

**United States' Compliance with the International Convention on the Elimination of All
Forms of Racial Discrimination (ICERD)**

**Stranded Abroad:
Shadow Report on Coercive Interrogations and Due Process
Violations in the Confiscation or Revocation of Passports of
American Citizens of Yemeni Origin**

July 11, 2014

I. Reporting Organization(s)

This Shadow Report has been prepared by a coalition of civil rights and community organizations who have documented a pattern of illegal passport confiscations by the U.S. State Department targeting American citizens of Yemeni origin.

The organizations are Asian Americans Advancing Justice (Advancing Justice)—Asian Law Caucus¹ and Advancing Justice—Los Angeles,² Arab Resource and Organizing Center,³ Center for Constitutional Rights,⁴ the Creating Law Enforcement Accountability & Responsibility project at CUNY School of Law,⁵ Council on American-Islamic Relations—

¹ Advancing Justice—ALC is the nation's first legal and civil rights organization serving the low-income Asian Pacific American communities. We strive to create informed and educated communities empowered to assert their rights and to participate actively in American society. Our National Security and Civil Rights program works to address post-9/11 racial and religious profiling, discrimination, and harassment, with a specific focus on the Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities. *See* <http://www.advancingjustice-alc.org>.

² Advancing Justice—Los Angeles is the largest legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders (NHPI) in the United States. We serve more than 15,000 individuals and organizations every year through direct services, impact litigation, policy advocacy, leadership development, and capacity building. We focus on the most vulnerable members of Asian American and NHPI communities while also building a strong voice for civil rights and social justice. *See* <http://www.advancingjustice-la.org>.

³ AROC is a grassroots organization working to address economic, social, and political impacts of anti-Arab racism through direct services, political education, organizing, and advocacy. We build power and leadership within the Arab community in the Bay Area to fight for our self-determination and for a more socially and economically just society. *See* <http://araborganizing.org>.

⁴ CCR is a non-governmental organization based in the United States that is dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. We use litigation proactively to advance the law in a positive direction, to empower poor communities and communities of color, to guarantee the rights of those with the fewest protections and least access to legal resources, to train the next generation of constitutional and human rights attorneys, and to strengthen the broader movement for constitutional and human rights. *See* www.ccrjustice.org.

⁵ The CLEAR project is housed at Main Street Legal Services, Inc., the clinical arm of the CUNY School of Law. CLEAR primarily aims to address the legal needs of Muslim, Arab, South Asian, and other communities in the New York City area that are particularly affected by national security and counterterrorism policies and practices. Our work is defined by our relationships with communities and grassroots organizations whose members wish to shape and respond to national security and counterterrorism policies and practices affecting them. CLEAR's community-oriented approach combines free legal representation with other services directed at satisfying the fuller range of community concerns. *See* <http://www.law.cuny.edu/academics/clinics/immigration/clear.html>.

California Chapter,⁶ the Muslim Legal Fund of America,⁷ the American Civil Liberties Union (ACLU) of Northern California and the ACLU of Southern California.⁸

II. Issue Summary

Since August 2013, the undersigned organizations have documented over a dozen instances in which officials of the U.S. State Department (“State Department”) have revoked or confiscated passports of U.S. citizens of Yemeni origin at the U.S. Embassy in Sana’a, although, based on the limited information available, the number actually affected is likely to be higher. These cases have involved clear violations of constitutional due process rights. In the cases documented, the State Department revoked or confiscated passports unexpectedly when Yemeni-Americans visited the U.S. Embassy in Sana’a to file routine consular paperwork—like, for example, documentation of a child’s birth abroad, or a visa application for a spouse or close relative. In each case, the U.S. citizens who sought assistance were instead interrogated until they signed confessions suggesting they or their parents misrepresented the family’s name when they immigrated to the United States decades earlier. Their passports were then summarily confiscated in a manner that violated U.S. laws and regulations, and had the effect of stranding these citizens abroad where it was difficult to seek legal assistance or access U.S. courts. Legal scholars who have examined this issue have described these passport revocations or confiscations as a form of unconstitutional “proxy denaturalization.”⁹ Yemeni-Americans appear to have been uniquely affected, raising concerns about national origin discrimination.

