

A New Approach to Hostage Diplomacy Responding Offensively

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In recent years, foreign states have increasingly taken United States citizens hostage to wring concessions from the U.S. government. This practice has become sufficiently common that policymakers and academics have developed the term “unlawful detention” or “wrongful detention” to distinguish state hostage-taking from non-state hostage-taking.¹ The U.S. has successfully secured the release of many wrongful detainees—fifty under the Biden administration alone—but to do so it has indeed made concessions, releasing money and prisoners.²

While the benefits may be worth the drawbacks, there is no avoiding that these concessions undermine American security—not only incentivizing further wrongful detentions, but supplying opponents with personnel and resources to expand hostile activities.³ Notorious Russian arms dealer Viktor Bout, exchanged in 2022 for Brittney Griner, has already begun supplying arms to the terrorist group Ansar Allah in Yemen, which in turn has targeted U.S. commercial and military vessels.⁴ And while the U.S. may try to employ international legal mechanisms to limit the ways in which a recipient of ransom money can use the ill-gotten funds, money is inherently fungible.⁵

Policymakers are cognizant of the tradeoff. Government officials have spoken repeatedly about the importance of diversifying the tools used to respond to wrongful detentions beyond concessions.⁶ Nonetheless, there has been little in-depth public discussion of what such tools might be.

At an April 2024 panel discussion at Columbia University, Ambassador Robert O’Brien, the former presidential special envoy for hostage affairs and former national security advisor, suggested a need to respond more “offensively”—refocusing responses on coercing rather than imploring adversaries to return wrongful detainees, allowing the U.S. to make as few concessions possible.⁷

Military force and sanctions are the most obvious “offensive” options for compelling an enemy to return a detainee. Both are impractical when dealing with states. Hostage rescue operations are difficult against non-state actors but virtually impossible against functional governments, and punitive airstrikes would be massively escalatory.

As for sanctions, instead of offering to relieve existing ones, the United States and its allies could implement new ones in response to specific instances of wrongful detention. However, the countries that most habitually wrongfully detain Americans, namely Russia, Iran, and China, are already heavily sanctioned. Additional sanctions may not significantly affect their decision calculus and would be challenging to fit into the existing sanctions regime.

The challenge therefore becomes thinking more creatively about generating offensive solutions.

Countering Wrongful Detainment with Rightful Detainment

Ambassador O’Brien has suggested that one underutilized weapon against wrongful detention is rightful detention: using the Department of Justice to arrest foreign nationals in the United States who are committing genuine misconduct following the wrongful detention of U.S. persons abroad.

Intelligence operatives provide an ideal pool for such arrests. For example, *The Wall Street Journal* noted in 2023 that there have been over 100 recent instances of Chinese nationals trespassing or attempting to trespass onto American military bases, resulting in few prosecutions.⁸ The Department of Justice has charged at least six individuals for this offense since the WSJ investigation.⁹ If the U.S. has the evidence to support prosecution, it could leverage these cases to seek justice for wrongfully detained Americans as well as to secure America's bases.

Undeclared foreign intelligence officers serving as diplomats attached to a country's embassy are a particularly promising focus. The United States national security apparatus is often well-aware of which diplomats are genuine and which are intelligence officers posing as diplomats. The United States has frequently exploited this knowledge of diplomatic intelligence activities to compel foreign states to change course; 223 Russian "diplomats" have been expelled from the U.S. since 2000,¹⁰ and in 2020 the United States expelled two Chinese "diplomats" for the first time in thirty years.¹¹ Additionally, targeting these individuals is less likely to create controversy with the American public than targeting individuals with foreign backgrounds but no apparent connection to an embassy, who could argue more persuasively that they are being unfairly targeted simply because of their nationality.

Prosecutions of undeclared foreign intelligence officers attached to embassies are currently rare at best. Instead, the United States treats spies in this category as if they have diplomatic immunity and expels them.

