



Rethinking U.S. Hostage Policy in Gaza and Beyond

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Americans have become a hot commodity. Compared to a decade ago, there has been a [175% increase](#) in the number of hostage-taking incidents by hostile governments and terror groups involving Americans. That was before Hamas took around a dozen Americans, alongside some 240 others, hostage on October 7.

While those horrific kidnappings brought the epidemic to the forefront of the public's mind, it was both presaged and enabled by a marked rise in government-sponsored detentions of Americans for political purposes. The U.S. policy response – across continents and administrations – has exacerbated this trend, rewarding hostage-takers with political and monetary concessions instead of deterring and penalizing them.

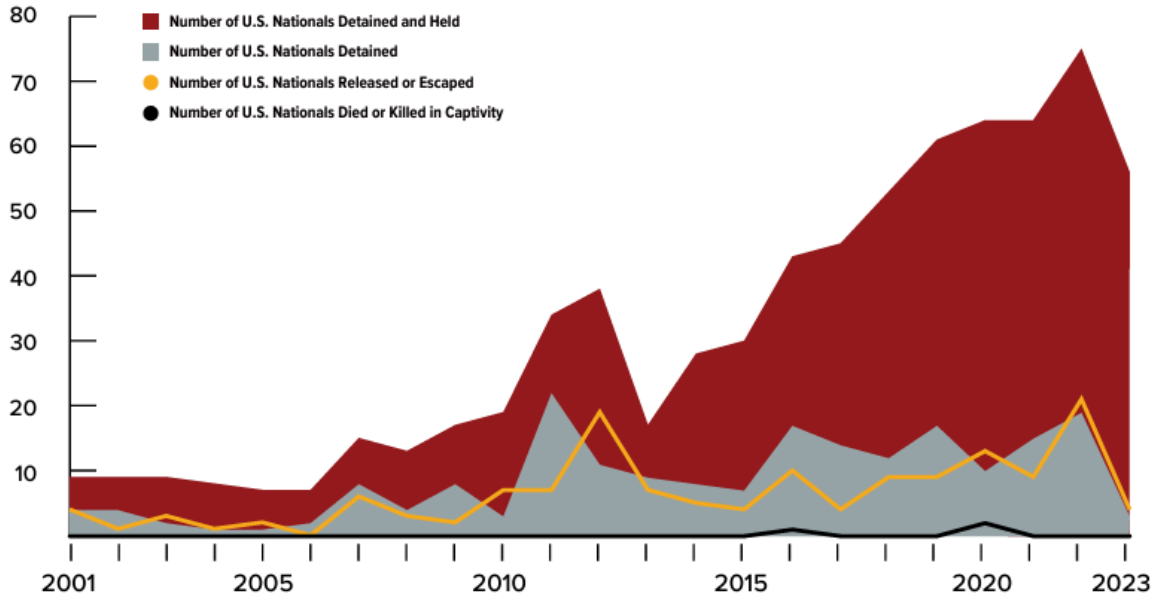
There is an urgent need to change course to secure the release of Americans, and all hostages, from Gaza and avoid more Americans being taken hostage. The United States should demand Qatar extradite Hamas' leadership for their involvement in the 10/7 attacks to increase pressure on the terrorist group to release hostages. The United States should also lead a broader international effort to penalize the hostile governments and groups that take Western citizens hostage.

What Happened?

- On October 7, 2023, in addition to slaughtering some 1,200 civilians inside Israel, Hamas dragged roughly 240 hostages of different nationalities – including Americans – back to Gaza.
- In November, a deal between Israel and Hamas resulted in the freeing of 105 female and child hostages in exchange for the release of 240 Palestinian prisoners held by Israel.
- More than 130 hostages, including as many as six Americans, continue to be held by Hamas in Gaza.
- Over the past three years, the United States has [negotiated](#) the freedom of three dozen Americans wrongfully detained and held hostage abroad. Unfortunately, the increase in Americans released has also been accompanied by a 175% increase in the number of Americans wrongfully detained abroad over the past decade compared with prior decade ago.
- From 2001-2011, an average number of four U.S. nationals were detained each year, according to [data](#) from the James W. Foley Legacy Foundation. From 2012-2022, an average of 11 U.S. nationals were wrongfully detained each year.
- The average duration of Americans' captivity has also increased by 60% in the period from 2011-2022.