Under U.S. law, the right to international travel is part of the liberty interested protected by the Fifth Amendment of the U.S. Constitution and can only be curtailed pursuant to due process of law. Pursuant to U.S. law, the State Department has the authority to revoke and

⁶ CAIR-CA is a chapter of CAIR, America’s largest Muslim civil liberties and advocacy organization. Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. *See* <http://ca.cair.com>.

⁷ MLFA is a national charity that funds legal work and programs to defend Muslims against injustice in American courtrooms, prisons, and communities. Established in 2001, MLFA has defended freedom of speech, association, religion, the right to a fair trial, and other constitutional rights. *See* <https://www.mlfa.org>.

⁸ The ACLU of Northern California and the ACLU of Southern California are two of the largest affiliates of the American Civil Liberties Union, a national, nonprofit, nonpartisan civil liberties organization dedicated to protecting the fundamental rights guaranteed by the Constitution and the laws of the United States. Combined, the two affiliates have approximately 80,000 members. The ACLU, and specifically the Northern and Southern California affiliates of the ACLU, engage in litigation and policy advocacy to enforce the constitutional and civil rights of immigrants (including naturalized citizens) and have a particular interest in protecting the rights of Muslim community members who have been unfairly targeted over the last decade in the name of national security. *See* <https://www.aclunc.org/>; <https://www.aclusocal.org/>.

⁹ *See* Ramzi Kassem, *Passport Revocation as Proxy Denaturalization: Examining the Yemen Cases*, 82 *FORDHAM L. REV.* 2099, 2111 (2014), available at <http://ir.lawnet.fordham.edu/flr/vol82/iss5/5> (“By choosing to take administrative action on a large scale in Yemen, the State Department has achieved an outcome—with naturalized citizens stripped of their U.S. passports, stranded beyond U.S. borders, and unable to avail themselves of due privileges and protections—that could normally be achieved in only two ways: denaturalization proceedings in court or revocation of citizenship resulting from a conviction for naturalization fraud, followed by removal proceedings.”). *See, also*, 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), available at <http://yalelawjournal.org/forum/citizenship-passports-and-the-legal-identity-of-americans.html>.

confiscate a passport if it believes the passport was obtained fraudulently.¹⁰ Whenever a passport is revoked, however, U.S. law requires the State Department to provide an individual with a written notice explaining the reasons, and a prompt opportunity for an administrative hearing.¹¹

The documented cases raise three distinct concerns.

First, until December 2013, the U.S. Embassy in Sana'a revoked an unconfirmed number of U.S. passports issued to Yemeni-Americans without written explanations or affording them opportunities to be heard as required by U.S. law. These revocations violated Yemeni-Americans' due process rights by depriving them of an opportunity to contest the revocation of their passports. As a result, many U.S. citizens were stranded in Yemen for months, and in some cases, for over a year, unable to repatriate or to travel internationally. As of February 2014, the U.S. Embassy in Sana'a has begun to offer travel documents permitting travel to the United States to some, but not all, individuals whose passports were revoked. Notably, these travel documents are single-entry and are confiscated at the border once entry occurred.

Second, even though the State Department's own rules provide that the name on a U.S. passport should simply match the name shown as *prima facie* evidence of U.S. citizenship,¹² the State Department withheld (and continues to withhold) passports from U.S. citizens on its accusation that they or their parents had different names prior to immigrating to the United States. In essence, the State Department appears to have revoked passports based on suspicion of prior immigration or naturalization fraud. However, under U.S. law, when the government suspects a U.S. citizen of naturalization fraud, it cannot revoke citizenship unless it proves with "clear, unequivocal, and convincing evidence" in a judicial tribunal that the individual made "substantial" and "material" misrepresentations during naturalization or immigration.¹³ Here, by contrast, no judicial process is required to revoke a U.S. passport, and the passport revocation need only be substantiated by a "preponderance of the evidence" in a post-revocation administrative hearing. Thus, the State Department achieved an effect—stranding U.S. citizens abroad—that would have usually required the government to go to court, bypassing the usual procedural safeguards that are extended to U.S. citizens when their citizenship is challenged.

