



Office of Inspector General
United States Department of State

ESP-19-01

Office of Evaluations and Special Projects

October 2018

**Review of Allegations of Improper
Passport Seizures at
Embassy Sana'a, Yemen**

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HIGHLIGHTS

Office of Inspector General
United States Department of State

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What OIG Reviewed

In January 2016, OIG received a complaint alleging that an Assistant Regional Security Officer for Investigations (ARSO-I) at Embassy Sana'a, Yemen, failed to follow regulations and Department policies when, as part of an ongoing passport fraud investigation from 2012 through 2014, he took the passports of individuals holding citizenship from both Yemen and the U.S. These U.S. citizens were unable to leave Yemen, which was in the midst of ongoing violent conflict.

OIG examined the circumstances surrounding the allegations to determine whether the ARSO-I and other Department staff followed applicable regulations and policies in seizing the passports. OIG did not address whether the citizens making the allegations committed passport fraud nor assess the quality of the ARSO-I's fraud investigation. Several factors affected the nature and timing of OIG's analysis, including difficulty in locating relevant information, evolving Department assertions about the authority by which it took the passports, and adoption of revised policies.

What OIG Recommends

OIG made four recommendations: develop databases to track and manage passport revocations, retentions, and confiscations; issue guidance on the procedures required to revoke and confiscate passports; clarify the circumstances in which individuals are entitled to limited validity passports to return to the United States if their documents are taken while they are abroad; and clarify the role of the Legal Adviser as the senior legal authority for the Department, including considering whether attorneys in other offices should report directly to the Legal Adviser. The Department concurred with all of OIG's recommendations.

What OIG Found

The Department does not have a central system to track passport confiscations or retentions. As a result, OIG could not determine the number of passport seizures that occurred at Embassy Sana'a from 2012 to 2014, and the total number remains uncertain. However, because one document provided by the Department contained a list of 31 names with dates on which the passports were taken, OIG focused on these cases. There are two bases in Department regulations that govern its authority to take passports from U.S. citizens: "retention" and "confiscation." Regardless of the authority by which the Department took the passports at issue here, the Department did not follow relevant standards. If the Department "retained" the passports, officials did not comply fully with required procedures. Furthermore, although the Department acknowledged that retentions are temporary measures, it held many of the passports in question for months (and in some cases, over a year), suggesting that the Department effectively confiscated these documents. Confiscation is permitted only after revocation or pursuant to an arrest. Revocation is the formal process by which the Department invalidates an individual's passport. Neither an arrest nor revocation occurred before any of the passports were taken.

The Department also failed to comply with relevant standards when it ultimately revoked the passports in all but one of the cases OIG examined. Although the Department must notify the holders in writing of the reason for revocation and their right to appeal, OIG could not confirm that these notices were sent in every case. Even if notices were sent, the affected individuals remained uninformed about the status of their passports for lengthy periods (in one case, almost 2 years). OIG also identified instances where individuals contacted the Department with questions and received limited information or no response at all.

OIG also identified other concerns. First, the lack of a single legal authority within the Department led to significant difficulties in resolving key legal issues. Second, although the Department has updated its policies, issues remain unresolved, including conflicting interpretations of the Department's authority to seize passports and uncertainty regarding eligibility for limited validity passports.

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OBJECTIVES

In January 2016, the Office of Inspector General (OIG) received a complaint alleging that Department of State (Department) employees failed to follow Federal regulations and Department policies when taking the passports of individuals holding citizenship from both Yemen and the United States. More specifically, this communication requested

an investigation into the failure of U.S. Department of State personnel at the U.S. Embassy in Sana'a, Yemen, and the Bureau of Passport Services in Washington, D.C., to follow the Department's rules and regulations concerning the revocation of U.S. passports, resulting in the exile of dozens of American citizens in Yemen for periods exceeding one year.¹

A report enclosed with the letter alleged that various groups initially received allegations from relatives of affected citizens regarding "improper confiscation" of U.S. passports in the spring of 2013.² These individuals reported that their relatives, many of whom had been naturalized citizens living in the U.S. for decades, were unable to leave Yemen after U.S. Embassy Sana'a seized their passports.³ In general, the citizens were at the embassy to obtain U.S. passports or birth records for children who had been born in Yemen. The report stated that the seizures occurred after embassy officials "alleged the name on the individual's Certificate of Naturalization or Citizenship or U.S. passports was 'false' or 'fraudulent.'" After the seizures, the report alleged that embassy officials "failed to provide [the affected citizens] with any formal notice explaining the confiscation or how to appeal, nor an alternative means to return to the United States without their passports." The report also commented that, during this time period, Yemen was facing a "humanitarian crisis and violent chaos."

According to information later obtained by OIG, while these citizens were at the U.S. embassy in Sana'a, Yemen, for consular services at various times from December 2012 to June 2013, an Assistant Regional Security Officer for Investigations (ARSO-I), as part of ongoing passport fraud investigations, took possession of their passports and other documents they had submitted to embassy consular officials in support of the requested services. He placed all the documents in a safe at the embassy. In addition to U.S. passports, in some cases the documents included certificates of naturalization and passports issued by the Yemen government.

¹ Letter to Steve Linick, Inspector General, Department of State, January 25, 2016.

² *Stranded Abroad: Americans Stripped of Their Passports in Yemen*, Asian Americans Advancing Justice (the Asian Law Caucus) and the City University of New York Law School's (CUNY) Creating Law Enforcement Accountability & Responsibility Project, January 2016.

³ This report contains several terms that refer to the act of taking physical possession of an individual's passport. Throughout the report, OIG uses "seize" and any derivative thereof in its plain language form and without reference to any formalized Department authority. Unless otherwise indicated, OIG uses "retain" and "confiscate" and any derivatives thereof as those terms were defined in the Department's Foreign Affairs Manual policies that were in effect at the time of the events under review.

OIG initiated this review to assess the allegations.⁴ OIG did not attempt to assess the validity of the underlying issues leading the Department to take possession of these passports; that is, OIG did not address whether the citizens making the allegations committed passport fraud, and it did not assess the quality of the underlying investigation. Rather, OIG examined the facts and circumstances surrounding the allegations to determine whether Department personnel followed applicable regulations and policies in place at the time for taking possession of the passports and to identify other relevant issues related to compliance with those regulations and policies.

Several factors affected the nature and timing of OIG's analysis, including difficulty in locating information relevant to the review and evolving Department assertions about the authority under which it took action on the passport cases under review. See Appendix A for additional information about scope and methodology.

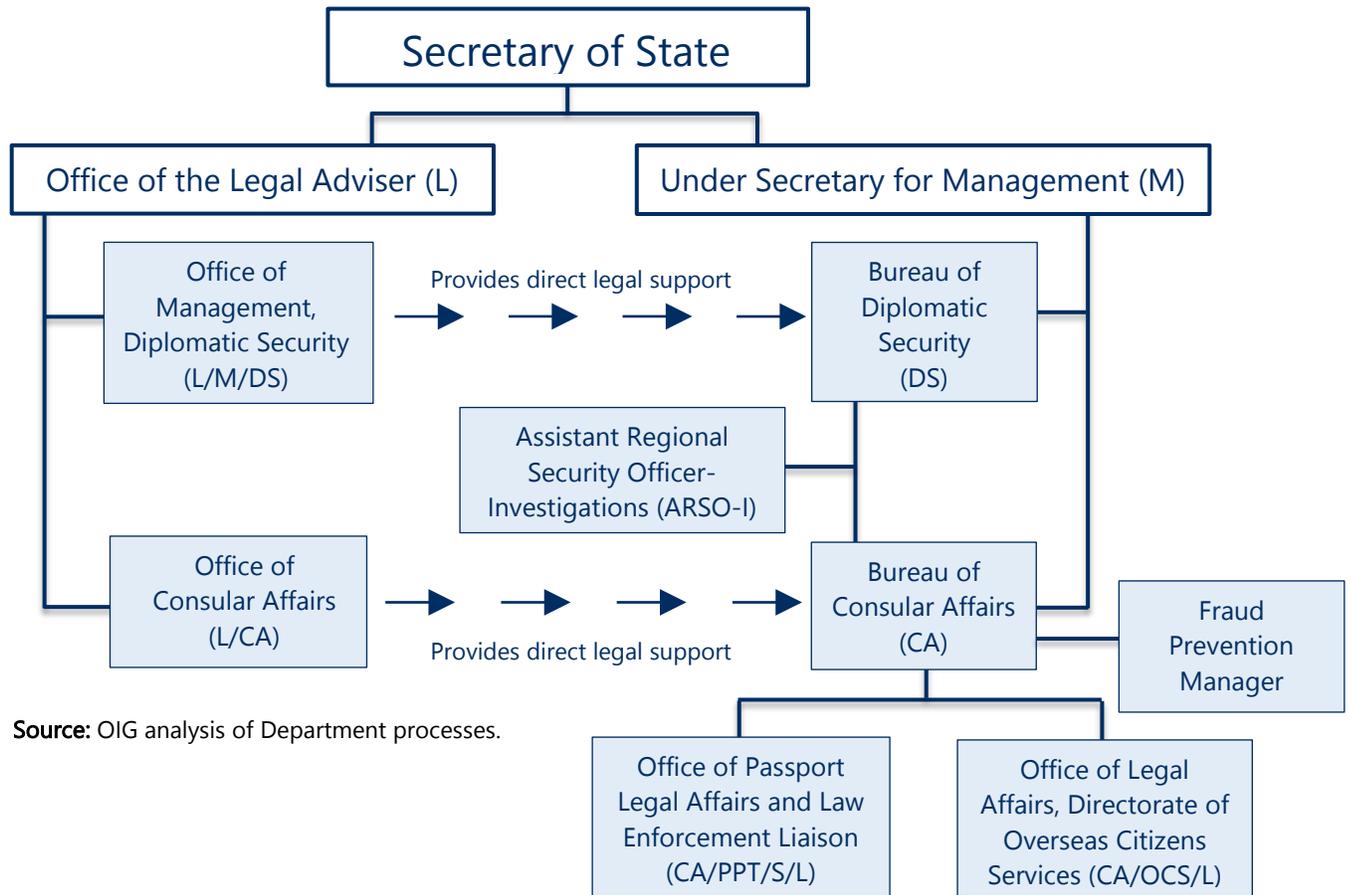
BACKGROUND

Department Bureaus and Offices with Relevant Passport-Related Responsibilities

Numerous bureaus and offices within the Department have purview over passport issues relevant to OIG's review. Figure 1 below identifies these entities, and specific responsibilities are described immediately following the figure.

⁴ During the course of its work, OIG learned that the passports were taken between December 2012 and June 2013.

Figure 1: Bureaus and Offices with Passport-Related Responsibilities



Source: OIG analysis of Department processes.

The Bureau of Consular Affairs (CA) reports to the Under Secretary for Management and is responsible for the welfare and protection of U.S. citizens abroad, for the issuance of passports and other documentation, and for the protection of U.S. border security and the facilitation of legitimate travel to the United States. The passport office in CA has authority to issue, grant, and verify passports and to establish rules concerning the issuance of passports.⁵ The Office of Passport Legal Affairs and Law Enforcement Liaison (CA/PPT/S/L) is responsible for making passport revocation decisions, with guidance from the Office of Legal Affairs within CA's Directorate of Overseas Citizens Services (CA/OCS/L) in specific cases. The Directorate is responsible for the protection and safety of U.S. citizens traveling and residing abroad and provides legal advice and policy guidance on the procedural and substantive aspects of this function. CA's legal offices report through CA channels to the Assistant Secretary for CA, not to the Office of the Legal Adviser. According to the FAM, the Legal Adviser only exercises "general direction over attorney-advisers, other than those in the Office of Inspector General, who work in bureaus other than the Office of the Legal Adviser."⁶

⁵ 22 U.S.C. § 211a.

⁶ 1 FAM 241.1(12) (August 1, 2012).

The Bureau of Diplomatic Security (DS) also reports to the Under Secretary for Management. DS is the security and law enforcement arm of the Department and its agents are responsible for investigating passport fraud,⁷ among other criminal issues. DS and CA created the Assistant Regional Security Officer for Investigations position as a “joint venture” to aid officials at certain embassies in preventing fraud.⁸ An ARSO-I’s primary task is to conduct investigations in concert with the embassy’s Fraud Prevention Unit, often handling matters that involve a combination of U.S. criminal and administrative laws, international law, and the local laws of other countries. The ARSO-I is a DS agent but can be accountable to both CA and DS, depending on the work being performed.

The Office of the Legal Adviser reports directly to the Secretary of State and is responsible for providing advice on all legal issues arising in the course of the Department's work. Attorneys in the Office of the Legal Adviser are assigned to subgroups that support the various Department bureaus; the attorneys in its CA subgroup (L/CA) are responsible for providing guidance and representation relating to the Department’s consular functions performed abroad.⁹ The Office of the Legal Adviser also has a subgroup of attorneys assigned to its Office of Management (L/M/DS) who are responsible for advising DS on issues of diplomatic and information security and related investigations.¹⁰ In contrast to the attorneys within CA, the attorneys in L/CA and L/M/DS report to supervisors within the Office of Legal Adviser.

