

# Australian government considers blocking return of Syrian fighters

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5 November 2013

In an unprecedented development, the Abbott government last week suggested preventing Australian citizens who fight in Syria from returning home, despite any such move being illegal, and most likely unconstitutional.

This proposal, first raised by the opposition Labor Party, demonstrates the political establishment's readiness to override even the most basic democratic right—citizenship. If citizens could be barred from the country on this basis, it would set a precedent that could be used to block the return of citizens on other political pretexts.

At the same time, the suggestion underscores the increasingly glaring contradictions produced by the reliance of the US and its allies, including Australia, on Islamic extremists in their drive to oust the Syrian regime of Bashar al-Assad.

Immigration Minister Scott Morrison told Sky News that an influx of so-called militants from Syria could “disrupt the significant social cohesion we have in this country.” He did not explain what he meant by “social cohesion.” Such a vague, and highly political, notion could provide a mechanism for excluding anyone regarded as a threat to the social or political order.

Morrison added: “I’m sure there’d be broad-based support across parliament to ensure that these sorts of things were not imported back into Australia.” He was responding to a call by Labor’s former Foreign Minister Bob Carr, who revealed on October 27 that he proposed such a ban when he was in office, but was advised it would be illegal.

Carr said he lobbied “at a senior level” to block Australian citizens returning after fighting in Syria, but was told “that if they’re Australian citizens legally you can’t stop them returning.” Carr declared that fighting in Syria was “a breach of Australian law and I think it

should be punished by an exclusion from Australia.”

Earlier this year, the Australian Security Intelligence Organisation (ASIO) estimated that about 200 Australians were participating in the Syrian war, mainly joining Sunni fundamentalists who have fought—increasingly armed by the US and its allies—to topple the Assad government since March 2011. These elements include the al-Nusra Front, an offshoot of Al Qaeda, and other groups outlawed by the US and its allies as “terrorist.”

Carr told the Australian Broadcasting Corporation: “Australians are right to be apprehensive about people whose fighting skills have been honed there who seek to return to Australia full of murderous ideological bent.” In response, Attorney-General George Brandis said the government “is seriously concerned that Australians are fighting in Syria,” including some with al-Nusra.

Under the “anti-terrorist” laws passed since 2001, Australians going to fight, fund, train or recruit in relation to the Syrian conflict could be jailed for up to 20 years. No-one returning from Syria has so far been charged, however, because that would open up many unanswered questions about the Western powers’ own support for Islamic extremists in Syria.

Never before has it been seriously suggested that citizens could be denied their right to live in Australia. Because of its British colonial origins, the 1901 Australian Constitution has no bill of rights, or even a reference to citizenship. Instead, Australian residents were termed “subjects” of the British monarchy.

According to legal expert Professor Helen Irving, a series of High Court cases dating back to 1908 establish a constitutional “right to abode.” Writing in a 2008 law journal article, she concluded: “Parliament is not free to pass a law disentitling any Australian citizen from

living in Australia.”

Whether legislation could be passed stripping someone of citizenship altogether is less clear, however. “The Constitution does not protect citizenship or prevent legislative deprivation of citizenship,” Irving stated.

At present, the Australian Citizenship Act contains no provision for denying a citizen access to Australia. Nor does it permit revoking the automatic citizenship of anyone born in the country whose parents were citizens or permanent residents, unless they serve in the armed forces of a country at war with Australia. Reactionary powers do exist to cancel the citizenship of someone who acquired citizenship by application, but only if they are convicted of a serious crime committed before being granted citizenship, or made a false statement to obtain citizenship.

According to British defence consultancy IHS Jane’s, up to 10,000 jihadists from all over the world are fighting in Syria to replace Assad’s regime with an Islamic state. Despite backing these “rebels” for the past two-and-a-half years, other Western governments have recently foreshadowed moves to crack down on those from their countries, although none have yet publicly proposed stripping them of their right to return home.

Last month, France’s Interior Minister Manuel Valls said more than 300 French nationals or residents were either fighting in Syria, or had plans to go, or had recently returned from Syria, a statistic he called “worrying” for French national security. In May, British Home Secretary Theresa May announced that UK citizens could now be stripped of their passports for “actual or suspected” activities declared to be “contrary to the public interest” without a legal procedure.

Similar powers already exist in the Australian Passports Act, and have been used to revoke the passports of about 50 citizens since 2001, including former Guantánamo Bay prisoner Mamdouh Habib. He was twice arbitrarily denied his right to a passport by the previous Labor government on the grounds that he was “likely to engage in conduct that might prejudice the security of Australia or a foreign country.” (See: “Australia: Former Guantánamo prisoner denied passport again”).

These are anti-democratic powers, exercised on the basis of ASIO security reports that are virtually

impossible to challenge, because the victims are barred from any information about why their passports have been revoked. Similar powers exist to strip refugees, political activists and other non-Australian citizens of visas and deport them without giving them any reasons.

Now those kinds of repressive powers are being mooted to potentially deprive citizens who are regarded as political threats not only of their right to a passport to leave Australia, but of their right to return. They could remain indefinitely stranded in another country, effectively stateless and denied all democratic and civil rights.

These are far from hypothetical questions. Last year, Australian citizen Jennifer Robinson, who was previously a lawyer for WikiLeaks founder Julian Assange, was initially stopped from boarding a flight from London to Sydney. Airline officials told her that she was on an “inhibited” travel list, a fact that Australian authorities only denied once Robinson publicised her situation via twitter. (See: “Assange lawyer delayed while flying to Australia”).

*The author also recommends:*

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[7 August 2008]



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