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November 03, 2009

Appeals Court Rules in Maher Arar Case: Innocent Victims of Extraordinary Rendition Cannot Sue in US Courts

On Monday, a federal court of appeals dismissed Canadian citizen Maher Arar's case against US officials for their role in sending him to Syria to be tortured. The Second Circuit Court of Appeals ruled that victims of extraordinary rendition cannot sue Washington for torture suffered overseas, because Congress has not authorized such lawsuits. In 2002, Syrian-born Maher Arar was held in New York on his way back to Canada from a family vacation in Tunisia. A subsequent Canadian public inquiry has shown Arar was held on erroneous advice from Canadian officials who accused him of ties to Islamic militants. US authorities then flew Arar to Syria, where he was imprisoned and tortured for a year. Canadian authorities exonerated Arar in 2007, apologized for their role in his torture, and awarded him a multi-million-dollar settlement. [includes rush transcript]



Guest:

Maria LaHood, Maher Arar's attorney and senior staff attorney at the [Center for Constitutional Rights](#).

RUSH TRANSCRIPT

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AMY GOODMAN: On Monday, a federal court of appeals dismissed Canadian citizen Maher Arar's case against US officials for their role in sending him to Syria to be tortured. The Second Circuit Court of Appeals ruled that victims of extraordinary rendition cannot sue Washington for torture suffered overseas, because Congress has not authorized such lawsuits.

In 2002, Syrian-born Maher Arar was held in New York on his way back to Canada from a family vacation in Tunisia. A subsequent Canadian public inquiry has shown Arar was held on erroneous advice from Canadian officials who accused him of ties to Islamic militants. US authorities then flew Arar to Syria, where he was imprisoned and tortured for a year. Canadian authorities exonerated Arar in 2007, apologized for their role in his torture, and awarded him a multi-million-dollar settlement.

Following Monday's 7-to-4 verdict, Maher Arar said, quote, "this recent decision and decisions taken on other similar cases, prove 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. If anything, this decision is a loss to all Americans and to the rule of law," he said.

In his dissent, Judge Guido Calabresi wrote, quote, "I believe that when the history of this distinguished court is written, today's majority decision will be viewed with dismay."

For more on this case, I'm joined here in our firehouse studio by Maher Arar's attorney Maria LaHood. She's a senior staff attorney at the Center for Constitutional Rights.

Welcome to *Democracy Now!*

MARIA LAHOOD: Thanks for having me.

AMY GOODMAN: Talk about the significance of this.

MARIA LAHOOD: Well, what the decision was, the court decided 7-to-4 that even if—or assuming that what Maher says is true, which we all assume at this point, that he was prevented from going to court in order to stop federal officials from sending him to Syria to be tortured and that he was in fact sent to Syria to be tortured—even assuming that's true, he has no remedy in the United States federal courts.

And the court said that was for two reasons. One, because of foreign policy and national security, the court was going to defer to the executive on their policy. First of all, Maher doesn't challenge the policy; he challenges what happened to him, being sent to Syria to be tortured. Second of all, it's the courts role to uphold our rights and to be the check and balance for the executive branch. The second reason was for secrecy purposes. Basically, the court said if state secrets might be at issue—the court didn't reach whether state secrets was—it was better to have a decision to preclude a remedy in open court rather than having to deal with classified information. It's an outrage.

AMY GOODMAN: I want to turn to Maher Arar in his own words right now. Two years ago, he described his ordeal in videotaped testimony to the House Judiciary and Foreign Affairs Subcommittee. He spoke via videoconference because he's barred from entering the United States.

MAHER ARAR: Let me be clear: I am not a terrorist. I am not a member of al-Qaeda or any other terrorist group.

I am here today to tell you about what happened to me and how I was detained and interrogated by the United States government, transported to

Syria against my will, tortured and kept there for a year.

Upon viewing my valid Canadian passport, an immigration officer pulled me aside. Officers from the FBI and the New York Police Department arrived and began to interrogate me. My repeated requests for a lawyer were all denied. I was told that I had no right to a lawyer, because I was not an American citizen.

I was then taken to the Metropolitan Detention Center in Brooklyn, where I was kept for the next ten days. After five days of repeated requests, I was finally allowed to make a brief phone call to alert my family of my whereabouts.

On October 8th at 3:00 in the morning, I was awakened and told that they had decided to remove me to Syria. By then, it was becoming more and more clear to me that I was being sent to Syria for the purpose of being tortured.

There, I was put in a dark underground cell that was more like a grave. It was three feet wide, six feet deep and seven feet high. Life in that cell was hell. I spent ten months and ten days in that grave.

