

Can Obama Say He's Sorry?

David Cole | May 21, 2012

Can the President say he's sorry to an innocent man whom the United States delivered to Syria to be tortured? Sixty thousand Americans have done so, signing a petition that begins, "I apologize to Maher Arar for the torture he suffered because of the actions of US officials and I urge you to do the same." Today, the petition's organizers—Amnesty International, the Center for Constitutional Rights and the National Religious Coalition Against Torture—delivered the [petition](#) [1] to the White House. An apology is the least President Obama can—and should—do.

Maher Arar is the Canadian citizen US officials intercepted in 2002 when he was changing planes at JFK airport on his way home to Canada from a trip to Europe. He was held incommunicado, interrogated by FBI officials and ultimately ordered deported—not to Canada, his home and destination, but to Syria, where he was handed off to Syrian security officials long condemned by the State Department for their use of torture in interrogations. The Syrians did in fact torture Arar, while posing the same questions that the FBI had asked him in New York. After a year in detention—ten months of it spent in an underground cell the size of a grave—the Syrians released Arar, concluding that there was no basis for concern about him.

Arar returned to Canada, wisely bypassing the United States this time. Upon his return, the Canadian government launched a formal inquiry, headed by a distinguished judge. It fully exonerated Arar and found the Canadian government responsible for transmitting false information about him to US authorities. Arar had been a person "of interest" to a Canadian investigation of a potential terrorist simply because he was thought to know the target, but the Canadians erroneously told the FBI that Arar was the target. However, the commission did not find Canadian officials responsible for the decision to send Arar to Syria, a decision that they say the United States made without notifying them. Canada's Parliament issued Arar a unanimous apology, and the government paid him \$10 million (Canadian) in compensation for his injuries.

Contrast Canada's willingness to take responsibility for its errors with the US response. Even though it was the United States that committed the much more egregious wrong of sending Arar to be tortured, it has never apologized. Indeed, it has kept Arar on a list that bars him from entering the United States—even though Canada has now informed the United States that its information was mistaken and has asked that Arar be removed from the list. When the Center for Constitutional Rights filed a lawsuit seeking damages from the US officials who sent Arar to be tortured in Syria, the Bush and Obama

administrations maintained that the case should be dismissed at the threshold because inquiring into the incident would reveal secrets and undermine national security.

The courts agreed. (I was one of Arar's lawyers on behalf of the Center, and argued his case.)

But the determination that a federal lawsuit for damages cannot be maintained does not absolve the United States of its moral responsibility to an innocent man whom it egregiously wronged. When Attorney General Eric Holder issued a new policy on the "state secrets" privilege in 2009, he acknowledged that the invocation of "state secrets" to bar a lawsuit claiming government wrongdoing need not be the end of the matter. The policy provided that even where state secrets precluded litigation, the Attorney General should refer serious allegations of wrongdoing to an Inspector General for further investigation. Arar's case was investigated by an Inspector General, but large swaths of its report were classified and have never been disclosed, and the key federal officials all refused to participate in the investigation. A full investigation is still needed.

But at a minimum, an apology is owed. US officials forcibly delivered Maher Arar, an innocent man, to a security service that we had long condemned for its use of torture. Isn't saying we are sorry the least we can do?

Editor's Note: You can sign the petition [here](#) [1]. David Cole represented Maher Arar in his federal lawsuit on behalf of the Center for Constitutional Rights.