Third, the sole basis for the illegal passport revocations appears to have been confessions of immigration fraud obtained after hours-long interrogations, in which individuals report they were denied access to an attorney, were not free to leave, were threatened with jail time if they did not sign, and were falsely promised that their passports would be returned if they did sign. A State Department whistleblower familiar with the interrogation process has substantiated these allegations to the press. The whistleblower explained that a non-public "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

¹⁰ See 8 U.S.C. § 1504; 22 C.F.R. § 51.62(a)(2).

¹¹ See 8 U.S.C. § 1504; 22 C.F.R. § 51.65(a), 51.70(a).

¹² See 7 Foreign Affairs Manual 1310, Appendix C, Section d ("The passport generally is issued in the name shown on the evidence of citizenship and identity...."), available at <http://www.state.gov/documents/organization/94676.pdf>.

¹³ See *Kungys v. United States*, 485 U.S. 759 (1988).

investigative officer and an interpreter who, the official said, treated their subjects ‘aggressively.’”¹⁴ The whistleblower also claimed that statements obtained from those interrogated were procured in an “inherently coercive and intimidating environment.”¹⁵ The State Department has neither confirmed nor denied this report.

To our knowledge, confiscations on this scale, and interrogations of this sort, have only been documented at the U.S. Embassy in Sana’a, and have only affected Yemeni-Americans. Official documents suggest the practice may stem, in part, from a presumption on the part of U.S. Embassy staff that citizens of Yemeni origin are making false claims and relying on forged documentation unless proven otherwise.¹⁶ Indeed, citizens of Yemeni origin have reported that interrogating officers told them they “knew” that “all Yemenis” lie about their names and familial relations.¹⁷

As a result of these passport revocations, and a failure of the State Department and supervising personnel at the U.S. Embassy in Sana’a to stop them, many U.S. citizens of Yemeni origin have been, and continue to be, stranded in Yemen, separated from their lives and families in the United States for months and, in some cases, over a year without any legal recourse. Some have returned to the United States with travel documents provided by the Embassy in February 2014, but remain in the U.S. without a U.S. passport. No one, to our knowledge, whose passport has been revoked has been subjected to denaturalization proceedings; thus, they remain U.S. citizens but without access to a U.S. passport for a potentially indefinite period.

Mr. Rayman Hussein’s case is one illustration of the wider problem. In January 2013, Mr. Hussein, a naturalized U.S. citizen of Yemeni origin, went to the U.S. Embassy in Sana’a to file an application for a U.S. passport for his three-year-old son, who had been born in Yemen, so they could fly to California together. At the Embassy, Mr. Hussein attempted to file the application, but was then taken to an interrogation room where he was interrogated about his own immigration history. Mr. Hussein was not advised of his right to an attorney or his right to remain silent, and was subjected to coercive treatment by a U.S. State Department officer. The officer detained and interrogated Mr. Hussein for several hours, and pressured him into signing a false confession that his name of record was not his true name. Under duress, Mr. Hussein signed the written confession, while at the same time objecting to its truthfulness. The State Department officer then seized Mr. Hussein’s U.S. passport without written explanation or any opportunity for an appeal.

¹⁴ See Amel Ahmed, *Yemeni-Americans cry foul over passport revocations*, AL JAZEERA AMERICA, Jan. 21, 2014, available at <http://america.aljazeera.com/articles/2014/1/21/yemeni-americanscryfouloverpassportrevocations.html>.

¹⁵ *Id.*

¹⁶ See U.S. Embassy Cable 09SANAA1729, “Fraud Summary-Sana’a,” September 29, 2009, available at <https://wikileaks.org/cable/2009/09/09SANAA1729.html> (“all Immigrant Visa cases are considered fraudulent until proven otherwise”). Although this applies specifically to Immigrant Visas, it is apparent from particular cases documented by the undersigned organizations that the same operating presumption applies when U.S. citizens are petitioning for their relatives’ immigration, or attempting to document the birth of their U.S. citizen children abroad.

