

The Story of Maher Arar

RENDITION TO TORTURE



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In September 2002, as he was on his way home to Canada, Center for Constitutional Rights (CCR) client Maher Arar was sent by U.S. officials to be detained and interrogated under torture in Syria under a program known as “extraordinary rendition.” Maher, a Canadian citizen of Syrian descent, was never charged with a crime, but he lost a year of his life and carries the mental scars of his detention and torture around with him to this day. This is the story of his nightmarish year of rendition, detention, and torture – and of Maher’s fight to achieve justice.

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Who is Maher Arar?



This is who I am. I am a father and a husband. I am a telecommunications engineer and entrepreneur. I have never had trouble with the police, and have always been a good citizen. So I still cannot believe what has happened to me, and how my life and career have been destroyed.

– Maher Arar

Maher Arar is a Syrian-born Canadian citizen who moved to Canada with his parents when he was 17 years old. Because he left Syria at 17, he avoided doing mandatory military service there. After attending McGill University and obtaining a Master's degree in telecommunications, he moved to Ottawa with his wife, Dr. Monia Mazigh, and young daughter Barâa.

In 1999, he started working for The MathWorks, Inc, a high-tech firm based in Boston, and then returned to Ottawa in 2001 to start his own consulting company, while still working as a consultant for The MathWorks, Inc. Maher and his wife had their second child, Houd, in February 2002.

Mr. Arar's Detention in the United States

In 2002, Maher was living in Canada, where he had been a citizen since 1991, and worked as a consultant with The MathWorks, Inc.

While in Tunisia with his wife and children, visiting his wife's family in September 2002, Maher received an email from The MathWorks saying they needed him to do some consulting work. Leaving his family in Tunis, he returned to Canada on a flight that transited through New York.

On September 26, 2002, Maher's flight arrived in New York at JFK airport at 2:00 p.m., where he was supposed to catch his connecting flight to Montreal. At immigration, Maher gave his valid Canadian passport to the immigration officer. After his name was entered into the computer, he was pulled aside and taken to another area. This is when his nightmare began. Two hours later, he was fingerprinted, photographed and his bags were searched. At this point, immigration officials told Maher that this was regular procedure, but refused to answer his increasingly anxious questions about what was happening. They did not let him make a phone call.

Officials from the New York Police Department and the Federal Bureau of Investigations (FBI) arrived and began questioning him. Maher repeatedly asked for a lawyer, but was told that he had no right to a lawyer because he was not a U.S. citizen. The officials promised that they would let him catch the next flight to Montreal once he answered their questions. Maher had nothing to hide,

so he cooperated with them. The officials interrogated Maher about everything - his work, his salary, his travel in the U.S., as well as about an acquaintance of his, Abdullah Almalki. They swore at him and insulted him. Maher told them everything he knew. He was then questioned by an INS officer.

After these grueling interrogations that lasted until midnight, they chained Maher's wrists and ankles, and took him to a cell in a nearby building at JFK Airport. He was not provided with any food and could not sleep as the lights were kept on all night. The next day, he was taken to the Metropolitan Detention Center (MDC) in Brooklyn, where he was kept in solitary confinement. During his detention at the MDC, he was shackled and interrogated. During one interrogation, an INS official informed him that they would like him to "voluntarily" return to Syria, a country known for torture and abuse of its prisoners; Maher repeatedly stated that he wanted to go home to Canada and that he would be tortured if he were sent to Syria. He became increasingly worried that the U.S. government planned to send him to Syria regardless of his concerns.

On October 1, 2002, Maher was given an INS-issued document stating that he was inadmissible into the United States because he belonged to an organization designated as a "Foreign Terrorist Organization," namely, al Qaeda.

Two days later, on October 3, 2002, Maureen Girvan of the Canadian Consulate visited Maher at the MDC. Maher expressed to her his fear that he might be removed to Syria, and Ms. Girvan assured Maher that removal to Syria was not an option, as he was a Canadian citizen. The Canadian government expected that the U.S. would return him to Canada. They did not.

In fact, it would be more than a year before Maher would set foot in Canada again.

Maher repeatedly asked for counsel, but his requests were denied. Finally, on October 5 he had a short visit with a lawyer — nearly one week after he was detained. Even after his visit with an attorney, he was interrogated without a lawyer being present, despite his repeated requests.

Mr. Arar's Rendition to Syria

After Maher met with the Canadian official and his lawyer, several federal officers interrogated him regarding his opposition to removal to Syria. He protested that he wanted his lawyer and was told that his lawyer refused to come. This interrogation lasted from 9pm on a Sunday night until 3am Monday morning. Throughout the interrogation, Maher expressed grave concern that he would be tortured if he were sent to Syria. Maher had not fulfilled his obligatory military service before he emigrated from Syria. Based on both Syria's well-known history of human rights abuses as well as Maher's own personal situation, he pled with U.S. officials not to send him to Syria. They ignored his concerns.

