

# AI Policy and Hostage Recovery with the Former Deputy Assistant to the President

## [00:00:00] Introduction and Guest Welcome

**Sheena Chestnut Greitens:** Welcome to *Horns of a Dilemma*, the podcast of the *Texas National Security Review*. I'm Sheena Chestnut Greitens, editor-in-chief of TNSR, and I'm here with Dr. Ryan Vest, our executive editor. Today, we're pleased to have joining us, Dr. Joshua Geltzer. Dr. Geltzer has served in various senior White House roles, including Deputy Assistant to the President, Deputy White House Counsel, and Legal Advisor to the National Security Council, where he provided legal counsel to the President and White House leadership on national defense, intelligence, and foreign relations.

Before that, he was Deputy Assistant to the President and Deputy Homeland Security Advisor, where he advised on counterterrorism, election security, migration management, and the release of US hostages and detainees, which is the subject he's on campus to talk about today.

Earlier this year, he received the James W. Foley American Hostage Freedom Award for his work to create a new federal structure for recovering Americans held abroad.

## [00:00:54] AI in National Security: Challenges and Policies

**Sheena Chestnut Greitens:** Before we get to the conversation on hostage recovery, we want to talk a little bit about the role of AI in national security, which is also something that Dr. Geltzer has worked a lot on. So, Dr. Geltzer, welcome to the podcast.

**Josh Geltzer:** Terrific. Thank you so much. Glad to be here.

**Ryan Vest:** So, right now, AI is one of the hottest topics that we see in the national security space. A lot of discussion going on, and in fact, I think in

*TNSR* we've had an article on AI in every single issue year —been something we've been getting a lot of submissions about. But it also seems like an often misunderstood, or maybe a poorly understood area for a lot of people, which makes crafting policy for policymakers and decision makers very difficult.

I was wondering if you could talk to us a little bit about how you see the main problems that governments are facing with exploitation, regulation, and proliferation of AI right now.

**Josh Geltzer:** I agree. There's so much in the AI space, it gets hard to figure out where policy begins, strategy ends, economics factors in.

When I think about it, I try at least to break it down to three pieces, all still really big, but at least distinguishable from each other. One is, at least from a US government perspective, how to foster continued development by the US private sector of this technology. And I think there's a lot of continuity, frankly, from the Biden administration into the second Trump administration on this issue, which we can dig into, but that's one.

Then second is for the US government, again, how to actually use this technology itself in innovative ways, but also ways that don't overreach, and that ensure that it's being deployed lawfully, and with the right protections and guardrails, for a very much still emerging technology. That's the second bucket. Then, the third bucket situates the United States in a global context. And there's probably lots of dimensions within it, but the one that gets talked about most often is how to think about US made AI technologies, in a world in which the US government wants US private sector to sell to many, but not all potential customers and actors abroad, while holding back some of the most sensitive, cutting edge AI technologies. And indeed, the semiconductors, the chips, making possible those cutting edge technologies from certain actors. That's how I break apart the AI policy set.

## **[00:03:13] Economic vs. National Security Imperatives in AI**

**Sheena Chestnut Greitens:** So, let me drill down on that for a minute here, because I remember hearing some previous comments that you made, where you talk about a little bit of the economic, versus the national security imperatives, and the fact, that they're somewhat in tension with each other.

So, from an economic standpoint, the US government and the US private sector might want to sell to as big a chunk of the global market as possible and really expand their market share to the maximum extent they can. On the other hand, there's this economic competitiveness, and even more, maybe a national security imperative to limit the really cutting-edge, top-end chips from going to certain countries of concern.

And so can you talk about, you know, that trade off, and how you see that economic–national security trade off playing out?

**Josh Geltzer:** I think you teed it perfectly, and I do think that's right.

There's almost always going to be an instinct, from the US private sector, to reach as many potential customers as it can with the technology. Not just to sell now, but also to make that the standard, make that the system, the stack on which the rest of the world develops.

As this technology gets integrated into more and more facets of the economy and just life too. At the same time, and it's not unique to AI, there are regimes, like export control regimes, designed specifically to say, it's great that the US private sector can make X or Y or Z, but it shouldn't be sold, at least everywhere, to all actors, because of the harms it can do in the wrong hands, the way it can be misused or exploited.

