

# GUIDE ON ENGAGING THE UNITED STATES GOVERNMENT ON ARBITRARY AND WRONGFUL DETENTION CASES

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## **TABLE OF CONTENTS**

About Robert F. Kennedy Human Rights	6
Foreword	7
Executive Summary	8
Glossary	11
Definitions	11
Abbreviations	13
Introduction	14
Research Methodology	16
How to Use This Guide	16
Part I: Legal Framework	17
I. Executive Order 13698—Hostage Recovery Activities and Presidential Policy Directive/PPD-30 (2015)	17
II. Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act (2020)	18
Responsibilities of SPEHA, HRG, and the HRFC	19
Wrongful Detention Designation Criteria	20
III. Executive Order 14078 (2022)	21
Part II: Relevant Actors	22
I. Executive Branch	22
White House	22
State Department	22
Department of Treasury	24
Hostage Recovery Fusion Cell (HRFC)	24
Engaging with the Executive Branch on Arbitrary and Wrongful Detention Cases	25
II. Legislative Branch	28
Senate	28
House of Representatives	28
Congressional Research Service	29
Engaging with the Legislative Branch on Arbitrary Detention Cases	30
Engaging with Congress	30
III. Non-Governmental Actors	31
Media	31

Part III: Guidance for engagement in regard to US nationals	32
I. Reflection Questions	32
II. Action Plan	33
Case Studies: US nationals	35
Paul Rusesabagina	35
Background	36
US Government Engagement	36
Lessons Learned	39
Theary Seng	40
Background	4 <sup>,</sup>
US Government Engagement	4
Lessons Learned	43
Part IV: Guidance for engagement in regard to non-US nationals	44
I. Reflection Questions	44
II. Action Plan	45
Case Studies: non-US nationals	47
Félix Maradiaga	47
Background	48
US Government Engagement	48
Lessons Learned	50
Mahmoud Hussein	5
Background	52
US Government Engagement	53
Lessons Learned	55
Conclusions	56
Acknowledgments	58
Annex I: Relevant Organizations	59
Annex II: Action Plan for engagement in regard to US nationals	6
Annex III: Action Plan for engagement in regard to non-US nationals	64
Annex IV: Questions to Create Fact Sheet	6



This guide is dedicated to our founder and fierce advocate for human rights and arbitrarily detained persons, Ethel Kennedy.



#### **About Robert F. Kennedy Human Rights**

Robert F. Kennedy Human Rights (RFK Human Rights) is a nonpartisan, non-profit organization that has worked to realize Robert F. Kennedy's dream of a more just and peaceful world since 1968. In partnership with local activists, we advocate for key human rights issues, pursuing strategic litigation at home and around the world. And to ensure change that lasts, we foster a social-good approach to business and investment and educate millions of students about human rights and social justice.

## **FOREWORD**

In 2020, Paul Rusesabagina, the real-life hero whose courage inspired the movie *Hotel Rwanda*, was kidnapped and arbitrarily detained by the Rwandan government. He was held in solitary confinement, deprived of medical care, and denied access to his lawyers. For 969 days, Paul languished in detention, criminalized for speaking out against the Rwandan president.

After years of advocacy by Paul's family, Robert F. Kennedy Human Rights, and other civil society allies, Paul was finally set free. In 2023, I had the opportunity to meet him face-to-face. Standing in that room, surrounded by Paul's loved ones and his legal team, I was struck by the relief-and pain-in his eyes. Paul's ordeal had come to an end, but it never should have begun in the first place.

For years, our organization has worked to support victims of arbitrary detention. From Egypt to Venezuela, we fight for individuals who are held without due process or detained at the whim of repressive governments. These types of cases are unfortunately skyrocketing. Over the past two decades, there has been a dramatic increase in the incidents of arbitrary detention of US citizens and lawful permanent residents abroad. The risk of arbitrary or wrongful detention has grown geographically as well. In 2001, only four countries had arbitrarily detained a US national. Today, that number has ballooned to 27 countries.

Some of these cases have drawn international scrutiny and media attention–for example, Russia's arrest of Wall Street Journal reporter Evan Gershkovich and former US Marine Paul Whelan. Other victims of arbitrary detention are overlooked, left without headlines or global outcry. In nearly all cases, the friends and families of detained individuals shoulder the burden of public advocacy, navigating a complex legal landscape to bring their loved ones home.

Time and time again, we have witnessed the tireless dedication of mothers, fathers, children, and friends as they've sought to secure the safe return of their detained loved ones. But that battle shouldn't be undertaken alone. Our hope is that this guide provides tangible help and direction for victims of arbitrary detention and their families facing the maze of federal resources and programs.

Arbitrary and wrongful detention is designed to isolate and repress. It is a weapon to silence dissent, intended to strike fear in the hearts of human rights defenders, activists, journalists, and citizens more broadly, creating a chilling effect on civil society. Addressing arbitrary detention and bringing those arbitrarily detained home isn't just about justice on an individual scale. It's about safeguarding the very foundation of democracy—the ability to speak out without the threat of a jail cell.

#### **Kerry Kennedy**

President, Robert F. Kennedy Human Rights

## **EXECUTIVE SUMMARY**

Arbitrary and wrongful detention as well as hostage-taking of individuals, human rights defenders, and opposition figures, is on the rise across the world. These illegal deprivations of liberty have a chilling effect on democracy and pose a grave risk to international peace and security. Beyond the macro impact, arbitrary detention has a high human cost. Individuals and family members of detainees are often left with little or no guidance on the remedial steps to take. When looking at the role the United States Government (USG) can play in supporting release efforts, there is usually no clarity on which government offices and officials to contact, how to most effectively engage with different mechanisms, and the nuances around how those mechanisms operate. For many families, the fight to get their loved one released from arbitrary detention is confusing, terrifying, and frustrating. It often consumes their lives, all while experiencing the grief and suffering that comes with the uncertainties of the situation.

At Robert F. Kennedy Human Rights, we have developed years of expertise working on arbitrary detention cases of US and non-US nationals. Through our experience, we recognized the need for more information on the mechanisms available to families or advocates dealing with the detention of a loved one without any prior legal or advocacy experience. Where this information does exist, we have found it to be often too technical for easy understanding and use by those who need it. To bridge this gap and create a practical resource for directly impacted individuals, we worked with legal experts, civil society organizations, family members of detainees, and formerly detained individuals, to produce this Guide on US Government Advocacy and Engagement for Cases of Arbitrary and Wrongful Detention (the Guide).

#### THE GUIDE

The Guide provides clear and concise information regarding advocacy strategies and engagement with USG on arbitrary and wrongful detention cases. While every case is unique, this Guide aims to ease the burden of the engagement and advocacy process by shedding light on ways that the USG can engage on these cases and offering a set of best practices for advocating before the USG to secure the victim's release. Our hope is that this Guide will serve as a valuable reference tool and provide some nuance or alternative methods of engagement to bolster advocacy efforts.

The Guide uses the phrase "arbitrary detention" to describe detentions that are deemed to be beyond the limits of domestic or international law. The Guide references "wrongful detention" when referring to the specific designation under the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act (Levinson Act), which only

applies to US nationals and requires a determination from the US Secretary of State. The Levinson Act and wrongful detention determination are explained in further detail in the Guide. Further, the phrases "US person" and "US national" are used in the guide. While similar, they have important differences that determine which offices within the USG are the right points of contact for your advocacy. A US person includes any US citizen or lawful permanent resident in the US, while a US national includes any US citizen or non-US citizen who owes permanent allegiance to the US and/or lawful permanent resident with significant ties to the US. For the definition of terms used in the Guide, see the Glossary section. Whether an arbitrarily or wrongfully detained individual is a US national and US person does not determine whether the US government chooses to engage. Regardless of the individual's status, the wrongfully or arbitrarily detained individual may still get support from the US government.

# USG ARBITRARY AND WRONGFUL DETENTION RESPONSE ARCHITECTURE:

The Guide describes the US legal framework for addressing wrongful detention, which has developed significantly over the last few decades. The framework consists primarily of Executive Order (EO) 13698 and Presidential Policy Directive (PPD) 30 issued by President Obama in 2015. Both of these orders have since been further expanded and codified by the Levinson Act, passed in 2020. President Biden then issued EO 14078 in 2022, which expanded the existing legal provisions in the Levinson Act.

The US legal framework vests the Executive Branch of the government with the highest level of authority and significant responsibility regarding cases of wrongful detention. The executive branch is charged with making wrongful detention determinations, securing the release of those arbitrarily detained, and providing support to families of those wrongfully detained. The President and the Secretary of State have the most authority and, in turn, the most influence when dealing with wrongful detention cases.

For US nationals, the Bureau of Consular Affairs is the lead office at the State Department for detention cases unless the Secretary of State has designated an individual as "wrongfully detained" based on the criteria in the Levinson Act and the totality of the circumstances. With a wrongful detention designation, the Office of the Special Presidential Envoy for Hostage Affairs (SPEHA), within the State Department, takes on the case and provides coordination and support. Interviews conducted in the process of drafting this guide revealed widespread frustration around the lack of transparency in the decision-making process for wrongful detention designations and concerns with the broad discretion that officials have in determining who receives a designation. For further information on wrongful detention designations, see the sections on Wrongful Detention Designation Criteria, Engaging with the Executive Branch on Arbitrary Detention Cases, and Guidance for Engagement in Regard to US Nationals.

For cases involving foreign nationals who are arbitrarily detained, the Bureau of Democracy, Human Rights, and Labor (DRL) within the State Department is the primary executive branch agency. Moreover, the State Department coordinates with Congress and the White House to respond to arbitrary detention more broadly through multilateral and unilateral diplomacy, foreign policy decisions, and engagement with international or regional accountability mechanisms. Interviews conducted in the process of drafting this guide revealed gaps in USG policy and action on arbitrary detention of non-US nationals. It must be noted, however, that there are many variables, including who was detained, where they were detained, and why, that may have an impact on what actions the USG will take. The authors of the guide also found that geopolitics plays a significant role in how the USG engages and what levers they are willing to use. For more information on the role of the Executive Branch in cases of arbitrary detention for non-US nationals, including a chart laying out the organizational structure of the State Department, see the Relevant Actors, Executive Branch and Engaging with the Executive Branch sections.

For the Legislative Branch, members of Congress in both the House of Representatives and the Senate have an important role to play in responding to arbitrary and wrongful detention cases. Members of Congress can request briefings from the State Department and other government agencies and offices to ensure that all branches of government are working towards the same objectives. They are capable of supporting families with detained loved ones by hosting meetings to discuss updates and options. Members of Congress can sponsor or support legislation or resolutions that can advance the efforts for the release of someone arbitrarily detained or draw attention to the case. Further, members of Congress can exert their influence to meet with and/or write letters to foreign government officials on behalf of the detained person.

Engaging with Congress is an extremely important part of USG advocacy for both US and non-US nationals. With a strategic advocacy and engagement plan, working with Congress can yield positive results and push the needle forward, especially when progress with the State Department and other areas of the USG has stalled. Members of Congress can "champion" the advocacy for the release of detained people, coordinate with and engage the White House and the State Department, engage with foreign officials, engage with the media, and more. One tip shared by family members of previously detained persons is that before engaging with members of Congress, committees, or caucuses directly, it can be helpful to map out which members might be the most helpful and/or the most likely to engage on the case. See more about the Legislative Branch and best practices for engagement under the Engaging with the Legislative Branch section.

In developing this Guide, we consulted with multiple legal experts, activists, former detainees and their families, government officials, and others working in the arbitrary detention space. To provide practical guidance, we have included four case studies of both US and non-US nationals who were or remain arbitrarily or wrongfully detained. With these case studies, we have included charts that lay out the

timeline of events to provide a visual representation of how certain advocacy strategies have worked in the past. While every case is unique, we hope that these case studies and timelines provide guidance on possible ways forward. We have also included a non-exhaustive list of civil society organizations working on arbitrary detention issues, including several that provided input for this guide, that may be able to provide support for some cases.

In the process of developing this Guide and analyzing existing USG mechanisms, the authors identified key areas for improvement. There is a real need for strengthening the legal and procedural system for these cases, including increased transparency around wrongful detention designations, clarity on roles and responsibilities of different officials and offices, as well as specificity on the types of support they provide, and a more equitable application of the law. More broadly, there is a need for increased attention and coordination amongst the relevant government bodies in addressing arbitrary detention cases. Finally, the USG needs to focus greater attention on deterrence efforts to prevent arbitrary detention from happening in the first place. As part of these efforts, the US should look to increase multilateral efforts and engagement with international human rights mechanisms.

# **GLOSSARY**

#### **Arbitrary detention**

Arbitrary detention is the deprivation of liberty of a person beyond the limits of domestic or international laws or standards. To be arbitrary, the detention does not have to be illegal, but more broadly it must include elements of "inappropriateness, injustice, lack of predictability and due process of law." Throughout this guide, we do not use "wrongful detention" and "arbitrary detention" interchangeably. We only use "wrongful detention" when we are referring to the specific designation under the Levinson Act. Otherwise, "arbitrary detention" will be used.

#### **Political prisoner**

A political prisoner is someone who is detained because of their political beliefs or activities that challenge or criticize a government.<sup>3</sup> The designation "political prisoner" may be used when an individual is detained for one or more of the following reasons: the individual is detained because of their political beliefs or activities that challenge or criticize a government; the individual poses a political threat to the government; the government uses the individual for intimidation or to support propaganda, the individual is used for the extraction of information; the individual is detained on politically motivated charges; the individual is detained because of their work as a human rights defender; or the individual has familial or other connections to individuals deemed to be a threat by the government. All political prisoners are also considered arbitrarily detained.

#### Prisoner of conscience

A United States person includes any US citizen, or lawful permanent resident in the United States. A legal entity registered in the United States or any person in the United States may also be a US Person.<sup>4</sup>

#### **United States Person**

A United States person includes any US citizen, or alien admitted for permanent residence in the United States, a legal entity registered in the United States or any person in the United States.

<sup>1</sup> About arbitrary detention, United Nations Working Group on Arbitrary Detention, https://www.ohchr.org/en/about-arbitrary-detention (last accessed Oct. 24, 2024).

<sup>2 1</sup> 

<sup>3</sup> Pathway to Freedom: Handbook for the Liberation of Political Prisoners, World Liberty Congress, https://worldlibertycongress.org/world-liberty-congress/handbook/, Nov. 2023.

U.S. Code 22 § 6010.

#### **United States National**

A United States national is a US citizen, or a non-US citizen who owes permanent allegiance to the United States;<sup>5</sup> and/or a lawful permanent resident alien with significant ties to the United States.<sup>6</sup>

## Non-United States Person/Foreign Person

A non-US or foreign person is an individual who is not a US citizen or a permanent resident of the US.<sup>7</sup>

#### **Wrongful Detention**

Detention is deemed wrongful following the determination of the US Secretary of State based on a set of criteria that include those enumerated in the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act. This designation only applies to US nationals, is discretionary, and is based on an assessment of the totality of the circumstances. US nationals that have yet to be designated as wrongfully detained under these criteria may still be considered arbitrarily detained under international law.

<sup>5</sup> The definition of a US national includes those in either U.S. Code 8 § 1101(a)(22) or U.S. Code 8 § 1408.

<sup>6</sup> Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act [hereinafter "Levinson Act"], S.5074, 116th Cong. (2020), https://www.congress.gov/bill/116th-congress/senate-bill/5074/text.

<sup>7</sup> U.S. Code 22 § 8921(6).

Further criteria for a wrongful detention determination can be found in § 302(a) of the Levinson Act [22 U.S. Code 22 § 1741(a)]. It is important to note that this determination is discretionary and simply because the USG has not designated someone as wrongfully detained, it does not mean that the detention is still not arbitrary.

#### **ABBREVIATIONS**

**ACS** Office of American Citizen Services and Crisis Management

**CA** Bureau of Consular Affairs

CIA Central Intelligence Agency

**CRS** Congressional Research Service

**DFP** Defending Freedoms Project

**DRL** Bureau of Democracy, Human Rights, and Labor

**EO** Executive Order

**ESSC** Emergency State Security Court

**FBI** Federal Bureau of Investigation

**FEC** Family Engagement Coordinator

**HAU** Hostage Affairs Unit

**HFAC** House Foreign Affairs Committee

HRFC Hostage Recovery Fusion Cell

**HRG** Hostage Response Group

NSC National Security Council

**OFAC** Office of Foreign Assets Control

PAO Public Affairs Officer

PPD Presidential Policy Directive

**SFRC** Senate Foreign Relations Committee

**SPEHA** Special Presidential Envoy for Hostage Affairs

**USG** United States Government

## INTRODUCTION

This Guide aims to explain and clarify the existing legal and political infrastructure within the United States Government (USG) that addresses arbitrary and wrongful detention and will provide guidance on best practices for engaging with the USG. With this Guide, we hope to increase access to and awareness of the resources available within the USG and to empower others to develop strong advocacy plans and to effectively engage with USG in arbitrary or wrongful detention cases.

The use of arbitrary and wrongful detention as tools of repression by States is an ever-growing problem, especially as democracy is on decline and authoritarianism is on the rise around the world.1 Many have and continue to be arrested and detained by authoritarian regimes with increasing regularity. Over the past two decades, there has been a dramatic increase specifically in the incidents of arbitrary and wrongful detention of US nationals-citizens and lawful permanent residents-abroad. Since 2001, the number of countries where US nationals have been wrongfully detained or taken hostage abroad has spread geographically from four to 27.2 At the end of 2024, there were 36 US nationals held hostage or wrongfully detained across 15 countries, with 31 wrongfully detained.<sup>3</sup> Nine cases involve US nationals who are no longer in detention but who face other forms of repression including travel bans and other restrictions on freedom of movement.4

Governments can play an essential role in advocating and negotiating for the release of these detained individuals, as well as pushing for greater deterrence and prevention efforts around arbitrary detention. The USG, given its

geopolitical stature, can play an important role in freeing these detainees and deterring the use of arbitrary or wrongful detention by other States for both US nationals and non-US nationals around the world. In order to address this growing issue, the USG has developed specific laws, mechanisms, and practices in place to deal with the arbitrary detention of US nationals and non-US nationals. However, navigating the USG landscape can be complex and confusing, especially without the appropriate resources. This Guide aims to provide clarity and help families make informed decisions on how to engage the USG on cases of arbitrary and wrongful detention.

The first section of this Guide outlines the legal framework around arbitrary and wrongful detention, giving an overview of the development of the law in this area and providing explanations of what the law states and the implications it has for arbitrary detention cases. The legal framework includes Executive Order 13698 and Presidential Policy Directive 30 issued by President Obama, the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act, and Executive Order 14078 issued by President Biden.

The second section of the Guide provides an overview of the actors within and outside the US government that are relevant to arbitrary and wrongful detention cases. This section is divided by the Executive Branch which includes the White House, State Department, Department of Treasury, Department of Justice, and Department of Defense, the Legislative Branch, which includes Congress, and other non-governmental actors such as civil society and the media. This section also provides

<sup>1</sup> Freedom in the World 2024: The Mounting Damage of Flawed Elections and Armed Conflict, Freedom House, Feb. 2024, https://freedomhouse.org/report/freedom-world/2024/mounting-damage-flawed-elections-and-armed-conflict (last accessed Oct. 24, 2024).

