

**The New York Times** | <https://www.nytimes.com/2019/03/04/us/politics/hoda-muthana-hearing.html>

# *Judge Declines to Speed Up Case of Alabama Woman Who Joined ISIS*

**By Charlie Savage**

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WASHINGTON — A federal judge on Monday rejected a request that he speed up consideration of a lawsuit filed on behalf of Hoda Muthana, an American-born woman who joined the Islamic State group in 2014 and is now stranded in a refugee camp in Syria with her 18-month-old son, the child of a slain ISIS fighter.

But the judge, Reggie Walton of the United States District Court for the District of Columbia, also suggested that he took a positive view of legal arguments that Ms. Muthana may be an American citizen, contrary to the government's declaration that she is not one.

The fate of Ms. Muthana, whose family lives in Alabama, has raised novel legal issues and become a political flash point since she surrendered to coalition forces fighting ISIS and said last month that she wanted to come home. In response, the Trump administration said she was not a citizen and would not be allowed back.

The judge's ruling that there are insufficient grounds to expedite the litigation means that her case is unlikely to be resolved until late spring or summer. But his comments also provide a reason to believe that she may ultimately prevail. Charlie Swift, a lawyer hired by her father, said after the hearing that he was "encouraged" by Judge Walton's views and hoped it was "foreshadowing" of the outcome.

In 2015, Ms. Muthana withdrew from college and used her tuition reimbursement to fund her travel to Syria. Once there, she touted ISIS's ideology on social media, including calling on Muslims in America to carry out terrorist attacks. But she now says she is sorry and wants to come home; Mr. Swift said she had wanted to leave earlier but feared being executed if she tried to leave.

The State Department canceled her passport in 2016 — under the Obama administration — and the Justice Department is taking the position that she does not qualify to be an American citizen under an exception to birthright citizenship in the Constitution for children of foreign diplomats.

Ms. Muthana's father was a diplomat from Yemen, but was discharged from that post shortly before she was born. The United States government only learned of that change after she was born, raising the question of whether his diplomatic status expired before or after her birth.

Her father has filed a lawsuit asking for declarations that she remains a citizen and that he may send her money without violating the law. He is also asking Judge Walton to order the government to take steps to take custody of her and his grandson from the Kurdish-led Syrian Democratic Forces now holding them and to bring them to American soil.

On Monday, Mr. Swift argued that Ms. Muthana and her son are in danger, including because other ISIS members now see her as a heretic. He also said Mr. Trump's intention to withdraw troops from Syria means the window of opportunity for the American government to get her out may be closing. And he emphasized that she would likely be prosecuted if she returns.

Mr. Swift also said the Justice Department's argument that a discharged former diplomat keeps his status until the United States government is notified of the change would produce absurd results, like letting former diplomats remain immune from prosecution for crimes committed during any lag period.

Foreign adversaries could exploit such a rule, he said, by quietly discharging diplomats while instructing them to commit espionage or sabotage. If such operatives were caught, they would have legal impunity while permitting those foreign governments to deny any responsibility.

Judge Walton said he had decided to handle the case on the normal timetable because the arguments that Ms. Muthana faced irreparable harm from delay were too speculative. But he also said Mr. Swift had offered good arguments for why it "didn't make sense" to interpret diplomatic status as lingering after a discharge if the American government does not receive notice right away.

Last month, Senator Doug Jones, Democrat of Alabama, said Ms. Muthana should return to the United States and be prosecuted. Americans who joined ISIS — or were arrested as they tried to travel to Syria — have been routinely charged and convicted of providing material support to terrorism.

But President Trump said he had directed the government not to allow her back, and Secretary of State Mike Pompeo issued a statement declaring that she "is not a U.S. citizen and will not be admitted into the United States." In an interview with Gray News broadcast Sunday night, Mr. Pompeo reiterated that Ms. Muthana is not welcome back.

"She has no right to come back to the United States of America," he said. "She's not a U.S. citizen. She has no claim for U.S. citizenship. That's what we'll be telling the court because that's the truth."

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