

Request for Congressional Action to Allow Survivors of Extraordinary Rendition to Obtain Redress

August 2010

Request of Rep. Price:

Citizens of North Carolina request that Rep. Price, with other Members of Congress, act to provide a legislative remedy to survivors of extraordinary rendition and torture. One possible model is the Commission of Inquiry established by the Canadian government in the case of Maher Arar (below). We also call upon Congress to take action to curtail the misuse of the “state secrets privilege” to silence lawsuits by survivors of U.S.-sponsored torture.

As described below, survivors of the U.S. extraordinary rendition program have been denied a day in a U.S. court in two landmark cases, while a decision is still pending in a third lawsuit. Of the detainees listed here, it appears that only Maher Arar was not transported by aircraft based in North Carolina and operated by Aero Contractors pilots.

1) El-Masri v. Tenet

Plaintiff: Khaled el-Masri was born in Kuwait in 1963 to Lebanese parents. He moved to Germany in 1985 to escape the Lebanese War. He became a German citizen in 1995, married in 1996, and has six young children. He is a carpenter by trade, and prior to his abduction was employed as a car salesman. El-Masri was detained from December 31, 2003 through May 28, 2004 in Macedonia and Afghanistan, where he was held in the CIA prison known as the "Salt Pit." Subsequently, El-Masri was unable to find employment, his mental health deteriorated, and he is now serving a jail term for physically attacking a mayor in Germany.

Legal Timeline:

December 2005: Mr. el-Masri filed suit against CIA Director Tenet, Aero Contractors of Smithfield, NC, and other defendants in the U.S. district court for the Eastern District of Virginia.

May 2006: A judge dismissed the case after the U.S. government intervened, arguing that allowing the case to proceed would jeopardize state secrets, despite the fact that Mr. El-Masri's story was already known throughout the world.

March 2007: The U.S. Court of Appeals for the Fourth Circuit upheld the lower court decision that denied Mr. El-Masri a hearing in the U.S.

October 2007: The United States Supreme Court refused to review Mr. El-Masri's case.

The U.S. government has never formally acknowledged what happened to Mr. el-Masri, nor apologized to him.

2) Arar v Ashcroft

Plaintiff: Maher Arar, a Canadian citizen, was detained in 2002 at JFK airport on his way home to Canada from visiting family. He was repeatedly denied the right to contact his family or a lawyer, interrogated by U.S. officials about alleged links to al-Qaeda, and sent against his will to Syria, a country renowned for torture. There, Mr. Arar was interrogated, tortured, and held in a grave-like underground cell for most of his year-long detention. He was released in October, 2003. Neither the U.S., nor any other country, has ever charged him with a crime.

Legal Timeline:

January 2004: Mr. Arar's suit was filed in the U.S. District Court for the Eastern District of New York against Attorney General John Ashcroft, FBI Director Robert Mueller, and several other U.S. immigration and DOJ officials.

January 2005: The U.S. government moved to dismiss the case by asserting the "state secrets" privilege, claiming that the reason Mr. Arar was deemed a member of al-Qaeda and sent to Syria, instead of Canada, was a "state secret."

February 2006: The U.S. District Court for the Eastern District of New York dismissed Mr. Arar's claims against U.S. government officials for "rendering" him to Syria to be tortured and arbitrarily detained. The Judge found that national security and foreign policy considerations prevented him from holding the officials liable for carrying out an extraordinary rendition even if such conduct violates our treaty obligations or customary international law.

September 2006: A Canadian Commission of Inquiry concluded "categorically that there is no evidence to indicate that Mr. Arar has committed any offence or that his activities constitute a threat to the security of Canada."

January 2007: Canada apologized to Mr. Arar and his family, and agreed to compensate Mr. Arar approximately \$10 million.

August 9, 2007: The Canadian government released new information showing that the CIA was involved in Mr. Arar's detention starting at least when he was detained in New York and had been in contact with Canadian officials during that time.

November 2009: The 2nd Circuit United States Court of Appeals upheld the ruling by the district court. In dismissing Arar's claim, the judge wrote, "Our ruling does not preclude judicial review and oversight in this context. But if a civil remedy in damages is to be created for harms suffered in the context of extraordinary rendition, it must be created by Congress, which alone has the institutional competence to set parameters, delineate safe harbors, and

specify relief. If Congress chooses to legislate on this subject, then judicial review of such legislation would be available."

May 2010: Now under the Obama Administration, the Justice Department argued to the U.S. Supreme Court that allowing Arar's case to go forward might disclose embarrassing diplomatic dealings.