Figure 2

U.S. NATIONALS WRONGFULLY DETAINED AND HELD (2001 – 2023)^c



c Figure 2 provides a snapshot of U.S. nationals wrongfully detained from January 1, 2001 - July 31, 2023. "U.S. Nationals Detained" refers to the number of incidents that occurred each year and "U.S. Nationals Detained and Held" refers to the total number of U.S. nationals wrongfully detained and the number of U.S. nationals wrongfully held at the beginning of that year.

Graphic from the James W. Foley Foundation's [Bringing Americans Home 2023 Report](#).

Why Is It Important?

- Bringing home Americans held hostage overseas is one of the most basic and important responsibilities of the U.S. government. But how it goes about securing the release of American hostages can and does impact the prospect for future hostage-taking and, therefore, the security of all Americans. Current U.S. practices reward the taking of American hostages, thereby driving up the number of Americans being taken hostage.
 - » The United States too often remains on the defense as foreign adversaries take more Americans hostage, failing to penalize and deter hostile actors for the practice and missing opportunities to increase our own leverage in subsequent negotiations.
- The most immediate priority for the United States should be securing the release of the American, and all other, hostages being held in Gaza by Hamas since October 7. A valuable source of leverage to accomplish that is the group's political leadership currently living in Qatar, who could be detained and charged by the United States for their involvement and "conspiracy" in funding and facilitating the efforts of Hamas to murder and kidnap U.S. citizens.
 - » Acts of hostage taking by Hamas or other foreign terrorist organizations are considered violations of U.S. federal law under the War Crimes Act of 1996 (18 U.S. Code § 2441), although no one has ever been charged under this statute. The actions of Hamas also [meet the standard](#) for conviction as hostage taking under 18 U.S. Code § 1203 for conspiracy "to continue to detain" U.S. citizens "in order to compel" a government

organization (the U.S. government) “to do or abstain from doing any act as an explicit or implicit condition for the release of” (in this case the suspension of U.S. military aid to Israel) those hostages.

- » The Biden Administration has not yet demanded the Qatari government turn Hamas leadership over to U.S. jurisdiction or that they be expelled from Qatar.
- » Typically, an extradition treaty, which the United States does not have with Qatar, is required in order for foreign states to have any legal duty to comply with such a request. However, political expediency and pressure can always override the lack of legal obligations.
 - In the immediate aftermath of the September 11, 2001, terror attacks, the United States demanded that the Taliban turn over Al Qaeda’s leadership, adding that the demand was “non-negotiable.” The October 7 attacks were one of the worst terror incidents since 9/11, with more than 30 American nationals murdered, and the U.S. response could still be similarly strong.
- » If the United States successfully pressured Qatar to turn over Hamas leadership to U.S. jurisdiction, the Biden administration could either trade these individuals for U.S. and other foreign hostages or choose to prosecute them in U.S. court.
- As the United States increasingly makes deals to free its citizens held hostage abroad, hostile groups and nations believe that U.S. citizens are valuable assets to be leveraged.
 - » Recent concessions by the Biden Administration – particularly the \$6 billion [ransom](#) payment made to Iran through the release of frozen Iranian oil sales proceeds – may have further emboldened foreign actors to take Americans hostage.
 - Hamas’ Director of National Relations Ali Baraka [told](#) Russia’s RT network on October 8, 2023, that Hamas believed they could force the U.S. government to free Hamas members imprisoned in the United States, noting “The U.S. conducts prisoner swaps. Only recently, it did one with Iran. Why wouldn’t it conduct a prisoner swap with us?”
- The September 2023 \$6 billion ransom payment to Iran violated [Presidential Policy Directive \(PPD\)-30](#), issued in 2015 by President Obama and still the active U.S. policy guidance on U.S. nationals taken hostage abroad and efforts to secure their release. Congress has not passed legislation codifying the guidance in PPD-30 or setting legal parameters for how hostage policy can be conducted.
 - » PPD-30 sets out two parallel goals of U.S. hostage policy: “to achieve the safe return of U.S. nationals taken hostage outside the United States” and to “strive to counter and diminish the global threat of hostage-taking; reduce the likelihood of U.S. nationals being taken hostage; and enhance United States Government preparation to maximize the probability of a favorable outcome following a hostage-taking.”
 - » PPD-30 states: “The United States will use every appropriate resource to gain the safe return of U.S. nationals who are held hostage. But the United States Government will make no concessions to individuals or groups holding U.S. nationals hostage. It is United States policy to deny hostage-takers the benefits of ransom, prisoner releases, policy changes, or other acts of concession.”