<sup>2</sup> Bringing Americans Home 2023: A Review of the Hostage and Wrongful Detainee Landscape, Cynthia Loertscher, James W. Foley Legacy Foundation, 2023, https://jamesfoleyfoundation.org/wp-content/uploads/2024/03/BringingAmericansHome2023\_\_Web2.pdf.

<sup>3</sup> Bringing Americans Home 2024: A Non-Governmental Assessment of U.S. Hostage Policy, Family Engagement, and the Hostage and Wrongful Detainee Landscape, Cynthia Loertscher, James W. Foley Legacy Foundation, 2024, https://jamesfoleyfoundation.org/wp-content/uploads/2025/03/Final\_Bringing-Americans-Home-2025-quantitative-report\_.pdf.

<sup>4</sup> *l*a

guidance on best practices for how to engage with these different actors, as well as how these actors interact with each other to further push for the release of a detained person.

The third and fourth sections offer case studies and further guidance for engagement with the US government, each focusing on US nationals and non-US nationals, respectively. The guidance lays out important questions to ask and information to gather for arbitrary detention cases. The case studies provide real world examples of cases of arbitrarily detained individuals and the ways in which their families and legal teams engaged with the US government. Each case study also includes a section on lessons learned that can be applied to their own case.



THE USE OF ARBITRARY AND WRONGFUL DETENTION AS TOOLS OF REPRESSION BY STATES IS AN EVER-GROWING PROBLEM, ESPECIALLY AS DEMOCRACY IS ON DECLINE AND AUTHORITARIANISM IS ON THE RISE AROUND THE WORLD.<sup>1</sup>

## RESEARCH METHODOLOGY

The research for this Guide includes desk and open-source research, as well as analysis of Robert F. Kennedy Human Rights' current and previous arbitrary detention cases and advocacy work. For this guide, we conducted multiple semi-structured interviews with civil society organizations, legal experts and practitioners, USG officials, and formerly arbitrarily detained individuals. We then applied our research, interviews, and past experiences litigating arbitrary detention cases to inform the creation of this guide.

# HOW TO USE THIS GUIDE

The Guide is intended to be used by individuals, organizations, working on arbitrary or wrongful detention cases around the world. This Guide provides information for cases that involve both US and non-US nationals. The first two sections "Legal Framework" and "Relevant Actors" provide an overview of the existing legal structure within the USG as it relates to arbitrary detention. The latter sections delve into best practices on engaging with the USG and provide examples through case studies. These sections are intended to be practical and to provide information on how to engage with the USG for a broad range of diverse situations and contexts.

The Guide may be used for informational and strategy development purposes. When used for strategy development, users should identify whether the detained person is a US or non-US national and refer directly to sections of the Guide that address engagement with USG for the victim. It is strongly advised that users of the Guide do not rely on the document as the only source of information for developing advocacy or engagement strategies. It is good practice to engage with experts including the organizations listed in the Guide for support as early as possible in the engagement or advocacy planning or execution process.

Furthermore, the law and processes that are referenced in this Guide may be changed by USG at any time. The authors intend to track changes in law and policy and update the Guide where appropriate. Users are encouraged to seek legal or other support, including by reaching out to the authors and other listed organizations, to determine the position of the law at the time of engagement.

## PART I: LEGAL FRAMEWORK

The US legal framework around arbitrary and wrongful detention has developed significantly over the last few decades, principally in response to the increased use of such detentions against US nationals abroad. Given this context, the legal framework predominantly focuses on US nationals. The framework consists primarily of Executive Order (EO) 13698 and Presidential Policy Directive (PPD) 30 issued by President Obama in 2015. Both of these orders have since been further expanded and codified by the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act (Levinson Act), passed in 2020. President Biden then issued EO 14078 in 2022, which expanded upon and added further detail to existing legal provisions in the Levinson Act.

# I. EXECUTIVE ORDER 13698-HOSTAGE RECOVERY ACTIVITIES AND PRESIDENTIAL POLICY DIRECTIVE/PPD-30 (2015)

In response to an increase in the hostage-taking of US nationals, the Obama administration issued EO 13698 to coordinate hostage recovery efforts by the USG and increase the likelihood of a successful recovery.5 Presidential Policy Directive (PPD) 30 is a specific form of EO that describes the Executive Branch's policies and therefore reiterates the legal framework and policies established in EO 13698. The provisions in this EO only refer to US nationals. Specifically, EO 13698 established the Hostage Recovery Fusion Cell (HRFC), a group which brings together multiple executive agencies and departments including the State Department (State), the Department of Treasury, the Department of Defense, the Department of Justice, the Office of the Director of National Intelligence, the FBI, the Central Intelligence Agency (CIA), and other agencies as the President may designate.<sup>6</sup> The HRFC is tasked with coordinating efforts on US nationals held hostage abroad, including through information sharing, making recommendations, and tracking hostage-takings, as well as engagement with and support for families of those taken hostage.

In addition to the HRFC, EO 13698 also established the Hostage Response Group (HRG) which sits under the White House and the National Security Council and is chaired by the Special Assistant to the President and Senior Director for Counterterrorism. The HRG was tasked with coordinating USG response to other hostage-takings abroad in which the US has a national interest. The HRG consists of members from executive agencies similar to the HRFC. The HRG works with HRFC to coordinate hostage recovery efforts, and identify and recommend policies and recovery options to the President.

EO 13698 also established the Special Presidential Envoy for Hostage Affairs (SPEHA) who is appointed by the President and reports to the Secretary of State. The SPEHA leads diplomatic engagements on US hostage and wrongful detention policy and recovery efforts in coordination with the HRFC and HRG. To

<sup>5</sup> Executive Order 13698-Hostage Recovery Activities [hereinafter "EO 13698"], Office of the Federal Register, National Archives and Records Administration, § 1, (June 24, 2015), https://www.govinfo.gov/content/pkg/DCPD-201500457/pdf/DCPD-201500457.pdf.

<sup>6</sup> EO 13698, § 2(b)(i-viii).

<sup>7</sup> The members of the HRG include the Director of the HRFC, the HRFC's Family Engagement Coordinator, and senior representatives from the State Department, Department of the Treasury, Department of Defense, Department of Justice, FBI, Office of the Director of National Intelligence, and other agencies as the President may designate.

<sup>8</sup> EO 13698, § 3(a-c).

<sup>9</sup> Id. at § 4(a).

<sup>10</sup> Id. at § 4(b)(i-v).

# II. ROBERT LEVINSON HOSTAGE RECOVERY AND HOSTAGE-TAKING ACCOUNTABILITY ACT (2020)

The Levinson Act turned EO 13698 and PPD-30 into law, codifying the HRFC, HRG, and SPEHA. Under the Act, it is the responsibility of the President to establish both the HRFC and HRG, and to appoint the SPEHA. The Act outlines the duties of the SPEHA which include leading diplomatic engagements on US hostage policy, coordinating diplomatic engagements in support of hostage recovery efforts with the HRFC, and ensuring that families of US nationals wrongfully detained are supported and given updated information on developments regarding their family members. 11 The HRFC includes a Director and a Family Engagement Coordinator whose responsibility it is to coordinate all communications between executive branch officials and the families of those wrongfully detained.<sup>12</sup> The HRFC is tasked with identifying and recommending hostage recovery options and strategies to the President, coordinating efforts by various agencies, assessing and tracking all hostage-takings of US nationals abroad, providing a forum for intelligence sharing, coordinating support effort to families, making recommendations to agencies to reduce the likelihood of hostage-taking, and coordinating with agencies regarding the media and other public inquiries.<sup>13</sup> In coordination with the HRFC, the HRG identifies and recommends hostage recovery options to the President, coordinates the development of hostage recovery policies and strategies, coordinates with SPEHA, and directs the use of resources at the HRFC to coordinate or assist in the recovery of a wrongfully detained US national or other hostage-takings abroad where the US has a national interest.<sup>14</sup>



THE ACT OUTLINES THE DUTIES OF THE SPEHA WHICH INCLUDE LEADING DIPLOMATIC ENGAGEMENTS ON US HOSTAGE POLICY, COORDINATING DIPLOMATIC ENGAGEMENTS IN SUPPORT OF HOSTAGE RECOVERY EFFORTS WITH THE HRFC, AND ENSURING THAT FAMILIES OF US NATIONALS WRONGFULLY DETAINED ARE SUPPORTED AND GIVEN UPDATED INFORMATION ON DEVELOPMENTS REGARDING THEIR FAMILY MEMBERS.

<sup>11</sup> Levinson Act, § 3.

<sup>12</sup> Id. at § 4(c)(2)(A).

<sup>13</sup> Levinson Act, § 4(d)(1-4).

<sup>14</sup> Id. at § 5(c)(1-6).

#### RESPONSIBILITIES OF SPEHA, HRG, AND THE HRFC

SPEHA HRG HRFC

- Sits under the State Department; appointed by the President and reports to the Secretary of State
- Manage cases of detained US nationals designated as "wrongfully detained" by the Secretary of State
- Leads diplomatic engagements for wrongful detentions of US nationals and coordinates with the HRFC
- Made up of the following teams: regional team; family engagement team, external engagement team, and a deterrence and prevention team
- Lead negotiations with foreign governments to secure the release of individuals designated as wrongfully detained
- Liaise with families of wrongful detainees for giving them updated information on developments regarding the detainee's case
- Provide both support during wrongful detention to the detainee and family and on-site support to returning detainees
- Engage with civil society, the media, Congress, and private sector advocates and experts
- Work to raise the cost of hostage diplomacy and reduce the risk of wrongful detention for US travellers

- Sits under the White House and the National Security Council and is chaired by the Special Assistant to the President and Senior Director for Counterterrorism
- Identify and recommend options and strategies to the President through the Assistant to the President for National Security Affairs to secure the recovery of hostages or the return of wrongfully detained United States nationals
- Coordinate and deconflict the development and implementation of policies, strategies, and activities that potentially affect the recovery or welfare of US nationals held hostage or the return or welfare of US nationals wrongfully detained abroad, including reviewing proposed recovery or return options
- Receive regular updates from the HRFC, SPEHA, and other executive departments and agencies on the status of US nationals being held hostage or wrongfully detained abroad and measures being taken to effect the hostages' safe recovery
- Receive regular updates from the State Department on all new wrongful detention determinations
- Coordinate the provision of policy guidance to the HRFC, including reviewing recovery options proposed by the HRFC and working to resolve disputes within the HRFC
- Make recommendations to the Deputies Committee of the National Security Council where higher-level guidance is needed

- Interagency group that brings together the State Department, FBI, Treasury, DOD, DOJ, CIA, and the Director of National Intelligence
- Identify and recommend hostage recovery options and strategies to the President through the National Security Council
- Coordinate efforts by participating agencies to ensure that information regarding hostage events, including potential recovery options and engagements with families and external actors (including foreign governments), is appropriately shared within the United States Government to facilitate a coordinated response to a hostage taking
- Assess and track all hostage-takings of US nationals abroad and provide regular reports to the President through the National Security Council on the status of such cases and any measures being taken toward the hostages' safe recovery
- Provide a forum for intelligence sharing and, with the support of the Director of National Intelligence, coordinate the declassification of relevant information
- Coordinate efforts by participating agencies to provide appropriate support and assistance to hostages and their families in a coordinated and consistent manner and to provide families with timely information regarding significant events in their cases
- Make recommendations to agencies in order to reduce the likelihood of US nationals being taken hostage abroad and enhance United States Government preparation to maximize the probability of a favorable outcome following a hostage taking
- Coordinate with agencies regarding congressional, media, and other public inquiries pertaining to hostage events

## WRONGFUL DETENTION DESIGNATION CRITERIA

The Levinson Act sets out criteria for the Secretary of State to determine whether US nationals are being wrongfully detained. After an individual is designated as wrongfully detained, SPEHA takes responsibility for the case and coordinates with other USG entities including Consular Affairs ACS officers, officials from the relevant US mission where the individual is detained, regional and country desk officers, and the National Security Council.<sup>15</sup> The criteria includes whether:

- 1. the US has credible information indicating the innocence of the detained individual;
- 2. the individual is being detained solely or substantially because they are a US national;
- 3. the individual is being detained to solely or substantially influence USG policy;
- 4. the detention is related to the individual's exercise of basic human rights including freedom of expression and freedom of religion;
- 5. the individual is being detained in violation of the laws of the detaining country;
- 6. NGOs and journalists have raised the individual's detention as a serious issue;
- 7. the US mission in the country has received credible reports that the detention is a pretext;
- 8. the individual is detained in a country where the State Department has determined that the judicial system is not independent or impartial;
- 9. the individual is being held in inhumane conditions;
- 10. due process of law has been sufficiently impaired so as to make the detention arbitrary, and:
- 11. US diplomatic engagement is likely necessary to secure the release of the detained individual. 16

Although these are the criteria listed in the Act, the Secretary of State has the discretion to make designations and is not limited by the list and in some instances some criteria may weigh more heavily than others. However, the Secretary of State is expected to consider the totality of the circumstances when making a determination.

The Levinson Act also requires the Secretary of State to provide support to families of individuals who are wrongfully detained.<sup>17</sup> For that purpose, SPEHA has established a Family Engagement team that coordinates with Consular Affairs officers to be a primary point of contact for families.<sup>18</sup> The Levinson Act also requires the Secretary of State to publish a resource guide for government officials and families of those wrongfully detained to help them understand USG policy and to provide guidance on next steps and actions they can take to assist with efforts to bring their loved one home, the first of which was published in 2021.<sup>19</sup>

The Levinson Act also outlines the use of sanctions against those responsible for hostage-taking or wrongful detention of US nationals. The President can impose sanctions on any foreign person that the President determines is responsible for or complicit in or has financially or materially supported the hostage-taking or wrongful detention of a US national abroad.<sup>20</sup> The sanctions include ineligibility for visas and admission into the US, the revocation of current visas, and the block of property and interests in property that are within the US.<sup>21</sup> The law also includes penalties for those who violate or attempt to violate the blocking of property or interests.<sup>22</sup>

<sup>15</sup> Resources for Families of Wrongful Detainees: Your U.S. Government Team, U.S. State Department, Office of the Special Envoy for Hostage Affairs, https://www.state.gov/your-u-s-government-team/#:^:text=The%20SPEHA%20team%20works%20closely,National%20Security%20Council%20(NSC) (last accessed Oct. 24, 2024).

<sup>16</sup> Levinson Act, § 2(a)(1-11).

<sup>17</sup> Levinson Act, § 3(5).

<sup>18</sup> Resources for Families of Wrongful Detainees: Your U.S. Government, State Department, Office of the Special Envoy for Hostage Affairs, https://www.state.gov/your-u-s-government-team/ (last accessed Oct. 24, 2024).

Resource Guide for Families for Wrongful Detainees, U.S. State Department, July 26 2021, https://www.state.gov/wp-content/uploads/2022/09/Guide-for-Families-of-Wrongful-Detainees-508-compliant.pdf (last accessed Oct. 24, 2024). As of the time of writing, the resource guide is being updated by SPEHA to be published at a later date.

<sup>20</sup> Levinson Act, § 6(a)-(b).

<sup>21</sup> Id. at § 6(b)(1)-(2).

<sup>22</sup> Id. at § 6(d).

#### **III. EXECUTIVE ORDER 14078 (2022)**

EO 14078 expanded upon certain provisions in the Levinson Act, primarily by expanding hostage recovery efforts to include efforts to secure the safe release of US nationals wrongfully detained. It provides that the Secretary of State should provide adequate resources to ensure that the families of those wrongfully detained receive updated information as well as support and assistance throughout their family member's detention.<sup>23</sup> This also includes further support and assistance to US nationals upon their return to the US from wrongful detention in coordination with the HRFC and the Department of Health and Human Services.<sup>24</sup> EO 14078 also vests on SPEHA, in coordination with the HRG, the HRFC, and relevant agencies with the responsibility to develop and implement deterrence strategies to reduce the likelihood of hostage taking or wrongfully detention of US nationals abroad.

Regarding sanctions, EO 14078 states that the Secretary of State can publicly or privately designate officials of foreign governments who are involved, directly or indirectly, in wrongful detentions, as is consistent with section 7031(c) of the State Department, Foreign Operations, and Related Programs Appropriations Act.<sup>25</sup> The 2022 EO, prohibits the making of any donations to a person whose property and interests in property are blocked pursuant to the EO.<sup>26</sup>

Further, the EO expands on this by stating that any transaction that evades or violates any of the prohibitions in the EO are not permitted.<sup>27</sup> For an individual whose property is blocked, there need be no prior notice of a listing or determination because such notice would render the measures ineffectual given the ability to quickly transfer funds.<sup>28</sup> <sup>29</sup>



AFTER AN INDIVIDUAL IS DESIGNATED AS WRONGFULLY DETAINED, SPEHA TAKES RESPONSIBILITY FOR THE CASE AND COORDINATES WITH OTHER USG ENTITIES INCLUDING CONSULAR AFFAIRS ACS OFFICERS, OFFICIALS FROM THE RELEVANT US MISSION WHERE THE INDIVIDUAL IS DETAINED, REGIONAL AND COUNTRY DESK OFFICERS, AND THE NATIONAL SECURITY COUNCIL. 15

<sup>23</sup> Executive Order 14078-Bolstering Efforts to Bring Hostages and Wrongfully Detained United States Nationals Home [hereinafter "EO 14078"], Office of the Federal Register, National Archives and Records Administration, § 3(c)(i-ii), July 19, 2022, https://www.federalregister.gov/documents/2022/07/21/2022-15743/bolstering-efforts-to-bring-hostages-and-wrongfully-detained-united-states-nationals-home.

<sup>24</sup> Id. at § 3(c)(iii).

 $<sup>25 \</sup>quad EO \ 14078, \S \ 5. \ For more information on \ 7031(c) \ sanctions, see here: \ https://humanrightsfirst.org/wp-content/uploads/2023/12/2023.12-Section-7031-Explainer_final.pdf.$ 

<sup>26</sup> Id. at § 8.

<sup>27</sup> Id. at § 9(a-b).

<sup>28</sup> Id. at § 10.

<sup>29</sup> For further Global Magnitsky Sanctions resources, see here: https://humanrightsfirst.org/library/u-s-global-magnitsky-sanctions/ and https://ofac.treasury.gov/sanctions-programs-and-country-information/global-magnitsky-sanctions.

# PART II: RELEVANT ACTORS

#### **EXECUTIVE BRANCH**

The Executive Branch of the USG wields the highest level of authority and bears significant responsibility for cases of arbitrary or wrongful detention. Multiple actors at the White House and in administrative entities are charged with making wrongful detention determinations, securing the release of those arbitrarily detained, and providing support to families of those wrongfully detained. The President, the Secretary of State and other highest-ranking officials have the most authority and, in turn, the most weight and impact when dealing with arbitrary detention cases.