This logic, was the logic that underpinned the Biden administration's approach to AI export control, and in particular the so-called “AI Global Diffusion Rule,” that was issued quite late in the Biden administration, which tiered - T-I-E-R-E-D - tiered the world in three, and for most countries at least, placed some restraints on the most powerful semiconductors that could be sold there. Now, the Trump administration has rescinded that rule, initially indicating that a new global diffusion rule, but maybe a simplified one, or a more lenient one, would follow. It hasn't followed yet, and it's not clear whether it will, but policy is still being made in this space along the way. I think it's being made more bilaterally. You saw President Trump do an early trip to the Middle East, and integrate, in essence, the US government with some private sector deals made with foreign governments, foreign sovereigns, and foreign private actors—all to greater data development of the type necessary for cutting edge AI technology.

And for now, it looks like there is a more permissive approach to sensitive US technology reaching at least certain actors, but a bit of a blur almost, between the US government's role and the US private sector's role.

**Sheena Chestnut Greitens:** So, you mentioned that the US government and the current administration had moved out relatively fast on this issue—rescinding the rule that you mentioned, but also the trip to the Middle East, the development of this AI action plan, and some of the other developments. I feel like when I read the news, sometimes things are happening on a weekly or sometimes daily basis, and it's a struggle to just make sure you're keeping up.

So I wondered, you know, as this environment and this space in policymaking is evolving pretty rapidly, how do you see the main features, or emerging features, of the administration's approach beyond, the maybe more permissive, approach for now? And, you know, what are the continuities and discontinuities with the last administration?

## **[00:06:44] US Government's Approach to AI Development**

**Josh Geltzer:** I think a big one, and one that has a lot of continuity behind it, and that sometimes gets less attention than other areas of AI policy, is on trying to foster domestic availability of the data centers that make possible cutting edge AI technology.

You know, this something that, at the end of the Biden administration, we worked on, in part by initiating a process to make available certain federal land to the private sector that would have the key elements, with just the space, the pure space, but also the energy and the water to cool, necessary to run data centers. And this was something the Trump administration has continued, I might even argue, has accelerated, moving from kind of an abstract idea, of a set of initial sites, to a more particularized, refined set of potential locations, for this sort of private sector development.

That all has been paired with a push that came out as part of the action plan to, where possible, cut through the sort of red tape, at least as the administration sees it, that can slow down domestic building and infrastructure development generally. But for this area specifically, to say if you have an AI project, a data center you want to build, tell us what rules and regs get in the way. Maybe we can alleviate, suspend, alter those, in the AI context. I think it's a challenging project, in part because there are a lot of rules and regs, and they have their reasons behind them—environmental and otherwise. It's particularly challenging 'cause a lot of what can slow down those sorts of projects, are driven by state laws and state regulations, where the federal government's

ability to reach in may be limited, or at least legally controversial, depending on, on what comes next.

But I do think that push to develop more in the AI infrastructure space domestically, sometimes hasn't gotten as much attention as the big, high money deals based on, let's say, Middle East focused development.

**Ryan Vest:** As we talk about these problems—you've mentioned export controls already—and as it turns out, on our previous episode of *Horns of a Dilemma*, we interviewed Jennifer Lind and Michael Mastanduno, who talked about current export controls on China and compared them to the COCOM export controls against the Soviet Union during the Cold War.

I was really struck by that discussion, really starting to think through how these work and how they don't work. And I guess my question is, as we look at this, in such an interconnected world that we live in today, with so many supply chains going back into China, is it even possible, really, to impose strict export controls? And if so, what do policymakers need to be thinking about to make them work?

**Josh Geltzer:** I think you are right to press on, not just the policy question, but the efficacy of enforcement question, that goes with any particular policy. And I guess my answer to that is, even imperfectly enforced policies, still have real bite. Virtually all enforcement policies are imperfectly enforced, but they do have bite, and they have bite in a couple of ways that I saw from time at the Justice Department, and that we see, I think continuing in some ways, under the current, justice and in particular the National Security division there, which is partly, when they get a really big case, a high profile case, they bring it, and they publicize it, and it puts on notice others in the space, whether export control at large or AI specific, that where there is malfeasance, which doesn't necessarily mean by a whole company, it can be by a particular employee, the Justice Department is going to pursue cases to the max. And in export control, that's still the rhetoric we hear, out of national security division leadership at this Justice Department. But I also think, beyond kind of how many the Justice Department catches, prosecutes, and publicizes, there is generally a lot of effort by the US private sector to be good corporate compliance stewards. Not perfect of course, but a lot of the companies that certainly I work with, they want to understand the lay of the land. They want to understand the legal landscape and they want to abide by it. So, part of what has been confusing in some ways about the export control regime for the first 10 months or so of the current administration, is there has been some back and forth. The thresholds, for example, for which chips and semiconductors can or can't be sold directly into

China has changed. Now it's changed as the administration has calibrated its policy in a really confusing and complex, and evolving area of AI. But it does make it harder for companies, who, the ones who want to be good corporate citizens, to know what they can and can't sell, where the cutoffs are.

