

ISSUE BRIEF

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The Trump Administration Should Hold Former ISIS Members Accountable Regardless of Gender

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Hoda Muthana and Kimberly Gwen Polman—two women with close ties to the United States who traveled to Syria in 2014 and 2015, respectively, to join the Islamic State—have now been discovered living in a Kurdish-controlled camp in northeast Syria. Both want to return to the U.S. and claim they pose no security threat.

The Trump Administration must flesh out a coherent and consistent response as to what to do with these women or those who claim to be American citizens, traveled to Syria, and now wish to return. Muthana and Polman say that there are four sisters from Seattle and their children who are being detained in a different camp.¹

For starters, the United States must confirm whether each individual is actually a U.S. citizen. If not, they have no legal right to enter the United States. The United States must then assess whether either committed federal crimes. If they committed crimes, the government has the option of indicting them and bringing them to trial in a federal court in the United States.

Whichever option the United States chooses, national security must be the top priority.

Context

Twenty-four-year-old Hoda Muthana was born to Yemeni parents in New Jersey, attended high school

in Hoover, Alabama, and then attended the University of Alabama. She is the daughter of a Yemeni diplomat who was stationed in the U.S. Children born in the U.S. to foreign diplomats are not automatically bestowed with citizenship, but the Muthana family states that his time as a diplomat had ended by the time of Hoda's birth.² There is an ongoing factual dispute as to her actual citizenship, which is now in litigation in the U.S. District Court in Washington, DC.

During her sophomore year at the University of Alabama, Hoda told her parents that she was heading to Atlanta for a college outing. In fact, she had met an ISIS contact online, who had instructed her to fly to Istanbul so that she could be smuggled into Syria.³ Muthana arrived in the ISIS caliphate in November 2014, having just turned 20, and lived in its capital of Raqqa.⁴

While in Syria, Muthana posted instructions online calling for the deaths of American citizens, encouraged Americans to travel to the caliphate, and praised al-Qaeda for its slaughter of satirical newspaper *Charlie Hebdo's* staff in Paris in January 2015.⁵ She is also a two-time widow of ISIS fighters. Now that ISIS is on the run, and she is in a detention facility with a young child, Muthana says she regrets her actions and that she was “manipulated.”⁶ When asked what an appropriate punishment would be for joining ISIS, she replied, “maybe therapy lessons.”⁷

Kimberly Gwen Polman is a 46-year-old who is reported to have been born to an American father and Canadian mother. She is a convert to Islam. Polman was born in Ontario and studied legal administration at Douglas College in British Columbia.⁸

Polman, who had been interested in nursing, was contacted online by someone in Syria who told her

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that the caliphate was in need of nurses. In 2015, Polman left Canada and headed to Syria, via Turkey, in order to live in the caliphate and marry the man she had met online.

Approximately a year later, Polman wanted to abandon the caliphate and made inquiries about being smuggled out of Syria. She was subsequently imprisoned by ISIS and claims she was raped.⁹

Polman was not born in the U.S., and the Canadian government has stated that it has “no legal obligation to facilitate [Polman’s] return” to Canada.¹⁰ It is unclear whether Polman has requested a return specifically to Canada, or whether her preferred destination is the United States.

As for Muthana, President Donald Trump and Secretary of State Mike Pompeo have reiterated a position initially taken by the Obama Administration: She is not a U.S. citizen and cannot return to the U.S. (This has been government policy since January 2016.)¹¹

The litigation will revolve around mixed questions of fact and the law, some of which is murky. The Citizenship Clause of the Fourteenth Amendment

grants U.S. citizenship to all persons “born or naturalized in the United States and subject to the jurisdiction thereof.”¹² Federal regulations set out that a “person born in the United States to a foreign diplomatic officer accredited to the United States...is not subject to the jurisdiction of the United States.”¹³ If the father was a diplomat at the time of her birth, she is not a citizen. If he was not, then she might be.

Her parents applied for a U.S. passport for her as a child, and claimed, using a letter from the United Nations, that the father had been discharged from his diplomatic post prior to her birth. The State Department issued her a U.S. passport on two separate occasions, and then reversed itself and revoked her passport during the Obama Administration.¹⁴

Her attorney claims that the United States is wrong as a factual matter, that her father not only was no longer a diplomat, but that he had applied for permanent immigration status prior to her birth.¹⁵ Therefore, according to her lawyer, the daughter was a U.S. citizen at birth, and the State Department’s award of two U.S. passports to Muthana was correct in the first place.