#### WHITE HOUSE

The most senior official in the White House is the President. Under the Executive Office of the President is the National Security Council (NSC). One of the leaders of the NSC, the National Security Advisor, is involved in high-level actions around arbitrary and wrongful detention cases. Under the NSC is the Hostage Response Group (HRG), as outlined in the Levinson Act.<sup>30</sup> This group is chaired by a designated member of the NSC. The chair of the HRG is the Special Assistant to the President and Senior Director for Counterterrorism. Other members include the Director of the Hostage Recovery Fusion Cell, the Family Engagement Coordinator, SPEHA and other senior representatives from the State Department (State), Department of Treasury (Treasury), Department of Defense (DoD), Department of Justice (DoJ), the Federal Bureau of Investigation (FBI), the Office of the Director of National Intelligence, and any other agencies that the President may designate.31

The HRG is responsible for identifying and recommending hostage recovery options and strategies and coordinates arbitrary detention recovery policies. The group receives regular updates from the Hostage Recovery Fusion Cell and the Special Presidential Envoy for Hostage Affairs. The HRG also coordinates the USG response to other hostage-takings and arbitrary detentions that occur abroad in which the US has a national interest.

#### **STATE DEPARTMENT**

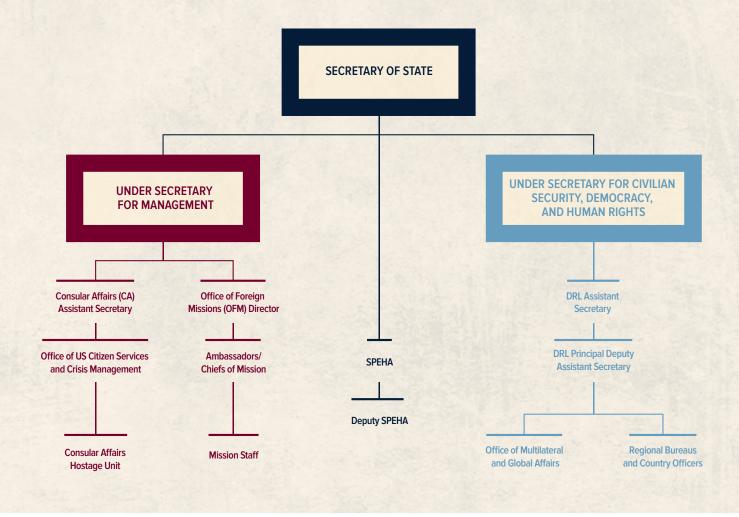
At the State Department, the Secretary of State is the highest level official and has the most influence and power regarding arbitrary detention cases. The Secretary of State plays a key role in arbitrary and wrongful detention cases. Under the Secretary of State is the Special Presidential Envoy for Hostage Affairs (SPEHA). SPEHA coordinates all diplomatic engagements for detentions of US nationals that it has determined are wrongful and collaborates with the Hostage Recovery Fusion Cell. SPEHA has a regional team comprised of staff devoted to negotiating wrongful detainees' releases and liaising with their families, a family engagement team working to strengthen support to wrongful detainees' and their families during and after detention, and an external engagement team focused on partnering with civil society and Congress, and a deterrence and prevention team working to raise the cost of hostage diplomacy and reduce the risk of wrongful detention for US travelers.

In addition to SPEHA, the Bureau of Consular Affairs (CA) is also involved in wrongful detention cases of US citizens. High-level officials in CA, including the Assistant Secretary and the Deputy Assistant Secretary for Overseas Citizen Services, are involved in the recovery processes. Another entity within the CA is the Office of American Citizen Services and Crisis Management (ACS). Under ACS are Consular Affairs ACS officers, located in Washington DC, who

<sup>30</sup> Levinson Act, § 3.

<sup>31</sup> Id. at § 3(b).

#### **DEPARTMENT OF STATE**



collaborate directly with their ACS counterparts at respective US embassies or consulates overseas to ensure that the State Department is coordinated in providing assistance to US citizens who are detained. Other relevant actors under the CA are those working at relevant embassies or consulates including the Ambassador/Chief of Mission, consular staff, the Regional Security Office, Public Affairs Office, and the political/economic desk officers.

Together, SPEHA and CA join forces to create the Family Engagement Team which includes members from groups. Specifically, the team comprises a SPEHA officer who manages diplomatic engagement to ensure an individual's release from detention, a consular affairs ACS officer in DC who works with the embassy or consulate where the individual is detained, and the SPEHA Family Engagement Coordinator who supports family members throughout their loved one's arbitrary or wrongful detention and post-return support for previously detained persons.

For arbitrary detention cases of foreign nationals, the Bureau of Democracy, Human Rights, and Labor (DRL) is the lead agency. High-level officials within DRL, including the Assistant Secretary of DRL and the Principal Deputy Assistant Secretary, may be relevant actors in some arbitrary detention cases. Within the front office of DRL is the Office of Multilateral and Global Affairs (MLGA), which focuses on thematic issues around political prisoners

and human rights defenders. Officials in this office can support arbitrary detention cases of foreign nationals, including by coordinating government efforts. They have also implemented the #WithoutJustCause Political Prisoners Campaign<sup>32</sup> to highlight cases of political prisoners and advocate for their release. DRL also comprises regional bureaus and desk officers who manage regional and bilateral policy issues for specific countries or regions. They are versed in the political and economic context in the detaining country and provide insights on the potential impact of US recovery actions. In addition, they can provide geopolitical updates, regional briefings, or other information that pertains to the political climate of the country both to other USG officials and departments and to families with loved ones detained abroad.

#### **DEPARTMENT OF TREASURY**

The Department of Treasury is led by the Secretary of the Treasury. Treasury is relevant because of its Office of Foreign Assets Control (OFAC) which is the USG's lead sanctions agency. Section 6 of the Levinson Act provides authorization for the use of discretionary sanctions against those responsible for or complicit in wrongful detention. Such sanctions include the freezing of assets or other property, meaning any transfers or dealings with regard to the assets or other property are prohibited.<sup>35</sup>

Under the Levinson Act, the USG can block all property and interests in property that come within the US or that are or come in the possession or control of a person determined by the Secretary of State to be responsible for or complicit in, directly or indirectly, a hostage-taking or the wrongful detention of a US national abroad.<sup>34</sup> This also includes anyone who ordered, controlled, or directed a hostage-taking or wrongful detention of a

US national abroad. The law also blocks any donations by or for the benefit of any person whose property and interests in property would impair the President's ability to deal with the wrongful detention.<sup>35</sup> It also prohibits any transaction by a US person or within the US that evades or avoids, has the purpose of evading or avoiding, causes a violation of or attempts to violate any of the prohibitions set forth in EO 14078, as well as any conspiracy to violate such prohibitions.<sup>36</sup>

#### **HOSTAGE RECOVERY FUSION CELL (HRFC)**

The Hostage Recovery Fusion Cell (HRFC) is an interagency team that coordinates efforts dedicated to recovering US nationals held hostage by non-state actors. Although individuals held by a foreign government are generally not regarded as hostages, the State Department consults with HRFC on certain matters through SPEHA and ACS.<sup>37</sup> The HRFC comprises the Director, Family Engagement Coordinator, representatives from State, Treasury, DoD, DoJ, Office of the Director of National Intelligence, FBI, CIA, and other agencies that the President may designate.<sup>38</sup>

The HRFC coordinates efforts by participating agencies to ensure that all relevant information and resources are used efficiently and effectively to secure an individual's release.<sup>39</sup> The HRFC also identifies and recommends hostage recovery options and strategies, shares information throughout agencies and provides a forum for intelligence sharing, and tracks all hostage-takings. They also work to ensure increased transparency and timely information sharing with families, and coordinate efforts by participating agencies to provide support and assistance to hostages and their families. More broadly, they make recommendations to agencies to reduce the likelihood of US nationals being taken hostage abroad.<sup>40</sup>

<sup>32 #</sup>Without.JustCause Political Prisoners Campaign, State Department, Bureau of Democracy, Human Rights, and Labor, https://www.state.gov/withoutjustcause/, last accessed Feb. 11, 2025).

<sup>33</sup> EO 14078 elaborated and expanded on this and authorized the Secretary of Treasury, in consultation with the Secretary of State, to take actions, including the creation of rules and regulations, and to employ all powers granted to the President by the International Emergency Economic Powers Act (IEEA) as may be necessary to carry out the purposes of EO 14078. The Secretary of Treasury may re-delegate any of these functions within the Department of Treasury.

<sup>34</sup> Levinson Act, § 6(a)

<sup>35</sup> *Id*. at § 8.

<sup>36</sup> *Id.* at § 9.

<sup>37</sup> Resources for Families of Wrongful Detainees: Your U.S. Government Team, U.S. State Department, Office of the Special Envoy for Hostage Affairs, https://www.state.gov/your-u-s-government-team/#:":text=The%20SPEHA%20team%20works%20closely,National%20Security%20Council%20(NSC) (last accessed Oct. 24, 2024).

<sup>38</sup> Levinson Act, § 2(b).

<sup>39</sup> Id. at § 2(d)(i-vii)

<sup>40</sup> EO 13698, § 2(d)(vi)

# ENGAGING WITH THE EXECUTIVE BRANCH ON ARBITRARY AND WRONGFUL DETENTION CASES

The chart below provides information on the various individuals and groups within relevant offices and describes their role and responsibilities in dealing with the arbitrary detention of individuals abroad.

ROLE/OFFICE	RESPONSIBILITIES		
WHITE HOUSE	Under the Executive Office and within the National Security Council is the Hostage Response Group (HRG). The HRG is responsible for identifying and recommending hostage recovery options and strategies and coordinates arbitrary detention recovery policies. The group receives regular updates from the Hostage Recovery Fusion Cell and the Special Envoy for Hostage Affairs.		
	The group is created by the President and is chaired by a designated member of the NSC. The chair of the HRG is the Special Assistant to the President and Senior Director for Counterterrorism. Other members of the group include the Director of the Hostage Recovery Fusion Cell, the Family Engagement Coordinator, SPEHA and other senior representatives from the State Department, Department of Treasury, Department of Defense, Department of Justice, the Federal Bureau of Investigation, the Office of the Director of National Intelligence, and any other agencies that the President may designate.		
	While the Hostage Response Group (HRG) primarily focuses on cases involving US nationals, the group also coordinates the USG response to other hostage-takings and arbitrary detentions that occur abroad in which the US has a national interest.		
	While it may be more difficult to access the President or the National Security Advisor, it is still possible that either the President, National Security Advisor, or other high-level US official will engage on the case either through speaking about it publicly or by raising it through diplomatic engagements. With such high levels of power and influence, it is more likely that such efforts will yield greater results. However, even if access to such high-level officials is not possible, communicating with mid or even lower level officials within the White House can prove useful.		
STATE DEPARTMENT	The <b>Secretary of State</b> has the most influence and power regarding arbitrary detention cases (second only to the President and the National Security Advisor), including the essential function of deciding wrongful detention determinations. For US nationals detained abroad, a wrongful detention determination is one of the most important steps for receiving full USG engagement and therefore a greater likelihood of success in getting that individual freed from detention. Therefore, pushing for a wrongful detention determination should be a primary focus of your advocacy team. However, there may be instances where this designation may not be helpful or where the USG is unwilling to make a determination.		
	Generally, a wrongful detention designation will be extremely beneficial for a case. It can bring heightened awareness and attention to a case, including media and public attention, in addition to the wealth of resources that the USG will utilize for the case. Further, a wrongful detention designation will trigger efforts from other government agencies and entities and will ensure their joint collaboration on the case. In most cases, there is increased communication and transparency from officials' visits to the detained individual and increased engagement between the USG and local counsel and local officials, although this may be hampered in situations where there is limited consular action such as when there is no US embassy in-country, or the detainee is a dual national. The increased coordination within the government and between the government and other actors, including the families of those detained, generally leads to increased problem solving and more creative solutions.		

#### Special Presidential Envoy for Hostage Affairs (SPEHA)

Once a wrongful detention designation is made, the **Special Presidential Envoy for Hostage Affairs** (SPEHA) takes on the case and coordinates all diplomatic engagements related to the case. Under SPEHA, there are resources including a **SPEHA Hostage Affairs Action Officer**, a **SPEHA Public Affairs Officer**, and **SPEHA Family Engagement Coordinator**.

Within SPEHA, there are several teams that carry out the office's mission. These include the family engagement team, the regional team, the external engagement team, and the deterrence and prevention team. SPEHA can provide support to the family and the detainee during detention and after the detainee comes back to the US.

#### Bureau of Consular Affairs (CA)

Until individuals are designated as wrongfully detained, their cases are under the purview of the CA. Under the CA is the Office of American Citizen Services and Crisis Management (ACS). Under ACS are Consular Affairs ACS officers in Washington DC who collaborate directly with their ACS counterparts at respective US embassies or consulates overseas to make sure that the State Department is coordinated in providing assistance.

Also under ACS is the Consular Affairs' Hostage Affairs Unit (HAU) with HAU officers.

Together, both SPEHA and CA join forces to create the Family Engagement Team which is comprised of a SPEHA officer who manages diplomatic engagement to ensure an individual's release from detention, a consular affairs ACS officer in DC who works with the embassy or consulate where the individual is detained, and the SPEHA Family Engagement Coordinator who supports family members throughout their loved one's arbitrary detention and provides on-site support for those coming home from wrongful detention.

For non-US nationals, US embassies and Missions in the country where the detainee is being held can provide extremely useful tools for those arbitrarily detained. Because they are on the ground and given their diplomatic status, they are able to gain access to detainees and to communicate with State officials about the individual and the case more easily. For example, you can request for an ambassador or embassy staff to stand in as a trial observer during trials, to help you get in contact with the detainee, or even to go visit the detainee in prison. Although rare due to security and other concerns, some officials may even be able to provide you with further information or context around the case. While much of their advocacy around arbitrary detention cases may be done in private, they may also speak out publicly through statements or social media about a case to push the government to act.

For human rights defenders and activists, DRL has developed the <u>Guidelines for U.S. Diplomatic Mission Support to Civil Society and Human Rights Defenders</u>. 41 While these guidelines are not enforceable, they offer guidance and tangible actions that US Mission staff can take to support human rights defenders who have been, or are at risk of being arbitrarily detained. There are Human Rights Officers who are tasked with addressing human rights issues.

#### Bureau of Democracy, Human Rights, and Labor (DRL)

DRL is based at the State Department in Washington DC and consists of the MLGA and officers focused on political prisoners and human rights defenders, regional bureaus and desk officers who manage regional, bilateral, and multilateral policy issues for a specific country or area. It is important to connect and engage with the officers working on the country and region where the individual is detained because of the wide range of support they may be able to offer. Some of the ways DRL can support an arbitrary detention case include:

<sup>41</sup> Guidelines for U.S. Diplomatic Mission Support to Civil Society and Human Rights Defenders [hereinafter "Guidelines for U.S. Diplomatic Mission Support"], U.S. Department of State, Democracy, Human Rights, and Labor, Nov. 2021, https://www.state.gov/wp-content/uploads/2021/11/Human-Rights-Defenders-Guidance.pdf.

#### Bureau of Democracy, Human Rights, and Labor (DRL)

- Providing political and social background and further insights in the country where the individual is detained
- Coordinating with other USG officials and departments regarding the case, including members of Congress and White House officials
- · Meeting with families of those detained
- Engaging with the UN and special rapporteurs to address specific issues and cases 42
- Publishing Annual Country Reports on Human Rights Practices where they can highlight arbitrary detention issues and cases<sup>43</sup>
- Engaging with civil society, multilateral organizations, and other States to coordinate diplomatic messages and support deterrence efforts<sup>44</sup>
- Raising awareness and the profiles of human rights defenders and political prisoners, including in diplomatic settings<sup>45</sup>
- Providing foreign assistance to support and protect civil society and journalists, including through direct financial emergency assistance to activists under threat<sup>46</sup>
- Using public and private actions against those targeting human rights defenders and journalists, including the use of Global Magnitsky and other sanctions<sup>47</sup>

High-level officials in DRL, including the Acting Assistant Secretary of DRL and the Principal Deputy Assistant Secretary have significant sway and gaining access to them may prove beneficial in pushing for broader USG action on the case. Throughout the process of liberating your client or loved one, DRL is an important resource for understanding sociopolitical dynamics and staying up-to-date on evolving situations in the country, both for those who have received a wrongful detention designation and those who have not received a designation.

### DEPARTMENT OF TREASURY

For those who are designated as wrongfully detained, the Levinson Act provides authorization for the use of discretionary sanctions against those responsible for or complicit in wrongful detention. It is unlikely, especially early on in a case, that you will have direct communication with Treasury officials but it is important to be aware of their function and the way that other government officials interact with them.

Generally, sanctions are sought later on in a case and are determined on a case-by-case basis. For some cases, sanctions may have the opposite of the intended effect, putting the detainee at risk by frustrating the targeted State. Further, the USG faces many geopolitical concerns and priorities when making decisions about who to sanction. Seeking sanctions is time intensive and requires technical skill, but the results may be mixed.

#### HOSTAGE RECOVERY FUSION CELL

The Hostage Recovery Fusion Cell (HRFC) is an interagency team that coordinates efforts dedicated to recovering US nationals held hostage by non-state actors. Although individuals held by a foreign government are generally not regarded as hostages, the State Department consults with the HRFC on certain matters through SPEHA and ACS. It is unlikely that you would have direct contact or engagement with the HRFC. Instead, other government officials at the State Department and elsewhere will coordinate with them should it prove necessary or helpful for a specific case.

<sup>42</sup> Id. at 6.

<sup>43</sup> Id. at 6.

<sup>44</sup> *Id.* at 6.

<sup>45</sup> *Id.* at 8.

<sup>46</sup> Id. at 6.

<sup>47</sup> Guidelines for U.S. Diplomatic Mission Support, p. 8.

#### LEGISLATIVE BRANCH

Under the Legislative Branch, members of Congress (MoCs) in both the House of Representatives and the Senate have an important role to play in arbitrary and wrongful detention cases. They can request briefings from the State Department and other government agencies and offices to ensure that all branches of government are working towards the same objectives. They can also support families with detained loved ones by hosting meetings to discuss updates and options. They can sponsor or support legislation or resolutions that can advance the release of someone arbitrarily detained or draw attention to the case. Further, MoCs can exert their influence to meet with and/or write letters to both US and foreign government officials on behalf of the detained person.

#### **SENATE**

Senate leadership, including the party leaders, are relevant actors on arbitrary and wrongful detention cases. Two committees within the Senate, the Senate Foreign Relations Committee (SFRC) and the Appropriations Committee, specifically the State, Foreign Operations, and Related Programs (SFOP) subcommittee are also important for USG advocacy on such cases. The SFRC has jurisdiction over all diplomatic nominations and debates and recommends legislation related to foreign policy and international treaties.49 This Committee has a Chairperson, Ranking Member, and other members from both parties. Appropriations and SFOP specifically are relevant because they control the funding that goes to the State Department and as well as funding for foreign aid and other support to foreign countries. Depending on the circumstances of the case, subcommittee chairs may also be able to provide support and may be more accessible. Some subcommittees that may be relevant for arbitrary detention cases include the Near East, South Asia, Central Asia,

and Counterterrorism subcommittee, the Western Hemisphere, Transnational Crime, Civilian Security, Democracy, Human Rights, and Global Women's Issues subcommittee, the Africa and Global Health Policy subcommittee, and the East Asia, the Pacific, and the International Cybersecurity Policy subcommittee. Other relevant actors include Senators from the detained individual's home state or other representatives with connections to the country of detention.