But I do think beyond the high profile enforcement matters, where you set the bar in terms of policy, or where you craft policy, has in part by corporate behavior, and often, not always, a desire to align with your understanding of the legal regime.

**Sheena Chestnut Greitens:** So one of the things that Lind and Mastanduno mentioned that export controls can do, is create friction, or they—I think they refer to it as sand in the gears, right? And there's that idea of sand in the gears that can slow down the development of an adversary's sort of adoption, and use, of some of the technologies that are of the greatest concern. And the effect that that does, is basically to buy time for the US private industry to do what it does best, which is innovate and stay at the leading edge.

So can you talk about what it is that is most challenging for US AI dominance right now? And how can, and should the US government—other than the negative, right, the export controls, we think of as telling companies what not to do—but maybe even on the positive side, how can and should the US government ensure, or help support private industry, to stay at the forefront of the AI race?

**Josh Geltzer:** I do think that the framing of buying time is right. It's not that anyone thinks that the other leading global developer of AI, which is China, is forever gonna be at its current capacity. But it's that right now, the US exceeds that capacity in certain articulable ways. And maintaining that lead, for however long one might, or ideally in an enduring way, has its benefits for national security and for the US economy. That's the sort of logic of, at least some. It doesn't tell you exactly where, what threshold, or how to calibrate a particular export control, but it suggests that export control has a role to play in this, in this domain.

Which then leads to your good question about “What can be done to help on the positive side, for the US private sector to continue to lead?” And I do think there were interesting things in the action plan and in the executive orders the administration issued in July along these lines. One of which is this idea of how to facilitate domestic development of data centers, and making available the land and other resources necessary for those.

I think another has been their interest in understanding what the legal landscape looks like. Part of what they've asked for feedback on from the US private sector is “Where do you see regulatory legal policy, other obstacles to AI development?” That request was previewed in the action plan, emitted by the Office of Science and Technology Policy at the White House recently, and the submissions are presumably flowing in.

Now it doesn't mean that it's good policy, or good strategy to do everything that comes in, because this is the balance of this space. And some of those regulations, restrictions may serve other purposes, may help protect from some of the harms that I think even AI's greatest enthusiasts recognize, can come with it being mishandled.

But I think, to try to at least understand the landscape of where those, who are at the forefront of this technology, feel that they're bumping into things, and then asking the question of “Do those things serve a purpose worth their maintenance, or should they yield to the, I think generally shared impulse to keep the US private sector in the lead here?”, I think that's a worthwhile project.

## **[00:14:25] AI in Military and National Security Applications**

**Ryan Vest:** So beyond the private sector, how should policymakers be thinking about how the government should use AI, or these technologies we're talking about?

**Josh Geltzer:** Yeah, this was something we focused on a lot in the last administration, and I think this administration has focused on as well. It's worth reminding ourselves how remarkable this is, that this potentially humanity changing technology has arisen entirely from the private sector. It is not like nuclear technology, where the US government and then other governments developed it, kind of owned it, and then set up heavily regulated regimes for the private sector to enter in certain ways.

Flip that for AI. Instead, remarkable US companies, and other companies globally developed this AI technology, and now the US government is figuring out both how to control—or at least, dole it out globally in the ways we've been talking about—but also how to use it itself. In the national security space in particular, we spent a lot of time on this in the Biden administration, because there is a lot of potential.

Already, it is a great challenge that the intelligence community and law enforcement have, to take massive amounts of information, protect it according to laws, rules, and regs, and in the interests of Americans' privacy. But also distill from it, the things that the American people expect the government to be able to distill from it: the next terrorist attack, the proliferation of a dangerous weapon. That's really hard. It's really hard and AI can help.

And part of what we began to work through in the national security memorandum on AI, that was issued towards the end of the Biden administration, was to set up particular pilot projects. Particular ways of using this technology, that we thought were legal to be sure, were beneficial, and would kind of keep going from toeing the water, to foot in the water, to eventually swimming at some point for the US government. In essence, to catch up to a US private sector, that a portion of which has developed these technologies, but other portions of which are harnessing them, and using them in ways, that the government mostly hasn't yet.

