admitting a translated statement by noting that the translator was able to speak both English and Spanish, had attended a course for Spanish interpretation, was an official interpreter for the county police department, had translated the petitioner’s statement “in a contemporaneous fashion” by writing his “words, verbatim, from Spanish to English,” read the statement back in Spanish, and gave the petitioner “an opportunity to indicate any lack of understanding or indicate any disagreement with the statement prior to his signing.”).

<sup>67</sup> See App. B.

## Questions for Investigation

- 1) What steps are in place—whether guidelines, policies, training, or otherwise—to ensure that interrogation statements obtained by Diplomatic Security agents and other consular officials are voluntary and made in awareness of an individual's rights?
- 2) What steps are in place—whether guidelines, policies, training, or otherwise—to ensure that individuals who have been selected for “interviews” by Diplomatic Security agents and other consular officials are aware that they are not required to participate in the interview and are free to leave at any time?
- 3) What steps are in place—whether guidelines, policies, training, or otherwise—to ensure that individuals are provided with competent translation services and that interrogators do not obtain signatures on statements before such a translation has been provided?
- 4) Did Department officials or personnel investigate allegations of coercive interrogations either before or after the effective date of revocation? If so, what was the result of these investigations, were the investigations adequate, and did the Department take appropriate remedial steps?
- 5) Did Department officials or personnel investigate allegations that statements written in English had not been translated?

**Recommendations:** The Department should promulgate policies requiring all Diplomatic Security agents who initiate an interview or interrogation into possible immigration or naturalization fraud to inform the individual that: (a) the individual has a right to remain silent; (b) the individual has the right to request an attorney's assistance (at their own expense); and (c) anything the individual says may be used against him in proceedings related to their citizenship, their passport, or possible criminal prosecution. If the individual is not in formal detention, then the Department's agents should affirmatively inform the individual that their presence is voluntary and they are free to leave. The Department should ensure that these warnings are given in the individual's preferred language to guarantee comprehension.

## E. Inadequate investigations prior to passport revocation

According to the Department, a passport revocation should be based on “the totality of the circumstances presented by *all the evidence*” available to the Department.<sup>68</sup> However, in several cases, the Department did not consider “all” the evidence before it, but rather, only the involuntary confessions obtained at the U.S. Embassy in Sana’a.

The OIG should review whether the Department should require corroboration for the Sana’a confessions before taking the drastic measure of revoking a passport. As discussed above, a Department whistleblower has claimed an internal investigation confirmed the involuntary confessions were obtained under “confrontational” circumstances.<sup>69</sup> Moreover, some individuals have been able to present incontrovertible evidence that information in their involuntary confessions is false.<sup>70</sup> And several other individuals have alleged to the Department that their statements were coerced. Yet there is no indication that the Department has taken any action in response to these allegations, including, for example, placing a moratorium on reliance on these involuntary confessions until a credible review can occur. To the contrary, the Department continues to rely on the Sana’a involuntary confessions in administrative hearings and for other purposes. To rely on the statements despite these allegations, and despite confirmed examples that involuntary confessions were demonstrably false, raises serious concerns about the adequacy of the Department’s revocation process.

Furthermore, it appears the Department has afforded dispositive weight to the Sana’a involuntary confessions even when records in its own files undercut their reliability. The Department has apparently made little if any effort to retrieve and review easily accessible records, such as an individual’s past passport applications that may shed light on the reliability of the Sana’a involuntary confessions. Moreover, the Department has ignored individual requests for these files, thereby preventing even individuals and their attorneys from reviewing the files to determine whether they contain relevant information.

### Questions for Investigation

- 1) What is the Department’s current process for reviewing whether adequate grounds exist to revoke a passport? Is this process adequate to protect individual interests and to ensure the reliability and correctness of the Department’s actions?

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<sup>68</sup> See Decl. of Jonathan M. Rolbin at 2-3, Director of Legal Affairs and Law Enforcement Liaison, Dep’t of State, *Garcia v. Freeman*, No. 1:11-CV-83 (S.D. Tex. Sept. 26, 2012) (“DOS reviews the new evidence, the evidence previously relied on in making the decision to issue the passport; and the totality of the circumstances presented by *all the evidence* now available to DOS.”) (emphasis added).

<sup>69</sup> See *supra* note 23.

<sup>70</sup> See *supra* p. 2 (discussing individual who found a DNA test in his alien file affirming his paternity, despite claim in confession denying paternity).