#### **HOUSE OF REPRESENTATIVES**

The House's highest level members include the Speaker, a Republican leader, and a Democratic leader. There are multiple relevant bodies under the House: the House Foreign Affairs Committee (HFAC), the Tom Lantos Human Rights Commission, and under the Appropriations Committee, the State, Foreign Operations, and Related Programs (SFOP) subcommittee. The HFAC is responsible for oversight and legislation related to a number of different foreign policy issues, including foreign assistance, the promotion of democracy, and international law enforcement issues.<sup>50</sup> The Committee consists of a Chairperson, a Ranking member, and other members from both parties. Similarly to the Senate, other relevant actors include representatives from the detained individual's home state or other representatives with connections to the country of detention. It is important to identify the leaders and members of these committees and to try to engage with them on your case.

The Tom Lantos Commission is a bi-partisan commission that works to protect and promote international human rights. To do this, the Commission provides public education activities, expert human rights advice, and encourages MoCs to engage in human rights issues and collaborate with one

<sup>48</sup> Resources for Families of Wrongful Detainees: Working with Congress, U.S. State Department, Special Envoy for Hostage Affairs, https://www.state.gov/working-with-congress/ (last accessed Oct 28, 2024).

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<sup>50</sup> Resources for Families of Wrongful Detainees: Working with Congress, U.S. State Department, Special Envoy for Hostage Affairs, https://www.state.gov/working-with-congress/ (last accessed Oct. 28, 2024).



UNDER THE LEGISLATIVE BRANCH, MEMBERS OF CONGRESS (MOCS) IN BOTH THE HOUSE OF REPRESENTATIVES AND THE SENATE HAVE AN IMPORTANT ROLE TO PLAY IN ARBITRARY AND WRONGFUL DETENTION CASES. THEY CAN REQUEST BRIEFINGS FROM THE STATE DEPARTMENT AND OTHER GOVERNMENT AGENCIES AND OFFICES TO ENSURE THAT ALL BRANCHES OF GOVERNMENT ARE WORKING TOWARDS THE SAME OBJECTIVES.

another as well as with CSOs.<sup>51</sup> The Tom Lantos Commission created the Defending Freedoms Project (DFP) in 2012, which aims to raise awareness to human rights abuses by encouraging MoCs to advocate on behalf of prisoners of conscience around the world.<sup>52</sup> MoCs can choose to take up advocacy work on behalf of a prisoner or multiple prisoners of conscience and can use their positions of power to raise their case with relevant USG officials, foreign officials, and the press.

In 2021, Representatives French Hill and Ted Deutch created the bipartisan Congressional Task Force on American Hostages and Americans Wrongfully Detained Abroad ("Task Force") with the aim of supporting US nationals who are wrongfully detained or held hostage abroad.<sup>53</sup> Through the Task Force, individual cases of wrongful detention can be raised before Congress and shared with other Members.

Some caucuses may also be useful in advocating for an individual's release from detention if relevant to the circumstances of the detention. Some examples include caucuses on specific countries or geographic regions of the world, the Equality Caucus which focuses on LGBTQ+ issues,<sup>54</sup> and the US-Africa Policy Working Group Caucus.<sup>55</sup>

#### CONGRESSIONAL RESEARCH SERVICE

Congressional Research Service (CRS) serves under the Library of Congress and assists MoCs with research at every stage of the legislative process. MoCs can request informative reports from CRS that they can then share with their constituents or with detained individuals' families. Further, families and advocates can get information from CRS to provide to MoCs that is verified and can be shared with other representatives. For MoCs, congressional reports tend to carry more weight.

 $<sup>51 \</sup>quad \textit{About}, \texttt{Tom Lantos Human Rights Commission}, \texttt{https://humanrightscommission.house.gov/about (last accessed Oct. 28, 2024)}.$ 

<sup>52</sup> Defending Freedom Project, Tom Lantos Human Rights Commission, https://humanrightscommission.house.gov/DFP (last accessed Oct. 28, 2024).

<sup>53</sup> ICYMI: Rep. Hill and Rep. Deutch Launch American Hostage Task Force, U.S. Congressman French Hill, https://hill.house.gov/news/documentsingle.aspx?DocumentID=8545 (last accessed Feb. 11, 2025).

<sup>54</sup> About the CEC, Congressional Equality Caucus, https://equality.house.gov/ (last accessed Feb. 11, 2025).

<sup>55</sup> U.S. Africa Policy Working Group, Ilhan Omar, https://omar.house.gov/issues/us-africa-policy-working-group (last accessed Feb. 11, 2025).

<sup>56</sup> About CRS, The Library of Congress, https://www.loc.gov/crsinfo/about/ (last accessed Oct. 28, 2024).

# ENGAGING WITH THE LEGISLATIVE BRANCH ON ARBITRARY DETENTION CASES

#### **ENGAGING WITH CONGRESS**

Engaging with Congress is an extremely important part of USG advocacy for both US and non-US nationals. With a strategic advocacy and engagement plan, working with Congress can yield positive results and push the needle forward, especially when it seems as if progress with the State Department and other areas of the USG has stalled. Before engaging with members of Congress directly, it can be helpful to map out which members might be the most helpful and/or the most likely to engage on the case. First, it is important to do some background research on any potential reputational risks or other risks that might impact the case if that member were to engage. Then, find out who the detained individual's representatives are. Generally, Congressional members are strong champions of a case in which their own constituent is arbitrarily detained. Next, research members who are on relevant committees and caucuses relevant to human rights and arbitrary detention issues (and other issues specific to your case), such as the Senate Foreign Relations Committee (SFRC), the House Foreign Affairs Committee (HFAC), and the Tom Lantos Human Rights Commission. Then, it is important to research which members have made public statements or taken action related to the country you are focused on. Finally, it is important to find which members have publicly taken efforts to engage on human rights and arbitrary detention issues in the past.

While it is important to be strategic with which members you engage, if you have the resources, it can also be beneficial to cast a wide net for the number of members that you engage with so as not to lose out on opportunities for increased engagement and publicity for your case. Depending on the political climate, the specific circumstances of the case (including, importantly, which country the detainee is held in), and other factors, some members of Congress may be more or less inclined to engage on a case. Some may decide to help in a

more private capacity, while others will be willing to make public statements.

## Some ways that Congress can assist with your case:

- Members of Congress can "champion" your case, meaning that they are fully engaged, speaking out publicly, working with the legal team to take appropriate actions
- Members of Congress can engage and work in coordination with the State Department and, when necessary, push them to take action on your case
- Member of Congress can engage the President, the National Security Advisor, and other highlevel officials within the administration to push them to take action on your case
- Members of Congress can engage with the media and speak out publicly on your case including by releasing a statement, giving a quote to a reporter, speaking out on social media, calling a reporter to push them to write a story, holding a press conference, recruiting multiple members of Congress to sign on to a public letter, introduce a resolution or read the detainee's name so that the case is in the Congressional record, and more
- In certain cases, members of Congress can engage with foreign officials, including foreign officials where the individual is detained, to push for their release by raising a case on a visit to that country, raising a case when foreign officials visit the US, calling the ambassador of a country who is based in DC, summoning embassy staff to meet with them on the Hill, and more.
- Members of Congress can meet with the family members and loved ones of those detained
- Members of Congress can sponsor or support legislation or resolutions calling for the release of an arbitrarily detained individual

#### **NON-GOVERNMENTAL ACTORS**

Partnership with third party negotiators, civil society organizations and other non-governmental entities is essential to engaging with the USG on arbitrary and wrongful detention cases. These non-governmental actors provide significant support to families of arbitrarily and wrongfully detained persons including through legal support, financial assistance, and other guidance such as advocacy strategy and how to deal with the media. Third party negotiators are those who assist, or sometimes lead negotiations for the release of a detainee. They can be extremely useful in moving negotiations forward given that they are not as limited as the USG by politics and diplomacy. Oftentimes, such negotiators are former politicians or former government officials with significant experience negotiating and working with foreign governments and non-state actors. Global Reach (formerly the Richardson Center for Global Engagement) is a key organization leading efforts on third-party negotiations.

It is advisable for families members and advocates of those detained to get in touch with non governmental organizations with expertise on arbitrary and wrongful detention cases or on the context within the detaining country. NGOs can also assist with advocacy and engagement with inter-governmental organizations such as the United Nations and the regional human rights institutions. For a list of other relevant organizations working on arbitrary detention and wrongful detention issues, see Annex I.

#### **MEDIA**

Depending on the circumstances of a case, the media can have an important role to play in raising awareness around a case and in pushing the USG to take action. By increasing public awareness, family members and advocates increase public pressure on all stakeholders within USG to take action. Members of Congress can help in generating media coverage including by issuing press releases, social media statements, hosting press conferences, giving quotes for news articles, and sometimes even calling reporters to share the story of the detention. While not always the case, high-profile cases which receive significant media attention likely benefit from such attention as compared to cases that receive less publicity. However, it is important to take into account that some media engagement and publicity may have a negative impact on a case. Some examples of publicity that might negatively impact a case include inaccurate messaging and framing of the case by the media, as well as publicity that puts negotiations and other efforts at releasing a detainee at risk. For other resources and guidance on best practices for engaging with the media see below:

Hostage US Guide: Handling the Media<sup>57</sup>

Wrongfully Detained US Citizens Family Resource Guide (Chapter 12: Handling the Media)<sup>58</sup>

<sup>57</sup> Handling the Media and Social Media: A Family's Guide, Hostage US (2021), https://hostageus.org/wp-content/uploads/2021/07/HandlingMediaGuide2021.pdf.

<sup>58</sup> Elizabeth R. Whelan, Wrongfully Detained US Citizens Family Resource Guide, (2021)
https://www.freepaulwhelan.com/images/images/hostage-resources/Wrongfully\_Detained\_US\_Citizens\_Family\_Resource\_Guide\_2021\_-\_E\_Whelan.pdf.

# PART III: GUIDANCE FOR ENGAGEMENT IN REGARD TO US NATIONALS

This section provides some steps that users of this Guide can take immediately after they learn of the detention of their loved one abroad. While the authors of this guide are confident in the list below, it is neither exhaustive nor chronological. As a rule of thumb, when in doubt about what to do, consult an expert in the area of arbitrary and wrongful detention in addition to following the guidance here.

#### **REFLECTION QUESTIONS**

Information gathering is essential to commencing advocacy or recovery efforts for a person detained abroad. Below are some reflection questions that prepare an advocate for engagement with the USG on an arbitrary or wrongful detention case involving a US national:

# Where is the person detained? What is that country's relationship with the US-Is it an ally or an adversary to the US?

The place where a US national is detained impacts the extent and approach of USG engagement in the case. Experience has shown that the USG is typically more hesitant to engage and speak out against a country that it considers an important ally to avoid negatively impacting that diplomatic relationship. Meanwhile, the USG may feel more emboldened to criticize or take action against hostile or adversarial States.

## Would engaging with the US potentially cause any harm or make the situation worse?

In some instances, any USG engagement may cause the State where the person is detained to

react negatively, potentially even retaliating by maltreating the detained individual. This may be especially true for parts of the world where anti-US and anti-Western sentiments are strong. It is key to consult with experts on the ground familiar with the case to determine whether USG involvement could potentially make the situation worse.

### What are the circumstances of the individual's arrest and detention?

The USG respects the jurisdiction of foreign courts, even when the person being tried is a US national so long as the arrest and detention are not arbitrary and the rules of fair trials are followed. In some cases, some US nationals are rightfully arrested and detained for crimes they committed. In such cases, the USG is able to provide consular assistance, including providing resources on local attorneys, visiting the detainee, ensuring proper medical care, etc., but they are not able to assist in the legal proceedings or help to secure the release of the individual.<sup>59</sup> If the detention is lawful, this guide does not apply. If there are any gray areas, provide the USG with as much evidence as possible proving the detainee's innocence or showing how the arrest and detention fail to comply with international human rights law standards.

## Was the person arrested because of their nationality as a US national or dual nationality?

In the Secretary of State's determination of wrongful detention, one element of the decision-making process that seems extremely important based on previous designations (or lack of designations) is

<sup>59</sup> Arrest or Detention of a U.S. Citizen Abroad, U.S. State Department, Bureau of Consular Affairs, Feb. 27, 2023, https://travel.state.gov/content/travel/en/international-travel/en/en/international-travel/en/international

whether or not the person was arrested and detained because of their nationality as a US national. If this is the situation in your case, highlighting this factor will be extremely helpful in a potential wrongful detention determination. However, if this is not true for your case, the USG may very well still engage, just for different reasons. When engaging with the USG, be sure to highlight the elements listed under the Levinson Act that apply to your case.

## What is the person's profession? Is the person a human rights defender, activist, or journalist?

The detained individual's profession may impact the USG's willingness to engage on their case. Depending on the administration, the Government may or may not have an interest in focusing on human rights and human rights defenders as an important part of its foreign policy. Although a US administration may declare its support for human rights in its foreign policy, it appears that the USG is less willing to engage on cases where the individual detained was also a human rights defender or activist. This has specifically been an issue in cases seeking a wrongful detention designation.

#### What was the person doing in the country?

It is important to have an understanding of what the individual was doing in the country, why they traveled there, and what they were doing in the lead up to their arrest and detention. Were they there for work? To visit family? These are factors that the USG weighs when considering engaging on a case, and in particular when making a wrongful detention designation.

### Do they plan to stay in the country after they are released?

In some cases of arbitrarily detained US nationals, especially in cases of human rights defenders, the individual indicates that they want to stay in the country of their detention to continue their work. Overall, the USG appears less interested in engaging with such cases, despite such a factor not being relevant to the arbitrariness of their arrest and detention, nor being a factor enumerated in the Levinson Act. Of course, this may not be the situation for every case, but we have noticed that this may be an area of concern for USG officials in previous and ongoing cases. This is in contrast to USG efforts on behalf of non US-persons who are journalists or human rights defenders who

intend to remain in their country.

#### How long have they been detained?

The initial hours and days of a US national's detention are vital when it comes to advocacy and engaging the USG. In the beginning there likely will be increased media attention and, because the situation is likely constantly evolving and shifting, there may be more flexibility and more of an opportunity for the USG to successfully engage. However, if it has been days, weeks, months, or years into an individual's detention, engaging with the USG may still be extremely important. The USG has successfully pushed and negotiated for the release of multiple US nationals years into their detention. As part of an advocacy strategy, it is important to mark how many days an individual has been detained and to use certain days (such as 100 days in detention, one year in detention, etc.) to campaign around the case and speak out publicly.

## Who are their Congressional representatives? Would they be willing to champion their case?

Early on, it will be important to identify and connect with the detained person's Congressional representatives and any other members of Congress who would be willing to support or even champion their case. Engaging with these representatives, keeping them informed, and pushing them for concrete acts such as making public statements, introducing and passing a resolution about their case, engaging with foreign governments, and more. Engaging with Congress can also be an important way to push the State Department, the President, and other Executive branch actors to respond and/or take action.

#### **ACTION PLAN**

After reflecting on the questions above, advocates for a wrongfully or arbitrarily detained individual can begin to take concrete actions to work for the individual's release. The section below aims to provide a general framework to help focus efforts towards the ultimate goal of liberty for the detained individual. The actions listed below are not exhaustive, and many can be taken concurrently. The final action plan will depend on the specific circumstances of each case. Annex II contains a condensed sample action plan that can be used or modified to organize the advocacy strategy.

Actor Mapping: Identifying those relevant actors who have the ability to contribute towards the release of a wrongfully or arbitrarily detained individual is an essential step to take early on. Given the wide array of actors that could be working towards release, it is important to have a clear idea of who could help and what pathways remain to be explored. Section II of the Guide discusses the different offices of the USG, which will be key partners in securing the release of an individual. The relevant offices will vary depending on the circumstances of the case. These include the Congressional representatives of the district or state that the individual was from, as well as relevant regional or thematic subcommittees and teams in Congress and the State Department, respectively. In addition to government actors, it can be helpful to contact potential NGOs who may be helpful in helping build an advocacy strategy to secure the individual's release. Contact information of US government offices can be found on government websites, and particular NGOs may have close partnerships with relevant government officials and may be able to put you directly in contact with them. Family members of previously detained individuals may be valuable people to contact, as they have their unique perspective and may have insights into the process.

Constituency Building: Creating a close network of interested individuals is key to help increase the effectiveness of advocacy strategies and help ensure that pushing for an individual's release will be sustainable. To that end, it can be helpful to identify existing coalitions of groups who are already working on cases of wrongful or arbitrary detention or on the human rights situation in the relevant country or region. Structuring a response team to divide responsibilities and pursue several pathways can be an effective strategy to pursue the liberation of a detained individual. It is often useful to involve family members, who are often the most effective advocates for their loved one. Choosing one family member or another individual to be the spokesperson can help build a strong advocacy strategy, and establishing a contact person can help ensure that the various actors have a clear person to contact

if there are any new developments in the case. At this point, outreach to relevant actors and organizations can be initiated, and it is important to plan for regular follow-up meetings and messages.

Advocacy Strategy Development: The exact form of an advocacy strategy will depend significantly on the circumstances of the individual's detention. In particular, the security and political conditions of the country where the individual is detained and the United States' relationship with that country will impact what kind of engagement with the media should be pursued. In some cases, it may be better for work to secure the detainee's release to occur without media coverage. In others, media engagement is a crucial step in bringing pressure on the executive branch officials and in particular Congress to act on the case. In those cases, it may be useful to start a social media campaign by creating accounts on different social media networks and setting up a specific hashtag as it relates to the particular case. If the individual remains unfortunately detained for a longer period of time, it can be useful to plan advocacy around key dates, such as after 100 days in detention.

Communication Plan: Advocating for release requires a carefully crafted communication strategy that will help make the campaign clear and effective. As mentioned above, it can be useful to designate one family member or other individual as the spokesperson for the campaign. In addition, it is often helpful to create a fact sheet (typically 1-2 pages long) that summarizes the case and gathers key dates, facts, and events into one place for easy reference. Family members and advocates can use this in the course of meetings with government officials, the media, or other partners. The fact sheet can be especially useful in streamlining and harmonizing the narrative so that it is both consistent and effective during the advocacy campaign.

Further Resources: For more information and useful advice regarding navigating the process of arbitrary detention, it may be useful to consult <u>Pathway to Freedom: Handbook for the Liberation of Political Prisoners</u>, published by the World Liberty Congress.<sup>60</sup>

<sup>60</sup> Pathway to Freedom: Handbook for the Liberation of Political Prisoners, World Liberty Congress, https://worldlibertycongress.org/world-liberty-congress/handbook/, Nov. 2023.