**Sheena Chestnut Greitens:** So, as Ryan mentioned, AI has been on the minds of a lot of our contributing authors recently, and I do think we've had an article on AI or autonomous weapons in pretty much every issue since both he and I came on board and started working at the journal. And one of those is an article in the next issue, that will come out by Nathan Wood, that's looking at the legality of autonomous weapons systems and their role in targeting.

But in the summer issue of our journal, Herb Lin wrote a piece that looked at AI and nuclear weapons, and he concludes that there is a limited role for AI in the maintenance and the use of America's nuclear weapons arsenal, but maybe not exactly what people would think of. In other words, it's not going to be used necessarily in actual weapons systems and decisions about nuclear launch— so kind of no Skynet, no Mission Impossible-type scenario—but, that there is a role for things like predictive maintenance and data intensive operational planning, where AI might actually play a useful, supportive role, again, under some human guidance. And he lays out some principles for how to think through that.

But I just want to ask you about your thoughts on where the AI landscape and national security is going, and what people should be tracking and looking for, as this landscape of AI statecraft and warfare keeps moving forward?

**Josh Geltzer:** I do start from the premise, that autonomy, which tends to get a lot of focus in these conversations, is not all or nothing. It's not a dichotomy. It's a spectrum. We have had weapons systems deployed for years, like the Patriot

System, that have elements of automatic responses to preset stimuli, in circumstances that we think humans are insufficiently swift to react to.

Now, that's not Skynet, but it's also, to my mind, an indication that autonomy isn't something that we either choose in or out for. That instead, we sort of have to break it apart, and say what roles do we want this technology playing. And the idea that it could, for example, help those in the US military meet the requirements of the law of armed conflict, that it could actually be better with the right training, the right deployment, the right human oversight at proportionality, or distinction, or humanity, or different requirements of use in bellow. I am open to that possibility. That is not a free for all, to just use it willy-nilly either.

But already, the US has long scrutinized weapons systems, system by system. Both to see whether they are valuable, but also to make sure the law of armed conflict is compliant. And it seems to me, this technology is not susceptible to sort of the blanket characterizations, and instead the idea that it could be used for minute targeting adjustments, in the way that at least public reporting has suggested.

The Israelis have used it in the past for carrying out the elimination of an Iranian nuclear scientist, as it's been publicly reported. This unmanned vehicle was not just manned, so to speak, remotely, but in fact, AI helped steady and calibrate the final shots that were fired, in part because of the lag of time, in part, to make out for multiple moving vehicles involved in it. The idea that AI could do that sort of targeting, it seems to me plausible that that could outperform humans, and indeed be more law of armed conflict compliant than humans. Even though another way to phrase what I've just said is - AI plated that weapon, which is a really, really big thing to say. And both are true.

And I just think it's gonna take really granular scrutiny of particular deployments, particular circumstances, understanding the models, training any augmentation that's likely done to make it fit for purpose in the military context. But it's all gonna happen fast, 'cause there's gonna be a race to use this stuff.

**Sheena Chestnut Greitens:** That's sobering.

## **[00:20:22] Transition to Hostage Rescue Discussion**

**Ryan Vest:** So Josh, I'd like to change gears now a little bit, and talk about the reason why you're actually on campus today, talking to the Clements Center, and the Strauss Center, and the students here at The University of Texas, and that's hostage rescue.

I know you've got deep roots in hostage rescue going all the way back to the Obama administration. You've been doing this for a lot of years now. You were recently recognized with the Foley Award for your work in this area, and I was just wondering, how did you get started in this? How did you end up becoming such an important figure in the US government in hostage rescue?

**Josh Geltzer:** It has been a privilege to work on these issues. I really do have a passion for them. They are very hard, but I also think very human, and therefore very meaningful to get to work on.

And when I was at the Justice department, in the National Security Division, during the Obama administration, we confronted the really awful circumstances of Americans being held by ISIS, and those did not end well. They ended up with the deaths of Americans and others, including Jim Foley, whom you, as you mentioned, I was honored to receive an award named after him.

And, you know, the government perhaps doesn't often enough acknowledge, to itself, and publicly, when it has failed. But that is what President Obama did, and he ordered a comprehensive review of how the US government approaches hostage wrongful detention issues, given that as hard as it was, no easy answers, all that, still, when Americans end up dead in the hands of terrorists, that outcome is just unacceptable. Not to mention, kind of unimaginable for their loved ones.

And so, I was initially a Justice Department lawyer having tracked those cases, assigned to that policy review, which I was honored and thrilled to do. And then when I had the chance to go on detail, on loan, to the National Security Council's legal team, I became the lawyer tracking that review for the White House, for the National Security Council there.