**Recommendations:**

The Department should not revoke passports based solely on the Sana'a involuntary confessions. Moreover, the Department should review an individual's records in their entirety, including prior passport and visa applications, before revoking a passport.

## VI. OIG's Prior Inspections of U.S. Embassy in Sana'a, Yemen

The Department's Office of the Inspector General (OIG) last conducted a regular inspection of the American Embassy in Sana'a, Yemen in 2010.<sup>71</sup> At the time, the OIG observed that there is a "6-month wait for appointments" and American Citizens "sometimes have to wait for several hours" in the waiting room before meeting with an officer.<sup>72</sup> The OIG recommended that the embassy should "reduce the maximum wait for American citizen services to two hours."<sup>73</sup> The OIG also recommended that the Embassy should "create a new position for an American citizen services officer" to combat the long wait times.<sup>74</sup> Furthermore, the OIG observed that the Embassy was unable to handle consular request inquiries over the phone.<sup>75</sup> The OIG recommended that the Embassy in Sana'a "should revamp its automated telephone answering system to provide accurate information about consular services and give the public an opportunity to inquire about specific cases."<sup>76</sup>

During the time period in question above, there were significant issues with American Citizen Services at the Embassy in Sana'a. American citizens continued to experience considerable delays and were ignored for months by Embassy officials, even as they requested urgent assistance to travel home during a time of crisis. It remained difficult to reach consular officials by phone and many emails were left unanswered. These delays and lack of response are a continuation of the previous problems that OIG identified in the 2010 Report. The OIG has the authority to investigate whether or not these recommendations had been implemented as well as the aforementioned allegations of misconduct.

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<sup>71</sup> OFFICE OF INSPECTOR GEN., UNITED STATES DEPARTMENT OF STATE AND BROADCASTING BOARD OF GOVERNORS, Report of Inspection, Embassy, Sanaa, Yemen, OIG Report No. ISP-I-10-63A (June 2010) at 2.

<sup>72</sup> *Id.* at 26-27.

<sup>73</sup> *Id.* at 64.

<sup>74</sup> *Id.* at 23.

<sup>75</sup> *Id.* at 21.

<sup>76</sup> *Id.* at 22, Recommendation 5.

## VII. Conclusion

Based on the above, we formally request that the Office of the Inspector General conduct an investigation in regards to the above-mentioned questions and recommendations.



## Appendix A: Department Officials Aware of Pattern of Revocations

The individuals below are likely to have information that can assist the OIG's investigation. The inclusion of their names in this report is not intended to imply that they have engaged in any wrongdoing.

### Interrogators at U.S. Embassy in Sana'a

- David W. Howell, *Diplomatic Security Service Special Agent*
  - Agent Howell conducted a substantial number of the interrogations resulting in signed confessions.
  - Affected individuals allege that Agent Howell engaged in improper behavior resulting in a coerced confession, varying from falsely promising to return a passport in exchange for a signature on a confession, to threatening jail time, prosecution, or fines if the individual failed to sign a confession.
  - Upon information and belief, DSS Agent Howell is currently posted to the U.S. Embassy in Paris, France.

### Other Personnel at U.S. Embassy in Sana'a

- Stephanie Bunce, *Former Chief Consul at U.S. Embassy in Sana'a, Yemen*
  - Ms. Bunce was the Consul at the U.S. Embassy in Yemen while several of the coercive interrogations and passport confiscations occurred.
  - During her tenure, the Embassy failed to provide Yemeni-Americans whose passports had been seized with travel documents to return to the U.S., despite their desperate entreaties for assistance.
  - Ms. Bunce is currently posted as Consul at the U.S. Embassy in Sydney, Australia.
- Brian Phelps, *Former Vice Consul at U.S. Embassy in Sana'a, Yemen*
  - Mr. Phelps was the Vice Consul who oversaw the passport services program at the Embassy and personally interacted with a number of individuals who had been interrogated and whose passports had been confiscated and subsequently revoked.
  - After advocacy groups in the United States contacted the State Department in Washington, D.C., Mr. Phelps was responsible for summoning individuals

whose passports were previously seized to the Embassy and providing them with official notices of revocation.