¹⁷ Moreover, some of our organizations have, in the immigration context, encountered similarly excessive scrutiny of applications filed by Yemeni-Americans on behalf of their spouses, children, or other close relatives. This further supports the conclusion that the U.S. State Department has singled out Yemeni-Americans for unequal treatment.

For several months thereafter, Mr. Hussein remained stranded in Yemen with his family, frequently sending e-mails to the U.S. Embassy in Sana'a pleading for assistance. His calls for help went unanswered, despite the deteriorating security situation in the country. The State Department only began to address his situation after a legal organization in the United States retained by Mr. Hussein made inquiries on his behalf. At this time, the State Department also appears to have begun addressing the issues raised by Mr. Hussein's case more broadly by sending written notices to U.S. citizens, including Mr. Hussein, whose passports had been illegally revoked and who had been stranded in Yemen for many months. These notices explained for the first time why their passports had been revoked and offered the affected individuals an opportunity for an administrative hearing in Washington D.C.

Following media attention, Mr. Hussein's passport was re-issued in February 2014, without a hearing, explanation, apology, or any compensation, approximately 13 months after it was initially confiscated and he was left stranded in Yemen away from his home in the United States.¹⁸

Many other Yemeni-Americans, however, remain without a U.S. passport or are going through an administrative hearing process that has been criticized by attorneys in the undersigned organizations for lack of due process protections, such as the opportunity to cross-examine witnesses to the interrogations, and excessive delay in the decision-making process.

Though it is a welcome development that the State Department is now offering administrative hearings to affected individuals, the use of forced confessions by the State Department as evidence against Yemeni-Americans continues to be problematic. Even after apparently determining that there was misconduct on the part of U.S. Embassy staff in Sana'a in relation to the passport revocation process,¹⁹ affected individuals have had to retain lawyers and to travel to Washington D.C., where the hearings are held, at a great personal—and sometimes prohibitive—cost of several thousand U.S. dollars, to represent their interests.

The passports that were confiscated have not yet been returned to all the affected Yemeni-Americans. To our knowledge, the State Department has failed to take reasonable measures to ensure that U.S. Embassy staff in future cases respect the rights of U.S. citizens of Yemeni origin in U.S. passport-related procedures. Moreover, to our knowledge, no State Department personnel, or personnel at the U.S. Embassy in Sana'a, have been held accountable for past abuses.

Although this submission relates to over a dozen known cases, media reports suggest that possibly many more U.S. citizens from Yemen have had their passports illegally revoked or

¹⁸ See Matt O'Brien, *Oakland man stuck in Yemen fights to return*, OAKLAND TRIBUNE, Jan. 31, 2014, available at http://www.mercurynews.com/breaking-news/ci_25030451/oakland-man-stuck-yemen-fights-return; Al Kamen, *In Yemen, U.S. Embassy confiscating some passports, ACLU warns*, WASHINGTON POST, Jan. 9, 2014, available at <http://wapo.st/1ksyR5y>; PapersPlease.org, *U.S. Embassy in Sana'a seizing U.S. citizens' passports*, Feb. 8, 2014, available at <http://papersplease.org/wp/2014/02/08/us-embassy-in-sanaa-seizing-us-citizens-passports/>; Peter Van Buren, *EXCLUSIVE: State Department Seizing U.S. Passports in Yemen*, WeMeantWell, Dec. 5, 2013, available at <http://wemeantwell.com/blog/2013/12/05/exclusive-state-department-seizing-u-s-passports-in-yemen/>.

¹⁹ See *supra* note 14.

confiscated.²⁰ Despite requests for records under the U.S. Freedom of Information Act, to date, the State Department is yet to make any information public about the exact number of U.S. passports that have been confiscated. Requests have also been made for the release of documents relating to the findings of an internal review of misconduct at the U.S. Embassy in Sana'a. These documents too are yet to be produced.

III. **Concluding Observations**

The Committee has not previously made recommendations on this issue.

IV. **U.S. Government Report**

The U.S. government did not address this issue in its June 2013 report.