At 4am on October 8, 2002, Maher was given his Final Notice of Inadmissibility informing him that, based in part on classified information, INS Regional Director Defendant J. Scott Blackman had ordered that he be removed, and the Commissioner of the INS had determined that his removal to Syria was consistent with Article 3 of the United Nations Convention Against Torture. Maher was taken from his cell to a private airport in New Jersey and was flown by private jet to Amman, Jordan via Rome, Italy. He heard flight crew identify themselves as members of the "Special Removal

Unit.” He was beaten in Amman and hours after arrival, was taken to Syria, where he spent the next year in unspeakably horrific conditions.

Mr. Arar’s Detention & Torture in Syria

In Syria, Maher spent more than 10 months in a grave-like underground cell. During the first two weeks of detention, he was subject to intense beating and interrogated, and whipped with an electrical cable. He was regularly threatened with more torture, and forced to hear others being tortured. He was forced to “confess” to having trained in Afghanistan, although he has never been to Afghanistan. It is believed his interrogations were coordinated with U.S. officials, who supplied information and questions and received reports from the Syrians on Maher’s responses.

On October 5, 2003, Syria released Maher without filing any charges. After a year of torture and investigation, the Syrian Ambassador to the U.S., Imad Moustapha, said, “We did our investigations. We traced links. We traced relations. We tried to find anything. We couldn’t.”

The Syrian security officials released Maher into the custody of Canadian Embassy officials in Damascus, Syria. That night, the Canadian Consulate flew Maher to Ottawa where, after being held for a year at the request of U.S. authorities in a grave-like cell, and tortured without access to an attorney or any recourse to challenge his detention, Maher was finally free and reunited with his wife and children.

Since his release, Maher and his wife Monia, who worked tirelessly on his behalf during the time Maher was imprisoned to get him released, have fought to clear his name and hold those who rendered him to Syria accountable.

Numerous major revelations have since come to light. According to testimony at Canadian hearings, Maher was never wanted for any crime in Canada, nor was he ever even a suspect in a crime. Indeed, Maher has never been charged with any crime in any country.

The Center for Constitutional Rights, which began working with Maher’s family before his release, brought his case after he arrived home. CCR, together with the law-firm DLA Piper, continues to represent Maher in his civil case against the U.S. government – Arar v. Ashcroft – so that Maher may finally receive some small measure of justice for his rendition to torture at the hands of the U.S.

I describe my cell in Syria as a grave because it was just three-feet wide, six-feet long, seven-feet high and unlit. While I was there I sometimes felt on the verge of death after beatings with a black electrical cable about two inches thick. They mostly aimed for my palms but sometimes missed and hit my wrists. Other times, I was left alone in a special “waiting room” within earshot of others’ screams. At the end of the day, they would tell me that tomorrow would be worse. In those ten-and-a-half months I lost about 40 pounds. I never saw, but only heard, the agony of my fellow prisoners. I was so scared I urinated on myself twice.

I agreed to sign any document they put before me, even those I wasn’t allowed to read. And eventually I would say anything at all to avoid more torture. “Do you want me to use that?” someone would ask when I didn’t answer soon enough, pointing to a steel chair in the corner of the interrogation room.

No, I told them, I did not want them to use that. And yes, I told them, I had been to Afghanistan. It wasn’t true, but it seemed important enough to my jailers. After a month, broken physically and mentally, I was also instructed to write these things down on a piece of paper next to other answers to other questions that they had gone ahead and penned on my behalf.

What is Rendition?

Extraordinary rendition is the forced transfer of a person from one country to another for arbitrary detention and interrogation under torture. Since September 11, 2001, the Bush administration has used extraordinary rendition to covertly transport an estimated 150 persons—and possibly more—for detention and interrogation without judicial oversight as part of the so-called “war on terror.” Victims of extraordinary rendition are sent to countries where torture is routinely practiced on detainees.

“Rendition, as currently practiced, is undermining our moral credibility and standing abroad and weakening the coalitions with foreign governments that we need to effectively combat international terrorism.”