The legal basis for diplomatic immunity is 22 U.S. Code § 254b, which incorporates the Vienna Convention's protections of diplomats into United States law. However, subsequent provisions of the U.S. Code do in fact authorize deviations from these protections under certain circumstances—circumstances that expressly include situations in which ostensible diplomats are caught engaging in intelligence activities harmful to the United States.¹² Diplomatic immunity need not pose a legal obstacle to arresting and prosecuting intelligence officers.

Such an approach is not without risk. An impromptu arrest of a foreign adversary's intelligence officer in response to the wrongful detainment of an American abroad could disrupt longstanding counterintelligence operations. It could also lead that adversary to arrest more Americans in retaliation, escalating the situation.

However, adversaries have often escalated wrongful detention situations themselves by seizing more U.S. citizens without any American provocation. A few months after Russia arrested American journalist Evan Gershkovich, it arrested another American journalist, Alsu Kurmasheva. Gershkovich's own arrest followed Paul Whelan's and many others.¹³ Allowing fear of additional wrongful detentions to paralyze the U.S.'s response would be unwarranted self-deterrence.

Ultimately, the United States has ready access to a largely untapped pool of foreign wrongdoers on American soil that can swiftly and legally be converted into trading chips when the need arises. Incorporating this tactic into the response to wrongful detentions would fundamentally change the tone of negotiations by making adversaries feel reciprocal pressure and a loss of control. An expectation of intelligence operatives' arrests could also make foreign adversaries more hesitant about resorting to wrongful detentions to pressure the United States in the future, as they would now need to factor in the damage to their intelligence operations and prepare for generally more complex, unpredictable negotiations.

Furthermore, replacing the release of a more serious foreign criminal (e.g., a Viktor Bout or a Vadim Krasikov) with the release of a newly arrested, relatively minor foreign criminal intelligence operative like a base trespasser or an embassy attaché, who might never have been arrested at all but simply monitored indefinitely were it not for their government's wrongful detention of an American, would allow the U.S. to avoid making meaningful concessions. A

prisoner swap on these terms would simply restore the status quo prior to the wrongful detention, rather than amount to a detrimental concession.

This tactic would not only provide security benefits but enhance popular support for prisoner exchanges. The American public evaluates the perceived cost to the United States of a prisoner swap against the perceived value of the American being detained.¹⁴ Giving up lower-value prisoners would reduce the controversy over a deal, creating domestic unity instead of division and a less upsetting situation for the freed detainees when they come home.

Targeting Visas of Family Members

Another potential response to wrongful detentions is to deny and revoke the visas not only of the individuals perpetrating the wrongful detentions, but of foreign nationals connected to them.

Executive Order 14078, issued by President Biden in July 2022, authorizes the Secretary of State, in conjunction with the Secretary of Homeland Security, to impose visa restrictions on a wide range of foreign nationals involved with hostage-taking, from the highest levels of government down to prison guards.¹⁵ However, this seems essentially symbolic since those individuals have almost certainly already made their peace with being unable to travel to the U.S.

A potentially more effective tactic could be to impose visa restrictions not only on participants in the hostage-taking, but on their family members as well. Many individuals from Russia, China, and Iran send their children to study in the United States or Europe and have spouses who vacation there. *The Washington Post* has noted, “In Beijing and Shanghai, stories abound of the elite frequenting their California vacation homes or sending their children to East Coast boarding schools.”¹⁶

Restricting the visas of family members of foreign nationals involved in hostage-taking appears to fall outside the scope of the current Executive Order, but there is a wealth of precedent. The European Union has sanctioned family members of both Syrian and Russian political figures and businesspeople.¹⁷ The United States has already limited visas for family members of Chinese Communist Party members. However, in both cases the policies have been designed to be less than maximally restrictive—for example, a family member of a Chinese official is still allowed one entry to the U.S. each month.¹⁸ The U.S. has room to tighten restrictions in response to new wrongful detentions and to induce its allies to do the same.