Passport Retention

Passport retention may occur when a consular officer suspects fraud by individuals applying for consular services. In those circumstances, the FAM directs consular officers who suspect fraud to “retain all original citizenship evidence and other documentation.”¹¹ The FAM directs the consular officer to refer the matter to the Fraud Prevention Manager (a Bureau of Consular Affairs employee) and to suspend the application.¹² The consular officer must also notify the applicant that the application was suspended and request any additional documentation.¹³ The Fraud Prevention Manager, in turn, determines whether the case should be referred to DS (specifically, the ARSO-I for posts that have one) to initiate a fraud investigation. If the case is referred to DS, passports and other supporting documentation retained by consular officers are also passed to DS.

⁷ 18 U.S.C. § 1542.

⁸ In December 2012, the Bureau of Consular Affairs and the Bureau of Diplomatic Security signed a memorandum of understanding in which DS special agents designated as Assistant Regional Security Officers for Investigations (ARSO-I) would be assigned to posts with high levels of fraud that require investigations.

⁹ 1 FAM 246.3 (February 10, 2009).

¹⁰ 1 FAM 246.10 (February 10, 2009).

¹¹ 7 FAM 1341.2(b)(1) (Jan. 31, 2017).

¹² 7 FAM 1341.2(b)(1) (Jan. 31, 2017); 7 FAM 1348(b) (June 9, 2017).

¹³ 7 FAM 1348(b) (June 9, 2017).

The FAM specifically notes that “parentage fraud issues must be handled sensitively” because of the ramifications to the family unit and the risk of jeopardizing the welfare of the child.¹⁴ Consular officers must handle such cases in a timely manner with proper consideration for the family.¹⁵ The FAM, however, does not place any specific time limits on how long a passport may be retained by the Department.¹⁶

Passport Revocation and Confiscation

In contrast to retention, the formal revocation of a passport requires additional steps as described in the Code of Federal Regulations (CFR) and the FAM.¹⁷ Revocation is the process by which the Department invalidates the individual’s passport; the individual cannot obtain another passport until the underlying issue precipitating the revocation is resolved.¹⁸ The FAM requires that the Department send a formal notification to the passport holder in revocation cases, including notice of any applicable right to appeal.

According to CA/PPT/S/L, the Department revokes approximately 1,500 passports every year. Department offices (including passport agencies and embassies) and external agencies can initiate passport revocation requests for a number of reasons, including that the passport was obtained illegally or fraudulently,¹⁹ non-payment of child support,²⁰ misuse or alteration of the passport,²¹ and after receiving notice that an individual’s certificate of naturalization or certificate of citizenship has been canceled.²² In April and May 2017, after OIG completed its work on this review, the Department revised its policies on passport fraud investigations. As a result, the description of policies in this section in some instances refers to requirements that are no longer in effect but that were in place from 2012 through 2014, during the time of the events in question. (OIG discusses the policy revisions in a later section of this report.)

Figure 2 below summarizes the process by which a passport should have been revoked and ultimately confiscated during the time period at issue.

¹⁴ 7 FAM 1131.5-1 (Feb. 24, 2016).

¹⁵ 7 FAM 1131.5-1 (Feb. 24, 2016).

¹⁶ There is likewise no specific guidance drawing a distinction between passports that are retained within the United States and those that are retained overseas, even though, as this matter illustrates, the practical consequences are quite different.

¹⁷ See 22 C.F.R. § 51.62 and 7 FAM 1380.

¹⁸ There are a small subset of instances in which an individual can obtain another passport without the underlying issue being resolved, such as the issuance of a limited-validity passport.

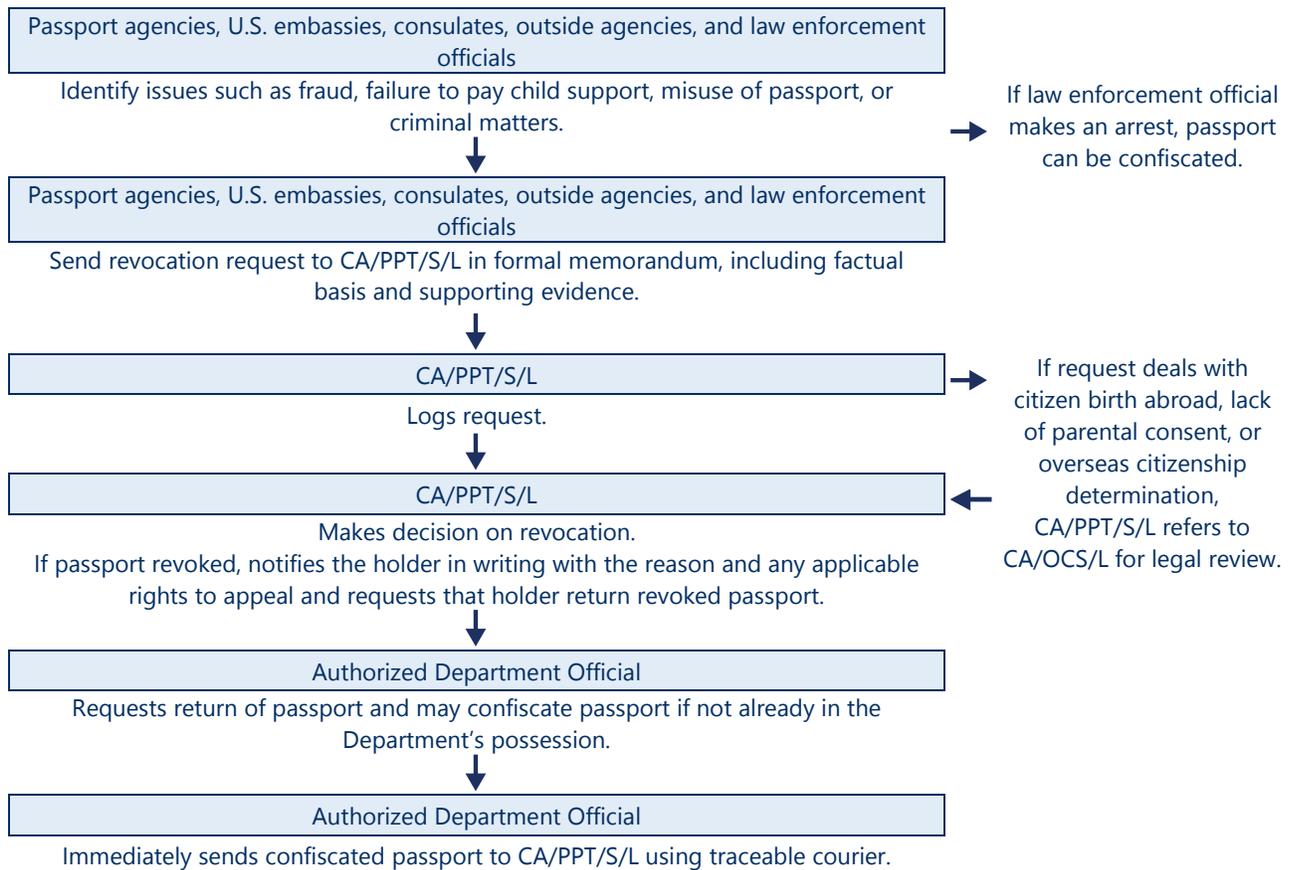
¹⁹ 22 C.F.R. § 51.62(a)(2).

²⁰ 22 C.F.R. § 51.60(a)(2).

²¹ 22 C.F.R. § 51.62(a)(2).

²² 22 C.F.R. § 51.62(b).

Figure 2: Passport Revocation and Confiscation Procedures During the Events at Issue



Source: OIG analysis of Department processes.

According to policies in place at the time of this report, all requests for passport revocation must be sent directly to CA/PPT/S/L,²³ which must log and track the requests upon receipt. The request itself must be in a memorandum format and include the affected individual’s biographical information, the factual basis for requesting revocation of the passport, and documentary evidence in support of the request.²⁴ Only CA/PPT/S/L can make formal revocation decisions, though in some cases it must seek a legal review or recommendation from CA/OCS/L.²⁵

During the time period in question, neither the FAM nor the CFR provided a burden of proof required to support a revocation decision. However, CA/PPT/S/L told OIG that the Department must prove by a preponderance of the evidence (i.e., that it is more likely than not) that the

²³ 7 FAM 1386.3 (February 24, 2016). From 2011 to February 2012, this requirement was located at 7 FAM 1386.1.

²⁴ 7 FAM 1386.4 (June 5, 2015). From 2011 to February 2012, this requirement was located at 7 FAM 1386.1.

²⁵ CA/PPT/S/L must seek a review from CA/OCS/L if the passport revocation is based on “non-acquisition of U.S. citizenship/nationality” in which the original citizenship determination was made overseas, there is a lack of two-parent consent, or if the request involves revocation of a consular record of birth abroad. See 12 FAM 223.5-3(c) (April 10, 2012) and 7 FAM 1386.6 (June 5, 2015). From 2011 to February 2012, this requirement was located at 7 FAM 1386.1.

grounds for revocation exist and that all revocation requests must go through several steps before approval. Specifically, the Division Chief for Legal Affairs assigns a revocation request to a staff attorney, who makes a recommendation based on the review of the supporting evidence.²⁶ The staff attorney's recommendation is then reviewed by the Division Chief and the CA/PPT/L Director before being finalized.

Once CA/PPT/S/L has made the decision to revoke a passport, the CFR requires that it notify the affected individual in writing with the specific reasons for revocation and, if applicable, advise the individual of the right to challenge the revocation at an administrative hearing.²⁷ After the notice has been sent, the FAM permits an authorized representative, such as a DS agent or ARSO-I, to confiscate (i.e., demand the surrender of) a passport.²⁸ According to the CFR, passports are the property of the U.S. and must be returned upon such a demand.²⁹ At the time the events in Yemen occurred, FAM policy provided that a passport could only be confiscated after formal notification of revocation or pursuant to a lawful arrest.³⁰ After a passport is surrendered, it must be immediately forwarded by a traceable express courier to CA/PPT/S/L.³¹

The FAM lists some instances, such as a failure to pay child support or tax debts, in which an individual whose passport is revoked overseas is eligible for an Emergency Photo-Digitized Passport (EPDP), a type of limited validity passport that allows a direct return to the United States.³² However, the FAM does not address whether individuals whose passports are revoked overseas for other reasons are entitled to an EPDP for return to the United States.

PASSPORT RETENTION, REVOCATION, AND CONFISCATION CASES ARE NOT ADEQUATELY TRACKED

OIG initially intended to review all cases in which passports were taken by Department officials at Embassy Sana'a from 2012 to 2014 but was not able to ascertain how many instances actually occurred.

Department officials are not required to track passport retentions, and the Department has no formal tracking mechanism. Since February 2012, the FAM has required CA/PPT/S/L to log and track passport *revocation* requests. However, the Department does not have a central database or storage system for these purposes. CA/PPT/S/L currently uses Microsoft Outlook, SharePoint,

²⁶ CA/PPT/L is made up of two divisions: the Legal Affairs Division (which handles revocations) and the Law Enforcement Liaison Division (which coordinates with the Department of Justice on investigative matters). The Division Chief for Legal Affairs heads the Legal Affairs Division.

²⁷ 22 C.F.R. § 51.65(a).

²⁸ 12 FAM 223.5-3(b) (April 10, 2012).

²⁹ 22 C.F.R. § 51.7 and 12 FAM 223.5-3(a) (April 10, 2012).

³⁰ 12 FAM 223.5-3(c) (April 10, 2012); *see also* Figure 2. No arrests were involved in this matter.

³¹ OIG understands "traceable express courier" to mean a service similar to Federal Express. 7 FAM 1386.7a (June 5, 2015). From 2011 to February 2012, this requirement was located at 7 FAM 1386.1.

³² *See, e.g.*, 7 FAM 1387.4a(2) (January 29, 2016); 7 FAM 1385.1(b)(1) (September 21, 2017).

and various spreadsheets to manage its revocation caseload, but CA/PPT/S/L acknowledged to OIG that such tools are inadequate.³³

As a result, OIG could not determine the exact number of passports taken by Embassy Sana'a officials from 2012 to 2014. OIG notes that, at various times, Department officials listed the total number of cases at 25, 36, 37, 40, and 43. The Department provided spreadsheets to OIG listing the cases, but they were missing key information, including names and relevant dates. One spreadsheet had a list of 31 names, along with "date of confiscation"³⁴ from December 2012 through June 2013. Because this information was relatively complete, OIG focused its efforts on examining the facts and circumstances surrounding these 31 cases. OIG acknowledges that this number likely understates the number of relevant cases.