During the early days of my detention, I was interrogated and physically tortured. I was beaten with an electrical cable and threatened with a metal chair, the tire and electric shocks. I was forced to falsely confess that I had been to Afghanistan. When I was not being beaten, I was put in a waiting room so that I could hear the screams of other prisoners. The cries of the women still haunt me the most.

After 374 days of torture and wrongful detention, I was finally released to Canadian embassy officials on October 5th, 2003.

These past few years have been a nightmare for me. Since my return to Canada, my physical pain has slowly healed, but the cognitive and psychological scars from my ordeal remain with me on a daily basis. I still have nightmares and recurring flashbacks. I am not the same person that I was. I also hope to convey how fragile our human rights have become and how easily they can be taken from us by the same governments that have sworn to protect them.

AMY GOODMAN: That was Maher Arar describing his own ordeal before the House Judiciary and Foreign Affairs Subcommittee. I shouldn't exactly say "before" the committee; he's not allowed into the United States, so he spoke via video conference, barred from entering this country. I mean, that is a very graphic description, Maria LaHood. What exactly does this mean, that the US government can take someone from US soil, US citizen or otherwise, and send them off to another country that they know engages in torture?

MARIA LAHOOD: Absolutely, and even that if they intend them to be tortured. And it doesn't have to be a foreign citizen. This decision is broad enough to affect any of us. Basically, if the federal government decides to do something that it purports to be in our national security to do, they could torture any of us, they could kill any of us, and there would be no relief in the federal courts.

AMY GOODMAN: Talk about the dissenting opinion of Judge Guido Calabresi.

MARIA LAHOOD: Well, as you quoted from him earlier, he says that, you know, he thinks that history will look with dismay on this decision. He talks a lot about how the courts have really turned the separation of powers notion on their head. You know, here, the majority says that it must defer to the executive, because of separation of powers, but he points out that separation of powers is the reason that courts must actually uphold the law and challenge what the executive does. He really looks to the long view.

And he—one of his statements is that he—he adds these words in his dissent—there were four dissents, all of them really well done—that he adds them in sorrow more than anger, because of how much this opinion reaches out, you know, he says, in judicial activism. And he uses it in the real meaning of the term, which is that they—this court decided things they didn't have to decide. They eliminated rights they didn't have to eliminate. They could have dealt with state secrets. They could have decided the issue more narrowly, but they didn't. They basically reached out to eliminate a remedy.

AMY GOODMAN: Are you appealing the decision?

MARIA LAHOOD: We haven't decided whether or not we'll petition the Supreme Court for review, but it does seem like it's a difficult thing to let this decision stand.

AMY GOODMAN: Why would you leave it?

MARIA LAHOOD: You know, there's other things that I think need to be done. I don't know what the Supreme Court would do. You know, there could be a remedy in Congress. There could be prosecutions. The reason Maher brought this case, to begin with, was accountability. He wanted to make sure that this didn't happen again and also to get some acknowledgment of what was done to him and an apology.

AMY GOODMAN: The remedy in the House could be a bill forbidding extraordinary rendition?

MARIA LAHOOD: It could be a bill forbidding extraordinary rendition, providing specifically for remedy, as the court called out, although we don't think that's necessary. It could be a particular bill for an apology and compensation for Maher.

AMY GOODMAN: He has gotten what? He settled for \$10 million from the Canadian government—

MARIA LAHOOD: From the Canadian government.

AMY GOODMAN: —for their participation in the giving information over to the US government that was false that led to his rendition.

MARIA LAHOOD: Exactly, exactly. Not having anything to do with the US's role.

AMY GOODMAN: Are there cases now relating to extraordinary rendition in the courts?

MARIA LAHOOD: There's currently a case brought by five victims of extraordinary rendition in the Ninth Circuit, *en banc*, against Jeppesen, the Boeing subsidiary who was involved with the flight plans for the renditions. And there, the district court dismissed on state secrets—

AMY GOODMAN: So this is Jeppesen based in California?

MARIA LAHOOD: Yes.

AMY GOODMAN: That flew the planes, that flew [inaudible]—

MARIA LAHOOD: They dealt with the flight plans for the planes for the trips for the extraordinary renditions.

AMY GOODMAN: Mm-hmm.

MARIA LAHOOD: The district court there dismissed on state secrets. The Ninth Circuit actually remanded to the district court to re-review the state secrets, saying that what it is is an evidentiary privilege, it's not a reason to dismiss the case all out. And the full Ninth Circuit has decided to rehear that opinion in December.

AMY GOODMAN: Maria LaHood, I want to thank you for being with us, Maher Arar's attorney here in the United States. She's a senior staff attorney with the Center for

Constitutional Rights based here in New York.



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