

Appeals Court Rejects Suit by Canadian Man Over Detention and Torture Claim

By BENJAMIN WEISER

A federal appeals court in Manhattan ruled on Monday that Maher Arar, a Canadian man who claimed that American officials sent him to Syria in 2002 to be tortured, cannot sue for damages because Congress has not authorized such suits.

The case has been widely watched because Mr. Arar claimed to be a victim of extraordinary rendition, the government policy of sending terrorism suspects to other countries for detention and interrogation.

In ruling 7 to 4 that Mr. Arar could not sue officials who were involved in his rendition, the United States Court of Appeals for the Second Circuit said that if a civil damages remedy were to be created, Congress would have to do it.

"We decline to create, on our own, a new cause of action against officers and employees of the federal government," Chief Judge Dennis G. Jacobs wrote in a 59-page majority opinion joined by six other judges.

Judge Jacobs wrote that it was for the executive branch to decide how to implement extraordinary rendition, and for the elected members of Congress — and not for us as judges — to decide whether an individual may seek compensation from officials for a constitutional violation.

The ruling on the suit, which was filed against John Ashcroft, then attorney general, and other officials, drew sharp criticism from the four dissenting judges.

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

Mr. Arar, 39, was detained in September 2002 at Kennedy International Airport as he changed planes on his way to Canada from a vacation in Tunisia. Suspected of having ties to Al Qaeda, he was held in New York for 13 days, interrogated and then sent to Syria, where he spent a year in confinement and, he says, was tortured.

He was released in 2003, and Canadian officials later concluded he had no involvement with terrorism.

A lawsuit filed by Mr. Arar was dismissed in 2006, a ruling affirmed in 2008 by a divided three-judge appeals panel. Then, in an opinion written by the majority, Judge David D. Cole, a Georgetown law professor, who argued the case on behalf of the Center for Constitutional Rights, which has been representing Mr. Arar, said a petition for Supreme Court review was likely.

A Justice Department spokesman had no comment.

ers in rendition cases would "affect diplomacy, foreign policy and the security of the nation." He said administrations had practiced rendition since at least 1995, and judicial review would "offend the separation of powers."

But dissenting, Judge Barrington D. Parker Jr. wrote: "This 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."

Judge Calabresi said the majority opinion had gone astray in its "utter subservience to the executive branch."

"In calmer times, wise people will ask themselves: How could such able and worthy judges have done that?" he wrote.

Mr. Arar, a Syrian-born telecommunications engineer, said via a spokesman: "I have done my best over the last seven long years to obtain justice through the U.S. court system. Today's decision removed any leftover hope that this will ever happen."

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