THE DEPARTMENT DID NOT COMPLY WITH RELEVANT GUIDANCE IN TAKING PASSPORTS

Throughout work on this project, the Department's position evolved as to whether it took the passports in question pursuant to its authority to confiscate documents, to retain documents in connection with fraud concerns, or otherwise. Ultimately, the Department took the position that the documents were retained rather than confiscated. OIG notes that this distinction was not consistently set forth in the information or documents that OIG received. None of the documents used the terminology of retention. Most simply state that the ARSO-I "seized" or "confiscated" the passport "after the [passport holder] admitted to the fraud." Moreover, in the course of numerous interviews and review of extensive documents, Department personnel frequently described the taking of passports as "confiscations."

The Department's change in approach had a substantial effect on the timing and scope of this project. Nonetheless, OIG has not determined which term applies because the Department did not follow its own policies in either case. Moreover, even if the passports were initially retained, they were held for so long—in some cases, for up to 2 years—that they should be treated as de facto confiscations. Finally, at the point the passports were ultimately revoked, the Department failed to comply with relevant procedures intended to safeguard the rights of U.S. citizens.

To the Extent the Passports Were Retained, the Department Did Not Comply With Relevant Policies

Assuming that Department officials relied upon their retention authority to take the passports, they did not meet the procedural requirements that are set forth in the FAM. The FAM outlines a number of steps that must be taken if a passport is retained when fraud is suspected, including

³³ The Director told OIG that his office may be receiving a new case management platform but he did not know when or if this would happen. He expressed frustration that his office is using "1990's technology."

³⁴ As discussed subsequently, the Department has asserted that these actions were retentions under the Department's retention authority if fraud is suspected, but the spreadsheet includes a column heading "Date of Confiscation."

referring the case to the Fraud Prevention Manager;³⁵ suspending the application;³⁶ notifying the applicant of the insufficiency of documentation;³⁷ and notifying the applicant of what additional documentation is required.³⁸ These are important procedural protections that ensure that a retention is justified by the existence of fraud indicators and that the applicant understands what additional information is needed to prove his or her identity.

As shown in Table 1, the Department was unable to demonstrate that it met all of these steps in any of the 31 cases. For example, the Department produced no documentation demonstrating that it had suspended any of the 31 affected individuals' applications or that any of these individuals were notified of the suspension. Activity logs in only 3 of 31 cases OIG reviewed show a notification to the passport holder that additional documentation was required. Only 14 of 31 case files contained information indicating that the case was referred to the Fraud Prevention Manager. In fact, in the remaining 17 cases, the case appears to have been sent directly to the ARSO-I.³⁹

Table 1: Procedural Requirements for Passport Retention: 31 Cases at Embassy Sana'a

Case	Referral to Fraud Prevention Manager	Application Suspended	Applicant Notified of Suspension	Applicant Notified More Documents Required
1	No	No	No	Yes
2	Yes	No	No	No
3	Yes	No	No	No
4	No	No	No	No
5	Yes	No	No	No
6	Yes	No	No	No
7	Yes	No	No	No
8	No	No	No	No
9	No	No	No	No
10	No	No	No	No
11	Yes	No	No	No
12	No	No	No	No

³⁵ 7 FAM 1344.3-3f(5). From July 2, 2012 to October 27, 2016, this requirement was located at 7 FAM 1345.3-4b(9).

³⁶ During the relevant time period, the FAM stated, "[i]f the preponderance of the evidence does not support the entitlement of the applicant to a passport, you must suspend action on the application and request additional documentation." From July 2, 2012, to June 29, 2017, this requirement was located at 7 FAM 1348(b).

³⁷ 7 FAM 1348c.

³⁸ 7 FAM 1348b.

³⁹ In the Department's comments, it asserted that "in 29 of the 31 cases, referrals were made to the fraud tracking system." OIG notes that simply referring information to the "tracking system" does not address the concerns set forth herein. In many of the cases, the consular tracking logs indicate that the referral was made contemporaneously with, or subsequent to, the taking of the passport, which raises concerns that the passport was taken *before* the appropriate process was followed and necessary review was undertaken. For example, OIG reviewed one case in which a consular officer noted that, in its tracking system, the Fraud Prevention Unit appeared to have been "circumvented." In another case, the Department's activity log indicates that the case was forwarded to the Fraud Prevention Manager, but the referral was "disregarded" after the ARSO-I took on the case. Accordingly, OIG did not include these cases in its count.

Case	Referral to Fraud Prevention Manager	Application Suspended	Applicant Notified of Suspension	Applicant Notified More Documents Required
13	No	No	No	No
14	No	No	No	No
15	Yes	No	No	No
16	Yes	No	No	No
17	Yes	No	No	Yes
18	Yes	No	No	No
19	No	No	No	No
20	Yes	No	No	No
21	No	No	No	Yes
22	No	No	No	No
23	No	No	No	No
24	No	No	No	No
25	Yes	No	No	No
26	No	No	No	No
27	No	No	No	No
28	Yes	No	No	No
29	No	No	No	No
30	No	No	No	No
31	Yes	No	No	No

Source: OIG analysis of Department of State data.

Furthermore, the Department provided no evidence that Embassy Sana'a officials took steps to comply with the requirement in the FAM to handle parentage fraud issues "sensitively" and "in a timely manner."⁴⁰ To the contrary, many of these cases lingered for months or years, and applicants were not given any information about their status, notwithstanding the notice requirements in the FAM.⁴¹

Passport Seizures Became Improper, De Facto Confiscations Because of Their Duration

As previously noted, FAM provisions in effect at the time the passports were taken specified that CA/PPT/S/L must revoke a passport before it could be confiscated, unless the confiscation

⁴⁰ 7 FAM 1131.5-1 (Feb. 24, 2016). The Department asserted in its comments that these were "fraud cases" rather than typical parentage cases, in which a parent applies for a passport for his or her child and there is a dispute as to the child's true parentage. In the cases at hand, this distinction is not meaningful, because many of these cases originated when a parent applied for consular services on behalf of his or her child. In language that has been in place throughout the review period, the FAM notes that parentage cases are difficult because of the potential to threaten the family unit and jeopardize the welfare of the child—regardless of whether these were "typical" parentage cases, precisely the same concerns were implicated here because of the dangerous conditions in Yemen.

⁴¹ In its response to a draft of this report, the Department represented that the chaos in Yemen hampered its operations overall and made communications with applicants difficult or impossible. OIG does not disagree that the operating environment created substantial challenges for the Department. These conditions, however, only increase the need to have clear, straightforward procedures and policies for Department employees. These conditions also made the circumstances of applicants who could not leave Yemen more difficult.

occurred as part of an arrest.⁴² These provisions provide important safeguards to ensure that American citizens are not deprived of their ability to travel without due process. Comparable safeguards do not exist for passport retentions, which presumably are intended to be short term in nature to allow for the determination of whether a fraud investigation is warranted. Indeed, the Department told OIG that passport retention cannot “continue indefinitely or for an unreasonably long time.”

However, the Department held the passports in these 31 cases for months at a time—and in two cases for over a year—before requesting revocation or taking other dispositive action.⁴³ The affected citizens were denied their ability to travel during this time and their frequent inquiries were routinely ignored by Department officials. Under these circumstances the practical consequence was the same as a passport confiscation, which according to Department policy at that time, must occur after a revocation or an arrest. For the 31 cases OIG reviewed, none of the citizens in question were arrested when their passports were taken.

Table 2 shows the dates the passports in the 31 cases were initially taken and the dates the Department finally notified the individuals that their passports were revoked. In the majority of these cases, CA/PPT/S/L did not send notices for 10 months or more. Keeping the passports for such long durations, often preventing citizens from leaving at a time when Yemen’s violence and civil unrest greatly increased, suggests that the passport seizures indeed amounted to confiscations, as contemporaneous Department documents describe them.

Table 2: Duration of Passport Seizures: 31 Cases at Embassy Sana’a

Case	Date Passport Taken	Date of Revocation Request	Date of Revocation Notice	Approximate Time Between Seizure and Notification
1	12/10/2012	10/18/2013	12/17/2013	12 months
2	12/30/2012	2/10/2013	5/7/2013	4 months
3	1/12/2013	10/18/2013	Unknown	Unknown
4	1/15/2013	3/12/2013	12/15/2013	11 months
5	1/15/2013	10/28/2013	12/16/2013	11 months
6	1/16/2013	10/29/2013	12/16/2013	11 months
7	1/21/2013	2/12/2013	12/31/2014	23 months
8	1/23/2013	11/4/2013	1/22/2014	12 months
9	1/23/2013	10/18/2013	12/15/2013	11 months
10	1/27/2013	10/28/2013	12/17/2013	11 months
11	1/29/2013	2/22/2013	12/15/2013	11 months
12	2/3/2013	10/18/2013	12/16/2013	10 months
13	2/4/2013	10/29/2013	1/21/2014	11 months
14	2/11/2013	10/21/2013	12/16/2013	10 months
15	2/11/2013	10/22/2013	12/17/2013	10 months

⁴² 12 FAM 223.5-3(c) (April 10, 2012).

⁴³ The Department asserts in its comments that the majority of revocations were processed within 60 days of the revocation request. The revocation requests themselves, however, occurred after an unreasonably long retention period.

Case	Date Passport Taken	Date of Revocation Request	Date of Revocation Notice	Approximate Time Between Seizure and Notification
16	3/30/2013	11/1/2013	Not revoked	N/A
17	4/2/2013	11/1/2013	12/15/2013	8 months
18	4/2/2013	10/20/2013	1/22/2014	9 months
19	4/2/2013	10/29/2013	12/15/2013	8 months
20	4/6/2013	11/4/2013	None	Unknown
21	4/8/2013	11/6/2013	1/21/2014	9 months
22	4/13/2013	10/27/2013	4/2/2014	12 months
23	4/14/2013	11/4/2013	Unknown	Unknown
24	4/15/2013	11/17/2013	None	Unknown
25	4/15/2013	10/21/2013	None	Unknown
26	4/16/2013	10/28/2013	None	Unknown
27	4/16/2013	10/28/2013	1/21/2014	9 months
28	4/16/2013	10/28/2013	1/21/2014	9 months
29	4/16/2013	1/17/2014	None	Unknown
30	4/16/2013	2/27/2014	None	Unknown
31	6/9/2013	11/1/2013	3/24/2014	10 months

Source: OIG analysis of Department of State data.

Although OIG was unable to obtain full details for each case, it identified instances where the citizens in question repeatedly contacted Embassy Sana'a's Office of American Citizen Services (ACS) and other Department officials to seek information about the reasons their passports were taken and request administrative hearings. In these instances, the citizens received limited information or no response at all.⁴⁴ The facts in Cases 7, 10, and 23 from Table 1 are illustrative:

- In Case 7, the citizen's passport was taken on January 21, 2013. The affected citizen contacted ACS for information about his passport on January 26, February 19, March 4, June 16, and September 11. His wife also contacted ACS on September 22, requesting information on how to secure her husband's return to the United States. Of these six inquiries, ACS responded to only one, with a request for the citizen's full name and date of birth, even though that information had already been provided. In September 2014, the citizen hired an attorney who contacted CA leadership and attorneys in CA/PPT/S/L and CA/OCS/L and requested reissuance of the citizen's passport or the provision of a notice of revocation and a hearing. In December 2014, CA/PPT/S/L sent a written notice of revocation to the citizen—almost 2 years after his passport was taken.
- In Case 10, the citizen's passport was taken on January 27, 2013. On January 30, the citizen contacted ACS asking why his passport had been taken. On February 2, ACS responded, noting that his passport was being held as part of an ongoing investigation. On March 7 and August 31, he emailed ACS seeking further clarification and requesting that his passport be returned. OIG does not have any evidence that ACS responded to these emails. On November 1 and November 21, the citizen's attorney contacted Department officials, including the then-Consular Chief at Embassy Sana'a and CA's

⁴⁴ These examples are not necessarily representative of the practices of ACS at other embassies.

Deputy Assistant Secretary for Passport Services, alleging the Department failed to follow regulations and requesting the return of the passport or an administrative hearing. The attorney told OIG he did not receive a response to these inquiries. On December 12, the citizen again emailed ACS to request his passport. In response, a consular official scheduled a meeting at the embassy on December 17, at which time staff informed the citizen that his passport was being revoked.

- In Case 23, the citizen's passport was taken on April 14, 2013.⁴⁵ The citizen returned twice to the embassy to try to retrieve his passport. He reported to OIG that embassy staff told him the matter was being "handled in Washington." Between July 2013 and January 2014, he emailed ACS and the embassy's immigrant visa office 10 times to seek information about his passport. ACS responded to four of his emails, noting that his case was part of an ongoing investigation. In June 2013, the citizen also contacted a civil rights group, which in turn contacted U.S. Senator Kirsten Gillibrand for assistance. Her office emailed the Department to ask for an internal review and, if appropriate, a return of the passport. Among documents obtained from the Department, OIG found a February 2014 cable from CA/PPT/S/L that instructed embassy staff to send a written notice to the citizen. However, according to his attorney, the citizen has not received a written notification and the attorney's inquiries to the Department have not been answered.