- Mr. Phelps is currently posted to the U.S. Embassy in Bogota, Colombia.
- William Lesh, *Chief Consul at U.S. Embassy in Sana'a, Yemen*
  - To our knowledge, Mr. Lesh was not present at or assigned to the U.S. Embassy in Sana'a while passports were actively being confiscated. However, Mr. Lesh's assignment there began approximately December 2013 or January 2014, and he oversaw the issuance of limited validity passports to American citizens whose passports had previously been revoked.

## Washington D.C.

- Brenda Sprague, *Deputy Assistant Secretary for Passport Services*
  - Contacted by the Asian Law Caucus about the issue in October 2013 but did not respond. Notices of revocation were issued after outreach to her office.
- Janice Jacobs, *Former Assistant Secretary for Consular Affairs for the Bureau of Consular Affairs*
  - Currently serving as the Department's "Transparency Coordinator"
  - Awarded Former Chief Consul Stephanie Bunce the *Barbara Watson Award for Consular Excellence* for "outstanding leadership" at the U.S. Embassy in Sana'a, Yemen.
- Jonathan M. Rolbin, *Director, Office of Legal Affairs and Law Enforcement Liaison*
  - Oversees office responsible for receiving, processing, and taking administrative action upon all requests to revoke a U.S. passport.
  - Mr. Rolbin's office receives revocation requests from other parts of the State Department or other agencies and then reviews them to make an initial revocation decision. As such, the U.S. Embassy should have prepared a cover letter and revocation request summarizing each individual case in Yemen and sent it to Mr. Rolbin's office for review and action.
  - Mr. Rolbin's office should have the ability to identify all passports revoked at the U.S. Embassy in Sana'a.
  - Mr. Rolbin's office is also responsible for organizing administrative hearings to review the revocation of U.S. passports, and is responsible for presenting the

Department's case at those hearings. The office should have records of all such hearings, including any testimony or other documentary evidence submitted by petitioners to rebut the Department's allegations or the involuntary confessions.

## Appendix B: Sample Involuntary Confession



U.S. Department of State  
DIPLOMATIC SECURITY SERVICE  
VOLUNTARY STATEMENT

I, [REDACTED], hereby make the following statement voluntarily to David W. Howell, who has identified himself/herself to me as a Special Agent of the Diplomatic Security Service, United States Department of State. I understand and agree that this statement may be used in an administrative or judicial proceeding, including a criminal proceeding, and that I may be identified in any such proceeding as the person making the statement.

I was born on (mm-dd-yyyy) 01/01/1990 in the city of [REDACTED] lbb in the country of Yemen and reside at [REDACTED] lbb, Yemen.

My true and correct name [REDACTED] I was born on 01/01/1990 in [REDACTED] lbb, Yemen to the parents of [REDACTED] and [REDACTED] My mother lives in [REDACTED] CA and my father lives with me in lbb, Yemen.

My father was smuggled to the U.S. by [REDACTED] who claimed my father as his step-child. My father's true father was [REDACTED] was not my father's step-father. My father entered the U.S. and naturalized as a U.S. citizen under the assumed/fraudulent identity [REDACTED]

I was issued a U.S. passport, number [REDACTED] under the assumed/fraudulent name [REDACTED] (DOB: 08/14/1967).

I married [REDACTED] on [REDACTED] 2009 in lbb, Yemen. My wife was previously married, but I do not know to whom. My wife did not have any children from her previous marriage. My wife and I have one child together. His true and correct name is [REDACTED] born [REDACTED].

My wife and I claimed that she was previously married to [REDACTED] and that she had two children from that marriage. This was not true. [REDACTED] are not my wife's children. Their father is deceased and we agreed to apply for them as our children, in order to smuggle them to the U.S.

I asked Special Agent David Howell to prepare this document for me, as I do not read or write well in English. This document was read to me in English and Arabic and I understood its contents completely. I swear/affirm that the information contained in this statement is the truth.

Nothing Follows

[REDACTED]  
page 1 of 2

Voluntary Statement

Name [REDACTED]

[REDACTED]

I have read this statement, consisting of this and 2 other page(s); and it is true, accurate, and complete to the best of my knowledge and belief. I have initialed each page, where necessary, and have been given an opportunity to make any corrections or additions. I have initialed each line where a correction has been made.

This statement is made of my own free will and accord without any promise of reward and without threats, force, or coercion used against me. I have been advised and I understand that this statement may be used for or against me in a court of law or in any proceeding deemed necessary by the United States Government.