- Although Congress has not passed legislation codifying the guidance in PPD-30, it did pass the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act (the Levinson Act), named after the longest-held hostage in U.S. history, as part of the Consolidated Appropriations Act of 2021 (P.L. 116-260). U.S. hostage policy is collectively guided by PPD-30 and the Levinson Act.
 - » The Levinson Act primarily focuses on bringing about the return of hostages, sets out the process within the U.S. government for how cases are referred, reviewed, and approved for action through various government offices; codifies offices including the Hostage Recovery Fusion Cell, the Special Presidential Envoy for Hostage Affairs; but authorizes sanctions on foreigners involved in hostage taking.
 - » The Hostage Recovery Fusion Cell (HRFC) is an interagency task force made up of representatives from the Departments of State, Treasury, Defense, Justice, the Office of the Director of National Intelligence, the Federal Bureau of Investigation, and the Central Intelligence Agency. The HRFC coordinates all efforts by participating agencies to secure the release of U.S. nations held hostage or wrongfully detained abroad, provides options and strategies to the President, and coordinates intelligence sharing and family support activities.
 - » The Levinson Act authorizes U.S. sanctions on hostage taking but does not set out guidance for how to further penalize or create a coalition to further deter hostage-taking. While hostage-takers might be penalized by the country whose citizen they detained, now including the United States, most of these foreign officials may correctly believe they can still freely travel and secure property in other Western countries.
- Unilateral sanctions are a good first step, but to have a stronger impact, restrictions must be adopted by a wide range of foreign countries.
 - » The United States has recently begun sanctioning foreign officials involved in hostage taking under Executive Order 14078, which implements the Levinson Act and enables sanctions against foreign officials involved in the hostage-taking or wrongful detention of U.S. citizens abroad.
 - » The Biden Administration, which released the Executive Order in July 2022, used the authority in April 2023 to [sanction](#) the Russian Federal Security Service (FSB), the Islamic Revolutionary Guard Corps' Intelligence Organization (IRGC-IO), and four IRGC-IO senior officials.
 - » In February 2021, Canada [launched](#) a “Declaration Against Arbitrary Detention in State-to-State Relations”, now signed by 74 nations including the United States, that endorses principles calling against the arbitrary detention of individuals without due process of law.
 - » The Declaration was accompanied by a [Partnership Action Plan](#), announced in May 2021 at a G7 Ministers' Meeting that outlines “voluntary measures States may wish to support” to deter arbitrary detention, including the sharing of data between states and collaboration on research and social media efforts. However, the initiative does not go further to develop efforts that would actually deter hostage-taking nations.
 - » One avenue for greater prosecution of hostage-taking individuals is through INTERPOL's Red Notices, which are requests by law enforcement authorities to locate and provisionally arrest a person pending extradition, surrender, or similar legal action.

Member countries apply their own laws in deciding whether to arrest a person, and developing international legal standards here may aid INTERPOL efforts.

- Sanctions help reduce the “demand” side of hostile nations seeking to take Americans or other Westerners, but do not address the supply side of individuals going into dangerous nations. The State Department seeks to deter U.S. travel to dangerous countries through its Travel Advisories, ranging from a safe “Level 1: Exercise Normal Precautions” for most Western countries to a “Level 4: Do Not Travel” warning.
 - » Warnings and advisories alone do not prevent U.S. travel to these countries – U.S. citizens still routinely travel to nations under the State Department’s Level 4 travel warning. This travel provides a risk that more U.S. citizens end up in a foreign prison without committing a crime and provides rogue regimes valuable leverage against the United States for a wide range of political issues that may arise.