June 2010: The U.S. Supreme Court refused to review Mr. Arar's case.

The U.S. government has never formally acknowledged what happened to Mr. Arar, nor apologized to him.

3) **Mohamed et al. v Jeppesen Dataplan, Inc**

Plaintiffs:

Binyam Mohamed: While in CIA custody in 2002, Ethiopian citizen Mohamed was stripped, blindfolded, shackled, dressed in a tracksuit, strapped to the seat of a plane and flown to Morocco, where he was secretly detained for 18 months and interrogated and tortured by Moroccan intelligence services. In January 2004, Mohamed was once again blindfolded, stripped, and shackled by CIA agents and flown to the secret U.S. detention facility known as the "Dark Prison" in Kabul, Afghanistan, where he was again tortured and eventually transferred to another facility and then to the U.S. Naval Station at Guantánamo Bay, Cuba. He was released in February 2009 without charges.

Abou Elkassim Britel: In May 2002, Italian citizen Abou Elkassim Britel was handcuffed, blindfolded, stripped, dressed in a diaper, chained, and flown by the CIA from Pakistan to Morocco, where he was tortured by Moroccan intelligence agents and where he is now incarcerated.

Ahmed Agiza: In December 2001, Egyptian citizen Ahmed Agiza was chained, shackled, and drugged by the CIA and flown from Sweden to Egypt where he was severely abused and tortured and where he remains imprisoned.

Mohamed Farag Ahmad Bashmilah: In October 2003, Mohamed Farag Ahmad Bashmilah was taken into custody by the Jordanian General Intelligence Department and tortured and interrogated for days. On the morning of October 26, 2003, he was turned over to agents who beat, kicked, diapered, hooded and handcuffed him before secretly transporting him to the U.S. Air Force base in Bagram, Afghanistan. Bashmilah was finally freed on March 27, 2006, never once having faced any charges related to terrorism.

Bisher al-Rawi: In November 2002, Iraqi citizen and long-term British permanent resident Bisher al-Rawi was kidnapped and later secretly flown by the CIA to Kabul, Afghanistan. For two months al-Rawi was imprisoned, interrogated and tortured at two separate CIA facilities in Afghanistan, before being transferred to the U.S. detention facility in Guantánamo Bay, Cuba in February 2003. There, he was imprisoned for more

than four years until his release on March 30, 2007. On his release, al-Rawi returned to his home in London where he currently resides freely. No charges have ever been brought against him.

Legal Timeline:

May-Aug 2007: Plaintiffs filed suit against Jeppesen Dataplan in U.S. District Court for the Northern District of California. A subsidiary of Boeing, Jeppesen's business is trip planning, and one its senior officials stated at an internal company meeting, "We do all of the extraordinary rendition flights -- you know, the torture flights. Let's face it, some of these flights end up that way."

February 2008: The district court dismissed plaintiffs' case against Jeppesen after the government intervened, invoking the "states secrets privilege"

February 2009: Now under the Obama Administration, the Department of Justice again asserted that the entire subject matter of the case is a state secret.

April 2009: A three-judge panel of the Ninth Circuit Court of Appeals reversed the district court dismissal of the case, ruling that the government cannot invoke the state secrets privilege to dismiss the entire suit; rather, the privilege can only be invoked with respect to specific evidence. The case was remanded to district court.

June 2009: The U.S. government (while not a defendant) appealed the 9th Circuit's April 2009 decision, asking that a full panel of appeals court judges rehear the case.

October 2009: The 9th Circuit Court of Appeals announced it would hear the government's appeal of its April 2009 decision before a full panel of 11 judges, which heard oral arguments in December 2009.

September 8, 2010: The Ninth Circuit Court of Appeals ruled that former prisoners of the C.I.A. could not sue over their alleged torture in overseas prisons because such a lawsuit might expose secret government information. The sharply divided ruling was a major victory for the Obama administration's efforts to advance a sweeping view of executive secrecy powers. (Emphasis added). It strengthens the White House's hand as it has pushed an array of assertive counterterrorism policies, while raising an opportunity for the Supreme Court to rule ... on the scope of the president's power to restrict litigation that could reveal state secrets.

By a 6-to-5 vote, the United States Court of Appeals for the Ninth Circuit dismissed a lawsuit against Jeppesen Dataplan Inc., a Boeing subsidiary accused of arranging flights for the Central Intelligence Agency to transfer prisoners to other countries for imprisonment and interrogation.

Prepared by:

NC Stop Torture Now

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