I have been advised and I also understand that the laws of the United States provide severe penalties for making a false statement, and that a person who knowingly and willfully makes a materially false, fictitious, or fraudulent statement shall, upon conviction, be fined not more than \$250,000 or imprisoned not more than 5 years, or both (18 U.S.C. 1001).

Signed [REDACTED]

Subscribed before me this 2<sup>nd</sup> day of April, 2013  
(month) (year)

[Signature]  
Special Agent  
Diplomatic Security Service  
U.S. Department of State


Witness [Signature]

Witness \_\_\_\_\_

PRIVACY ACT NOTICE: This information is requested pursuant to 22 U.S.C. 4801, et seq. (Omnibus Diplomatic Security and Antiterrorism Act of 1986 as amended) and 22 U.S.C. 2709 (Special Agents). This information is being sought on a voluntary basis in connection with a DS investigation. The information being solicited on this form may be made available to appropriate agencies, whether federal, state, local or foreign, for law enforcement and administrative purposes as authorized by law. It may also be disclosed pursuant to court order. Your failure to comply with this request will result in no adverse consequences.

page 2 of 2

## Appendix C: Sample Notice of Revocation



*Embassy of the United States of America*  
*Sana'a, Yemen*

December 15, 2013

Dear Mr. [REDACTED]:

The Department of State has requested this office to inform you that it has revoked U.S. Passport Number [REDACTED], issued to you on [REDACTED] in the name of [REDACTED]. This action is taken in accordance with the provisions of Section 51.62 (a)(2) of Title 22 of the U.S. Code of Federal Regulations, which provide that a U.S. passport may be revoked when it has been determined that the passport was illegally, fraudulently or erroneously obtained.

State Department records show that you executed a passport application in the name of [REDACTED], U.S. Passport Number [REDACTED] was issued to you in the name of [REDACTED].

An investigation revealed that you are not [REDACTED], born on [REDACTED] 1990. In fact, you are [REDACTED], born on [REDACTED] 1990. On [REDACTED] 2013, you signed a sworn statement admitting that your true identity is [REDACTED]. Because you made a false statement of material fact in your passport application, your passport is revoked pursuant to Section 51.62(a)(2) of Title 22 of the U.S. Code of Federal Regulations.

U.S. Passport Number [REDACTED] is in the possession of the Department and will be destroyed. You are requested to surrender any other U.S. passports to the bearer of this letter. In that connection, please note sections 51.4(f)(1), 51.7(a) and 51.66 of the regulations pertaining to surrender of your passport on demand.

Section 51.4(f)(1)- Validity of Passports- (f) Invalidity- A United States Passport is invalid as soon as: (1) The Department has sent or personally delivered a written notice to the bearer stating that the passport has been revoked.

Section 51.7(a)- Passport Property of the U.S. Government- (a) A passport at all times remains the property of the United States and must be returned to the U.S. Government upon demand.

Section 51.66- Surrender of Passports- The bearer of a passport that is revoked must surrender it to the Department or its authorized representative upon demand.

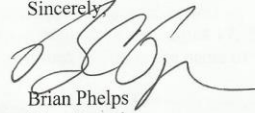
Any further use of a U.S. Passport in the identity of [REDACTED] would constitute a violation of section 1544 of Title 18 of the U.S. Code, a felony.

You are advised you are entitled to a hearing upon written request under sections 51.70 through 51.74 of the passport regulations in Title 22 of the U.S. Code of Federal Regulations, a copy of which is enclosed. Section 51.70 of the U.S. Code of Federal Regulations states that:

"A person whose passport has been denied or revoked under 22 CFR 51.60(b)(1) through (10), 51.60(c), 51.60(d), 51.62(a)(1), where the basis for the adverse action would entitle the applicant to a hearing under this section, or section 51.62(a)(2) may request a hearing to the Department to review the basis of the denial or revocation within 60 days of receipt of the notice of denial or revocation."

If you should desire such a hearing, you must notify this office within 60 days after receipt of this notice. A request for a hearing does not serve to stay the revocation action taken by the Department of State.

