



Egypt: Death of American Citizen and Congressional Response

Jeremy M. Sharp

Specialist in Middle Eastern Affairs

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Overview

On January 13, 2020, Mustafa Kassem, a dual U.S.-Egyptian citizen who had been detained in Egypt since 2013, died of heart failure in an Egyptian prison after a two-year hunger strike. The Egyptian government has [defended its treatment of Kassem](#), claiming that he received adequate medical care and legal rights. [Secretary of State Michael R. Pompeo called Kassem’s death “pointless and tragic.”](#)

Some [Members of Congress had long been concerned](#) for Kassem, [arguing](#) that Egyptian authorities unlawfully detained and wrongfully convicted him. Kassem’s death has [upset some in Congress](#), sparking condemnations of the Egyptian government and calls for sanctions on Egyptian officials. Other lawmakers may be hesitant to advocate punitive action against the Egyptian government based, at least in part, on concern for preserving long-standing U.S.-Egyptian security cooperation. Nevertheless, the Kassem case presents an example of how the treatment of U.S. residents and/or citizens by authoritarian regimes can create challenges for U.S. policymakers seeking to preserve security cooperation while upholding human rights principles and legal responsibilities.

Since the Egyptian military deposed late President [Mohamed Morsi’s government in 2013](#), authorities have cracked down on most dissent in a campaign that has, at times, led to the detainment of U.S. citizens who either have participated in anti-government protests or have been innocent bystanders. Like prior Administrations, the Trump Administration has been committed to [securing the release of American political prisoners and hostages abroad](#), and Kassem’s death has raised questions over whether the Administration or Congress might take punitive measures against Egypt.

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Background and Legal Issues

Mustafa Kassem was detained in 2013 during a family visit to Egypt. Police arrested him while nearby authorities forcibly dispersed anti-government sit-ins in Cairo that led to the deaths of over 800 people. After five years of pre-trial detention, Kassem was convicted of trying to overthrow the Egyptian government and was sentenced to 15 years in prison at a mass trial. Kassem had diabetes and a heart condition, and his health gradually deteriorated under incarceration. After his conviction, he began a liquid-only hunger strike to protest his sentence.

For Egyptian-Americans detained in Egypt, the legal issues are complex. The United States and Egypt have no specific legal treaties regarding dual nationality. According to the U.S. State Department, “The Egyptian legal system is different from the legal system in the United States, with significantly different standards of evidence and due process....Egyptian law considers dual nationals to be Egyptian citizens.” In 2015 during the Obama Administration, Egypt released Mohamed Soltan, another dual U.S.-Egyptian citizen who had been on a hunger strike to protest his conviction, but only after Soltan renounced his Egyptian citizenship thereby allowing President Sisi to deport him under Egyptian law [Law No. 140-2014, Vol. 46(bis) *Al Jariddah Al-Rasmyiah*, Nov. 13, 2014]. Reportedly, before his death, Kassem was in the legal process of relinquishing his Egyptian citizenship pending final approval by the Egyptian government.

Trump Administration Focus on Americans Detained in Egypt

The Trump Administration has said it is committed to securing the release of Americans held abroad, including in Egypt. In April 2017, Egypt released detained Egyptian-American aid worker Aya Hijazi, who had been imprisoned for nearly three years. President Trump claimed that the government of Egypt had complied with his request for her release, asserting that he succeeded where the former Administration had failed. In January 2018, Vice President Michael Pence traveled to Egypt, where he raised the case of Kassem, saying that “President Al Sisi assured me that he would give that very serious attention...” Secretary Pompeo also repeatedly raised Kassem’s case, most recently in late 2019.

Congressional Reaction and Policy Options

Immediately after Kassem’s death, several lawmakers called on Egypt to release all other unjustly detained Americans. Other Members called on the Administration to pressure Egypt by withholding U.S. military assistance. Since FY2012, Congress has passed appropriations legislation that withholds the obligation of Foreign Military Financing (FMF) to Egypt until the Secretary of State certifies (though the Secretary may waive this certification) that Egypt, among other things, releases “political prisoners and provide[s] detainees with due process of law.” In 2018, Senator Patrick Leahy placed a hold on \$105 million in FY2017 FMF until the State Department received an update on Mustafa Kassem’s health.

Two Senators have called on the Administration to sanction those Egyptian officials responsible for Kassem’s death using either a provision in appropriations law and/or the Global Magnitsky Human Rights Accountability Act. Section 7031(c) of P.L. 116-94 requires the Secretary of State to make foreign officials and their immediate family members ineligible for U.S. entry if there is credible evidence that such individuals have been involved in a gross violation of human rights. The Secretary of State is not required to publicize such actions and may waive this requirement in the interest of national security. Human rights violators may additionally be subject to U.S. visa restrictions under Executive Order 13818, which was issued pursuant to the Global Magnitsky Human Rights Accountability Act. Individuals

designated pursuant to E.O. 13818 are publicly identified and subject to economic sanctions in addition to visa restrictions. After the 2018 murder of U.S. resident, Saudi national journalist Jamal Khashoggi, the Trump Administration designated over a dozen Saudis under Section 7031(c) and designated some Saudi individuals for Global Magnitsky sanctions.

During Senate consideration of the FY2020 State and Foreign Operations Appropriations bill, Senate appropriators directed in their committee report that the Secretary of State shall apply Section 7031(c) to foreign government officials who were involved in the “wrongful imprisonment of Mustafa Kassem, an American citizen imprisoned by the Government of Egypt and whose health is failing.” This language was not included in the final bill text or the Joint Explanatory Statement accompanying P.L. 116-94 (Division G). Nevertheless, the explanatory statement directs federal departments to comply with directives, reporting requirements, and instructions contained in related House and Senate appropriations committee reports “as though stated in this explanatory statement, unless specifically directed to the contrary.”

Kassem’s death may affect other cases of dual U.S. and Egyptian citizens imprisoned in Egypt on alleged politically-motivated charges. More broadly, if his death is accompanied by punitive U.S. measures, it may strengthen U.S. efforts to signal opposition to the unjust detainment of American citizens, but at the possible cost of heightening tensions in U.S.-Egyptian relations. Recent disclosures that Kassem died before his Egyptian citizenship renunciation request could be finalized also may draw attention to the potential need for the United States and Egypt to more formally have bilateral agreements in place pertaining to the treatment of U.S.-Egyptian dual nationals.

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