

AIR AMERICA *beta*

APPEALS COURT RULES CANADIAN TORTURED AFTER RENDITION CANNOT SUE UNITED STATES

Monday November 2, 2009 3:03 p.m.



Photo Credit: johnwmacdonald on Flickr

By [Associated Press](#)

NEW YORK (AP) — A Canadian engineer cannot sue the United States after being mistaken for a terrorist when he was changing planes in New York a year after the 2001 terrorist attacks, a federal appeals court ruled Monday.

The judges of the 2nd U.S. Circuit Court of Appeals voted 7-4 to uphold a decision by a lower court judge dismissing a lawsuit brought by Maher Arar, a Syrian-born man who was detained as he tried to switch planes in 2002.

Arar sued the U.S. government and top Justice Department officials, saying the United States purposely sent him to Syria to be tortured days after he was picked up at John F. Kennedy International Airport on a false tip from Canada that he had ties to Islamic extremists. The lawsuit said Arar was allowed to see a lawyer only once despite his repeated efforts to receive representation.

Syria has denied he was tortured. The Canadian government agreed to pay him almost \$10 million after acknowledging it had passed bad information to U.S. authorities.

The appeals court said in a majority opinion that it cannot let Arar use the courts to press his claims against the U.S. government without Congress enacting legislation that spells out exactly how a case as unusual as Arar's claims can be brought and what potential remedy exists.

Otherwise, the court said, allowing the lawsuit to proceed would "offend the separation of powers and inhibit this country's foreign policy."

Maria LaHood, a senior staff attorney at the Center for Constitutional Rights, which represented the Ottawa resident, said an appeal to the Supreme Court was likely.

"I can't see letting this decision stand without a fight. It's an outrage," she said.

In a statement issued by the center, Arar said the ruling and other recent court decisions show that "the court system in the United States has become more or less a tool that the executive branch can easily manipulate through unfounded allegations and fear mongering."

He called the ruling "a loss to all Americans and to the rule of law."

A spokeswoman for government lawyers had no immediate comment.

At stake in the lawsuit was the court's role in reviewing the practice of "extraordinary rendition" in which someone suspected of supporting terrorism is transferred to a foreign nation for imprisonment and interrogation without formal charges, trial or court approval.

The appeals court said it was hesitant to create "a new damages remedy that Congress has not seen fit to authorize."

It added: "Even the probing of these matters entails the risk that other countries will become less willing to cooperate with the United States in sharing intelligence resources to counter terrorism."

The appeals court ruling came almost a year after the full 2nd Circuit heard nearly three hours of arguments in front of several hundred spectators in the building's largest courtroom.

A three-judge appeals panel earlier last year upheld a Brooklyn judge's finding in 2006 that the government did not violate the Torture Victim Protection Act. The law allows U.S. courts to assess damages against perpetrators of human rights abuses committed abroad.

In one of four dissents to the majority ruling Monday, Judge Barrington D. Parker criticized the statement that permitting Arar to sue "would have the natural tendency to affect diplomacy, foreign policy and the security of the nation."

Parker wrote that such a view of the separation of powers "which confines the courts to the sidelines is, in my view, deeply mistaken; it diminishes and distorts the role of the judiciary especially during times of turmoil."

He added that it "distorts the system of checks and balances essential to the rule of law, and it trivializes the judiciary's role in these arenas."

Article Tags

[brooklyn judge](#)

[Canada](#)

[canadian government](#)

[Center for Constitutional Rights](#)

[department of justice](#)

[john f. kennedy international airport](#)

[Judge](#)

[maher arar](#)

[new york](#)

[ottawa](#)

[rendition](#)

[Supreme Court](#)

[Syria](#)

[torture](#)

[United States](#)

There is 1 comment

1.

HH911Hoax

Criminal government = Criminal Courts = Selective prosecution. Maher's lucky to make it back home: "You're not Al-CIA? OOPS, sorry for raping/beating you, you are free to go.."

4:23 p.m. • Monday November 2, 2009