V. **Legal Framework**

Under ICERD, State Parties are required “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights.”²¹ Among the rights listed, the “The right to leave any country, including one’s own, and to return to one’s country,”²² has been most clearly violated. However, several other rights are also implicated when an individual’s passport is revoked, such as the inability to reunite with family members, return to jobs, or pursue educational opportunities.²³

The pattern of passport confiscations at the U.S. Embassy in Sana'a violates these essential rights, and disproportionately impacts U.S. citizens of Yemeni national origin.

VI. **The CERD Committee General Comments**

The Committee has not previously released General Comments about this topic.

²⁰ See, e.g., Al Kamen, *In Yemen, U.S. Embassy confiscating some passports, ACLU warns*, Washington Post, Jan. 9, 2014, available at http://www.washingtonpost.com/politics/in-yemen-us-embassy-confiscating-some-passports-aclu-warns/2014/01/09/8011d2fa-7956-11e3-8963-b4b654bcc9b2_story.html (noting varying reports of “more than 20 known cases,” “in the hundreds,” and “at least the high double digits”). See also Domani Spero, *US Embassy Yemen: Revocation of U.S. Passports, a Growing Trend?*, DiploPundit, Jan. 13, 2014, available at <http://diplopundit.net/2014/01/13/us-embassy-yemen-revocation-of-u-s-passports-a-growing-trend/> (“There had been talks alleging ‘500 seized/revoked passport cases.’ Our own inside source who is not authorized to speak about this matter tells us that ‘at least 100 passports were taken’ so far in Sana’a.... The State Department refused to confirm or deny the number of passport revocations to date.”).

²¹ See Art. V.

²² See Art. V.(d)(ii).

²³ See Art. V(e)(i), (ii), and (v).

VII. Other UN Body Recommendations

Article 12 of the International Covenant on Civil and Political Rights provides for freedom of movement. Additionally, General Comment 27 on Article 12 further defines the parameters of the right and its importance.

VIII. Recommended Questions

- How many U.S. passports belonging to U.S. citizens of Yemeni national origin or descent have been confiscated or revoked since January 1, 2009, and what measures has the State Department implemented, in appropriate cases, to return or restore U.S. passports to the individuals whose passports have been wrongly revoked or confiscated?
- When will the State Department provide a full written explanation of the reasons for the confiscation or revocation of these passports by U.S. Embassy personnel?
- What measures have been adopted by the State Department to address any unlawful passport confiscations, the use of coercive interrogations during passport-related processes, and reliance on possibly forced confessions at the U.S. Embassy in Sana'a?
- What measures has the United States adopted to hold officials accountable for any due process violations perpetrated by them during passport-related process at the U.S. Embassy in Sana'a?

IX. Suggested Recommendations

- The State Party should instruct personnel at the U.S. Embassy in Sana'a to treat Certificates of Citizenship, Certificates of Naturalization, and Consular Reports of Birth Abroad belonging to Yemeni-Americans as *prima facie* proof of U.S. citizenship as required by U.S. law. Yemeni-Americans who approach the Embassy for routine consular paperwork should not be subjected to intrusive investigations concerning the validity of their U.S. citizenship on the basis of their national origin, especially since their claims of citizenship have already been adjudicated by the U.S. government.
- The State Party should promptly investigate allegations of discriminatory and unfair conduct at the U.S. Embassy in Sana'a (including but not limited to due process violations, forced confessions, coercive interrogations, and inappropriate stereotyping and generalizations by Embassy Staff) and should publicly release its findings (including the findings of prior investigations or reviews). The State Party should also implement appropriate remedies, including:
 - i. re-instate U.S. passports for those wrongfully confiscated;
 - ii. hold staff responsible for misconduct accountable;
 - iii. provide appropriate compensation to individuals whose rights were violated; and
 - iv. implement appropriate training to avoid repetition of these acts.

- The State Party should implement measures at the U.S. Embassy in Sana'a to prevent coercive interrogations and forced confessions in the future, including but not limited to:
 - i. advising all U.S. citizens of their rights prior to any interview or interrogation; and,
 - ii. providing any U.S. citizen whose passport has been revoked or confiscated with information about how to exercise their right to return to the United States and how to challenge the passport revocation through the administrative hearing procedure.