Even When the Department Ultimately Revoked the Passports, It Could Not Provide Appropriate Documentation of Required Notifications

Separately from the question of retention or confiscation, at the point the passports were ultimately revoked, the Department could not provide appropriate documentation. In July 2013, Department staff in Washington, D.C., became aware of the ARSO-I's actions⁴⁶ when they were contacted by staff from the National Security Council with allegations that numerous passports had been seized from U.S. citizens in Yemen. As discussed later in this report, staff and attorneys in the Office of the Legal Adviser, DS, CA/PPT, and CA/OCS had difficulty achieving consensus on the appropriate course of action to take with regard to the seized passports and the affected citizens. Regardless, the Department ultimately decided that revocation requests should be submitted. Therefore, in October 2013, DS informed the embassy's new ARSO-I that he should continue holding the passports but that he should also submit revocation requests to CA/PPT/S/L (with the exception of four passports for which the previous ARSO-I had already submitted requests).

On the basis of those requests, CA/PPT/S/L decided to revoke—or, in one case, declined to renew—passports in 30 of the 31 cases OIG reviewed.⁴⁷ However, OIG was unable to confirm

⁴⁵ The ARSO-I also seized travel documents belonging to the U.S. citizen's family.

⁴⁶ The Division Chief of Legal Affairs in CA/PPT/S/L had received four revocation requests submitted by the ARSO-I in February and March 2013. However, the revocation requests OIG reviewed did not indicate that passports had already been seized, and the Division Chief does not recall whether the ARSO-I informed her about these seizures.

⁴⁷ CA/PPT/S/L declined to revoke the other passport, and it was subsequently returned to the citizen. Although determining the status of subsequent appeals was outside the scope of this review, OIG learned that three of the

that the revocation requests complied with policies or that the Department took sufficient steps to provide appropriate notifications to the affected individuals. Requests for passport revocation must be sent directly to CA/PPT/S/L with documentary evidence in support of the request.⁴⁸ Although the Director of CA/PPT/S/L stated that both he and the Division Chief for Legal Affairs approve the recommendations of their staff attorneys for revocation based on a preponderance of the evidence standard, OIG did not find written documentation of supervisory approval among the documents it received.

Once CA/PPT/S/L made the decision to revoke a passport, Federal regulations require the Department to notify the affected individual in writing with the specific reasons for revocation and to advise the individual of the right to challenge the revocation at an administrative hearing, if applicable.⁴⁹ As noted, CA/PPT/S/L eventually decided to revoke 30 (in one case, declined to renew) of the 31 passports in question. However, for 12 of the 30 cases, the Department was unable to provide copies of the required notification.⁵⁰ In seven of the cases, the Department provided copies of various cables instructing post to send revocation notices but could not locate a copy of the notice or verify that one was sent. The Department asserted that the reason for these missing documents was that paper files were destroyed for security purposes when the embassy was closed in 2015. Table 3 provides information on notifications in the 31 cases.

revocations were later overturned. Also, both the FAM and the CFR require written notice of denial to renew a passport to the applicant, similar to revocation. 7 FAM 1381.2 (June 5, 2015); 22 C.F.R. § 51.65.

⁴⁸ 7 FAM 1386.3 (February 24, 2016). From 2011 to February 2012, this requirement was located at 7 FAM 1386.1.

⁴⁹ 22 C.F.R. § 51.65(a).

⁵⁰ The Department asserts in its comments that, in 26 of the cases, "there was "evidence" that the applicants were notified. As described in Table 3, however, OIG was not provided copies of these notices, and in most cases, the "evidence" was simply an instruction to post to send a notification. This is on its own insufficient to establish that any notification was actually sent or, if it was, when that occurred.

Table 3: Notifications of Revocation for 31 Cases at Embassy Sana'a

Case	OIG Received Copy of Notice?	Case	OIG Received Copy of Notice?
1	Yes	17	Yes
2	Yes	18	No ^a
3	No ^a	19	No ^a
4	Yes	20	No
5	Yes	21	No ^a
6	Yes	22	No ^a
7	Yes	23	No ^a
8	Yes	24	Yes
9	Yes	25	No ^a
10	No	26	No ^b
11	Yes	27	Yes
12	Yes	28	Yes
13	Yes	29	No
14	Yes	30	No
15	Yes	31	Yes
16	N/A		

See notes and sources on following page.

^a The Department provided copies of various cables instructing post to send revocation notices but could not locate a copy of the notice or verify that a notice was sent.

^b CA/PPT/S/L declined to renew this passport as opposed to revoking it; however, both the FAM and the CFR require written notice of denial of a passport to the applicant.

Source: OIG analysis of Department of State data.

LACK OF A SINGLE LEGAL AUTHORITY DELAYED RESOLUTION AND CREATED ONGOING CHALLENGES

The process by which the Department dealt with the legal issues raised by the passport seizures was characterized by a lack of clarity and an inability to reach timely decisions. Ultimately, OIG concludes that many of the ongoing challenges occurred at least in part because the staff and attorneys involved in the discussions have overlapping and sometimes competing responsibilities regarding passport fraud, retentions, revocations, and confiscations.

Most Passports Were Taken after an ARSO-I Received Email Guidance from a Paralegal

On December 11, 2012, one day after he took the first passport belonging to a U.S. citizen, the ARSO-I sent a message to two CA group email accounts set up to respond to legal and law enforcement questions on passport issues. The ARSO-I sent his email to "CA-PPT-Revocations" and "CA-PPT-Legal-Hits-Overseas." According to the Director of CA/PPT/S/L, the Revocations email box is used to address questions from Department officials regarding the revocation process. The Director stated that questions in the Revocations box are usually answered by an attorney. The Legal Hits email box is used to respond to requests from DS to conduct law

enforcement searches on individuals to determine whether there is any information that would preclude passport issuance, such as a valid arrest warrant. The Director said that paralegals typically handle these requests.

In his email, the ARSO-I said he would “like to get CA’s guidance on what we can/cannot do.”⁵¹ He presented a fact pattern that he stated was very common in Yemen. He described situations where U.S. citizens visited Embassy Sana’a to apply for passports or other birth records for their children. He stated that, during the course of their interactions with embassy staff, these citizens acknowledged entering the U.S. under a different name prior to obtaining their own passports through naturalization.⁵²

A paralegal in CA/PPT/S/L responded to the ARSO-I from the CA-PPT-Revocations email account. As she later explained to OIG, her answer was intended “simply to describe PPT/L policy on the issue” and to mean that the ARSO-I could confiscate passports as long as he “came right back with a revocation.” Based on the details in his email, the paralegal stated that she believed that the ARSO-I had already done an investigation and that the revocation requests would be submitted quickly.⁵³

The ARSO-I told OIG that, after receiving the paralegal’s email, he believed he could seize passports as long as he subsequently submitted a revocation request and substantiated the decision to hold the passport with a showing of probable cause. He continued to take passports as part of his fraud investigations until June 2013.⁵⁴ There is no evidence that anyone at the Department was aware of the paralegal’s email. There was no answer to the ARSO-I’s inquiry to the “Legal Hits” mailbox.

⁵¹ To the extent that this paragraph reveals privileged attorney-client communications, the Department has waived any such privilege.

⁵² As noted previously, OIG did not analyze whether these passports were, in fact, obtained fraudulently or otherwise address the substance of the ARSO-I’s investigation. OIG similarly expresses no opinion as to the merits of the ARSO-I’s description of the facts that prompted him to make the request for guidance in the first place.

⁵³ The paralegal told OIG she did not believe her response provided “specific authorization to confiscate passports.” In general, the paralegal told OIG she believed that ARSO-I’s have authority to confiscate passports in several circumstances, including (1) if the passport was issued in error; (2) if the passport bearer has outstanding child support arrearages; (3) if there is a felony warrant for the passport bearer’s arrest; and (4) if the ARSO-I has evidence that the passport was acquired through fraud. She told OIG she based her answer on her interpretation of the FAM, the Code of Federal Regulations, and CA/PPT/S/L’s standard operating procedures. She stated that no one from CA/PPT/S/L, or any other Department entity, approached her about the email until OIG’s document request in 2016.

⁵⁴ The ARSO-I also seized certificates of naturalization and passports issued by the country of Yemen, although he did not request guidance on these actions and did not inform anyone at the Department or at Embassy Sana’a that he had seized those documents.

Once They Became Aware of the Situation at Embassy Sana'a, Department Officials Had Difficulty Achieving Consensus

OIG observed that the lack of a single point of authority for issues relating to passport revocations and confiscations led to conflicts about the appropriate course of action to take regarding how to handle the repercussions of the ARSO-I's actions at Embassy Sana'a.⁵⁵ OIG also observed that resolving these conflicts was hampered by the fact that L attorneys and CA attorneys are assigned to separate offices and report to separate officials and lack clearly defined roles and responsibilities regarding issues such as passport retention and confiscation. L attorneys report through L channels to the Legal Adviser, who is the Department's senior legal officer. CA attorneys report through CA channels to the Assistant Secretary for Consular Affairs and are subject only to the "general direction" of the Legal Adviser. Thus, the Department's senior legal officer lacks clear authority to decide differences of opinion between L and CA attorneys or, for that matter, between the two legal offices within CA itself.

As described previously, various bureaus and offices have relevant responsibilities regarding the issues that are the subject of OIG's review. The passport office in CA has authority to issue, grant, and verify passports and to establish rules concerning the issuance of passports. The legal section of the passport office, CA/PPT/S/L, is responsible for making revocation decisions, with guidance from the lawyers in Overseas Citizens' Services, CA/OCS/L, in specific cases. Regarding passport fraud, CA and DS created the ARSO-I position as a "joint venture" to aid officials at certain embassies in preventing passport and other types of fraud. The ARSO-I is a DS agent but can be accountable to both CA and DS, depending on the circumstances of the work being performed. Finally, the Office of the Legal Adviser is responsible for furnishing advice on all legal issues arising in the course of the Department's work, and attorneys in its L/CA and L/M/DS subgroups provide counsel to CA and DS, respectively. However, the attorneys in CA do not report to the Legal Adviser, who only exercises "general direction" over their work.

During the course of its work, OIG heard different viewpoints concerning the roles and responsibilities of the various Department attorneys. For example, an Attorney Advisor for L/CA told OIG that if there are any disagreements among these offices, attorneys in the Office of the Legal Adviser ultimately resolve the issue. However, the former Assistant Legal Adviser in charge of the L/CA attorneys also told OIG that because CA/PPT/S/L and CA/OCS/L are responsible for day-to-day operational matters, the Office of the Legal Adviser prefers to defer to the CA attorneys on how best to handle those matters. Current and former L/CA attorneys noted that the office's role is to provide CA/PPT/S/L and CA/OCS/L advice about legal issues and potential litigation risks, but not to provide specific instructions or "to tell them what to do." The Director of CA/PPT/S/L noted that the attorneys in his office work closely with staff in CA and, therefore, gain policy knowledge and insight that L/CA does not typically have. In this way, he believes that

⁵⁵ OIG has previously reported on problems with coordination among CA's various legal units, noting that crosscutting issues that affect multiple units, such as parentage issues surrounding assisted reproductive technology, could benefit from a formal collaborative approach. OIG, *Inspection of the Bureau of Consular Affairs, Directorate of Overseas Citizens Services, Office of Children's Issues, Office of Policy Review and Interagency Liaison, and the Planning, Programs, and Systems Liaison Division* (ISP-I-12-21, May 2012).

CA/PPT/S/L functions as CA's "in-house counsel," whereas L/CA functions as more of an "outside law firm." A former senior official from CA/OCS/L also described the Office of the Legal Adviser's role as being primarily that of a "referee" between CA/PPT/S/L and CA/OCS/L. Another former Assistant Legal Adviser for L/CA agreed, noting that L/CA generally attempts to assist Bureau of Consular Affairs attorneys in reaching agreement rather than to override them on matters of law.

Consequences of overlapping authority are exacerbated by the fact that individuals in the ARSO-I position do not have a single point of contact for legal questions arising overseas. The ARSO-I who seized the passports at Embassy Sana'a told OIG that he never received any training on who to contact in such situations. L/M/DS told OIG that ARSO-Is typically consult with L/M/DS regarding criminal and law enforcement issues and contact attorneys within or associated with CA (CA/PPT/S/L, CA/OCS/L, or L/CA) for issues related to passport revocation. The existence of multiple sources of legal advice could lead to forum shopping or lack of proper coordination. Here, for example, the ARSO-I received a response from a paralegal to the email he sent to the mailbox "typically" staffed by attorneys but received no response from the other mailbox "typically" staffed by paralegals.