# CASE STUDIES: US NATIONALS

Paul Rusesabagina

**STATUS: RELEASED** 



#### **BACKGROUND**

Paul Rusesabagina, a dual Rwandan-Belgian national and a permanent resident of the United States. He was released from arbitrary detention in Rwanda after 969 days. His release came after years of relentless work from Mr. Rusesabagina's family and legal team who assisted local counsel on the case, brought petitions to UN bodies, and advocated before the multiple countries on his behalf. Thanks to these efforts and negotiations between the United States, Rwanda, and Qatar, the team was able to secure Mr. Rusesabagina's release and bring him back to the US in March 2023.

Mr. Rusesabagina is a survivor of the Rwandan genocide and a widely-celebrated humanitarian hero who sheltered hundreds of people in his hotel in Kigali during the genocide and inspired the 2004 film, Hotel Rwanda. After multiple threats due to his criticism of Rwandan President Paul Kagame, he left Rwanda in 1996 and settled in Belgium where he lived until 2009, when he relocated to the US for safety.61 He received numerous awards for his courageous work, including the US Presidential Medal of Freedom in 2005.62 In August 2020, Mr. Rusesabagina had plans to fly to Burundi for a speaking engagement. However, on his flight from Dubai to Burundi he was sedated and the plane instead went to Kigali.63 He was abducted by Rwandan officials and detained incommunicado.64 He was restrained, blindfolded, and held in solitary confinement for 260 days.65 He was refused medical treatment despite being a cancer survivor and dealing with hypertension and cardiovascular disease.66

There were multiple fair trial violations and procedural violations in his case. After four months

of detention, Mr. Rusesabagina was indicted and charged with terrorism. He was denied access to his lawyers and instead given two state-appointed lawyers who undermined his case. He was held in pretrial detention without access to any documents to prepare his defense and he was denied calls with family or lawyers. Ultimately, Mr. Rusesabagina was wrongfully convicted and sentenced to 25 years in prison.<sup>67</sup> Following this, the government appealed the sentence seeking an increased sentence. Experts and human rights organizations deemed the trial a farce.68

#### **US GOVERNMENT ENGAGEMENT**

Mr. Rusesabagina's team, including his family and legal team, worked tirelessly to bring him home. One of the primary levers that resulted in his liberation was engaging with the US government. However, it is important to note that Mr. Rusesabagina's case was well-known and well-publicized which also played a significant role in the engagement around his case. Given how public the case was, there was an accelerated process on the part of the US government. After Mr. Rusesabagina was abducted in August 2020, his daughters, Carine Kanimba and Anaïse Kanimba had already met with the Special Envoy for Hostage Affairs (SPEHA), Roger Carstens. It is important to note that families of other arbitrarily detained US nationals, such as Ryan Corbett,69 a US citizen formerly detained in Afghanistan, and Paul Whelan,<sup>70</sup> a US citizen formerly detained in Russia, did not speak with the SPEHA office until over a year after their initial arrest and detention.

Abdi Latif Dahir, Declan Walsh, How the Hero of 'Hotel Rwanda' Fell into a Vengeful Strongman's Trap, The New York Times, Sept. 20, 2021, http://www.nytimes.com/2020/09/18/world/africa/rwanda-paul-rusesabagina.html (last accessed Oct 28, 2024).

<sup>62</sup> Presidential Medal of Freedom Recipients, Office of the Press Secretary, The White House, Nov. 3, 2005, https://georgewbush-whitehouse.archives.gov/news/releases/2005/11/20051103-5.html (last accessed Oct 28, 2024).

UN Confirms that Rwandan Authorities Abducted And Are Arbitrarily Detaining Paul Rusesabagina, Robert F. Kennedy Human Rights, March 31, 2022, https://rfkhumanrights.org/our-voices/un-confirms-that-rwandan-authorities-abducted-and-are-arbitrarily-detaining-paul-rusesabagina/ (last accessed Oct. 28, 2024).

<sup>64</sup> Id

<sup>65</sup> Id.

<sup>66</sup> Id.

<sup>67</sup> UN Confirms that Rwandan Authorities Abducted And Are Arbitrarily Detaining Paul Rusesabagina, Robert F. Kennedy Human Rights, March 31, 2022, https://rfkhumanrights. org/our-voices/un-confirms-that-rwandan-authorities-abducted-and-are-arbitrarily-detaining-paul-rusesabagina/ (last accessed Oct. 28, 2024).

Geoffrey Robertson, AO, QC, Final Report: The Case of Paul Rusesabagina, Clooney Foundation for Justice, May 16, 2022, https://cfj.org/reports/final-report-the-case-of-paul-rusesabagina/ (last accessed Oct. 28, 2024).

<sup>69</sup> Free Ryan Corbett, https://www.freeryancorbett.com/ (last accessed Oct. 28, 2024).

About Paul Whelan, Free Paul Whelan, https://www.freepaulwhelan.com/index.php/about-paul-whelan-american-travel-moscow-russia-tourist-lefortovo-detention-medicalpassport-british-canadian-irish-citizen-arrested-wrongfully-detained-fsb-is-it-safe-travel-to-russia (last accessed Oct. 28, 2024).

It would still take another year and a half before Mr. Rusesabagina would receive his wrongful detention designation from the Secretary of State. At the time of Mr. Rusesabagina's detention, the US Congress had yet to pass the Levinson Act into law, so there were more limited mechanisms on the books to utilize. During the first four months of his detention, there was strong US engagement from all branches of government on his case. According to Mr. Rusesabagina's daughters, Carine and Anaïse, the State Department went "above and beyond" to get access to their father. Members of Congress and the Senate Foreign Affairs Committee wrote letters demanding Mr. Rusesabagina's release. After the administration changed, President Biden made commitments to address arbitrary detention early on. After that, Mr. Rusesabagina's family met with Secretary of State Antony Blinken in the first week of Biden's presidency. However, after that, the USGs work on Mr. Rusesabagina's case seemed to pause. For the following ten months, the Biden administration was silent on Mr. Rusesabagina's case. Carine and Anaïse also found that the Rwanda desk under the State Department's DRL, was almost deferential to the proceedings in their father's case in Rwanda (proceedings which had been widely deemed a sham by human rights experts).71

Mr. Rusesabagina's team turned to the US Congress, which Carine and Anaïse believe was what eventually got the State Department to begin making more progress on his case. Congress passed resolutions calling for Mr. Rusesabagina's release and the Senate froze assets intended to be transferred from the State Department to Rwanda. By leveraging tools in Congress, they were able to push the State Department to not only pay attention to Mr. Rusesabagina's case, but to take action. His team was also able to encourage members of Congress to publicly condemn Mr. Rusesabagina's detention through social media which helped raise awareness and put further pressure on Rwanda. Congress also sent internal letters from various members to the

MR. RUSESABAGINA'S TEAM, INCLUDING HIS FAMILY AND LEGAL TEAM, **WORKED TIRELESSLY** TO BRING HIM HOME. ONE OF THE PRIMARY LEVERS THAT RESULTED IN HIS LIBERATION WAS **ENGAGING WITH THE** US GOVERNMENT.

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<sup>71</sup> Geoffrey Robertson, AO, QC, Final Report: The Case of Paul Rusesabagina, Clooney Foundation for Justice, May 16, 2022, https://cfj.org/reports/final-report-the-case-of-paul-rusesabagina/ (last accessed Oct. 28, 2024).

State Department to push them to act. Carine and Anaïse were also invited to testify before Congress about their father's detention and about the ways they had been personally targeted by the Rwandan government through the use of spyware. This, in addition with the use of sharing briefing papers and having Congressional meetings with certain members also helped to raise awareness within Congress and pushed other members to take action. In particular, Carine and Anaïse believed that the House Foreign Affairs Committee and the Senate Foreign Relations Committee were vital in pushing for these efforts and having influence over the State Department and the rest of the Executive branch. Specifically, finding a member of Congress to "champion" a case, can be extremely useful in helping to navigate Congress and push for these actions. Carine and Anaïse believe that finding a champion for their father that was well-versed in the diplomacy space is essential to avoid the situation from becoming politicized.

Those working on Mr. Rusesabagina's case also gained access to key actors within the Executive branch, including Biden's National Security Advisor, Jake Sullivan. By gaining this access and developing relationships to build a coalition within the Executive, this pushed the USG to prioritize Mr. Rusesabagina's case and take further action. Carine and Anaïse highlighted how important it is to gain this access within the Executive but acknowledged the inequity with which some cases are able to gain access quickly, while others may take much longer to gain such access, and some may never gain access at all. Some organizations, namely the Bring Our Families Home Campaign,<sup>72</sup> work to bridge the gap for families having difficulties accessing the USG by helping to coordinate introductions with key officials.

It was not until May 2022, following a positive decision from the United Nations Working Group on Arbitrary Detention ("Working Group"),73 that Paul Rusesabagina was finally designated as wrongfully detained by the Secretary of State.74 After the designation was made, there were significant changes in the way the USG engaged on his case. Mr. Rusesabagina's team received full detailed information from officials' visits to him in prison, there was significantly more engagement between the USG and local counsel as well as local officials, the USG was much more active in their search for solutions, there was increased communication and transparency, the USG increased their involvement of Mr. Rusesabagina's family in seeking solutions and decision-making, and there was improved coordination among the different governmental bodies involved.

Mr. Rusesabagina's team also tried to apply further pressure through the use of Global Magnitsky sanctions (GloMag sanctions). However, after a submission for GloMag sanctions, Carine and Anaïse said that it was like a "black box" with extremely little transparency or communication on the status of the submission. There was significant frustration over the lack of USG response and engagement because they believe that it is a tool that is being underutilized and underprioritized, likely because of geopolitical concerns, even though it could be extremely useful in affecting behavioral change by States.

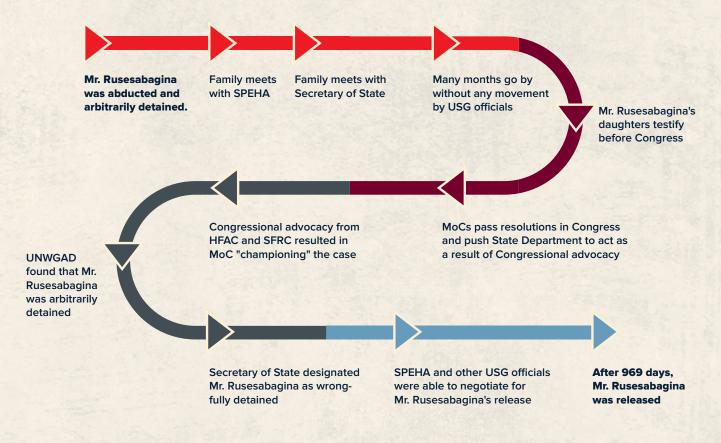
However, after months of SPEHA and other USG engagement on Paul Rusesabagina's case following his designation, the US was able to negotiate with the Qataris as a third-party mediator for his release. While the details of the negotiation process are unknown, they proved successful. The negotiation for his release ultimately came at the last minute, in the last week of scheduled negotiations. After 969 days of arbitrary detention, he was finally released.

<sup>72</sup> Bring Our Families Home, https://www.bringourfamilieshome.org/ (last accessed Oct. 28, 2024).

<sup>73</sup> UN Confirms that Rwandan Authorities Abducted And Are Arbitrarily Detaining Paul Rusesabagina, Robert F. Kennedy Human Rights, March 31, 2022, https://rfkhumanrights.org/our-voices/un-confirms-that-rwandan-authorities-abducted-and-are-arbitrarily-detaining-paul-rusesabagina/ (last accessed Oct. 28, 2024).

<sup>74</sup> Agence France-Presse, US Says 'Hotel Rwanda' Hero 'Wrongfully Detained', Voice of America, May 19, 2022, https://www.voanews.com/a/us-says-hotel-nwanda-hero-wrongfully-detained-/6581789.html (last accessed Oct. 28, 2024).

### MR. RUSESABAGINA'S CASE TIMELINE



### **LESSONS LEARNED**

- Finding and designating certain family members to lead the team working to secure a person's release is important. Carine and Anaïse were extremely engaged in nearly all aspects of their father's case and such level of engagement was vital to pushing the USG to act and ultimately to successfully liberating him.
- If you are having difficulty engaging with the State Department, focus your efforts on Congress to push the State Department to Act.
- Try to build a coalition of support with key actors in the Executive branch that have access to the President.
- While the process can be opaque and the timing uncertain, continuing to push for a wrongful detention designation (in certain circumstances) can be extremely important because of the

- significant increase in support and engagement from the USG.
- The use of a third country to assist with negotiations can be essential to not only starting negotiations, but to effectively securing a detainee's release.
- A change in administration will likely result in a change in the way the USG engages with your case. Try to learn as quickly as you can what levers may be more or less important with the new administration.
- While GloMag sanctions can be useful, it is important to figure out, depending on the administration, the geopolitical situation, and who the sanctions are targeting, whether or not it is worth putting in the effort and time towards that goal.

**Case Studies: US Nationals** 

### Theary Seng

STATUS: DETAINED



### **BACKGROUND**

Theary Seng is a dual-national, Cambodian-American human rights lawyer and activist currently detained in Cambodia. On June 14, 2022 she was sentenced to six years in prison after being convicted of "conspiracy to commit treason" and "incitement to create gross chaos impacting public security".75 She received this sentence for creating two posts on Facebook that criticized Hun Sen, Cambodia's Prime Minister until 2023. After her parents were murdered by the Khmer Rouge regime during the Cambodian Genocide, Ms. Seng was brought to the US where she grew up and became a lawyer. She returned to Cambodia in 2004 to found two NGOs focused on human rights. Since then she has been an outspoken advocate for human rights and democracy in Cambodia, vocal in her criticism of the Cambodian government. She is currently being held in horrific conditions in Cambodia's Prey Sar prison<sup>76</sup> outside of Phnom Penh.<sup>77</sup>

Ms. Seng's trial received an "F" grade from the American Bar Association's Center for Human Rights and the Clooney Foundation for Justice's Trial Watch Initiative.<sup>78</sup> In July 2023, the United Nations Working Group on Arbitrary Detention ("Working Group") found Ms. Seng's detention was arbitrary due to the regime's "political motivation" and because of the nature of the mass trial in her

case which was "incompatible with the interests of justice."<sup>79</sup> The Working Group also found her case to be part of a broader attack on freedom of expression in the country.<sup>80</sup>

While high-level US officials have raised her case and called for her release, the Secretary of State has yet to make a wrongful detention designation for Ms. Seng's case. President Biden and Secretary Blinken both raised Ms. Seng's case with Hun Sen, calling for her release. During President Biden's visit to Cambodia in November 2022, Ms. Seng went on a week-long hunger strike protesting prison conditions and engaged in two additional hunger strikes in 2023. Other US officials, including Under Secretary of State Uzra Zeya, USAID Administrator Samantha Power, Samantha

### US GOVERNMENT ENGAGEMENT

Theary Seng's team-led by Perseus Strategies, Freedom House, and Robert F. Kennedy Human Rights, as well as her brother Mardi Seng-continues to work tirelessly for her release, especially through USG engagement. Since her arrest and

<sup>75</sup> United Nations Working Group on Arbitrary Detention Demands Immediate and Unconditional Release of U.S./Cambodia Dual National And Human Rights Activist Theory Seng, Robert F. Kennedy Human Rights, July 12, 2023,

https://rfkhumanrights.org/united-nations-working-group-on-arbitrary-detention-demands-immediate-and-unconditional-release-of-u-s-cambodia-dual-national-and-human-rights-activist-theary-seng (last accessed Oct. 28, 2024).

<sup>76</sup> Upon her arrest in June 2022, she was held in a remote prison in Preah Vihear province, 330 km (200 miles) away from Phnom Penh and she was moved back to the infamous overcrowded Prey Sar prison outside of Phnom Penh in September 2023, where is currently being held.

<sup>77</sup> Jared Genser, Kerry Kennedy, *This American is a Political Prisoner in Cambodia. How is that okay?*, The Washington Post, Nov. 10, 2022, https://www.washingtonpost.com/opinions/2022/11/10/biden-cambodia-theary-seng-prisoner/ (last accessed Oct. 28, 2024).

<sup>78</sup> Trial Observation Report: Cambodia v. Theary Seng, American Bar Association's Center for Human Rights, Clooney Foundation for Justice, Sept. 2022, https://www.americanbar.org/content/dam/aba/administrative/human\_rights/trialwatch/theary-seng-trialwatch-report.pdf.

U.N. Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March-5 April 2023, 96th Sess., June 15, 2023, U.N. Doc. A/HRC/WGAD/2023/5, https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session96/A-HRC-WGAD-2023-5-Cambodia-AEV.pdf.
 Id.

Readout of President Joe Biden's Meeting with Prime Minister Hun Sen of Cambodia, The White House, Nov. 12, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/12/readout-of-president-joe-bidens-meeting-with-prime-minister-hun-sen-of-cambodia/ (last accessed Oct. 28, 2024); Ned Price, Secretary Blinken's Meeting with Cambodian Prime Minister Hun Sen, Office of the Spokesperson, U.S. State Department, Aug. 4, 2022, https://www.state.gov/secretary-blinkens-meeting-with-cambodian-prime-minister-hun-sen/ (last accessed Oct. 28, 2024).

Sebastian Strangio, Cambodian Dissident Begins Hunger Strike Over Prison Conditions, The Diplomat, Nov. 7, 2022, https://thediplomat.com/2022/1/(cambodian-dissident-begins-hunger-strike-over-prison-conditions/ (last accessed Oct. 28, 2024).

<sup>83</sup> Jailed Cambodian American Returned to Prisoner After Hospital Visit, Radio Free Asia (Dec. 13, 2023), https://www.rfa.org/english/news/cambodia/theary-seng-appeal-hospital-12132023163036.html; Khuon Narim, Imprisoned Activist Seng Theary Ends Ten-Day Hunger Strike, Cambodian Journalists Alliance Association News (Jul. 28, 2023), https://cambojanews.com/imprisoned-activist-seng-theary-ends-ten-day-hunger-strike/.

<sup>84</sup> Under Secretary Uzra Zeya, X, June 15, 2022, https://x.com/undersecstatej/status/1537252335331823617?s=21&t=O5IBRdZaB3dnfTXQ3onAMg (last accessed Oct. 28, 2024).

<sup>85</sup> Samantha Power, X, June 16, 2022, https://x.com/PowerUSAID/status/1537471903081840641?s=20&t=aBosSAWAA5myAA56k671-Q (last accessed Oct. 28, 2024).

<sup>86</sup> U.S. Chief of Mission, X, June 13, 2022, https://x.com/USAmbCambodia/status/1536557150893654016?s=20&t=9PHHITP\_iOUjUe-S86cP7A (last accessed Oct. 28, 2024).

