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European Languages

زبانهای اروپایی

By Tom Carter
19.11.2019

Federal court strips citizenship from US-born woman held in Syrian detention camp

On Thursday, a federal court sided with the Trump administration in ruling that 25-year-old Hoda Muthana, who was born in New Jersey and is now being held in a detention camp in Syria, cannot return to the United States because she is not a US citizen.

The ruling is a victory in the far-right campaign to undermine the Fourteenth Amendment. Ratified in 1866-1868, the Fourteenth Amendment guarantees automatic citizenship to every person born within the borders of the United States.

A number of figures in the Trump administration, including Trump himself and his fascistic aide Stephen Miller, have publicly advocated the abolition of the right to birthright citizenship. The Muthana case was doubtless designed in part to test the level of judicial resistance to such proposals.

Hoda Muthana's father, Ahmed Ali Muthana, worked as a diplomat for Yemen from 1990 to 1994. She was born after he was fired from that position. When her family applied for her to have a US passport in 2004, the State Department initially questioned her citizenship status in light of her father's diplomatic background, which would have constituted the single narrow exception to the general rule that all persons born in the US are automatically US citizens.

When Muthana's family applied for her passport, her father provided uncontroverted documentation that his diplomatic status had ended before she was born. Accordingly, on January 24, 2005, she was issued a passport listing her nationality as "United States of America." This passport was renewed on February 21, 2014.

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While a student at the University of Alabama at Birmingham, Muthana apparently came under the influence of jihadist ideas she encountered online. She would later describe this experience as being “brainwashed.” In November 2014, without telling her family, Muthana ran away to Syria in an effort to link up with Islamic State jihadists. Her distraught father contacted the American authorities for help in trying to find her.

Upon arriving in Syria, according to Muthana, she and other female sympathizers were forced to surrender their cell phones, confined to a locked barracks, and made available as potential brides for male jihadists. Shortly after arriving, she was married to Suhan Rahman, an Islamic State jihadist from Australia who went by the name Abu Jihad Al-Australi. After her first husband was killed a few months into the marriage, she was married to a Tunisian man, with whom she had a son. Her second husband was killed in 2017.

When the military fortunes of the jihadists declined, her enclave was encircled and ran out of food. She eventually escaped and was detained by US-backed Syrian Democratic Forces troops in January of this year.

Muthana is currently being held with her son in a detention camp in Syria. When she indicated a desire to return to the US, the country of her birth, the Trump administration saw an opportunity. Trump immediately tweeted: “I have instructed Secretary of State Mike Pompeo, and he fully agrees, not to allow Hoda Muthana back into the Country!”

However, the US government never formally initiated legal proceedings against Muthana, nor was any effort made to provide her with due process. Instead, the authorities simply sent a letter to her parents’ address, which Muthana obviously never received, announcing that she was not a citizen.

Secretary of State Pompeo appeared on national television to proclaim that Hoda Muthana “is a terrorist.” He added, “She is not a United States citizen. She ought not return to this country.” He also stated that “you have to consider the context.” The clear implication of these remarks was that Muthana was being stripped of citizenship on the grounds of her former political beliefs and actions.

Muthana’s father promptly filed a lawsuit as her “next friend,” asking a federal judge to clarify that, whatever his daughter may have done, she remained a citizen with a valid US passport.

Attorneys for Muthana's family pointed to numerous judicial decisions and federal statutes recognizing that a US passport is conclusive evidence of citizenship. Since the US already issued her a passport twice, they argued, the question of her citizenship had already been absolutely and finally settled. The US government, they argued, cannot now revoke her citizenship on the basis of having "second thoughts."

Moreover, the attorneys argued, even the act of revoking her passport does not equate to revoking her citizenship, which the US government had previously accepted as established by the fact of her birth in New Jersey. As a US citizen, under American and international law, she would be entitled to return to the country even without a passport. Not only does Muthana have a constitutional right to return, the US government has an affirmative duty to help ensure that she can do so safely, they pointed out.

Muthana "wants to come home and is willing to submit to any charges against her—though, to be clear, at the moment there are none," argued attorney Christina Jump of the Constitutional Law Center for Muslims in America, who represents Muthana's father.

In response to evidence that Muthana's father was no longer working as a diplomat at the time of her birth, the government contended that the US government did not actually receive official notice of the terminated diplomatic status until after Muthana's birth.

The lawyers for Muthana's family described the evidence put forward by the government on the question of the supposedly late notice as irrelevant and dubious. They argued that "the documents provided by Defendants do not conclusively reveal the date on which the United States first learned of the end of Mr. Muthana's duties."

On Thursday, Judge Reggie Walton of the US District Court for the District of Columbia ruled that Muthana "doesn't have a constitutional right to return to the United States because she is not a US citizen." The judge's ruling from the bench apparently took the attorneys by surprise, who had expected him to take some time to prepare a written decision.

"I am constrained to rule that at the time of her birth, she was still under the protection afforded to diplomats and that when she was born she was not born a US citizen," Walton announced.

Walton, appointed by President George W. Bush, served as a judge on the infamous Foreign Intelligence Surveillance Court (FISC) from 2007 to 2014, in the last year as its presiding judge. While Walton at one time criticized the National Security Agency's

“flagrant violation” of court orders, he later stated, “I never found anything that they did was malicious.” In other respects he is known as a “long ball hitter,” or a judge who imposes very long prison sentences on people convicted of crimes.

The Fourteenth Amendment’s citizenship provision is radically democratic. It states, “All persons born... in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

Ratified with the echoes of the Civil War’s cannons still in the air, this simple principle was designed to guarantee all of the “privileges and immunities of citizens,” “due process” and “equal protection” not only to the recently emancipated slaves and their children, but also to the children of all immigrants.

Under the Fourteenth Amendment, citizenship is absolute, automatic and irrevocable. There is no requirement that a person pledge allegiance to the government, adhere to particular political views, observe any religion, speak any language, or belong to any race. No crime that a person commits has any bearing on the question of citizenship, and no citizen can be involuntarily deprived of citizenship.

The ringing endorsement of democratic principle enshrined in the Fourteenth Amendment, as far as the oligarchs who dominate America in the 21st century are concerned, amounts to nothing short of seditious left-wing extremism.

Since taking office, Trump has repeatedly threatened to issue an executive order overturning the Fourteenth Amendment. Since the Fourteenth Amendment is part of the US Constitution, overturning it would technically require amending the Constitution, which requires a two-thirds majority vote in both the House of Representatives and the Senate and ratification by three-fourths of the states.

Nevertheless, last year Trump claimed that his own lawyers in the White House Counsel’s office supported his right to “reinterpret” the Fourteenth Amendment to abolish birthright citizenship.

The Democrats, for their part, have not lifted a finger to defend the principles contained in the Fourteenth Amendment from attack. It is significant to note that the efforts to strip Hoda Muthana of citizenship were initiated in 2016 under Obama administration Secretary of State John Kerry.

The malicious and callous treatment of this young woman and her son, who have now been abandoned to their fate in a Syrian detention camp, has been passed over in silence by all of the Democratic Party frontrunners in the 2020 presidential elections.

18 November 2019