Although staff in DS, CA/PPT/S/L, CA/OCS/L, L/M/DS, and L/CA ultimately decided on a course of action, they had differing views about the Department's authority to revoke and confiscate passports, and these disagreements continued well beyond the October 17, 2013, decision to submit revocation requests. Staff expressed, among themselves and to OIG, conflicting interpretations about a multitude of issues, such as under what circumstances U.S. passports can be seized and whether and how to issue limited validity passports to U.S. citizens whose passports have been revoked or confiscated overseas.⁵⁶

OIG does not express an opinion on any specific legal issue described here and does not suggest that the mere fact of disagreement is necessarily of concern on a complex, novel legal issue. OIG's concern, instead, is diffused and overlapping legal responsibilities, combined with the absence of a single decision-maker with the clear authority to resolve differing viewpoints. Without such a single decision-maker, there is an increased risk of inconsistency, confusion, and legal decisions that do not comply with policy.

⁵⁶ Implicit in the disagreement is the question of whether a passport may be revoked on the basis of a fraudulent act when the alleged fraud is the use of an allegedly assumed identity in obtaining the passport, and where the allegedly fraudulent identity is the same one that had previously been used to obtain a validly issued certificate of naturalization or citizenship. There were, and are, differing views in the Department on whether the passport may be revoked in such a case on the basis of alleged fraud in the identity document, or whether, because the identity document matches a certificate of naturalization or citizenship, the passport may not be revoked until the certificate is revoked. *See* 7 FAM 1153e(4) (stating that, if post or passport agency believes the certificate was issued fraudulently, the person remains eligible for a U.S. passport until the certificate is revoked); *but see* 7 FAM 1381.2d(1) (stating that an individual remains eligible for passport until certificate is revoked unless the individual is ineligible for passport services for reasons other than non-citizenship).

RECENT FAM AND FAH UPDATES DO NOT RESOLVE POLICY CONFLICTS AND RAISE ADDITIONAL CONCERNS

In April and May 2017, after OIG completed its work on this review but before sharing its findings with the Department, new policies were issued in the FAM and the FAH concerning passport fraud investigations.⁵⁷ These new policies do not address OIG's findings and, in fact, raise additional concerns.

First, the new policies introduce new terminology that is unclear and vague. For example, FAM⁵⁸ and FAH⁵⁹ both note that CA may request that DS "recover" a passport that CA/PPT has issued. Yet, the Department does not explain the distinction between "retain" and "recover," and it does not describe under what circumstances and by what standards issued passports can be recovered. In another example, the updated policies also note revocation requests must occur in a "reasonably expeditious" time frame. However, this is not a specific requirement and could be subject to varying interpretations.

Second, the new policies fail to address questions raised by the events that occurred in Yemen. For example, in cases where individuals' passports are revoked while overseas, the Department has not clarified the circumstances in which those individuals are entitled to limited validity passports to return to the United States. Likewise, the new policies do not clarify how long and on what authority the Department may retain other documents, including U.S. certificates of naturalization or citizenship and foreign passports, when fraud is suspected in applications for consular services.

Finally, the new policies contain provisions that contradict requirements found in the CFR. For example, although the policies require DS agents to notify consular staff when they have retained a passport, passport holders are only notified when CA initiates a request for DS to recover a passport. Furthermore, passport holders are not entitled to appeal a decision to retain a passport. However, the CFR requires that the Department notify, in writing, an individual whose passport has been revoked. The written notice should include specific reasons for revocation and advise the individual of the right to challenge the revocation at an administrative hearing.⁶⁰

THE DEPARTMENT'S RESPONSE

On September 21, 2018, the Department provided its comments on a draft of this report, including its concurrence with all of OIG's recommendations, which can be found in Appendix B.

⁵⁷ 12 FAM 224 (May 19, 2017) and 12 FAH-4 H-120 (April 17, 2017).

⁵⁸ 12 FAM 224.1-5b.

⁵⁹ 12 FAH-4 H-124.2a.

⁶⁰ 22 C.F.R. § 51.65(a).

In its response, the Department raised a variety of factual and legal claims. Many of these points were set forth in the Department's earlier, informal comments,⁶¹ and OIG has, to a large extent, already considered these issues in the body of the report. In reference to a few particular factual points, the text of the report has been modified to address those items directly. Concerning other points, OIG has acknowledged the Department's comments within the report but has made no changes.

In addition, OIG notes certain issues that the Department repeatedly raised in its response. The Department emphasized that unique circumstances existed in Yemen during the time period in question that made passport fraud a priority but also created obstacles to the swift completion of comprehensive fraud investigations and the prompt referral of cases for revocation. The Department also emphasized that it has authority for passport retentions separate from that permitting revocations and confiscations and that there are clear distinctions between passport revocations, retentions, and confiscations.⁶²

OIG does not dispute that Yemen was a high fraud post, or that the deteriorating security conditions in Sana'a at the time weighed heavily on daily Embassy functions. However, OIG confirmed that there were no particularized national security concerns related to the specific individuals whose passports were seized and that had there been such concerns, the proper course of action would have been to refer the information to the Federal Bureau of Investigation.

OIG also agrees that there are different bases for the retention versus the revocation or confiscation of a passport. As the report explains in detail, though, the distinctions between these authorities is less than clear, as evidenced by the fact that Department officials used "confiscation" terminology in contemporaneous internal communications or in response to subsequent inquiries by OIG in contexts that the Department now says referred to retentions. In fact, it is precisely because of this lack of clarity that OIG has made recommendations to improve and refine existing guidance. OIG also notes that the Department's claim that the "retentions" could not be "confiscations"—de facto or otherwise—because there was no arrest fails to address the main argument. Rather than justifying the approach taken by the Department, this argument confirms the flaws inherent in indefinite "retention" of passports without the procedural protections attendant to a formal "confiscation." Finally, OIG agrees that the cases presented complex questions, but the deteriorating security situation in Yemen and the risks to U.S. citizens remaining there made the resolution of such questions even more urgent.

⁶¹ See Appendix A, Scope and Methodology.

⁶² The Department also asserted that it acted quickly given the fact that the situation presented a complex issue of first impression: "in light of signed confessions of identity fraud, could passports be issued for travel to the United States and in what names?" However, without opining on the substantive issues in that matter, OIG notes that a federal court has noted "skepticism regarding the voluntariness of the statement" in one of these cases. *Omar v. Tillerson*, Case No. 15-cv-01760-JSC (Nov. 28, 2017).

CONCLUSION

The seizure of passports belonging to U.S. citizens at Embassy Sana'a has exposed weaknesses in both the Department's policies and its decision-making processes, as shown by the lengthy amount of time needed to reach a decision as to how to handle the situation in Sana'a. In addition, there is continuing confusion over the Department's authority to confiscate passports, revoke passports, retain passports, and issue limited validity passports. Although the Department recently updated some of its policies related to passport fraud investigations, key issues identified by OIG remain unaddressed, and the updates themselves may create additional challenges for the Department. Resolving such issues will likely require a senior legal officer with clear authority to decide differences of opinion between the various offices with purview over passport related issues and to set transparent, well-defined policy going forward. However, there is currently no one at the Department empowered to take such actions. OIG expects that its recommendations will move the Department closer to meaningfully addressing these concerns.

RECOMMENDATIONS

To ensure compliance with the CFR and various Department policies regarding the seizure and revocation of passports, OIG has issued the following recommendations to the Bureau of Consular Affairs, the Bureau of Diplomatic Security, and the Office of the Legal Adviser.

Recommendation 1: The Bureau of Consular Affairs, Office of Passport Services, in conjunction with the Bureau of Diplomatic Security, should develop centralized, searchable databases to track and manage passport revocation cases, as well as retentions of passports and other documents seized on suspicion of fraud when citizens apply for consular services, or under other circumstances, and to track confiscations of such documents if they are seized on grounds other than retention authority.

Management Response: In its September 21, 2018, response, the Department concurred with this recommendation and stated that delivery of a system to manage and track passport retentions and revocations is slated for its consular systems modernization. The modernization is a decade-long project slated to “begin in the next few years” and that will bring passport and visa application services, overseas citizen services, and internal business processes to a consolidated technology framework. It also stated that when agents from the Bureau of Diplomatic Security acquire and retain evidence during a passport fraud investigation, “the facts and details are documented in DS’s Investigative Management System,” which is a “centralized, searchable database used to track and manage investigations.”

OIG Reply: Based on the Department’s response, OIG considers this recommendation to be resolved. The recommendation can be closed when OIG receives documentation that this system has been implemented. OIG will monitor the Department’s progress through the compliance process.

Recommendation 2: The Secretary of State should clarify the role of the Office of the Legal Adviser as the senior legal authority for the Department and consider whether attorneys in other offices should report directly to the Legal Adviser.

Management Response: In its September 21, 2018, response, the Department concurred with this recommendation and stated that the Secretary will task the Office of the Legal Adviser to review the Foreign Affairs Manual “with a view to clarifying” its role.

OIG Reply: Based on the Department’s response, OIG considers this recommendation to be resolved. The recommendation can be closed when OIG receives a copy of the revisions to the Foreign Affairs Manual that, in fact, clarify the role of the Office of the Legal Adviser and address the reporting relationships of attorneys in other offices.

Recommendation 3: The Bureau of Consular Affairs should coordinate with the Office of the Legal Adviser to issue guidance and, if necessary, amend the Foreign Affairs Manual to clarify

- (1) The differences between retention and confiscation of a passport and any other authority that exists to take a passport, the circumstances under which each is authorized, the types of documentation or data entries the Department must create and maintain in exercising each authority, the notifications and advisements that must be given to the document holders in each case, and the fact that retentions must be limited to a specific temporary period.
- (2) The circumstances in which individuals whose passports are retained, confiscated, or revoked while overseas are entitled to limited validity passports to return to the United States.

Management Response: In its September 21, 2018, response, the Department concurred with this recommendation and stated that the Bureau of Consular Affairs, the Bureau of Diplomatic Security, and the Office of the Legal Adviser will work together to issue revised guidance and/or Foreign Affairs Manual provisions. The Department specifically noted that the “guidance on retention of passports will address appropriate temporal limitations.”

OIG Reply: Based on the Department’s response, OIG considers this recommendation to be resolved. The recommendation can be closed when OIG receives a copy of the revised guidance that specifically addresses each of the concerns set forth in this recommendation.

Recommendation 4: The Bureau of Consular Affairs and the Bureau of Diplomatic Security should ensure that all ARSO-Is receive appropriate training on the clarifications described in Recommendation 3 and identify a single point of contact for ARSO-Is and other DS agents seeking legal guidance.

Management Response: In its September 21, 2018, response, the Department concurred with this recommendation with respect to training and stated that it will “ensure that all ARSO-Is receive appropriate training on the clarifications described in Recommendation 3.” As to the remainder of the recommendation, the Department stated that it concurred “with modifications” and that it would “identify a single point of contact for ARSO-Is and other DS agents seeking legal guidance on the retention and/or confiscation of a passport.”

OIG Reply: Based on the Department’s response, OIG considers this recommendation to be resolved. The recommendation can be closed when OIG receives documentation that the Department has established a process to train ARSO-Is and that a single point of contact has been identified for ARSO-Is and other DS agents seeking legal guidance on the retention and/or confiscation of a passport.

APPENDIX A: SCOPE AND METHODOLOGY

OIG initiated this review to assess the allegations of improper seizure of passports at Embassy Sana'a from 2012 to 2014.⁶³ OIG did not attempt to assess the validity of the underlying issues leading the Department to take possession of these passports; that is, OIG did not address whether the citizens making the allegations committed passport fraud, and it did not assess the quality of the Department's fraud investigations. Rather, OIG examined the facts and circumstances surrounding the allegations to determine whether Department staff followed applicable regulations and policies in place at the time for taking possession of the passports and to identify other relevant issues related to compliance with those regulations and policies.

To conduct its work, OIG requested that the Department provide OIG information on all U.S. passports seized at Embassy Sana'a from 2012 to 2014. If available, OIG reviewed identity documents, such as U.S. or Yemeni passports and birth records; statements from the affected individuals; reports of investigations; written requests for revocation; communications between the Department and affected individuals; and internal Department communications. In selected cases, OIG interviewed the affected citizens and their legal counsel. In addition, OIG reviewed regulations and policies in place during the relevant time period, including provisions of the Immigration and Nationality Act,⁶⁴ related regulations and Department directives in the FAM and FAH, and guidance and policies in cables and memoranda.

OIG also interviewed current and former CA employees, including the Director of Passport Legal Affairs and Law Enforcement Liaison within the Directorate of Passport Services and the Managing Director of Overseas Citizens Services in the Office of Legal Affairs within the Directorate of Overseas Citizens Services. In addition, OIG interviewed the former Consular Chief for Embassy Sana'a and officials from the Bureau of Diplomatic Security, including ARSO-Is at Embassy Sana'a from 2012 to 2014. OIG also interviewed staff in the Office of the Legal Adviser, including current and former attorneys.

Several factors affected the nature and timing of OIG's analysis.

First, as described in this report, the Department does not have an effective, centralized database or system for tracking passport retention, revocation, and confiscation cases. As a result, OIG was unable definitively to identify how many individuals were affected by the conduct at issue. Second, on a closely related point, the Department was frequently unable to provide information in a timely manner because of its inability to locate relevant materials.