And that has just sort of set in motion a chain of getting to touch this issue, and try to help on it for, I guess, more than a decade now.

## **[00:22:29] Hostage Rescue Policies and Structures**

**Sheena Chestnut Greitens:** So you mentioned President Obama's change in how the government handled this issue So, PPD-30 and President Obama's executive order—can you talk a little bit about how that changed the ways that the US deals with hostage situations, for listeners who might not be as familiar with how this issue has evolved, and policies evolved on this issue over time?

If I remember right, there were some relaxations on things like paying ransoms, and negotiating for the release of US citizens, even when it came to negotiations with terror groups. So can you talk a little bit about how we should think about this balance between negotiations and the risk that that might create some perverse incentives, or even provide support to groups that in other circumstances, we wouldn't consider doing that for?

**Josh Geltzer:** So I think of the review as yielding three things: new policy, new structures, and a new paradigm. And I'll hit each of them quickly. New policy, as you said, there was a presidential policy directive, as well as an executive order, that replaced a previous governmental policy that was certainly well intentioned, and had been crafted by with care, but had a couple of problems.

One, it wasn't public, so family members who wanted, quite understandably, to know where the lines were, and where the government could or couldn't help them, would or wouldn't help them if they wanted to negotiate with terrorists, they didn't see the policy. And the second problem was, even if they could see the policy, the way those of us who had clearances in government did, it had some ambiguities and complexities.

And so it was overhauled into PPD-30, which has a lot of nuance to it, but is overwhelmingly public, and which fundamentally says, you can negotiate for you, the US government and you, the private sector, can negotiate with actors in the world generally to bring loved ones home. And the US government will generally stand with the private sector, meaning families, family members, and loved ones as they try to negotiate, even as the US government itself tries to avoid making concessions.

It's a lot more complicated than that, but it tried to at least offer some clarity on those points. Second, as I mentioned, were new structures. So the review created the Hostage Recovery fusion cell, which is based at FBI, but pulls together experts from across the executive branch to work on these issues together, to stay current, to share intelligence and information on cases, and to develop strategies of securing American's release.

We also created the special presidential envoy for the Hostage Affairs office at the State Department, which has become kind of a lead diplomat in many ways, showing the world that even for actors we might not otherwise talk to much to or at all, in part, that's a policy or strategic choice not to engage at times with a bad actor, not to reward them. We would still have someone who could talk to them about this. About bringing Americans home.

But then the third biggest, the third element was the new paradigm I mentioned, and this was literally called a new paradigm. It was a paper that was generated internal to the review, to grapple with how to think about the US government, and loved ones, and family members, in this space, in a way, that would be better than what had unfolded during the Obama administration, and the ISIS detentions, and the hostage takings. And it made the simple, but fundamental point, that no one has a greater stake in the outcome of these cases, than the loved ones of the hostage or the wrongful detainee, and that they needed, and deserved, to be treated as partners by the government.

That doesn't mean they would see every last bit of classified intelligence. It doesn't mean they could dictate what the US government would or wouldn't do, but they sure deserve a seat at the table in understanding their loved one's circumstances, and being in dialogue with the US government, as a try to get them released.

And after we found this paper extremely helpful to our thinking internally, we ended up releasing it, as part of the kind of written products from the review, alongside the EO and the PPD. So those were the main elements that came out of it.

## **[00:26:21] Challenges with Hostile Foreign Powers**

**Ryan Vest:** So, up to this point, we've talked a lot about terrorists and non-state actors that have been taking Americans hostage. How does this line of thinking and these new policies—how do they affect hostile foreign powers that have also been taking Americans hostage?

**Josh Geltzer:** Yeah, you know, we developed these policies a decade ago, knowing that both types of cases would exist and that over the years, 'cause we hope these policies would endure, and they've endured a decade, which is pretty good in Washington these days. That the balance between which ones dominated the headlines, the numbers would, would rise and fall.

So, we included the notion of Americans held unlawfully or wrongfully abroad, but we didn't specify which cases were in and which were out, which is really hard to do, because countries around the world put Americans through their justice systems the same way we put through our justice system, people of nationalities, of all types.

And it's the unusual case, frankly, the rare case where the US government is gonna reach the conclusion that, wait a minute, that's being done for political benefit. That person's not being treated the way they would if they weren't an American. So we flagged the point, we built the structures to work on the cases, but we didn't really specify who was in, who was out. It had never really been specified in US policy or law up to that point.