<sup>87</sup> Ned Price, Mass Sentencing of Opposition Activists in Cambodia, Office of the Spokesperson, U.S. State Department, June 15, 2022, https://www.state.gov/mass-sentencing-of-opposition-activists-in-cambodia/ (last accessed Oct. 28, 2024).

detention, the team has worked with Consular Affairs and have pushed the State Department for a wrongful detention determination. Thanks in large part to engagement and pressure from Ms. Seng's legal team, during an official visit to Cambodia in 2022, Biden raised Ms. Seng's case to then-President Hun Sen, and both Biden and Secretary Blinken have publicly denounced her case and the sham trial. However, they have called her detention "unjust", instead of wrongful, leaving Ms. Seng and her team without the resources that come with a wrongful detention designation. Beyond this, the White House and the State Department have not yet met with Ms. Seng's family or legal team regarding her designation and instead continue to refer them to Consular Affairs. Similar to others' experiences engaging on arbitrary detention cases with Consular Affairs, the team has received little support or guidance. Her legal team has struggled to get Consular Affairs to initiate phone calls with Ms. Seng and there has been very little transparency around Consular Affairs' actions on her case. Further adding to the confusion and frustration of Ms. Seng's family and legal team, the State Department has failed to provide clear information on the status of her wrongful detention determination which has now taken over two years with little to no information from the USG despite significant time and effort put in by her family and team.

In July 2023, Ms. Seng's legal team received a favorable opinion from the Working Group, which found Ms. Seng's arrest and detention to be arbitrary

and called for her immediate release.<sup>88</sup> The team used this decision in order to help leverage their USG advocacy, especially on the Hill. The decision became a touchstone of their Congressional advocacy which pushed members of Congress to speak out publicly on her case. With the vetting and backing of the UN, members felt more confident speaking out on her case and calling for her release.

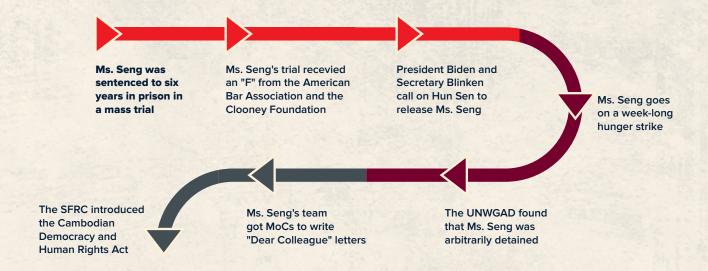
In addition to using the Working Group decision, Ms. Seng's team utilized a number of other strategies on the Hill. The team organized a "Dear Colleague" letter to Secretary Blinken regarding her designation and pushed for members of Congress to address Cambodian Prime Minister Hun Manet. In terms of legislation, there was language incorporated into the joint explanatory statement of the Further Consolidated Appropriations Act, 2024, which, importantly, identified Ms. Seng as "unlawfully and wrongfully detained," and stated that the State Department should impose visa restrictions under Section 7031(c) of the Act on the Cambodian officials responsible for her detention.<sup>89</sup> In addition, a Senate bill, the Cambodian Democracy and Human Rights Act, highlighted the detention of Ms. Seng and other activists and, if enacted, the bill would use sanctions and other tools to hold the Cambodian government accountable for corruption and human rights violations.90 Although the bill has not passed, her team has leveraged the bill as a means to highlight Ms. Seng's case, while pushing for the passage of the bill both to advance Ms. Seng's case and for the broader benefit of human rights in the country.

<sup>88</sup> U.N. Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March-5 April 2023, 96th Sess., June 15, 2023, U.N. Doc. A/HRC/WGAD/2023/5, https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session96/A-HRC-WGAD-2023-5-Cambodia-AEV.pdf.

<sup>89</sup> Joint Explanatory Statement, Department of State, Foreign Operations, and Related Programs Appropriations Act, 2024, Further Consolidated Appropriations Act, 2024, 48 (Mar. 2024), https://docs.house.gov/billsthisweek/20240318/Division%20F%20SFOPs.pdf.

<sup>90</sup> Cambodia Democracy and Human Rights Act of 2023, S.2331, 118th Cong. (2023-2024), https://www.congress.gov/bill/118th-congress/senate-bill/2331/ text#:":text=Introduced%20in%20Senate%20(07%2F18%2F2023)&text=To%20promote%20free%20and%20fair,Cambodia%2C%20and%20for%20other%20purposes.&text=To%20promote%20free%20and%20fair,Cambodia%2C%20and%20for%20other%20purposes.

### MRS. SENG'S CASE TIMELINE



### **LESSONS LEARNED**

- When facing barriers when trying to engage with the State Department or White House, it can be effective to channel efforts into Congressional engagement because of the important role members of Congress play in not only engaging with foreign governments, but more importantly in pushing and engaging with other parts of USG. In some cases, members of Congress may be more willing to engage in arbitrary detention cases than other government officials.
- In building an advocacy strategy, it is important to consider all possible levers and options, including international mechanisms that might have an impact on USG advocacy and engagement. The United Nations Working Group on Arbitrary Detention can be an extremely helpful tool for USG advocacy by "legitimizing" the arbitrariness of the

- detention and can help USG officials feel more comfortable to speak out and take action.
- It is important to understand that, in some cases, the Secretary of State may take significant time to make a wrongful detention determination, and may never make such a designation. What makes this particularly difficult is that there may be little to no communication regarding the decision-making process or updates on where things stand with the determination, even in cases where it seems unlikely that they would offer a designation. While this is frustrating and changes need to be made to improve the process for designations, it is important to focus efforts on other areas that may yield better outcomes more quickly, such as engaging with Congress.

## PART IV: GUIDANCE FOR ENGAGEMENT IN REGARD TO NON-US NATIONALS

While the US legal and policy structure for US nationals is more robust, in large part due to the Levinson Act regime, there are still levers and mechanisms, albeit less formal, that can be utilized within the US government for those working on cases of arbitrarily detained non-US nationals. Specifically, US embassies and missions as well as the Bureau of Democracy, Human Rights, and Labor (DRL) within the State Department are the primary entities that deal with arbitrary detention cases for foreign nationals. There are also multiple efforts by the State Department, Congress, and the White House to combat arbitrary detention more broadly through multilateral and unilateral diplomacy, policy change, and accountability mechanisms. However, there are still gaps and improvements that are needed in the USG's policies and responses to arbitrary detention for non-US nationals.

Like Part III, this section provides some steps that users of this Guide can take immediately after learning of the detention of a relative abroad. While the authors of this guide are confident in the list below, it is neither exhaustive nor chronological. As a rule of thumb, when in doubt about what to do, consult an expert in the area of arbitrary and wrongful detention in addition to following the guidance herein this guide.

### **REFLECTION QUESTIONS**

As with cases involving US nationals, information gathering is essential to commencing advocacy or recovery efforts for non-US nationals detained abroad. Below are some reflection questions that prepare an advocate for engagement with the USG on an arbitrary or wrongful detention case involving a non-US national:

### Where is the person detained? What is that country's relationship with that US? Are they an ally or an adversary to the US?

Similar to the situation for US nationals, depending on where the individual is detained, there may be vastly different responses from the USG. The USG may be more or less inclined to act on cases depending on the country, the US's relationship with that country, and the geopolitical circumstances at the time which can change quickly and frequently. Depending on the circumstances, the USG may have competing priorities on a country at any given time, which could impact their willingness to take action. To understand some of these competing priorities, it can be helpful to look at the bilateral relationship between the US and the country in question, including what types of support or aid they receive from the US, whether there is joint military collaboration, etc.

### Would US engagement increase risk to the person or their case?

In some cases, USG engagement on a case may bring about negative outcomes for the detainee, such as leading to longer time in detention, and being put at risk of further harm. Especially in cases involving non-US nationals, it is important to do research and consult with local experts to determine whether or not USG involvement would help or harm a case. There also may be situations where USG engagement is simply not the most effective or practical way to spend your time and efforts. If it would not be appropriate for the USG to engage, it can be helpful to think about which other countries may be more effective.

### What is the person detained for? What are the charges, if any?

The USG respects the jurisdiction of foreign courts so long as the charges brought are legitimate and the rules of fair trial are followed. However, the USG may need further information and/or evidence to conclude that a detention is arbitrary. This is where it is helpful to engage with the USG early on in a case in order to provide as much up-to-date information as possible. In addition, it is important to consider what the individual is detained for because this could also have an impact on the USG's willingness to engage on a case. For example, the USG may be less inclined to engage on cases that are more political in nature for fear of being seen as interfering with another country's political affairs.

### What is the person's profession? Is the person a human rights defender, activist, or journalist?

The detained individual's profession may impact the USG's willingness to engage on their case. Depending on the administration in power, the Government may or may not have an interest in focusing on human rights and human rights defenders. At the same time, an administration's interest in supporting wider human rights foreign policy does not necessarily mean the USG will be more inclined to support human rights defenders. However, within DRL and US missions, there are guidelines on supporting human rights defenders, activists, and journalists at risk abroad, as well as staffers who are in charge of supporting and coordinating this work. As a result, human rights defenders, activists, and journalists who are non-US nationals may have an easier time accessing support from the USG as compared to non-US nationals in other professions.

### How long have they been detained?

The initial hours and days after an individual's detention are vital when it comes to advocacy and engaging with the USG. However, while it may help to engage early on, seeking USG support and assistance later on in a case may still prove important in moving the needle on a case. As part of an advocacy strategy, it is important to mark how many days an individual has been detained and to use certain days (such as

100 days in detention, one year in detention, etc.) to campaign around the case and speak out publicly.

### Does the individual have any family members in the US? Are they a US national? Do they have any other connections to the US? Would a member of Congress be willing to champion the case?

For USG engagement, it can be extremely useful if the detained individual has family members in the US, especially if one of those family members is a US national themselves. This can be particularly useful for engaging with members of Congress, specifically, the family member's representatives. Members of Congress may be more likely to champion a case of arbitrary detention if the detained person's family member is one of their constituents. While having such connections to the US is helpful, it is by no means necessary to effectively engage with the USG on an arbitrary detention case.

### **ACTION PLAN**

After reflecting on the questions above, advocates for a wrongfully or arbitrarily detained individual can begin to take concrete actions to work for the individual's release. The section below aims to provide a general framework to help focus efforts towards the ultimate goal of liberty for the detained individual. The actions listed below are not exhaustive, and many can be taken concurrently. The final action plan will depend on the specific circumstances of each case. Annex II contains a summarized sample action plan that can be used or modified to organize the advocacy strategy.

Actor Mapping: Identifying those relevant actors who have the ability to contribute towards the release of a wrongfully or arbitrarily detained individual is an essential step to take early on. Given the wide array of actors that could be working towards release, it is important to have a clear idea of who could help and what pathways remain to be explored. Section II of the Guide discusses the different offices of the US government, which will be key partners in securing the release of an individual. For non-US nationals, the most important offices include US embassies, US missions, and the

<sup>91</sup> See the Mahmoud Hussein case study.

Bureau of Democracy, Human Rights, and Labor (DRL). In addition to government actors, it can be helpful to contact potential NGOs who may be helpful in helping build an advocacy strategy to secure the individual's release. Contact information for US government offices can be found on government websites, and particular NGOs may have close partnerships with relevant government officials and may be able to put you directly in contact with them. Family members of previously detained individuals may be valuable people to contact, as they have their unique perspective and may have insights into the process.

Constituency Building: Creating a close network of interested individuals is key to help increase the effectiveness of advocacy strategies and help ensure that pushing for an individual's release will be sustainable. To that end, it can be helpful to identify existing coalitions of groups who are already working on cases of wrongful or arbitrary detention or on the human rights situation in the relevant country or region. Structuring a response team to divide responsibilities and pursue several pathways can be an effective strategy to pursue the liberation of a detained individual. It is often useful to involve family members, who are often the most effective advocates for their loved one. Choosing one family member or another individual to be the spokesperson can help to build a strong advocacy strategy, and establishing a contact person can help ensure that the various actors have a clear person to contact if there are any new developments in the case. For non-US nationals, it can increase the effectiveness of engagement with the USG if that family member is a US national. At this point, outreach to relevant actors and organizations can be initiated, and it is important to plan for regular follow-up meetings and messages.

Advocacy Strategy Development: The exact form of an advocacy strategy will depend significantly on the circumstances of the individual's detainment. In particular, the security and political conditions of the country where the individual is detained and the United States' relationship with that country will impact what kind of engagement with the media should be pursued. In some cases, it may be better for work to secure the detainee's release to occur without media coverage. In others, media engagement is a crucial step in bringing pressure on the executive branch officials and in particular Congress to act on the case. In those cases, it may be useful to start a social media campaign by creating accounts on different social media networks and setting up a specific hashtag as it relates to the particular case. If the individual remains unfortunately detained for a longer period of time, it can be useful to plan advocacy around key dates, such as after 100 days in detention.

Communication Plan: Advocating for the release requires a carefully crafted communication strategy that will help make the campaign clear and effective. As mentioned above, it can be useful to designate one family member or other individual as the spokesperson for the campaign. In addition, it is often helpful to create a fact sheet (typically 1-2 pages long) that summarizes the case and gathers key dates, facts, and events into one place for easy reference. Family members and advocates can use this in the course of meetings with government officials, the media, or other partners. The fact sheet can be especially useful in streamlining and harmonizing the narrative so that it is both consistent and effective during the advocacy campaign.

**Further Resources**: For more information and useful advice regarding navigating the process of arbitrary detention, it may be useful to consult Pathway to Freedom: Handbook for the LIberation of Political Prisoners, published by the World Liberty Congress.<sup>92</sup>

<sup>92</sup> Pathway to Freedom: Handbook for the Liberation of Political Prisoners, World Liberty Congress, https://worldlibertycongress.org/world-liberty-congress/handbook/, Nov. 2023.

### CASE STUDIES: NON-US NATIONALS

Félix Maradiaga

**STATUS: RELEASED** 



### **BACKGROUND**

Félix Maradiaga is a Nicaraguan human rights defender, academic, former presidential candidate, and former political prisoner. Following demonstrations in Nicaragua in April 2018, the Ortega regime accused Mr. Maradiaga of "financing terrorism."93 After physical attacks and multiple death threats, Mr. Maradiaga fled to the US in July 2018 and lived in exile for one year before returning to Nicaragua. 94 Upon his return, he faced constant surveillance and was prohibited from leaving Managua from September 2020 to February 2021, with special forces blocking all exits from his home. On February 28, 2021, he announced his candidacy for the Presidency of Nicaragua and less than four months later on June 8, 2021, he was arbitrarily arrested and detained. He was held incommunicado without charge for nearly three months until he was charged on August 25, 2021 for "conspiracy to undermine national integrity."95 In a closed-door trial that took seven days and involved multiple due process violations he was found guilty, and was later sentenced to 13 years in prison for "conspiracy to undermine national integrity."96

Mr. Maradiaga was sent to a maximum security prison and experienced inhumane treatment and poor living conditions.<sup>97</sup> He was beaten, held in solitary confinement, subjected to intense daily interrogations, and was refused drinking water.<sup>98</sup> The trials took place within the prison for fear of him giving statements to journalists.<sup>99</sup> He was held in detention for 611 days until the Ortega regime exiled him to the US.<sup>100</sup> On February 9, 2023, after

negotiations between the Biden Administration and the Nicaraguan government, Mr. Maradiaga and 221 other political prisoners were expelled to the US and the regime stole their assets and revoked their Nicaraguan nationality. Their release came after negotiations between the US and Nicaraguan officials.

To this day, Mr. Maradiaga and his family face harassment and threats from the Nicaraguan government.<sup>101</sup> The Ortega regime regularly shares misinformation through social media about him and the harassment against his family members is so severe that his siblings have been forced to flee the country and seek asylum abroad.<sup>102</sup>

### US GOVERNMENT ENGAGEMENT

Mr. Maradiaga's legal team included Perseus Strategies as well as his wife, Berta Valle, who played an essential role in his release. Shortly after Mr. Maradiaga's arrest and detention, his legal team filed an urgent appeal to the United Nations Special Rapporteur on Torture on his behalf following his severe beatings after he was taken into custody. They also received a positive decision from the United Nations Working Group on Arbitrary Detention ("Working Group"). Further supporting these efforts, the human rights organization Center for Justice and International Law (CEJIL), requested and successfully obtained provisional measures on behalf of Mr. Maradiaga with the Inter-American Court of Human Rights.

<sup>93</sup> Félix Maradiaga, Wilson Center, https://www.wilsoncenter.org/person/felix-maradiaga (last accessed Oct. 28, 2024).

<sup>94</sup> Id.

<sup>95</sup> Jared Genser, International Legal Team for Nicaraguan Political Prisoners Juan Sebastián Chamorro and Félix Maradiaga Files Petition with UN Working Group on Arbitary Detention, Perseus Strategies, Oct. 28, 2021, https://www.perseus-strategies.com/wp-content/uploads/2021/10/Nicaragua\_WGAD\_press-release\_10.28.21-eng.esp\_.pdf.

<sup>96</sup> Melissa Mahtani, 'An audit of the heart': Nicaraguan dissident Felix Maradiaga and his wife Berta Valle on balancing the fight for justice with family life, CNN, May 31, 2023, https://www.cnn.com/2023/05/31/americas/felix-maradiaga-wife-prison-release-intl-latam/index.html (last accessed Oct. 28, 2024).

<sup>97</sup> Félix Maradiaga, Freedom House, https://freedomhouse.org/expert/felix-maradiaga (last accessed Oct. 28, 2024).

<sup>98</sup> Félix Maradiaga, Exile and Resistance: An Interview with Félix Maradiaga, Freedom House, Feb. 6, 2024, https://freedomhouse.org/article/exile-and-resistance-interview-felix-maradiaga (last accessed Oct. 28, 2024); Nicaraguan Presidential Candidates Félix Maradiaga and Juan Sebastián Chamorro Confirmed Alive, Perseus Strategies, Sept. 1, 2021, https://www.perseus-strategies.com/wp-content/uploads/2021/09/nicaragua\_press-release\_09.01.21\_ENG.ESP\_.pdf.

<sup>99</sup> Félix Maradiaga, Exile and Resistance: An Interview with Félix Maradiaga, Freedom House, Feb. 6, 2024, https://freedomhouse.org/article/exile-and-resistance-interview-felix-maradiaga (last accessed Oct. 28, 2024).

<sup>100</sup> Félix Maradiaga, Wilson Center, https://www.wilsoncenter.org/person/felix-maradiaga (last accessed Oct. 28, 2024).

<sup>101</sup> Information shared from Félix Maradiaga.

<sup>102</sup> Information shared from Félix Maradiaga.

<sup>103</sup> Urgent Appeal Filed to UN Special Rapporteur on Torture on Behalf of Félix Maradiaga, Nicaraguan Opposition Leader and Presidential Candidate, Perseus Strategies, June 11, 2021, https://www.perseus-strategies.com/wp-content/uploads/2021/06/FINAL-ENGLISH-PRESS-RELEASE-06.11.21.pdf.

<sup>104</sup> U.N. Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fifth session, 14-18 2022, 95th Sess., March 27, 2023, U.N. Doc. A/HRC/WGAD/2022/73 https://digitallibrary.un.org/record/4034971/files/A\_HRC\_WGAD\_2022\_73-EN.pdf?ln=es.