Second, the designation of the takings in question as retentions or confiscations ultimately affected OIG's work. OIG initially requested that the Department provide OIG information on all U.S. passports "confiscated" at Embassy Sana'a from 2012 to 2014. This terminology was

⁶³ These dates are based on information in the allegations OIG received; during the course of its work, OIG learned that the passports were taken between December 2012 and June 2013.

⁶⁴ 8 U.S.C. Chapter 12.

consistent with the allegations included in the January 2016 letter and with many of the Department's own documents. On September 22, 2017, however, the Department provided informal, preliminary comments to a draft report provided in August 2017. In those comments, the Department asserted that its actions in seizing these passports were taken under the Department's *retention* authority rather than its *confiscation* authority.⁶⁵ OIG accordingly undertook to examine the Department's *retention* authority and any evidence the Department could provide that it used this authority in its handling of the cases under review. Accordingly, on November 30, 2017, OIG asked the Department for documents bearing on its retention authority, including contemporaneous records from its processing of these cases that might reflect its exercise of retention authority and procedures, and, on January 24, 2018, the Department provided its final response to that document request. That is, the expansion of scope to address the Department's retention authority substantially extended the time required for this project.

Finally, as described in the body of the report itself, in April and May 2017, after OIG had completed its fieldwork on this review, the Department revised its policies on passport fraud investigations. OIG then analyzed the effect of these revisions on its findings.⁶⁶

OIG conducted this work in accordance with quality standards for evaluations as set forth by the Council of the Inspectors General on Integrity and Efficiency.

⁶⁵ The Department contends that it informed OIG of this position during the fieldwork portion of the project. OIG has no record of being so informed, and OIG found no written communication to this effect before the Department's September 2017 comments. Moreover, throughout OIG's work in this matter, as is ordinary procedure, OIG conducted all interviews with two officials present. No notes reflect any references during the interviews to the Department's retention authority, and no interviewer independently has such a recollection.

⁶⁶ As a result, some of the FAM citations in footnotes may have been changed.

APPENDIX B: DEPARTMENT OF STATE RESPONSE

THE DEPARTMENT'S RESPONSE TO THE OIG REVIEW OF ALLEGATIONS OF IMPROPER PASSPORT SEIZURES AT EMBASSY SANA'A, YEMEN

We welcome the opportunity to respond to your report, *Review of Allegations of Improper Passport Seizures at Embassy Sana'a, Yemen*. The Department is committed to continuing to improve our processes and concurs with the recommendations; however, we also have concerns with several of the Inspector General's (OIG) assertions and conclusions.

Citizenship fraud and identity fraud are national security risks the Department confronts in the United States and all over the world when adjudicating United States passport and Consular Report of Birth Abroad (CRBA) applications and when determining whether to revoke previously issued passports and CRBAs. Unique circumstances existed in Yemen during the time period in question. There are specific differences among retention, revocation, and confiscation. The Department has broad authorities for retaining and revoking passports on the basis of false identity. The Department addresses these issues and others in detail below.

1. Every Passport Decision is a National Security Issue.

One wrongfully issued valid passport, especially one issued in a false identity, poses an ongoing threat to U.S. national security and border security. The complex national security issues presented by identity fraud and passport issuance, in turn, influence the Department's policies, practices and actions. A valid U.S passport allows the bearer to travel to the United States, provides visa-free access to over 170 countries around the world, and serves as a representation to foreign governments that the U.S. Government has made a determination of the bearer's "origin, identity and nationality."¹ The passport may be used to open bank accounts, purchase property, and even be submitted as identification to procure a government job. If issued in a fraudulent identity, the passport may also be used as the basis for obtaining other documents in the false identity (e.g., a social security card or driver's license).

¹ See generally 8 U.S.C. § 1101(a)(30).

Passports issued to persons using fraudulent identities expose another vulnerability: the true identity is never run through appropriate national security, border security, and law enforcement database checks. Finally, a passport issued in a false identity allows the bearer to perpetuate the fraud and potentially bring others to the United States through the immigrant visa process.

2. The Situation in Yemen.

Yemen was and has been a historically high fraud post where many applicants engaged in passport or visa fraud. In the past, Diplomatic Security (DS) investigated and discovered that passport and visa applicants had engaged in DNA fraud in coordination with local doctors. After revising the Department's DNA collection procedures to combat DNA fraud, Embassy Sana'a encountered many instances of U.S. citizens applying for passports or CRBAs for children they claimed as their own, only later to seemingly disavow one or more of these "children" once DNA was requested to establish the relationship. In addition, government issued Yemeni vital records are easily obtained through bribery or fraud. In Yemen, virtually anyone can easily obtain a birth certificate, marriage certificate, or identity card issued in any name or date of birth.

Yemen was and remains a country with a weak central government. It is the headquarters for Al Qaeda in the Arab Peninsula and the Islamic State in Yemen (ISIS-Y). It was home to notorious terrorist Anwar al-Awlaki and is home to Jaber A. Elbaneh, Qassim al-Rimi, and other terrorists on the FBI's most wanted list. The Iran-linked Houthi militant group controls part of the country.

The U.S. Embassy in Sana'a closed in February 2015, as a result of continuing violence, ongoing security issues and civil unrest. During the period subject to OIG review, the Embassy in Sana'a was a high threat post. The building, compound, and staff were continually subjected to actual or threatened militant attacks and violence. In 2008, the Embassy was bombed, killing 12 people. It was attacked again in 2012. In the five years before the Embassy closed in 2015, it was on authorized or ordered departure three times, for several month periods each time. Staff sometimes could not leave their homes to get to work because of shootings and violence on the streets. For the same reasons, at times staff could not leave the Embassy to get to their homes, instead spending the night sleeping under their desks.

The difficult conditions in Yemen created obstacles to the swift completion of comprehensive identity fraud investigations. The ability to safely locate and interview people, research local records, and collect evidence became increasingly complicated due to the violent and deteriorating security environment. The lack of reliable government mail service, unavailability of commercial carriers, and dangers to embassy couriers further complicated our denial and revocation notification procedures by making it extremely difficult to send letters by mail or personal delivery.

3. Identity Fraud Cases at Embassy Sana'a.

The following scenario is typical of the identity fraud cases presented in Yemen. A U.S. citizen smuggler fraudulently claims an individual to be his biological child. During the Immigrant Visa (IV) application process, this individual assumes the last name of the smuggler, made possible as the Yemeni legal system allows name changes with little to no supporting documentation or justification.² The individual with the alleged biological relationship to the U.S. citizen smuggler immigrates and obtains a valid certificate of naturalization issued in the assumed identity, and subsequently obtains other documents such as a social security card and driver's license in that false identity. Years later, after the smuggled individual naturalizes as a U.S. citizen, he escalates the fraud that allowed him entry to the United States. This is accomplished both by using the individual's fraudulently obtained identity to naturalize his legitimate biological children, as well as by replicating the initial fraud for others posing as his offspring, all of whom will assume the fraudulent last name of the original smuggler. Ultimately, using schemes of this type, dozens of individuals across multiple generations are able to fraudulently enter the United States as a result of a single original passport fraud. The national security implications of such cases and the need for processes to identify and combat these situations should not be minimized. Non-public materials provided to OIG during the investigation show the threat is very real.

² Most Yemeni vital records are not computerized, and the Government of Yemen does not employ secure processes and procedures for adjudicating and maintaining vital records. As a result, it is quite easy and very common for a person to assume a different identity in Yemen and to fraudulently obtain valid documents to support that identity. An individual can prove one's identity before a government official without any documentary evidence. He or she simply may present any two witnesses to attest to the individual's identity to obtain documents such as a birth certificate, national identity card, or even a Yemeni passport. Embassy staff observed, on multiple occasions, individuals waiting outside government offices willing to be hired as "witnesses" for payment.

Embassy Sana'a routinely encountered cases involving facts similar to the scenario explained above, including the 31 cases that OIG reviewed. These cases included identity fraud, naturalization fraud, and human smuggling, and posed a potential national security risk. Most cases followed the same pattern: the U.S. citizen would come to the Embassy to apply for a service, perhaps an immigrant visa or a passport, on behalf of a purported family member, usually an unmarried child. The citizen would voluntarily provide his passport to Department officials, along with application materials and any other supporting evidence. He would then speak with consular staff and if the application was not immediately acted upon, he would be instructed to leave and await further contact.³ The consular staff, upon reviewing the information provided, would identify a possible fraud issue and refer the matter to the DS special agent working on consular matters, generally the Assistant Regional Security Officer for Investigations (ARSO-I).⁴ Consular staff would contact the citizen and advise him to return to the Embassy for an interview. The ARSO-I would then interview the citizen, using a Yemeni translator. In the course of this interview, the citizen would admit to being smuggled into the United States by a man who had purported to be his father but was not. He would often admit the name on his U.S. passport was not his true identity and provide the ARSO-I with his true name and his parents' true names. The citizen would then sign a statement, which the Yemeni translator read to him in his native language, attesting to this information. Based on the admission and any other evidence, the ARSO-I would determine that the previously issued U.S. passport was issued in a false name and the application submitted by the bearer contained materially false information, including the bearer's name and the false names of his parents. The ARSO-I or consular staff would continue to retain the passport⁵ based on the signed statement and would later submit the case to Passport Services' Office of Legal Affairs and Law Enforcement Liaison

³ The Department uses the word "he" because overwhelmingly in Yemen passport and visa fraud is perpetrated by a male, who previously naturalized fraudulently or lawfully, and then seeks to bring in others who are purportedly relatives. Some beneficiaries are relatives but often others are not.

⁴ Certain ARSO-Is are assigned to consular sections at more than 100 overseas posts. While their primary task is to conduct criminal investigations related to passport and visa fraud, they perform a number of other tasks in support of their consular section's work, including engaging with CA's fraud prevention managers in order to prevent criminals and terrorists from exploiting U.S. passports and visas for illegal gain. These agents are rated or reviewed by the Consular Chief at post and spend approximately 80% of their time performing investigations and fraud prevention work. They spend the balance of their time on RSO programmatic duties. See 12 FAM 223.2-1.

⁵ Although the passports were placed in a safe by the ARSO-I, such a practice is consistent with internal controls policies and good practices for retaining passports still valid and for securing personal identifying information (PII). See 7 FAH-1 H-644.3.

(CA/PPT/S/L, hereinafter “PPT/L”) for revocation following the requirements set forth in the Department’s Foreign Affairs Manual (FAM).⁶

4. The Department has Broad Passport Retention Authority and there are Necessary and Important Distinctions Among Retention, Revocation and Confiscation.

The Department has broad passport retention authority under 22 U.S.C. § 211a, 22 C.F.R. § 51.46 and § 51.7 (“retention authorities”). When applying for passports or other consular services at Embassy Sana’a – consistent with the practice worldwide – bearers voluntarily provide their passports to the Department. In all the cases OIG reviewed, the Embassy found indicators suggesting fraud had occurred.⁷ Consistent with current Department policies, practices, and regulations and those in effect at the time, and incident to a suspicion of fraud, passports were retained⁸ as part of the adjudication of the application.

The Department is authorized to retain evidence, such as fraudulently obtained passports, for anti-fraud or law enforcement or other similar purposes.⁹ Moreover, the passport is the property of the U.S. government as 22 C.F.R. § 51.7 specifically provides.¹⁰ The language from section 51.7 is

⁶ See previous 7 FAM 1386, now 8 FAM 804.1. The Department agrees that best practices were not followed in many instances at Embassy Sana’a, and some passports were retained by the ARSO-I for long periods of time prior to requesting revocation under the FAM. The violence and unrest routinely occurring in Sana’a at the time, as well as the ongoing security issues and staffing problems resulting from the ordered departure status, violence and unrest, contributed to the delays.

⁷ The Department provided OIG with evidence of fraud indicators for all 31 cases on January 18, 2018 and January 23, 2018 in response to OIG’s November 30, 2017 request.

⁸ Regardless of the terminology that may have been employed in internal communications to describe the retention of the passports or in response to subsequent inquiries by OIG, the cases and actions at Embassy Sana’a demonstrate that the passports were retained as that term is used in federal regulations and consistent with Department policy and practice. Specifically, 22 C.F.R. §51.46 provides:

Return or retention of evidence of U.S. citizenship or non-citizen nationality.

The Department will generally return to the applicant evidence submitted in connection with an application for a passport. The Department may, however, retain evidence when it deems it necessary for anti-fraud or law enforcement or other similar purposes.

⁹ See 22 C.F.R. § 51.46.

¹⁰ **Passport property of the U.S. Government.**

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

(b) Law enforcement authorities who take possession of a passport for use in an investigation or prosecution must return the passport to the Department on completion of the investigation and/or prosecution.