If you fast forward a few years, a law was passed by Congress, signed by President Trump at the very end of his first administration called the Levinson Act, named after Bob Levinson, who was held in captivity and ultimately perished in captivity. And it was named in his honor. His family's been a remarkable force for good in this, in this whole area. And it set out factors, not exhaustive, but at least it should be considered, in assessing which Americans held abroad, acknowledged as such, by a foreign government, should be deemed unlawfully or wrongfully detained.

And the factors are things like, “How does the punishment being sought for this person compare if that person were not an American?”. “Or, is the foreign government publicizing it in a way that suggests they want to extract some sort of concessions for this person?”. “Or are they actually reaching out formally or informally, and trying to negotiate something, showing that they think it's more a tool for, for a deal rather than an actual application of their domestic laws, such as they are?”.

And it also set up a process whereby four entities within the State Department feed in recommendations to the secretary about who gets designated: the consular affairs office, which is in charge of all the Americans held abroad, except the rare ones that get pulled out and put in this category—so they're involved; the special Presidential Envoy for Hostage Affairs Office, who handles these, these cases along with others; the lawyers at the State Department—the legal advisor's office; and then the relevant regional bureau. And they funnel up to the Secretary of recommendation.

It's not a perfect system. I don't know what perfect looks like in such a complicated space. Families at times are frustrated by the decisions, or the lack of decisions, or what they feel is an opaqueness about the process. But I do

think the Levinson Act, which also did other things, was a real step forward, in at least bringing some rigor, and consistency, and structure, to how these determinations are made.

And frankly, as we have this conversation, the wrongful detentions are in greater numbers for Americans globally, and they're the ones that have kind of garnered greater headlines in the past few years with high profile Americans like Brittany Griner, and Evan Gershkovich.

**Sheena Chestnut Greitens:** Those are actually the cases I was thinking about as well—thinking about the two cases you just mentioned in Russia, but also the Chinese rhetoric around the two Michaels who were detained in China, and an Australian journalist around the same time.

And so in a lot of those cases, the government that's detaining Americans will insist that this is being done—as the Chinese government did in the cases I just referenced—in accordance with their national or their state security laws. But as we know, the rule of law in the United States, might look very different from the rule by law that a number of these governments use their court systems and detentions for.

So I'm wondering how do you think about those cases? And is there a distinction between those kinds of unlawful detentions by a foreign power that presents a legal justification, however different and questionable it might be, versus the Americans who are like taken hostage abroad? Is there a distinction under US law and policy process for how those types of cases are dealt with?

**Josh Geltzer:** There is. You phrased it perfectly. If you're a non-state actor, a terrorist group, a criminal gang, a pirate, you can't hold an American against his or her will, period. If an entity tried to do it here in the United States, they'd be charged with kidnapping and they'd be investigated abroad for hostage taking. And a criminal case gets opened by the FBI assuming the facts are credible enough to bear it out. And it's pretty, so long as those facts make clear that America's being held by a non-state actor against his or her will, you're kind of presumptively in the hostage category.

The government held, government acknowledged cases are much harder to distill. The ones that are sort of in, and the ones that are out, and even those factors that I quickly hit on before, they map onto cases differently, they apply in different degrees. Some don't apply at all. It is very complicated. I don't think anyone's proposition is, or can be, that countries cannot enforce their laws against foreign nationals. That's never been the rule. It's never been the policy. I

think it would lead to global chaos. It would be particularly unpopular, I think, here in the United States. So you don't get a free pass just for being foreign national, diplomatic immunity, and its complexities aside.

So instead you need to try to figure out who's in and who's out. And I do think the Levinson Act factors, and the way the State Department, in good faith, has tried to implement those since the passage of that law, late at the end of Trump's first administration, has been admirable. To try to distill when is either the treatment, day-to-day treatment of an American, worse than it would be if it were for a national of that country. Or when is the crime charged or alleged worse, or when is the sentence being pursued worse, or when is there high publicity around it? Or what is the government saying in diplomatic channels, or other channels, or publicly, we think there's a resolution to be had here if only we could work out a deal.

Those are at least some of the features one looks for. I think if one's at the State Department, and making a recommendation to the Secretary of State to say, "Hey, you know, of the many cases that accrue, this is one where we should treat this person as wrongfully detained." It's a really powerful thing to do, because once you've put someone in that bucket, I at least think, and I think a lot of people think that our government should go to great lengths to try to bring them home.