<sup>105</sup> Inter-American Court of Human Rights, *Precautionary Measure No. 671-18, Matter of Félix Alejandro Maradiago Blandón regarding Nicaragua*, Resolution 50/18, 9 July 2018, https://www.oas.org/es/cidh/decisiones/pdf/2018/50-18mc671-18-ni.pdf.

As part of their USG engagement, Ms. Valle joined his legal team in Washington D.C. on multiple trips to advocate for his release. They had meetings with high-level Biden Administration officials, including the National Security Council Director for the Western Hemisphere, the USAID Administrator, and the Under Secretary of State for Civilian Security, Democracy, and Human Rights. 106 They also engaged with civil society and Members of Congress and participated in a series of events highlighting Mr. Maradiaga's case including participating in a protest outside of the Nicaraguan embassy and testifying before the Tom Lantos Human Rights Commission, among others.<sup>107</sup> As a result of these engagements with the USG, the Ortega regime released a statement finding Ms. Valle summarily guilty in absentia without charge or trial, of being "traitors to the homeland." 108

The team's second trip to Washington coincided with Nicaraguan elections on November 7, 2021,

when Ortega declared himself reelected.<sup>109</sup> They used this key date and news to leverage the media to highlight Mr. Maradiaga's case. They were able to publish an op-ed in the Washington Post and they were featured in an episode of CBS's 60 Minutes. 110 Later in July 2022, the team released artist renditions of what Mr. Maradiaga and other political prisoners looked like following ill treatment and starvation.<sup>111</sup> These released images resulted in significant media attention and publicity. In an attempt to discredit these images and reports of ill-treatment, Ortega released images of more than twenty political prisoners, including Mr. Maradiaga. 112 However, Ortega failed in his efforts, with such images only further highlighting the regime's concerning behavior and treatment of political prisoners, as well as exposing their concern over their public image. The media engagement and publicity only served to support the team's advocacy, including their engagement with the USG.



SHORTLY AFTER MR. MARADIAGA'S ARREST AND DETENTION, HIS LEGAL TEAM FILED AN URGENT APPEAL TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON TORTURE ON HIS BEHALF FOLLOWING HIS SEVERE BEATINGS AFTER HE WAS TAKEN INTO CUSTODY. 103

<sup>106</sup> Jared Genser, Update from Week of Advocacy in Washington D.C., Nov. 12, 2021,

https://mailchi.mp/1005d599e524/update-on-juan-sebastin-chamorroflix-maradiaga-summary-of-nicaragua-freedom-week?e=9ac3afa22a (last accessed Oct. 28, 2024). 107 Jared Genser, Update from Week of Advocacy in Washington D.C., Nov. 12, 2021,

https://mailchi.mp/1005d599e524/update-on-juan-sebastin-chamorroflix-maradiaga-summary-of-nicaragua-freedom-week?e=9ac3afa22a (last accessed Oct. 28, 2024).

<sup>108</sup> Jared Genser, Press Conference Remarks, Perseus Strategies, July 28, 2021, https://www.perseus-strategies.com/wp-content/uploads/2021/07/press-conference-remarks\_JG\_VC\_BV.pdf.

<sup>109</sup> Jared Genser, Update from Week of Advocacy in Washington D.C., Nov. 12, 2021,

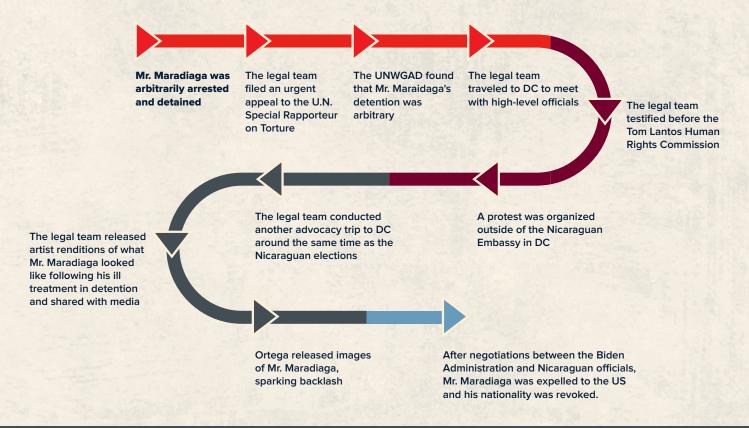
https://mailchi.mp/1005d599e524/update-on-juan-sebastin-chamorroflix-maradiaga-summary-of-nicaragua-freedom-week?e=9ac3afa22a (last accessed Oct. 28, 2024).

<sup>110</sup> Berta Valle, Victoria Cárdenas, Ortega, emboldened after stealing the election, is ready to tighten his grip in Nicaragua, Washington Post, Nov. 9, 2021, https://www.washingtonpost.com/opinions/2021/11/09/nicaragua-ortega-dictatorship-election-stolen/ (last accessed Oct. 28, 2024).

<sup>111</sup> Relatives of Nicaragua's Political Prisoners Condemn Grave Health Situation in El Chipote, Incommunicado Detention of Their Loved Ones, Perseus Strategies, July 7, 2022, https://www.perseus-strategies.com/wp-content/uploads/2022/07/press-release-07.07.22.pdf.

<sup>112</sup> Breaking Images of Political Prisoners Juan Sebastián Chamorro and Félix Maradiaga Amid Staged Judicial Hearings in Nicaragua, Perseus Strategies, Sept. 2, 2022, https://www.perseus-strategies.com/wp-content/uploads/2022/09/BREAKING-IMAGES-PRESS-RELEASE.pdf.

### MR. MARADIAGA'S CASE TIMELINE



### **LESSONS LEARNED**

- Depending on the circumstances of the case, media engagement and publicity can be extremely important in pushing a case along and adding pressure to USG officials to take action.
- As with many cases of arbitrary detention, engagement with multiple stakeholders can be an effective way to make progress. In Mr. Maradiaga's case, his team engaged with the USG, the EU and other European countries, the Inter-American human rights system, the UN, and civil society organizations. Together, each of these efforts built on top of the other to create the necessary pressure to get the USG to act and ultimately to successfully liberate Mr. Maradiaga and the other 221 political prisoners.
- It is important to engage with USG officials through in-person meetings in Washington

- DC. Meeting in-person can force officials to pay attention to your case and can add pressure for them to take action. However, travel to Washington DC (especially for multiple trips) can be costly and a significant burden for many families. In these cases, it might be possible to send a single representative, or to find pro bono support that may be able to attend in-person meetings.
- Family engagement on arbitrary detention cases may be essential, as they tend to be the driving force behind advocacy efforts. In this case, Mr.
   Maradiaga's wife Berta Valle played a vital role as a spokesperson for the campaign and helped apply significant pressure. If possible, try to find a family member to be a spokesperson or representative.

**Case Studies: Non-US Nationals** 

### **Mahmoud Hussein**

**STATUS: RELEASED** 



### **BACKGROUND**

Mahmoud Mohamed Ahmed Hussein, also known as "the t-shirt detainee," has been in and out of arbitrary detention in Egypt since 2014. Mr. Hussein was first arbitrarily arrested in 2014 at the age of eighteen as he returned home from a peaceful demonstration commemorating the third anniversary of the January 25 Revolution.<sup>113</sup> He was stopped by police for wearing a January 25 protest scarf and a t-shirt with the words "a nation without torture."114 He was beaten and subjected to electric shocks to intimate parts of his body.<sup>115</sup> He was forced to falsely confess to possessing explosives, protesting without authorization and receiving payment, and belonging to a terrorist group. 116 He sustained dire injuries, underwent two hip replacements surgeries, and now depends on a crutch to walk. He was released on bail after over two years in arbitrary pre-trial detention, in violation of the two-year maximum set forth by Egyptian law.<sup>117</sup> He faced twenty-two near-automatic detention renewals by the Cairo Criminal Court. His lawyers were repeatedly denied access to documentation regarding his case.

On November 13, 2015, Robert F. Kennedy Human Rights submitted an urgent action petition to the United Nations Working Group on Arbitrary Detention ("Working Group"), arguing that Mr. Hussein's arbitrary arrest, torture, and prolonged

pre-trial detention violated numerous human rights obligations of the Egyptian government. In February 2016, NPR interviewed Egypt's Foreign Minister Sameh Shoukry and challenged him about the unjust basis for and length of Mr. Hussein's detention. On February 17, 2016, Mr. Hussein's case was referred to the Supreme State Security Prosecution. The presiding judge ordered his release upon payment of bail, and he was released on March 25, 2016.

On February 26, 2018, the Emergency State Security Court (ESSC) tried Mr. Hussein in his absence and sentenced him to life imprisonment.<sup>121</sup> He was not summoned to the trial nor permitted to present a defense. He was only made aware of this judgment when he underwent a background check while applying for a job.

Mr. Hussein's case gained significant media attention around the world and was covered by prominent Egyptian and global media outlets including Al Jazeera, 122 the Washington Post, 123 the BBC, 124 the Guardian, 125 the Huffington Post, 126 Daily News Egypt, 127 and Mada Masr. 128

On August 30, 2023, Mr. Hussein was stopped at a checkpoint as he returned to Cairo. He was arrested allegedly in execution of the judgment from the 2018 in absentia trial. Hussein was forcibly disappeared for five days, blindfolded, interrogated

<sup>113</sup> RFK Human Rights Welcomes Release of Mahmoud Hussein, Robert F. Kennedy Human Rights, March 28, 2016, https://rfkhumanrights.org/our-voices/rfk-human-rights-welcomes-release-of-mahmoud-hussein/ (last accessed Oct. 28, 2024).

<sup>114</sup> *Id*.

<sup>115</sup> *Id*.

<sup>116</sup> *ld*.

<sup>117</sup> Id.

<sup>118</sup> RFK Human Rights Submits Case to UN Working Group, Robert F. Kennedy Human Rights, Nov. 13, 2015, https://flkhumanrights.org/press/rfk-human-rights-submits-case-to-un-working-group/ (last addressed Oct. 28, 2024).

<sup>119</sup> David Greene interview with Sameh Shoukry, Egypt's Foreign Minister: Egypt Has A 'Very High Degree of Security', NPR, Feb. 10, 2016, https://www.npr.org/transcripts/466028636?storyld=466028636?storyld=466028636.

<sup>120</sup> RFK Human Rights Welcomes Release of Mahmoud Hussein, Robert F. Kennedy Human Rights, March 28, 2016, https://rfkhumanrights.org/our-voices/rfk-human-rights-welcomes-release-of-mahmoud-hussein/ (last accessed Oct. 28, 2024).

<sup>121</sup> Egypt: RFK Human Rights Calls for the Immediate Release of Mahmoud Hussein, Robert F. Kennedy Human Rights, Sept. 26, 2023, https://rfkhumanrights.org/our-voices/egypt-rfk-human-rights-calls-for-the-immediate-release-of-mahmoud-hussein/ (last accessed Oct. 28, 2024).

<sup>122</sup> Anealla Safdar, Egypt's 'T-shirt detainee' freed from jail, Al Jazeera, 25 March 2016, https://www.aljazeera.com/news/2016/3/25/egypts-t-shirt-detainee-freed-from-jail (last accessed Oct. 28, 2024).

<sup>123</sup> Claire Parker, Missy Ryan, Egypt intensifies crackdown ahead of key U.S. decision on military aid, Washington Post, Sept. 8, 2023, https://www.washingtonpost.com/world/2023/09/08/egypt-us-aid-human-rights/ (last accessed Oct. 28, 2024).

<sup>124</sup> Orla Guerin, The shadow over Egypt, The BBC, Feb. 23, 2018, https://www.bbc.co.uk/news/resources/idt-sh/shadow\_over\_egypt (last accessed Oct. 28, 2024).

<sup>125</sup> Adam Sobel, Ahmed Tahoun, Ahmed Mehdat, Jaser Alagha, Mustafa Khalili, *Egypt's youngest political prisoner, five years since the revolution-video*, The Guardian, Jan. 25, 2016, https://www.theguardian.com/world/video/2016/jan/25/egypts-youngest-political-prisoner-five-years-since-the-revolution-video (last accessed Oct. 28, 2024).

<sup>126</sup> Sophia Jones, Egypt's Young "Anti-Torture T-Shirt" Detainee Finally Free After Nearly 800 Days Behind Bars, Huffpost, March 25, 2016, https://www.huffpost.com/entry/egypt-detainee-released\_n\_56f54a3ce4b014d3fe22dec5 (last accessed Oct. 28, 2024).

<sup>127</sup> Amira El-Fekki, *T-shirt detainee Mahmoud's release order between heaven and hell*, Daily News Egypt, March 23, 2016, https://www.dailynewsegypt.com/2016/03/23/t-shirt-detainee-mahmoud-husseins-release-order-heaven-hell/ (last accessed Oct. 28, 2024).

<sup>128</sup> Thousands demand release of teenager arrested two years ago for wearing anti-torture t-shirt, Mada Masr, Nov. 12, 2015, https://www.madamasr.com/en/2015/11/12/news/u/thousands-demand-release-of-teenager-arrested-2-years-ago-for-wearing-anti-torture-shirt/ (last accessed Oct. 28, 2024).

<sup>129</sup> Egypt: RFK Human Rights Calls for the Immediate Release of Mahmoud Hussein, Robert F. Kennedy Human Rights, Sept. 26, 2023, https://rfkhumanrights.org/our-voices/egypt-rfk-human-rights-calls-for-the-immediate-release-of-mahmoud-hussein/ (last accessed Oct. 28, 2024).



## MR. HUSSEIN'S CASE GAINED SIGNIFICANT MEDIA ATTENTION AROUND THE WORLD AND WAS COVERED BY PROMINENT EGYPTIAN AND GLOBAL MEDIA OUTLETS INCLUDING AL JAZEERA, 122 THE WASHINGTON POST, 123 THE BBC, 124 THE GUARDIAN, 125 THE HUFFINGTON POST, 126 DAILY NEWS EGYPT, 127 AND MADA MASR. 128

without the presence of his lawyer, and held in three separate locations. Security forces also raided his home and took his computer, printer, and personal belongings. He was detained at Badr prison complex where his health rapidly declined. On November 13, 2023, he underwent surgery and he was denied access to his prescribed medicine.

On April 23, 2024, the judge in Mr. Hussein's case ordered his release upon payment of bail.<sup>131</sup> However, despite paying the bail and complying with all administrative requirements, the Egyptian authorities forcibly disappeared Mr. Hussein for a little over a month before they released him on May 26, 2024.<sup>132</sup> At his most recent court date on June 26, 2024, he was sentenced to three years in prison and detained again for the remainder of the time he had not yet served.<sup>135</sup> On August 28, 2024, Mr. Hussein was finally released.

### **USGOVERNMENT ENGAGEMENT**

Robert F. Kennedy Human Rights, working together with Amnesty International and Mr. Hussein's family, engaged with the USG on his case. The team conducted outreach to various USG officials. resulting in multiple public statements and actions from those officials and the State Department. After connecting with Senator Leahy's office, one of his Appropriations Committee staffers raised Mahmoud's case directly with Egyptian officials who were meeting with him to discuss US aid to Egypt. The team also met with Sarah Sewall, then Under Secretary for Civilian Security, Democracy, and Human Rights, ahead of her trip to Egypt, where she raised Mahmoud's case with Egyptian officials. Then US Ambassador to the United Nations Samantha Power posted on social media

<sup>130</sup> Egypt must immediately and unconditionally release anti-torture protester Mahmoud Hussein, Robert F. Kennedy Human Rights, March 28, 2024, https://rfkhumanrights.org/our-voices/egypt-must-immediately-and-unconditionally-release-anti-torture-protester-mahmoud-hussein/ (last accessed Oct. 28, 2024).

<sup>131</sup> Egypt: RFK Human Rights Welcomes the Release of Mahmoud Hussein and Calls on the Government to Drop the Case Against Him, Robert F. Kennedy Human Rights, April 23, 2024, https://rfkhumanrights.org/our-voices/egypt-rfk-human-rights-welcomes-the-release-of-mahmoud-hussein-and-calls-on-the-government-to-drop-the-case-against-him/ (last accessed Oct. 28, 2024).

<sup>132</sup> RFK Human Rights Condemns the Enforced Disappearance of Mahmoud Hussein and Reiterates Call for his Immediate Release, Robert F. Kennedy Human Rights, May 22, 2024, https://rfkhumanrights.org/our-voices/rfk-human-rights-condemns-the-enforced-disappearance-of-mahmoud-hussein-and-reiterates-call-for-his-immediate-release/ (last accessed Oct. 28, 2024).

RFK Human Rights Condemns the Re-sentencing of Mahmoud Hussein "the T-Shirt Detainee" and Calls for His Immediate Release, Robert F. Kennedy Human Rights, June 26, 2024 https://rfkhumanrights.org/our-voices/rfk-human-rights-condemns-the-re-sentencing-of-mahmoud-hussein-the-t-shirt-detainee/ (last accessed Oct. 28, 2024).

about Mr. Hussein's case<sup>134</sup> and Mr. Hussein's case was included in the 2015 and 2016 Country Reports on Human Rights Practices in Egypt.<sup>135</sup>

After his re-arrest in August 2023, Mr. Hussein's team, including his brother who lives in the US, contacted members of Congress and scheduled meetings with those willing to engage. In order to identify relevant members of Congress, staff at Robert F. Kennedy Human Rights conducted significant mapping research on members based on their positions, Committee membership, whether they had engaged on Egypt issues in the past, and whether they had engaged on human rights issues and arbitrary detention cases in the past. They also reached out to Mr. Hussein's brother's representatives. Even though not all offices agreed to meet, many others were still interested in maintaining communication and taking other actions for Mr. Hussein's case. Eventually, after multiple meetings and correspondence related to the case, Senator

Van Hollen, one of his brother's representatives, decided to become a champion for the case. He actively engaged with the US embassy in Egypt and led influential private advocacy, including with the Ambassador of Egypt to the US, Mr. Mortaz Zarhan. Senator Van Hollen also raised Mr. Hussein's case during the Senate Foreign Relations Committee meeting when questioning US Assistant Secretary Barbara Leaf. Page 137

The team also met with staffers at the State Department in DRL, specifically those who worked for the Near Eastern Affairs section. While no known specific actions came from the meeting, they agreed to support Mr. Hussein's case as appropriate and asked for regular updates on his case.

Following Mr. Hussein's re-detention in June 2024, his team continued to engage with and share updates with their USG contacts and to push for USG pressure on Egypt to release him before his ultimate release in August 2024.



AFTER HIS RE-ARREST IN AUGUST 2023, MR. HUSSEIN'S TEAM, INCLUDING HIS BROTHER WHO LIVES IN THE US, CONTACTED MEMBERS OF CONGRESS AND SCHEDULED MEETINGS WITH THOSE WILLING TO ENGAGE.