22 C.F.R. §51.7.

printed in every passport book.¹¹ Department FAM provisions, in effect at the time, also instructed adjudicators to retain documents in connection with suspicions of fraud.¹² In each of the 31 cases OIG reviewed there was evidence that the passports were obtained by fraud, and thus could be retained consistent with these regulations and policies. This is not to say, however, that such retention can continue indefinitely or for an unreasonably long time. In addition, where revocation is appropriate, the bearer must be sent notice of the revocation and, when applicable, provided an opportunity for an administrative hearing.¹³

The Department retains passports each day in the United States and across the world in accordance with its retention authorities, as described above. By contrast, a passport is *confiscated*, in accordance with 12 FAM 223.5, only when it is taken pursuant to an arrest or after it is revoked. A passport retention does not become a confiscation, de facto or otherwise, regardless of the length of time the Department is in possession of the document. Whether a passport was retained or confiscated is defined by the circumstances and authorities under which the Department obtained the passport. In addition, a retained passport remains valid until certain actions are taken, and the retained passport may even ultimately be returned to the bearer for use.¹⁴

Each day, domestically and overseas, thousands of persons routinely and voluntarily provide their passport to the Department to obtain a consular service such as a passport renewal, a name change, or a CRBA or visa application for a family member. As appropriate, the Department retains these passports while adjudicating the application submitted or service requested. The Department reviews the bearers' information, and runs it through database checks to make sure the bearers are or remain entitled to their passports. Sometimes they are no longer entitled to the passport. For example, the bearer may have a warrant for his/her arrest, and while he/she may not be arrested at that moment by a special agent of the Department, the

¹¹ U.S. Customs and Border Protection (CBP) generally relies on this regulation to retain U.S. passports at the various ports of entry consistent with its policy to "remove from circulation all counterfeit, fraudulent, and altered travel and identity documents..." CBP defines a fraudulent document as one that has been altered, counterfeited, used by an individual to whom the document was not issued, or obtained through fraudulent means. See CBP Directive No. 334-047A, dated March 1, 2017.

¹² See 7 FAM 1343, 1344, and 1347 in effect at the time (guidance on examining applications for fraud and the retention of citizenship evidence where there is a suspicion of fraud in an application).

¹³ 22 C.F.R. § 51.65(a). If the Department does not revoke the passport, it must be returned to the bearer.

¹⁴ See 22 C.F.R. §51.4.

Department is authorized, pursuant to its retention authorities,¹⁵ to retain the passport during the adjudication of the service. To do otherwise would provide the wanted felon with the means to flee anywhere in the world. Similarly, if the bearer obtained the passport through fraud, returning the passport despite the fraud would allow the bearer the means to continue to perpetrate the fraud against the U.S. government, a foreign government or other entities across the globe. In all the cases OIG reviewed, there were signed statements by individuals admitting that the bearers obtained their passports through fraud.

The cases OIG reviewed were authorized passport retentions consistent with the Department's retention authorities available in the FAM and regulations; they were not passport confiscations as that term was used at that time in 12 FAM. While Embassy Sana'a did not immediately institute revocation procedures upon retaining the passports, the duration of the Department's retention of passports did not render the retentions themselves unauthorized or somehow transform them into "de facto confiscations." No one at Embassy Sana'a, neither consular staff nor the ARSO-I, was taking evidence incident to an arrest. The passports were retained incident to the adjudication of an application or other service, during which the Department received information that called into question whether the bearers remained entitled to the passport. As noted above, when presented with information that demonstrated that the bearers were issued passports in a fraudulent identity, the Department was authorized by 22 C.F.R. 51.46 to retain them. To return the passports instead of retaining them pending reviews and requests for revocation, would have threatened national security, border security, and the integrity of the passport adjudication and issuance process.

The OIG report states that the Department position on confiscations and retentions "evolved" over the course of the OIG review. However, the Department has maintained the same distinction between retained and confiscated passports. While working level documents created and provided in response to OIG requests may have used the terms broadly, it did not modify the circumstances or authorities under which the Department came into possession of the passports or how the cases were handled at the time. Passport revocation is an entirely distinct process from confiscation or retention and is governed by a different legal framework and practice.

¹⁵ 22 C.F.R. 51.46.

Neither confiscation nor retention necessarily triggers a request for revocation, and therefore it is inaccurate to state that there were significant delays in revoking all of the 31 passports.¹⁶ PPT/L does not take revocation action until it receives a passport revocation request accompanied by evidence supporting the basis for revocation.¹⁷ In the case files OIG requested and reviewed from PPT/L, the majority of the revocations were completed by PPT/L in 60 days or less from the date Embassy Sana'a sent the revocation request memorandum and supporting evidence to PPT/L.¹⁸ Further, Department regulations, specifically 22 C.F.R. 51.65, require that the Department notify the bearer of the revocation. Overseas, that responsibility generally falls on the nearest U.S. embassy or consular post, and not PPT/L as stated in the OIG review.¹⁹ As previously stated, Embassy Sana'a was often operating under conditions that made revocation notification extremely difficult. Despite this, in 26 of 29 cases there was evidence that the bearers were notified that their passports were revoked.²⁰ In cases that were revoked, the Department followed its authority under 22 C.F.R. §§ 51.60 and 51.62 to, as appropriate, issue limited validity passports to U.S. citizens for direct return to the United States.

5. There is Clear Statutory and Regulatory Authority for Passport Revocation on the Basis of Fraudulent Identity.

When the Department issues or denies a passport application, or determines whether to revoke a passport, it reviews the facts, circumstances and documentation pertaining to three issues: citizenship, identity, and entitlement. Thus, the applicant must show that he/she is a citizen, is who he/she claims to be, and there must be no statutory or regulatory basis that precludes them from obtaining or retaining the passport.²¹ These are independent requirements. Indeed, the Department makes these distinctions,

¹⁶ For example, the report repeatedly states that the passports were "eventually" revoked; see also page 12 ("In the majority of these cases, PPT/L did not send notices for 10 months or more") and Table 2, all of which conflate the retention process and the revocation process.

¹⁷ 8 FAM 804.1-3.

¹⁸ Throughout the review PPT/L completely responded to all OIG requests, including all requested revocation and revocation hearing documents, and all cases had evidence of supervisory approval.

¹⁹ See OIG Report Figure 2.

²⁰ In some cases where the Department was unable to produce a copy of the written revocation notice provided by Embassy Sana'a, the Department produced other evidence demonstrating the bearer was notified. When Embassy Sana'a closed in 2015, consistent with written guidance, staff destroyed all sensitive consular documents including those containing personal identifiable information.

²¹ See 22 C.F.R. §§ 51.60-62.

and has revoked passports on the basis of fraudulent identity, in many other instances outside the Embassy Sana'a context. The source for the authority to revoke passports on the basis of identity is described below.

First, the distinction between citizenship and identity is reflected in longstanding Department policy as articulated in the FAM. The FAM specifically identifies the difference between ineligibility for a passport on the basis of citizenship and ineligibility on any other basis, including identity (for which a naturalization certificate is not definitive proof). "By law, pursuant to 8 U.S.C. 1443(e), Certificates of Naturalization or Citizenship are proof of United States citizenship. Accordingly, an individual remains eligible for a U.S. passport until his/her Certificate of Naturalization or Certificate of Citizenship is revoked by USCIS or a U.S District court, **or unless he/she is ineligible for passport services for reasons other than non-citizenship.**"²² (Emphasis added) "[I]f USCIS declines to cancel the Certificate of Naturalization/Certificate of Citizenship, **and there is no fraudulent identity issue regarding the applicant,** [Consular Affairs] must issue a full validity passport and take action to remove the lookout." (Emphasis added).²³

Second, federal regulations specifically provide for the need of passport applicants to separately prove citizenship and identity.²⁴ Similarly, federal regulations provide for the revocation of passports issued on the separate bases of fraud and non-nationality.²⁵ There are four documents issued by the U.S. government that prove citizenship: a naturalization certificate, a certificate of citizenship, a validly issued U.S. passport, and a CRBA. All are equal under the law as citizenship documents and essentially are irrefutable proof of U.S. citizenship during the period of their validity.²⁶ Of these four citizenship documents, only the U.S. passport is defined in the

²² See previous 7 FAM 1381.2 d(1) (now 8 FAM 802.2-1). This section of the FAM was found at paragraph 1381.2 paragraph d as of February 10, 2012, but was previously found in similar form though not identical wording at 7 FAM 1386.2 going back to at least 2008.

²³ See previous 7 FAM 1382.1 paragraph d(6) (now 8 FAM 802.2-1). This language was in 1381.2 paragraph d(6) from February 10, 2012 to October 25, 2013. On October 29, 2013, it was removed, but similar language was added to 1381.2 paragraph d(3): "Generally, if an applicant's name hits against a [specific] reason code when the individual presents either a Certificate of Naturalization or Citizenship, you must issue a full validity passport. Reasons for denial may include failure to sufficiently establish identity or other non-entitlement reasons defined in a hold." This language remains in this section today.

²⁴ See 22 C.F.R. §§ 51.23, 51.40.

²⁵ See 22 C.F.R. §§ 51.62(a)(2) and (b).

²⁶ See 22 U.S.C. § 2705 and 8 U.S.C. § 1443(e).

Immigration and Nationality Act as an identity document.²⁷ Naturalization certificates and certificates of citizenship are not identified by law as proof of identity. Accordingly, Department policy and practice is to treat them as *refutable* evidence of identity, the same as, for example, a driver's license.²⁸

Third, federal law provides the Department with specific statutory authority to revoke a U.S. passport on the basis of fraud.²⁹ The same law provides for an important legal distinction between the revocation of a passport and a denaturalization. Revocation of a passport does not affect the citizenship status of the bearer, but only the document itself. On the other hand denaturalization terminates one's claim to citizenship. The Department has authority to revoke a passport, whereas only a federal judge may order someone denaturalized. The law states in relevant part:

The Secretary of State is authorized to cancel any United States passport or Consular Report of Birth, or certified copy thereof, if it appears that such document was illegally, fraudulently, or erroneously obtained from, or was created through illegality or fraud practiced upon, the Secretary....The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued **shall affect only the document and not the citizenship status of the person in whose name the document was issued.**³⁰

(Emphasis added.)

When revoking a passport, the burden of proof is on the Department. The Department may revoke a U.S. passport when there is a preponderance of the evidence supporting grounds for revocation. This has been the Department's standard of proof in place well before 2012. Further, the Department has articulated this standard numerous times publicly and consistently, including in court filings.³¹

²⁷ See 8 U.S.C. § 1101(a)(30).

²⁸ See generally previous 7 FAM 1320 (now 8 FAM 401.3-2), and 22 C.F.R § 51.23(c).

²⁹ 8 U.S.C. § 1504.

³⁰ 8 U.S.C. § 1504.

³¹ See, e.g., Castro, et al v. Freeman, 1:09-cv-00208 (S.D. Tex.) (Rolbin Declaration, Nov. 20, 2012, ECF No. 217-1 at ¶¶ 5-6).

The cases OIG reviewed were not the first or the last instances where the Department revoked the U.S. passport of an individual who admitted that it had been issued in a false identity and who also held a valid naturalization certificate in the false identity. Notably, we applied this policy in 2010 when the Federal Bureau of Investigation apprehended several Russian spies who were living in the United States as U.S. citizens under false identities. Some obtained U.S. citizenship by naturalizing in their false identities, and obtained U.S. passports using their naturalization certificates. Following their apprehension, the Russian spies admitted in sworn statements to their true identities. Relying on the laws, regulations, and policies referenced above, and despite the individuals being in possession of still valid naturalization certificates, CA revoked their passports on the basis of their use of fraudulent identities and false claims on the passport application.

Unlike in the Russian cases, however, here the Department faced an unusual situation because the bearers of these passports sought documentation to return to the United States. A complex question needed to be resolved – in light of signed confessions of identity fraud, could passports be issued for travel to the United States and in what names? This issue was a matter of first impression for the Department and resolution required several meetings and multiple discussions among lawyers and policy makers. Within weeks, however, a decision was reached and guidance was drafted, reviewed, cleared and communicated to Embassy Sana'a, with detailed instructions on how to issue limited validity passports. Subsequently, a formal guidance cable was sent on February 3, 2014.³²

6. Proper Procedures for Handling These Cases Were Followed.

a. Embassy Sana'a followed notification procedures for processing fraud cases.

In each of the 31 cases OIG reviewed, there was evidence of fraud obtained at the time of passport retention. Despite the evidence obtained by Embassy Sana'a in each case, OIG asserts that procedural requirements were not followed in cases where a passport was retained and where fraud was suspected. OIG contends that Embassy staff should have referred the case to the Fraud Prevention Manager (FPMs), suspended the application, and

³² Though this guidance was issued to Embassy Sana'a, it applies equally to any post overseas presented with a similar factual situation. CA intends to incorporate it into upcoming revisions to 8 FAM.

notified the applicant of the insufficiency of documentation and what documents are required. It further stated that several cases were referred directly to the ARSO-I. However, it is inaccurate to state that procedural requirements were not followed.