The choices can be painful ones, and the Levinson Act calls for efforts to be made to bring Americans home, but of course, doesn't say exactly what price you need to pay, or what costs you need to be willing to endure. But once you're in that category, I think the set of tools the US government is willing to bring to bear view really changes.

I should say, it's not that there's nothing done for others. Consular affairs working through our embassies, or where we don't have them, are protecting powers for those, who are not designated as wrongfully detained, and try to get counselor access as international law entitles, tries to ensure representation, tries to ensure fair treatment, at least as fair as what otherwise happens in the courts of that country.

So it is not that America abandons its others, but it is a special thing when someone is put in that wrongful detention category.

**Ryan Vest:** From that wrongful detention category, I've seen—again, some of the cases we've brought up already, we talked about Brittney Griner, some of the others—where it seems like there was a pretty clear intent there to grab an

American, in order to negotiate the release of somebody they wanted released from US detention. So we end up with kind of an incentive there, for other nations to take Americans, and wrongfully detain them.

How should policy makers be thinking about this balance between having to release people that we have rightfully put in jail in order to get our people out, versus leaving our people on their own?

**Josh Geltzer:** It's really hard, and, you know, as the former special presidential envoy for Hostage Affairs, Roger Carstens likes to point out, treating human beings as pawns and trying to trade them, as appalling as that is, you can find it in Sun Tzu's *The Art of War*, and it's been with humanity for millennia.

So it wasn't invented recently. It wasn't, and didn't crop up after one particular deal was made. And indeed, when, you know, the Biden administration took office, we found people held in Russia like Trevor Reed, and Paul Whelan, even though there hadn't been swaps for a while, and half now that there have been some swaps, there is not some explosion of Americans held. So it's very hard.

And we did talk to the experts in our government about this, because it weighed on our minds. Even as we wanted to get people home, we did not want to incentivize the taking of others. And I think the general sense is, look, there's probably some threshold above which it could lead to more of an effort to go out and grab Americans. These sorts of swaps were happening every day, every week, but they happened at some faltering, stuttering pace, under prior administrations, under the Biden administration, under the current administration. And they'll probably continue at that pace in the future.

And there, I do think that we do have a moral responsibility to try to bring people home. That doesn't mean you necessarily pay the first price asked of you—no good negotiator would do that. You try to whittle it down. You try to get as many Americans out as you can.

But the alternative is one I don't think we were willing to confront—which is to say someone like a Paul Whelan or Brittney Griner—they're not just going to serve out whatever sentence has been foisted on them by an illegitimate system. They may well live out their life and die in a Russian penal colony. I don't trust the Russian system to actually let them out at the end of their current sentence versus cook up some other crime to charge them with. And so we couldn't accept that.

Even as we brought Americans home, we did think there was an urgency to upping our game in terms of deterring and preventing future cases. So we can talk more about what we did in that area as well.

**Sheena Chestnut Greitens:** Well, let me ask you about that. That side of it. How do you, when you are in these negotiations, think about the balance between the price you have to pay at the end of a tough negotiation—a heart wrenching set of conversations to get Americans back— how do you try to keep that from happening as often as possible?

**Josh Geltzer:** I think it's critical, and I think it's something we felt urgency to do at the same time as resolving the cases, which tend to get more of a splash, more notice, and I think it needs more work, because it's as clearly far easier to prevent a case than to resolve one.

So, we did at least three things as an administration: one starting really in the first weeks of the Biden administration, we worked to foster and strengthen global norms against this practice. So there's a Canadian led initiative against arbitrary detention, and Secretary of State Blinken, threw US diplomatic heft into that effort.

And I think among partners and allies, it really has strengthened attention on this issue, and kind of fostered norms against it. What exactly tools are brought to bear when a country in that consortium feels that one of its nationals, or the nationals of another participating country has been wrongfully detained? What tools get brought to bear? It's still being worked out, and those teeth matter a lot, but strengthening the norms matters too. We worked pretty hard on that. That's one.

Second thing we did was to try to warn Americans even more starkly. So, we added to the State Department travel advisories a D for wrongful detention indicator, which means if you're going to Russia, if you're going to Venezuela, if you're going to Iran, there's a risk that the government itself may pick you up and detain you. There already was a K for kidnapping indicator for countries where a non-state actor was likely to take you hostage. We thought it was worth making even clearer where a government might be the perpetrator of that.

And then the third thing was, to try to punish this activity where we could, and thus ideally deter it from occurring at the same rate in the future. So the Levinson Act, that I mentioned before, provided tools that President Biden then made available through an executive order he issued, for imposing financial sanctions, visa bans, against entities and individuals who participate in the

hostage taking and wrongful detention of Americans abroad. And we utilize those against actors.