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1. Rukmini Callimachi and Catherine Porter, “2 American Wives of ISIS Militants Want to Return Home,” *The New York Times*, February 19, 2019, <https://www.nytimes.com/2019/02/19/us/islamic-state-american-women.html> (accessed March 1, 2019).
 2. David Shortell, Jennifer Hansler, and Michelle Kosinski, “Trump Says Alabama Woman Who Joined ISIS Should Not Return to US,” CNN, February 20, 2019, <https://www.cnn.com/2019/02/20/politics/hoda-muthana-state-department/index.html> (accessed March 1, 2019). For further discussion of the legal consequences of the of Muthana’s citizenship status, see Steve Vladeck, “Unpacking (Some of) the Legal Issues Surrounding Hoda Muthana,” Just Security, February 20, 2019, <https://www.justsecurity.org/62659/unpacking-some-of-issues-surrounding-hoda-muthana/> (accessed March 1, 2019).
 3. Ibid.
 4. Callimachi and Porter, “2 American Wives of ISIS Militants Want to Return Home,” and Martin Chulov and Bethan McKernan, “Hoda Muthana ‘Deeply Regrets’ Joining Isis and Wants to Return Home,” *The Guardian*, February 17, 2019, <https://www.theguardian.com/world/2019/feb/17/us-woman-hoda-muthana-deeply-regrets-joining-isis-and-wants-return-home> (accessed March 1, 2019).
 5. Callimachi and Porter, “2 American Wives of ISIS Militants Want to Return Home.”
 6. Enjoli Francis and James Longman, “Former ISIS Bride Who Left US for Syria Says She ‘Interpreted Everything Very Wrong,’” ABC News, February 19, 2019, <https://abcnews.go.com/International/isis-bride-left-us-syria-interpreted-wrong/story?id=61175508> (accessed March 1, 2019).
 7. Ibid.
 8. Callimachi and Porter, “2 American Wives of ISIS Militants Want to Return Home.”
 9. Ibid.
 10. Rukmini Callimachi and Catherine Porter, “Hamilton-Born ISIL Bride Wants to Come Home,” *The Hamilton Spectator*, February 21, 2019, <https://www.thespec.com/news-story/9184473-hamilton-born-isis-bride-wants-to-come-home/> (accessed March 1, 2019).
 11. An observation made by Seamus Hughes on Twitter. See *Ahmed Ali Muthana vs. Michael Pompeo and Donald J. Trump*, United States District Court for the District of Columbia, February 21, 2019, <https://utexas.app.box.com/s/qrmxb0xbpkoks6zw9uhh9klxb1696tx5> (accessed March 1, 2019).
 12. Jonathan Shaub, “Hoda Muthana and Shamima Begum: Citizenship and Expatriation in the U.S. and U.K.,” Lawfare blog, February 25, 2019, <https://www.lawfareblog.com/hoda-muthana-and-shamima-begum-citizenship-and-expatriation-us-and-uk> (accessed March 1, 2019).
 13. Ibid.
 14. Ibid.
 15. Steve Vladeck, “Unpacking (Some of) the Legal Issues Surrounding Hoda Muthana.”
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As the legal details get sorted out, it is important not to lose sight of the fact that these two women, and perhaps others, have joined the ranks of opposing enemy forces and actively participated, at some level, in their terrorist activities. There are numerous examples in the West of women actively plotting terrorist attacks.¹⁶

Furthermore, Muthana has incited violence against U.S. citizens while in Syria and did not surrender until virtually all of ISIS's territory had been wiped out.

Recommendations

The Trump Administration should consider the following options.

Returning and Prosecuting. Muthana and Polman broke U.S. law by joining ISIS, a designated terrorist organization. They should be questioned for their intelligence value first, and then, if applicable, turned over to law enforcement for potential investigation and prosecution. If they have committed crimes, they should be indicted in federal court and brought to justice.

Trying cases of terrorists captured overseas can be challenging, but federal prosecutors have done an exemplary job doing just that before and after 9/11.¹⁷ Compared to the European allies, the U.S. has a high success rate in prosecuting those who left the U.S. to join ISIS and then returned. According to George Washington University's Program on Extremism, three-quarters were charged with terror-related offenses. Those convicted received an average sentence of 10 years.¹⁸

Preventing Return. By legally preventing those who fought with terrorist groups from returning to the U.S., the government would be sending a much-needed message that it will not indulge or excuse those who join terror groups. This may deter foreign fighter travel in the future.

Recognizing the Long-term Need to Flesh out a Reintegration Strategy. The U.S. does not have de-radicalization programs to deal with individuals such as Muthana and Polman. While there has been increased focus on Terrorism Prevention Partnerships¹⁹ policy recently, these efforts are still nascent. Besides, de-radicalization programs in other countries vary greatly in quality and in success rates.²⁰

Conclusion

The U.S. cannot and should not discount the security concerns these women pose. Muthana and Polman are security threats until proven otherwise.

The prudent course of action here is for the U.S. to confirm whether each individual is actually a U.S. citizen and engage in an intelligence debrief. Then, if applicable, they should be turned over to federal law enforcement authorities for investigation and possible indictment for federal crimes. If the evidence merits prosecution, they should be prosecuted in an Article III federal district court, and if convicted, sent to prison for an appropriate period of time.

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 17. Robin Simcox, "The Presumption of Innocence: Difficulties in Bringing Suspected Terrorists to Trial," The Henry Jackson Society, 2013, <http://henryjacksonsociety.org/wp-content/uploads/2013/12/The-Presumption-of-Innocence.pdf> (accessed March 1, 2019).
 18. Alexander Meleagrou-Hitchens, Seamus Hughes, and Bennett Clifford, "The Travelers: American Jihadists in Syria and Iraq," George Washington University Program on Extremism, February 2018, <https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/TravelersAmericanJihadistsinSyriaandIraq.pdf> (accessed March 1, 2019).
 19. U.S. Department of Homeland Security, "Terrorism Prevention Partnerships," <https://www.dhs.gov/terrorism-prevention-partnerships> (accessed March 1, 2019).
 20. For example, see James Brandon and Lorenzo Vidino, "European Experiences in Counterradicalization," *CTC Sentinel*, Vol. 5, No. 6 (June 2012), <https://ctc.usma.edu/european-experiences-in-counterradicalization/> (accessed March 1, 2019).
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