The United States could even consider entirely pausing the issuance of business, education, and tourism visas to all applicants from a country wrongfully detaining American citizens. If an American cannot safely travel to a particular country, preventing that country’s citizens from traveling here restores symmetry.

Adversarial and even allied countries may object to the perceived collective punishment these sanctions represent. Nonetheless, the public would likely view the hypocrisy and weakness of allowing a foreign adversary to abuse Americans while family members of its leaders enjoy American/Western largesse as the greater moral transgression. Moreover, non-Western countries have a much more ruthless history of targeting family members for use in prisoner exchanges. As recently as 2015, Lebanon detained the wife and sister of members of the terrorist group Jabhat al-Nusra and exchanged them for captured Lebanese soldiers.¹⁹ And though Russia denies it, a story still circulates of a 1985 incident in which the USSR responded to its diplomats being taken hostage by an Islamic fundamentalist group by allegedly kidnapping a relative of the group’s leader, castrating him, and sending the leader the relative’s testicles

with a vow to do the same to other relatives if the captives were not returned.²⁰ Any proposed U.S. response to a hostage incident would undoubtedly pale in comparison.

Opposition to targeting visas may also come from American universities, which rely heavily on international students, particularly Chinese students, for revenue.²¹ However, refusing to assist in helping rescue Americans abroad, while drawing attention to a situation that may be controversial itself, could easily backfire on universities in the eyes of the public and fail to derail the policy.

Responding to Secondary Adversaries: Tariffs and Force

Russia, Iran, and China are not the only countries that wrongfully detain Americans. Approaches that are not available when dealing with the three main perpetrators may be fruitful in these other cases.

Sometimes the U.S. determines that allied or neutral countries have wrongfully detained an American. When dealing with such instances, the first Trump administration was repeatedly able to secure positive outcomes by enacting or threatening to enact tariffs.

After Turkey detained Pastor Andrew Brunson, the U.S. rejected a proposed swap for Fethullah Gülen, instead sanctioning individual Turkish officials and raising tariffs on Turkish steel and aluminum. As Turkey's economy struggled for unrelated reasons, Turkey returned Brunson from prison early rather than unnecessarily compound its economic difficulties.²² Similarly, the United States threatened Sweden with a trade war following Sweden's arrest of the rapper Rakim Mayers (better known as A\$AP Rocky). Mayers was returned to the U.S. without serving a prison sentence.²³ The threat of tariffs may have played a role in Colombia's release of Luis Andrade as well.

Allied and neutral countries may be particularly susceptible to threats of tariffs and sanctions. Their economies are typically more integrated with that of the United States than the economies of hostile states. They also may have more at stake in maintaining an overall positive relationship with the U.S., ultimately deciding that the detainment is not worth souring the relationship.

Moreover, not all hostile countries have the defensive strength or prison security of Russia, Iran, and China. Units of the United States military and those of our allies train extensively for hostage rescue missions and maintain effective capabilities in that area. In recent years, hostages have been rescued by force in Yemen, Burkina Faso, Niger, and Gaza, among others.²⁴

All these cases involved non-state hostage takers, and even a weak state poses an exponentially more difficult martial challenge than a non-state actor. However, a weak state that chooses to wrongfully detain an American cannot entirely ignore the lurking threat of the U.S. military and its proven track record of violent success.

Conclusion

Neither arresting foreign nationals committing misconduct in the United States nor restricting family members' visas is necessarily the answer to solving the United States's vulnerability to wrongful detentions. Given that states have different interests and reasons for taking hostages, there can be no one answer. However, raising the cost to adversarial states of wrongful detention while lowering the cost to the United States is imperative. When considering how to do so, United States policymakers should incorporate aggressive tactics that force the hostage-taker to confront difficult choices and reduce the favorable position that hostage-taking states have too often enjoyed so far.

The views expressed in this paper are those of the author and do not reflect the official policy or position of the U.S. Army or the U.S. government.

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