Now, that's gotta be a continuing effort, just like other areas where bad actors continue to crop up, and you need to designate and sanction them if you want to keep pace with that, you don't get to stop. You need to keep it up. And similarly, I think there's work that can be done by the government, and the private sector together, to really underscore the risk for Americans of traveling to certain parts of the world.

But this area strikes me as one that merits a lot more investment, because it sure is easier to prevent a case rather than, you know, work through it and resolve it with a high price to pay, not to mention the human suffering that happens along the way.

**Sheena Chestnut Greitens:** Let me ask maybe one more final question.

## **[00:39:16] Balancing Public and Private Efforts in Hostage Negotiations**

**Sheena Chestnut Greitens:** You mentioned earlier that families are often really powerful advocates for their loved ones who are in captivity or deemed abroad. And I wondered about the way that public and private intersect here, because often these negotiations, for various reasons, have to be, or should be, conducted behind closed doors.

But there is an element of a moral imperative that policymakers and the American public feel to bring their loved ones—or our people, usually is the way that people talk about it, right?—bring our people home. And that's a really powerful sort of factor in public opinion. America's a democracy. Policymakers have to be responsive to that, while also handling negotiations that sometimes need to take place behind closed doors to be successful.

So if you're actually the person in the hot seat, how do you think about that mix of public and private information sharing, to get to the right outcome?

**Josh Geltzer:** It's very hard, and I have seen family members, and third parties, and others, trying to help do a mix of things. I guess, I would underscore the importance of transparency and candor with the US government.

And I say that, in part because resolving, at least the toughest cases, tends to be something where those outside the government can't get to a hundred percent. Doesn't mean they can't contribute, they can, they do some wonderful people work in this space. But as I think those same people would say, if they were part of this conversation, if you're gonna let someone out of Bureau of Prison's custody as part of a swap. Or if you're going to alleviate a sanction on a terrorist, or if you're gonna enable a diplomatic visit that hasn't happened yet, that's gonna take the US government.

And so therefore, it flows from that premise, that having transparency and candor with the government about the private efforts is important. And I saw some actors do that very well during my time in government service.

For the loved ones themselves, when I was in government, I would say two things to them, both of which I think were true, and I think are true.

One, I know they were sometimes pushed, urged to kind of go on media and say, we weren't doing enough as a government, we were moving too slowly, et cetera. And I would reassure them, as would my colleagues that that wasn't true. That we felt a sense of urgency of these cases and often talked with them about as, as best we could, what we were doing in them. They didn't need to go on TV, or on social media, and criticize us. So that could be true.

But then the second thing was also true. Which was, they needed to get their loved one home, and they needed to deal with the period until that happened. And if it helped them get through it to criticize us, or if they wanted to make sure they were doing everything they could, I could never imagine what it's like to be in their shoes. And I certainly wouldn't fault them for doing it.

I did sometimes, as did my colleagues make the point, that for certain actors, in the world and here, I mean the bad actors doing the hostage taking and the wrongful of attention, feeling that the pressure is being ramped up on the US government by its own public, might actually lead them to drag out negotiations or extract a higher price. So it is not cost free, but they have their freedom of speech, and they need to both feel that they're contributing to that outcome, and deal with the horrible period till one gets there.

I just felt that I personally, but we as a government, kind of had to give them the space to express themselves, and to make clear to them that we were working day in, day out to achieve the result we all wanted, which was bringing their loved ones home.

**Sheena Chestnut Greitens:** Seems like once you're in that space, there are not a lot of easy answers.

## **[00:42:53] Conclusion and Farewell**

**Sheena Chestnut Greitens:** Thanks for joining us on *Horns of a Dilemma*, the podcast of the *Texas National Security Review*. Our guest today has been former Deputy Assistant to the President, Deputy White House Counsel, and Legal Advisor to the National Security Council, Dr. Joshua Geltzer. Thanks so much for joining us today.

**Josh Geltzer:** Thank you. It's been a pleasure.

**Sheena Chestnut Greitens:** If you enjoyed this episode, please be sure to subscribe and leave a review wherever you get your podcasts, and you can always find more of our work at [TNSR.org](https://TNSR.org).

Today's episode was produced by *TNSR's* digital and technical manager, Jordan Morning, and made possible by The University of Texas System. This is Sheena Chestnut Greitens and Ryan Vest. Thanks again for listening.