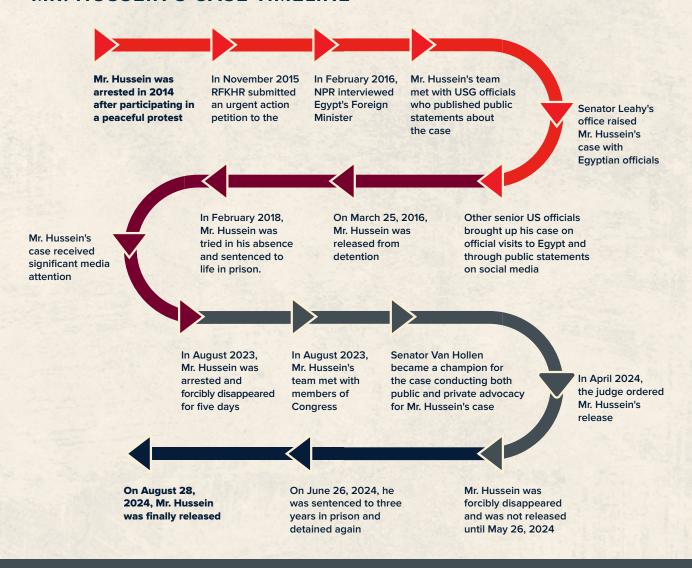
<sup>134</sup> Samantha Power, X, https://x.com/AmbPower44/status/693103385906647040 (last accessed Oct. 28, 2024).

<sup>135 2015</sup> Country Reports on Human Rights Practices: Egypt, U.S. State Department, Bureau of Democracy, Labor, and Human Rights, https://2009-2017.state.gov/j/drl/rls/hrrpt/2015/nea/252921.htm (last accessed Oct. 28, 2024); 2016 Country Reports on Human Rights Practices: Egypt, U.S. State Department, Bureau of Democracy, Labor, and Human Rights, https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/egypt/ (last accessed Oct. 28, 2024).

<sup>136</sup> Chris Van Hollen, X, May 29, 2024, https://x.com/ChrisVanHollen/status/1795881248566518128 (last accessed Oct. 28, 2024).

<sup>137</sup> Seth Binder, X, June 26, 2024, https://x.com/seth\_binder/status/1806133896171442483?s=42 (last accessed Oct. 28, 2024).

### MR. HUSSEIN'S CASE TIMELINE



### **LESSONS LEARNED**

- of Congress, invest in research and map out which members will be most relevant to your case based on their position, committee membership, their past experiences and work with your specific country, and their previous experience working on human rights issues and arbitrary detention.
- It can be extremely helpful to find one or two members of Congress to champion your case. In Mr. Hussein's case, Senator Van Hollen's engagement and public statements
- were likely useful in pushing the Egyptian government to release him. One way to do this can be to develop strong relationships with Congressional staff because they can help to prioritize your case for that particular Member.
- If the detainee has a family member who is a US national, it is important to engage with the detainee's family's representatives because they tend to be the strongest champions for arbitrary detention cases of their constituents.

### CONCLUSION

The central message of this Guide is that a framework exists under U.S. law and within the Government to respond to arbitrary and wrongful detention. In summary, the Guide outlines this multifaceted framework, highlighting its components, how they function in practice, and how family members and advocates can engage them. It is important to note that this Guide is not a standalone document but rather a complement to existing guiding tools from governmental entities and other stakeholders.

The legal framework described in the Guide governs U.S. government intervention in cases involving U.S. nationals, including citizens and lawful permanent residents. However, it also allows for government engagement in wrongful detention where the U.S. has a national interest. This broad and undefined category creates some confusion but also underscores another key theme of the Guide: the U.S. Government can, in certain circumstances, assist non-U.S. nationals. The Mahmoud Hussein and the Félix Maradiaga case studies exemplify this and should encourage activists of non-U.S. nationals to proceed to seek U.S. government support as outlined in this Guide.

Structurally, the White House and the State Department play the most active roles in the wrongful detention response framework. However, advocates and families should strategically leverage the significant influence of the U.S. Congress and its members to bring visibility to cases and push for action, particularly for non-U.S. nationals. Identifying congressional champions who can amplify advocacy efforts and engaging directly with the detaining state—either independently or through diplomatic missions in Washington, D.C.—are important strategies.

A successful advocacy strategy must go beyond government engagement and include collaboration with media, civil society organizations, former

detainees, law firms, and other key actors. This Guide offers practical recommendations for developing and executing advocacy strategies, such as actor mapping, establishing contact with the detained individual, drafting fact sheets and other materials, and conducting briefing meetings with congressional allies. While each case requires a tailored approach, these general strategies can be adapted to most situations.

Through research and stakeholder interviews, the authors of this Guide identified several challenges within the U.S. system. Top among them is the lack of clarity regarding the specific roles of different government agencies, inter-agency coordination, and what families and advocates can do to secure government attention. Additionally, the absence of objective standards for designating individuals as wrongfully detained and the lack of a clear framework for U.S. action on arbitrary detention—particularly in cases involving human rights defenders—remain significant concerns.

Arbitrary and wrongful detention is a complex challenge without a singular solution. Addressing it requires ongoing collaboration among all stakeholders and a commitment from the U.S. government to balance recovery efforts with prevention strategies that tackle root causes. Beyond domestic efforts, international relations and geopolitical factors significantly impact the effectiveness of U.S. intervention in these cases. Nevertheless, all stakeholders must remain committed to addressing this issue with the goal of preventing future occurrences.

To enhance advocacy efforts, stakeholders have recommended key reforms. Many civil society actors urge the U.S. Congress to amend the Levinson Act to provide clearer guidelines on the Secretary of State's discretion in making wrongful detention designations. Similarly, they recommend the passage of legislation such as the proposed Human Rights Defenders Protection

Act to safeguard human rights defenders abroad. Structural improvements, such as merging the HRG and HRFC and expanding SPEHA's authority towards a more coordinating function, could further enhance the responsiveness of an amended Levinson Act to the challenges faced by detainees and their advocates.

This Guide is a contribution to the collective effort to combat arbitrary and wrongful detention around the globe. It reflects RFK Human Rights commitment to working alongside advocates, families, and other stakeholders in pursuit of a world where human rights, democracy, and the rule of law are upheld and protected.



ARBITRARY AND WRONGFUL DETENTION IS A COMPLEX CHALLENGE WITHOUT A SINGULAR SOLUTION. ADDRESSING IT REQUIRES ONGOING COLLABORATION AMONG ALL STAKEHOLDERS AND A COMMITMENT FROM THE U.S. GOVERNMENT TO BALANCE RECOVERY EFFORTS WITH PREVENTION STRATEGIES THAT TACKLE ROOT CAUSES.

### **ACKNOWLEDGMENTS**

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### **ANNEX I**

### RELEVANT ORGANIZATIONS

See below a list of relevant organizations working on arbitrary detention and wrongful detention issues:

### **Amnesty International**

Amnesty International is a non-governmental organization working around the world to uphold human rights. Amnesty International supports individual cases of arbitrary detention and engages in advocacy with the USG, the UN, and foreign governments.

### **Bringing our Families Home**

Bringing Our Families Home is a campaign composed entirely of the families of US nationals held hostage or wrongfully detained overseas. They push the USG to take action to secure the release of those held hostage or wrongfully detained. They also engage in other advocacy efforts including engaging the media and Congress.

### The Center for Strategic and International Studies (CSIS) Commission on Hostage Taking and Wrongful Detention

The CSIS Commission on Hostage Taking and Wrongful Detention is a bipartisan commission that seeks to propose new USG policies to deter hostage-taking and wrongful detention, study the efficacy of different strategies toward diverse actors, and develop further tools and authorities to empower US officials and the families of hostages and wrongful detainees.

### **CIVICUS**

CIVICUS is a global alliance of civil society organizations and activists working to strengthen civil society around the world. They provide support and connections for civil society, advocate for open spaces, and work against the use of arbitrary detention by governments.

### **Committee to Protect Journalists (CPJ)**

CPJ works to promote press freedom worldwide and defend the rights of journalists to do their work safely and without fear of reprisal. They do this through research, advocacy, and by providing life-saving support to journalists working around the world through rapid response assistance.

### **Freedom House**

Freedom House's initiative *Free Them All: The Fred Hiatt Program to Free Political Prisoners* aims to document and study the cases of thousands of activists who have been arbitrarily detained and to advocate for their immediate release. They conduct research and publish reports on arbitrary detention as well as other issues impacting democracy and human rights around the world.

### **Freedom Now**

Freedom Now provides *pro bono* legal representation to individuals arbitrarily detained around the world. They also engage in advocacy on issues such as prison conditions, transnational repression, rehabilitation of former prisoners of conscience, and support for civil society.

### Global Reach (formerly Richardson Center for Global Engagement)

Global Reach assists US nationals who have been taken hostage or wrongfully detained abroad. They represent and work *pro bono* on behalf of the families of victims. They leverage their network of relationships to negotiate unencumbered by the bureaucracy that the USG faces.

### **Hostage Aid Worldwide**

Hostage Aid Worldwide is an organization that works to provide humanitarian relief and support to current and former hostages and wrongful detainees. They also conduct research and gather data on both hostages and wrongful detainees to figure out ways to disrupt incentives for hostage-taking and wrongful detention.

### Hostage US

Hostage US supports families of US nationals taken hostage or wrongfully detained abroad and provides support to hostages and detainees when they return home, helping them to rebuild their lives. They provide essential resources including resources on mental health, engaging with the media, fundraising, how to plan for meetings with government officials, financial considerations, cybersecurity best practices, and more.

### **Human Rights Foundation**

Human Rights Foundation promotes freedom in countries ruled by authoritarian regimes by supporting activists, raising awareness around human rights issues, and advocating for policy change.

### **Human Rights Watch**

Human Rights Watch investigates and reports on human rights abuses around the world. They advocate before governments, the UN, businesses, and elsewhere to push for change and to hold perpetrators accountable. They focus on and support arbitrary detention cases around the world.

### **The Initiative Against Arbitrary Detention**

Canada launched the Initiative Against Arbitrary Detention in State-to-State Relations on February 15, 2021. The Initiative seeks to put an end to the arbitrary arrest, detention, and sentencing of foreign nationals and dual citizens for diplomatic leverage by reaffirming established principles of human rights, international law, and the independence of the judiciary. Today, the Initiative is recognized as a leading effort in international engagement against hostage diplomacy worldwide.

### International Institute on Race, Equality and Human Rights

The International Institute on Race, Equality and Human Rights (Race and Equality) is an international non-governmental organization that works with partner organizations and activists in Latin America to promote and protect the human rights of populations in marginalized conditions, whether due to their national or ethnic origin, their sexual orientation or gender identity.

### The International League Against Arbitrary Detention

The International League Against Arbitrary Detention scrutinizes arbitrary detention cases globally, provides free legal support before the United Nations Working Group on Arbitrary Detention, and advocates at the international level to free victims of arbitrary detention.

### James W. Foley Legacy Foundation

The James W. Foley Legacy Foundation advocates for the freedom of US nationals held hostage or wrongfully detained abroad and promotes journalist safety. They conduct research on hostage-taking and wrongful detention, publishing an annual report on these issues. They use this research to make legislative and policy recommendations to bring US nationals home, support victims, and deter hostage-taking and wrongful detention.

### **The Lantos Foundation**

The Lantos Foundation for Human Rights & Justice was established to carry on Congressman Tom Lantos' proud legacy as a leading advocate for American engagement in human rights globally. It seeks to advance human rights and justice by advocating for the United States and other democratic nations to prioritize these fundamental rights for all global citizens, through campaigns and awareness on the frontlines of human rights struggles.

### The McCain Institute

The McCain Institute is a nonpartisan organization inspired by Senator John McCain and his family's dedication to public service. It defends democracy, advances human rights, and empowers character-driven leaders. The Institute has a designated program that advocates for the freedom of political prisoners.

### The Middle East Democracy Center

The Middle East Democracy Center was founded in 2024 and is a merger of the Freedom Initiative and the Project on Middle East Democracy. They work on pursuing justice, freedom and accountability for those unjustly detained and persecuted in the MENA region. They advocate on behalf of victims rights, document cases, and provide support to victims and their families.

### **Perseus Strategies**

Perseus Strategies is a law firm that represents individuals who have been arbitrarily detained around the world. They have secured the release of many high-profile political prisoners. They also advocate before many international human rights bodies, including the United Nations Working Group on Arbitrary Detention. They offer pro bono legal support depending on the circumstances of a case.

### **Robert F. Kennedy Human Rights**

As part of their broader work, Robert F. Kennedy Human Rights litigates and advocates on behalf of arbitrarily detained individuals and their families around the world. They litigate before international human rights bodies including the United Nations Working Group on Arbitrary Detention. They also advocate before governments, the United Nations, and other international and regional bodies to end the use of arbitrary detention.

### **World Liberty Congress**

The World Liberty Congress works to build networks of activists and political dissidents to support democracy and end human rights abuses around the world. They focus on supporting political prisoners and those facing arbitrary detention, including by sharing best practices on liberation efforts through their handbook for political prisoners.

### World Movement for Democracy (National Endowment for Democracy (NED))

The World Movement for Democracy is a global network of civil society activists, scholars, parliamentarians, journalists, and others committed to advancing democracy. They facilitate a network of democracy supporters and host discussions and workshops on issues related to democracy around the world. They have a #SetThemFree campaign that raises awareness and advocates for the release of political prisoners.

### **ANNEX II**

### ACTION PLAN FOR ENGAGEMENT IN REGARD TO US NATIONALS

In addition to answering the reflection questions, this annex provides those beginning a campaign for the release of arbitrarily or wrongfully detained US nationals with a list of possible actions to take in one place. The ultimate actions and steps taken with regard to arbitrary detention will vary case by case, especially concerning media advocacy. These actions could, and in some cases, should be taken concurrently, and this list is not meant to be exhaustive but rather a resource for beginning engagement.

Information Gathering			
Establish information surrounding circumstances of detention			
☐ Draft fact sheet (prompts in Annex V)			
Identify the relationship between the detaining country and the United States			
<ul> <li>Run context analysis of the detaining country</li> </ul>			
<ul> <li>Identify and contact experts familiar with local conditions</li> </ul>			
<ul> <li>Identify potential risks in conducting advocacy/media engagement</li> </ul>			
Attempt to establish contact with a detained person without putting anyone in harm's way			
·			

Contact Consular Affairs Officials

### **Actor Mapping**

den	tify relevant actors
	White House
	- Hostage Response Group
	State Department
	- SPEHA
	Hostage Affairs Action Officer
	• Public Affairs Officer
	Family Engagement Coordinator
	<ul> <li>Bureau of Democracy, Human Rights,</li> <li>and Labor</li> </ul>
	Office of Multilateral and Global Affairs
	Interagency
	<ul> <li>Hostage Recovery Fusion Cell</li> </ul>
	Congress
	- House
	Representative from home district of detained individual
	House Foreign Affairs Committee
	· Tom Lantos Human Rights Commission
	<ul> <li>Congressional Task Force on American Hostages and Americans Wrongfully Detained Abroad</li> </ul>
	• Thematic Committees
	- Senate
	Senator of Home District of detained individual
	Senate Foreign Relations Committee
	<ul> <li>Relevant members of State, Foreign Operations, and Related Programs Subcommittee</li> </ul>
	- Regional subcommittees
	<ul> <li>Congressional Research Service</li> </ul>
	NGO Actors (refer to Annex I)
	Families of previously detained persons
	- Connectors to Actors

# Identify existing coalitions of groups Structure response team Involving family members Choosing a spokesperson/contact person from the family Contact Actors & Connectors Initial outreach Plan periodic follow-ups

# Media Strategy Determine appropriate public-facing media engagements Social Media Engagement Hashtags Set up campaign handles Plan key dates (e.g. 100 days, one year, etc.) Public Government Engagement Engaging with Congress Fund Raising Plans Media monitoring for updates

### **ANNEX III**

## ACTION PLAN FOR ENGAGEMENT IN REGARD TO NON-US NATIONALS

In addition to answering the reflection questions, this annex provides those beginning a campaign for the release of arbitrarily or wrongfully detained non-US nationals with a list of possible actions to take in one place. The ultimate actions and steps taken with regard to arbitrary detention will vary case by case, especially concerning media advocacy. These actions could, and in some cases, should be taken concurrently, and this list is not meant to be exhaustive but rather a resource for beginning engagement.

Information Gathering			
Establish information surrounding circumstances of detention			
☐ Draft fact sheet (prompts in Annex V)			
Identify the relationship between the detaining country and the United States			
Run context analysis of the detaining country			
<ul> <li>Identify and contact experts familiar with local conditions</li> </ul>			
☐ Identify potential risks in conducting advocacy/media engagement			
Attempt to establish contact with a detained person without putting anyone in harm's way			
Contact Consular Affairs Officials			

### **Actor Mapping**

dentify relevant actors	
☐ White House	
- Hostage Response Group	
☐ State Department	
- Bureau of Democracy, Human Rights, and Labor	
Office of Multilateral and Global Affairs	
☐ Interagency	
<ul> <li>Hostage Recovery Fusion Cell</li> </ul>	
☐ Congress	
- House	
<ul> <li>A representative from the home district of a family member</li> </ul>	
House Foreign Affairs Committee	
Tom Lantos Human Rights Commission	
Thematic Committees	
- Senate	
<ul> <li>Senator of Home District of a family member</li> </ul>	
Senate Foreign Relations Committee	
<ul> <li>Relevant members of State, Foreign Operations, and Related Programs Subcommittee</li> </ul>	
- Regional subcommittees	
<ul> <li>Congressional Research Service</li> </ul>	
☐ NGO Actors (refer to Annex I)	
☐ Families of previously detained persons	
☐ Connectors to Actors	

### 

# Media Strategy □ Determine appropriate public-facing media engagements □ Social Media Engagement □ Hashtags □ Set up campaign handles □ Plan key dates (e.g. 100 days, one year, etc.) Public Government Engagement □ Engaging with Congress Fund Raising Plans Media monitoring for updates

### **ANNEX IV**

### QUESTIONS TO CREATE FACT SHEET

This sample fact sheet contains a few suggested categories of information that are essential when communicating with government officials, media, or other partners in the advocacy campaign. Use these prompts to craft a fact sheet, typically 1-2 pages, that can serve to centralize all relevant information in one place and harmonize the campaign's advocacy efforts. Some of these may not be relevant to the case at hand.

## Background Information Full name, including any aliases Gender Date of birth and/or age Nationality Profession (if relevant) Circumstances surrounding travel (if detained abroad) Include specific dates of travel

# Details of Arrest or Detention Date, time, and location of arrest Association of forces/ actors who detained the individual Purported charges or reason for arrest, if any Facility of detention, if known Length of time in detention Condition while in detention Health concerns

## Other considerations Whether there has been any contact with the detainee Whether there is a consistent way to reach the detainee Whether there has been any hiring of counsel or securing of counsel

Whether they were targeted on a specific basis

Whether there has been any legal

proceedings

### ROBERT F. **KENNEDY HUMAN RIGHTS Robert F. Kennedy Human Rights** Washington, D.C. 1300 19th Street, NW, Suite 750 Washington, DC 20036 **New York** 88 Pine Street, Suite 801 New York, NY 10005 RFKHumanRights.org