What Should the United States Do Next?

- The United States should request the rapid extradition by Qatar of all Hamas leadership and officials currently residing in Qatar. This is preferable to requesting the expulsion of Hamas leadership since they are likely to relocate to third countries with whom the United States has even less favorable relations, such as Iran and Turkey, and where U.S. and Israeli authorities have less ability to secure and trade Hamas leadership – alive – for U.S. and Israeli hostages.
- Congress should request the Department of Justice explain what steps are being taken to bring about the extradition of Hamas leaders from Qatar, and if not, why existing U.S. criminal statutes are not being utilized to bring Hamas leaders to justice.
- To prevent any further provision of ransom payments to the Iranian regime or other hostile governments, Congress should codify the guidance set out in PPD-30 and impose firm restrictions on the provision of financial incentives, including sanctions relief or reduction in economic restrictions, to foreign governments in exchange for the release of U.S. citizens. Should the U.S. government wish to carry out a hostage deal that violates its own policy, they should require a waiver granted by the leadership of the Senate Foreign Relations Committee and House Foreign Affairs Committee.
- The State Department, in conjunction with the Hostage Recovery Fusion Cell and INTERPOL Washington, should lead an international diplomatic coalition aimed at identifying and punishing all regimes and officials responsible for the hostage taking of Western civilians. The goal should be to negotiate and adopt a multilateral convention or treaty that binds like-minded nations to joint actions that punish hostage takers.
- The first step the United States should take is to advance the 2021 Partnership Action Plan by creating a common set of standards to identify cases of hostage-taking or wrongful detention. Sharing data and information would help nations better recognize “problem countries” and have more visibility on the full scope of the number of wrongfully detained citizens in each country, rather than just from one country.
- The United States should share and encourage other countries to share lists of all officials responsible for the wrongful detention of their citizens through both diplomatic and law enforcement channels. A negotiated legal convention or treaty should either encourage or bind participating nations to issue visa and financial sanctions against all officials on the ‘hostage-takers list’, pursuant to each nation’s domestic laws and due process requirements.

- The Secretary of State should block visas to all foreign officials who have participated in hostage-taking from attending meetings at the United Nations in New York City, similar to the existing authority for the Secretary of State to prohibit UN visas to foreigners who pose a risk to U.S. persons.
- The State Department should automatically restrict and reduce the travel radius of foreign diplomats visiting the United Nations accredited to hostage-taking nations. The current travel radius for most diplomats of hostile nations is 25 miles around the UN Headquarters in Manhattan – this radius should be incrementally reduced for each subsequent American or Western hostage taken by a target government.
- The United States should deny all visas to foreign officials – for UN and international organization postings or other diplomatic assignments - who have been sanctioned pursuant to U.S. terrorism or WMD-proliferation authorities. Such denials would remain consistent with the United States’ commitment under the UN Headquarters Agreement as these individuals present a risk to the safety of U.S. citizens.
- The United States needs to develop stronger restrictions and disincentives for Americans to travel to countries with an elevated risk of kidnapping and wrongful detention, particularly Iran, Syria, Venezuela, and Russia.
 - » Since 2018, the State Department has prohibited U.S. travel to North Korea after the regime detained, tortured, and ultimately killed University of Virginia student Otto Warmbier. This travel restriction renders U.S. passports invalid to the target country and is subject to a waiver from the Secretary of State in exceptional circumstances.
- Congress should mandate the Secretary of State conduct an annual assessment of countries on the State Department’s Level 4 Travel Warning to determine whether each country should be subject to a U.S. travel ban, or provide explanations on why U.S. passports should not be invalidated due to travel to these nations.
- The *No Paydays for Hostage -Takers Act* ([H.R. 5826](#)) which passed out of the House Foreign Affairs Committee on October 19, 2023, would deny visas to any foreign officials who have been sanctioned under terrorism or WMD-proliferation authorities. The Act would also require the Secretary of State to conduct an annual determination into whether the travel of U.S. persons to Iran presents an imminent danger to the public health or physical safety of U.S. travelers and whether such travel should be banned.