In Table 1, OIG asserts that several cases were not referred to the Fraud Prevention Manager (FPM). However, the consular activity logs and records from the fraud tracking system provided to OIG show that many of those cases were in fact referred. The documents provided to OIG show that in 29 of the 31 cases, referrals were made to the fraud tracking system. The FAM does not require the ARSO-I to accept cases only from an FPM, but rather may accept them from a variety of sources.³³ As noted in information the Department provided to OIG on January 23, 2018, during the time period in question, Embassy Sana'a did not have a permanent FPM. Instead, entry-level officers served rotations as the FPM in addition to their regular adjudication duties. The logs and records show that the cases were handled by employees within Embassy Sana'a's Fraud Prevention Unit, as well as entry-level officers, and note referrals by FPU to the fraud tracking system, as well as entries for cases in the fraud tracking system itself. The logs provided to OIG also specifically state, among other things, that "Fraud summary prepared and referred to ARSO-I. Case added to ARSO-I /FPU [Fraud Prevention Unit] list."

In addition, in cases involving fraud concerns, FPMs *may* request additional documents from an applicant should those documents help to make a final determination regarding fraud. However, complete applications found to have fraud concerns may not require or result in additional document requests. As noted in 7 FAH-1 H-943.5, fraud assessments are conducted using a variety of tools. When additional documents or interviews of the applicant are not pursued, the applicant is not notified of the fraud concerns and is not required to be notified until formal restrictive action is taken.

b. The scope and requirements for handling "parentage" fraud cases.

In the 31 cases reviewed by OIG, discovery of the fraud was triggered by an application for a consular service – usually in the form of an application for

³³ 12 FAM 224.1-1(B).

a U.S. passport or Consular Report of Birth Abroad. The applicants in these situations were generally *not* the individual whose passport was retained; rather, the passport bearers were the applicants' fathers. OIG states the FAM requires that parentage fraud issues be handled 'sensitively,' that there was no evidence that Embassy Sana'a officials followed this requirement, and that Embassy officials were required under the FAM to suggest that parents consult a lawyer.

The Department strives to handle all matters sensitively and to treat applicants with respect and dignity.³⁴ The main fraud concern at Embassy Sana'a was not parentage fraud as that term is generally used in passport adjudication, but rather identity fraud by the applicants' fathers who bore U.S. passports in false identities. Parentage fraud applies when an individual falsely or fraudulently claims a person (usually a minor) as his or her biological child when there is no actual parent-child biological relationship. This is separate from a scenario where a U.S. citizen parent seeking to gain derivative citizenship for a child admits in the course of the review of the application to falsely naturalizing and holding a U.S. passport in a false identity.

In addition, during the time period of events reviewed by OIG, there was no requirement that officials suggest parents consult a lawyer. From 1998 to 2016, the relevant FAM section³⁵ stated that when it was clear that there was no citizenship claim for a child, Posts should provide information on visa eligibility.³⁶ It was not until February 2016 that the Department added the current language stating that posts should suggest parents consult a lawyer in cases where the child does not have a citizenship claim. This was more than a year after the Embassy in Sana'a closed.

OIG also states that instead of handling these cases in a timely manner, they lingered for months or years, and applicants were not given information about their status. In more than one-third of the cases, a decision was made on the application in less than two weeks. In some cases, delays were due to host-country infrastructure presenting challenges in contacting applicants, or

³⁴ The applicable FAM section at the time, 7 FAM 1131.5-3 - Paternity Issues, outlines methods to resolve parentage questions, including recommending that the family undergo DNA testing to resolve any questions of paternity. It should be noted that Sanaa has long been among the top posts in the number of cases recommending DNA testing to resolve paternity issues due to the unreliability of documentation.

³⁵ Former 7 FAM 1131.5-2

³⁶ The records provided to OIG evidence Embassy Sana'a relaying such information to applicants.

procedural difficulties in conducting DNA tests.³⁷ In addition, Department practice is that Fraud Prevention Units do not communicate the results of a fraud investigation or assessment to the applicant regardless of the outcome. Rather, they pass the results to the adjudicating consular office so the adjudicating officer can either issue or deny, and inform Diplomatic Security if further investigation is warranted.

7. The Department Took Steps to Address the Retention of Passports in Yemen.

As the OIG noted in its report, communication between CA and post was a challenge. Continuity in staffing was hindered by staff vacancies and absences, while the deteriorating security situation affected post's ability to work. Different offices throughout CA and the Department had received different information at different times. The ARSO-I in Sana'a sent an email, in December 2012, to two PPT/L mailboxes for guidance. That email made no mention of either the number of fraud cases or the amount of time that had elapsed since the retention of any passports to that point. According to OIG's timeline in its draft report, less than a handful of cases were referred to PPT/L for revocation in the first half of 2013.

8. This was a Unique Situation.

In the latter half of 2013, the scope of the situation in Yemen became clearer to the Department, as information was reported and shared regarding the numbers of cases involved and the delays in requesting revocation by Embassy Sana'a.³⁸ These cases presented a unique and complex situation. Namely, there were a significant number of passport bearers overseas who confessed to having committed a similar type of identity fraud in obtaining their U.S. passport, yet had also naturalized in the false identity, held valid naturalization certificates issued in that false identity, and were seeking to return to the United States. In an effort to resolve this problem, and to thoroughly review and address the legal and policy issues presented, several offices within the Bureau of Consular Affairs and the Office of the Legal Adviser with expertise on the issues collaborated to conduct a review and provide a recommended course of action. Meetings and discussions took

³⁷ Further, in those few cases involving parentage fraud, there was no evidence that the Department acted insensitively.

³⁸ See 8 FAM 804.1.

place over several weeks, and often included consular management at the Embassy. Several lawyers, including the heads of these offices, participated. Given the complexity and novelty of issues involved, from a legal, policy, and operational standpoint, these robust internal deliberations were essential. CA and DS leadership supported the decisions reached, recommendations suggested, and actions taken.

9. Once Aware of the Scope, the Department Acted Quickly to Resolve the Issues.

Due to circumstances at Embassy Sana'a (the security environment required the ARSO-I to suspend the majority of his investigatory work; the ordered departure further burdened the resources of the ARSO-I office, etc.), very few cases were referred for revocation prior to November 2013. By the time they were referred to PPT/L, a decision on the general course of action had been reached. DS provided TDY support to the Embassy that helped the ARSO-I review pending cases and prepare revocation requests, and PPT/L mobilized to quickly review and act on cases as they were received. Consistent with existing law, regulations, and policy, if appropriate, the related passports were revoked. The Embassy was tasked with providing the revocation notices to the affected persons, as was, and remains standard practice for overseas posts. Although OIG's asserts³⁹ that PPT/L is responsible for sending the notice, 22 C.F.R. 51.65 requires that the Department notify the bearer of the revocation. Overseas, that responsibility generally falls on the post requesting revocation.

CA provided interim written guidance to Embassy Sana'a in October 2013, and thereafter continued to engage with Embassy Sana'a on issues as they arose, both by phone and via email. In January 2014, while the issue of providing limited validity passports to persons whose passports were revoked was being addressed, Embassy Sana'a notified CA that individuals were requesting passports in order to return to the United States. Guidance was immediately provided to Embassy Sana'a instructing them to notify bearers of revoked passports who held valid citizenship evidence, i.e., naturalization certificates, that they might obtain limited validity passports in their true names. This guidance was formalized in the cable that was sent to Embassy Sana'a on February 3, 2014.

³⁹ See OIG Report Figure 2.

It should also be emphasized that, due to the highly volatile situation in Yemen, many operations that were routine for other U.S. embassies were not possible in Yemen, including telecommunications, postal service, and courier services. At that time, only 9% of the population had internet access, and in many cases phones were turned off or individuals did not respond, further hampering text or e-mail communication. These factors sometimes resulted in delays in providing written notification to a bearer of the actions taken.⁴⁰

10. Conclusion.

The Department faced challenging circumstances in Yemen. As one OIG investigator noted during an interview, there was a “perfect storm” of events resulting in the need to find a resolution as unique as these circumstances. When confronted with a series of cases involving similar fact patterns of fraudulent identity that had been asserted in the context of an application for a passport or CRBA, and where the passport was retained by a Post under the serious resource and security constraints identified above, numerous offices within the State Department worked assiduously to identify the scope of the problem and to identify a way forward that balanced the State Department’s interest in protecting the integrity of the passport issuance process, together with the U.S. citizen’s right to return to the United States. The Department recognized that the interests on both sides were high. By carefully and deliberately considering national security, existing policy and practice, the limitations of the environment at Embassy Sana’a, and the needs of documented U.S. citizens, the Department acted in a responsive manner that is not adequately reflected in the OIG report.

⁴⁰ Instances of the difficulties Embassy Sana’a experienced in reaching out to individuals to deliver notification was documented in the notes made by consular officers and provided to OIG as a part of its review.

THE DEPARTMENT'S RESPONSE TO THE OIG RECOMMENDATIONS

OIG Recommendation 1: The Bureau of Consular Affairs, Office of Passport Services in conjunction with the Bureau of Diplomatic Security, should develop centralized, searchable databases to track and manage passport revocation cases, as well as retentions of passports and other documents seized on suspicion of fraud when citizens apply for consular services, or under other circumstances, and to track confiscations of such documents if they are seized on grounds other than retention authority.

The Department's response to Recommendation 1: The Department concurs with OIG Recommendation number 1 with regard to the retention and revocation of passports and other documents. As noted in the report, PPT/L currently tracks and manages passport revocations using MS Outlook and SharePoint. CA is currently undergoing a modernization effort of all consular services, titled ConsularOne. Delivery of a system to manage and track passport retentions and revocations is slated for Project 6 of ConsularOne, scheduled to begin in the next few years.

When a DS agent acquires and retains evidence during a passport fraud investigation, the facts and details are documented in DS's Investigative Management System (IMS). IMS is a centralized, searchable database used to track and manage investigations.

OIG Recommendation 2: The Secretary of State should clarify the role of the Office of the Legal Adviser as the senior legal authority for the Department and consider whether attorneys in other offices should report directly to the Legal Adviser.

The Department's response to Recommendation 2: The Department concurs with OIG Recommendation number 2. The Secretary will task L to review the FAM with a view to clarifying the role of the Office of the Legal Adviser as the senior legal authority for the Department and, together with CA, to prepare a recommendation to the Secretary regarding whether attorneys in other offices should report directly to the Legal Adviser.

OIG Recommendation 3: The Bureau of Consular Affairs should coordinate with the Office of the Legal Adviser to issue guidance and, if necessary, amend the Foreign Affairs Manual to clarify

(1) The differences between retention and confiscation of a passport and any other authority that exists to take a passport, the circumstances under which each is authorized, the types of documentation or data entries the Department must create and maintain in exercising each authority, the notifications and advisements that must be given to the document holders in each case, and the fact that retentions must be limited to a specific temporary period.

(2) The circumstances in which individuals whose passports are retained, confiscated, or revoked while they are overseas are entitled to limited validity passports to return to the United States.

The Department's response to Recommendation 3(1): The Department concurs with this recommendation 3(1). CA/PPT/L will work with L/CA to issue guidance on the retention of passports prior to revocation, and CA/PPT/L, L/M, and L/CA will work together with Diplomatic Security to clarify guidance on the confiscation of passports. The guidance on both issues will address the circumstances under which each type of action is authorized, the types of documentation or data entries the Department should create and maintain, and the notifications and advisements that must be given. The guidance on retention of passports will address appropriate temporal limitations.

The Department's response to Recommendation 3(2): The Department concurs with this recommendation 3(2). CA/PPT, DS and L/CA will collaborate, and as appropriate, make revisions to the Foreign Affairs Manual.

OIG Recommendation 4: The Bureau of Consular Affairs and the Bureau of Diplomatic Security should ensure that all ARSO-Is receive appropriate training on the clarifications described in Recommendation 3 and identify a single point of contact for ARSO-Is and other DS agents seeking legal guidance.

The Department's response to Recommendation 4: The Department concurs with the first clause of Recommendation 4, with respect to training and will ensure that all ARSO-Is receive appropriate training on the clarifications described in Recommendation 3. With respect to the second clause of the recommendation, the Department concurs with modifications. The Department will identify a single point of contact for ARSO-Is and other DS agents seeking legal guidance on the retention and/or confiscation of a passport.

ABBREVIATIONS

ACS	American Citizen Services
ARSO-I	Assistant Regional Security Officer – Investigations
CA	Bureau of Consular Affairs
CA/OCS/L	Bureau of Consular Affairs, Directorate of Overseas Citizens Services, Legal
CA/PPT/S/L	Bureau of Consular Affairs, Office of Passport Legal Affairs and Law Enforcement Liaison
CFR	Code of Federal Regulations
DS	Bureau of Diplomatic Security
FAH	Foreign Affairs Handbook
FAM	Foreign Affairs Manual
L	Office of the Legal Adviser
L/CA	Office of the Legal Adviser, Office of Consular Affairs
L/M/DS	Office of the Legal Adviser, Office of Management, Diplomatic Security

OIG EVALUATIONS AND SPECIAL PROJECTS TEAM

Claire Barnard
Thomas McDonald

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