Sincerely,



Brian Phelps  
Vice Consul  
Embassy of the United States  
Sanaa, Republic of Yemen



## Appendix D: Sample E-mails from Stranded Americans to U.S. Embassy in Sana'a

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Wednesday, January 30, 2013 2:25 AM  
**To:** Sanaa ACS (Sanaa)  
**Subject:** [REDACTED]

Dear: US Consular

January 30,2013

Subject: [REDACTED]

On January 27, 2013 I submitted a passport application and a Consular Report of Birth Abroad (CRBA) applications for my son [REDACTED]. I wanted to fulfill my responsibility as a father in making sure that my son will be save and able to travel to the States before I go back to California to finish law school. Instead of helping me the Consular ended up denying my son's applications they also took my recent and old passports from me without giving me a official document in writing that explains in details the reason why they didn't give me my passports back. I want the Consular to make clear for me so I can defend myself. I left the Embassy very disappointed after being there from 7 in the morning until 4:30 in the after noon. I very disappointed because the US my country where i lived since I was 10 years old. I had been a US citizen for 17 years and I feel that the US is a part of me. Could you please send me back an email in writing an official document to me that explains in details the reason why my passports was taken from me.

Sincerely,  
[REDACTED]

[REDACTED]

[REDACTED]



---

From: [REDACTED]  
Sent: Saturday, August 31, 2013 7:40 AM  
To: Sanaa ACS (Sanaa)  
Subject: RE: [REDACTED]

Dear: American Citizens Services

I am an American Citizen who had been trying to get a US passport for my son [REDACTED] for more than a year now, my son date of birth [REDACTED]. I still can't believe that I been stuck in Yemen for 14 months for a simple reason of applying for US Passport for my son. Furthermore, instead of serving me the Embassy took my old and recent passports from me for no reason. I hold the US Embassy responsible for the suffering and hardship of me and my family. There are no words that could express the suffering of me and my family. The last time I was at the Consular Office, they told me to reapply for a US passport for me and my son. It make sense to reapply for US Passport for my son but the thing that don't make no sense is asking me to apply for a US passport for me when I do have a valid US passport that the Consular took from me eight months ago. I am requesting the Embassy to hand me back my passports that they took from me asap and make me an appointment so that I can reapply for a US passport for my son.

[REDACTED]

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## **Urgent inquiry of my passport due Medical Situation.**

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To: SanaaACS <SanaaACS@state.gov>

Mon, Apr 1, 2013 at 10:52 AM

Applicant's Name: [REDACTED] D.O.B. [REDACTED]

US Passport No.: [REDACTED]

Tel. No.: [REDACTED]

H.E. US Consul In Yemen, Esq.

Dear Sir,

Since my interview held on January 23rd, 2013 my passport is still detained at the Embassy. As I have to go back to the USA for medical treatment as soon as possible. I am using the following medicines which are not available here in Yemen:

1-Glyburide 5 mg (MFG Aurobindo) tablets

2- Aspirin Regimen (Tablets)

3-Metformin 1000min Tablets

4-Hydrochlorothiazide 25 Mg Tablets

5-Pravastatin 40 Mg tablets

6-Diovan 320 Mg tablets

7-Labetalol 200 Mg tablets

8- Gemfibrozil 600 Mg Tablets

All these kinds are not available here in Yemen. If there would be any Judicial processing, they would be finished in USA. My daughter's application has not also been finished and decided. Please note that I must be back to the USA for a sooner medical treatment.

Kindly, I would be very grateful if you would give me an appointment to receive my passports to enable me travelling to US if possible.

Your consideration to this matter is highly appreciated in advance.

Awaiting

Best regards

The applicant: [REDACTED]

Gmail - Inquiry about my husband's Documents / Please assist

USA TRANSLATION OFFICE <usatranslationoffice@gmail.com>  
To: SanaaACS <SanaaACS@state.gov>

Applicant Name: [REDACTED]  
Date Of Birth: [REDACTED]  
Passport No.: [REDACTED]  
Contact No. : [REDACTED]

My husbands information as follows:

The applicant: [REDACTED]

## Appendix E: Sample Notices from State Department Re-Instating Passport



United States Department of State

Washington, D.C. 20520

February 5, 2014



Dear [REDACTED]

The Department has reviewed the record in preparation for the passport revocation hearing for [REDACTED] and determined that issuance of a passport is warranted. The Department has received [REDACTED] passport application and it is currently in process. As [REDACTED] will be re-issued a U.S. passport, the February 26, 2014 hearing is cancelled and we consider the matter closed.

Thank you for your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Christine L. McLean".

Christine L. McLean  
Division Chief, Legal Affairs  
Office of Legal Affairs and Law Enforcement Liaison