-Senator Joe Biden.
July 26, 2007

U.S. legal obligations regarding rendition

- **United Nations Convention against Torture (ratified by the U.S. in 1994), Article 3:**
 1. No State Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.
- **The Foreign Affairs Reform and Restructuring Act of 1998** is domestic legislation which requires that the U.S. to comply with CAT Article 3 and take extra measures to prevent the involuntary return, removal or extradition of a person to a country where he or she fears torture.
- **International Covenant of Civil and Political Rights (ratified by the US in 1992) Article 7:**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
- **Torture Act 2000, 18 U.S.C. §§ 2340, 2340A**

2340. Definitions

As used in this chapter—

- (1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;
- (2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from—
 - (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
 - (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
 - (C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; [...]

2340A. Torture

(a) Offense.— Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life. [...]

(c) Conspiracy.— A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.

“There are international covenants against torture. The submission of rendition is something that is going to have to come under some judicial supervision.... I believe [Arar] is a very compelling case that there needs to be judicial intervention or needs to be a lot more oversight than there has been on these matters.”

—*Senator Arlen Specter, March 7, 2007*

Arar v Ashcroft

CCR, with the law-firm DLA Piper, represents Maher Arar in a case against the U.S. officials responsible for sending him to Syria to be interrogated under torture, including former Attorney General John Ashcroft, former Deputy Attorney General Larry Thompson, FBI Director Robert Mueller, and other U.S. immigration officials.

Maher brought claims under the Fifth Amendment of the U.S. Constitution for being sent to Syria for arbitrary detention and torture, as well as for being denied access to counsel and the courts and his inhumane conditions of confinement in the U.S. He also brought a claim under the Torture Victim Protection Act (TVPA) for being subjected to torture under color of law of Syria. He seeks a jury trial, damages and declaratory relief. The first count alleges that by sending Arar to Syria to be tortured, Defendants are liable under the TVPA for conspiring with Syrian officials to subject him to torture under color of foreign law. The second count alleges that Defendants violated Mr. Arar’s substantive due process rights under the Fifth Amendment by transporting him to Syria so that he would be tortured and coercively interrogated there. The third count alleges that Defendants violated Mr. Arar’s substantive due process rights by transporting him to Syria to be arbitrarily detained there. The fourth count alleges that Defendants’ inhumane treatment of Mr. Arar while he was detained in the United States, as well as their preventing his access to counsel and the courts, including by lying to him and his attorney, further violated his substantive due process rights.

On February 16, 2006, Judge David G. Trager of the U.S. District Court for the Eastern District of New York dismissed Maher’s claims. The District Court dismissed Mr. Arar’s TVPA count on the ground that the Act does not protect non-U.S. citizens, and because it found that the U.S. officials, even though alleged to have conspired with Syrians officials to have Mr. Arar tortured in Syria, were not acting under color of foreign law unless they were acting at the behest of Syrian officials, and therefore the Act was not applicable. The District Court found that even assuming that Mr. Arar

was entitled to Fifth Amendment substantive due process protection under the U.S. Constitution, the Defendants could not be liable for sending him to Syria to be tortured and arbitrarily detained because national-security and foreign policy concerns foreclose a damages remedy. After rejecting Defendants' argument that Mr. Arar was not entitled to Constitutional protection because he had not "entered" the United States, the District Court required Mr. Arar to re-plead his Fifth Amendment substantive due process claims to better allege that he was subjected to gross physical abuse in the U.S., what injury the denial of access to counsel prevented him from grieving, and that Defendants were personally involved. Finally, the District Court found that Maher did not have standing to seek declaratory relief against the U.S. officials because he does not continue to suffer an ongoing harm which such relief would redress.

Mr. Arar appealed this decision to a three judge panel of the Second Circuit Court of Appeals, which affirmed the dismissal 2-1 in June 2008, agreeing with the lower court that Mr. Arar's claims would interfere with national security. However, in an extremely rare move, the Court of Appeals decided that Mr. Arar's appeal would be reheard by twelve judges. The rehearing occurred on December 9, 2008 in New York.

"Maher Arar was the victim of the Bush Administration's program of 'extraordinary rendition.' This is a disgusting practice that brings dishonor to the United States of America, and ultimately endangers our troops in the field by validating the use of torture all over the world. We must know the truth of what happened to Maher Arar, why it happened, upon whose orders, and upon what justification."

-Representative Edward Markey, September 20, 2006

Case Timeline

January 22, 2004	The Center for Constitutional Rights filed suit, on behalf of Mr. Arar, in the U.S. District Court for the Eastern District of New York against Attorney General John Ashcroft, former Deputy Attorney General Larry D. Thompson, and FBI Director Robert Mueller, as well as numerous directors of the U.S. immigration officials.
September 27- October 4, 2004	Defendants file motions to dismiss the case.
January 14, 2005	Mr. Arar's opposition to the motion to dismiss motions is filed.
January 18, 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, are "state secrets." The government argued that litigating the would reveal intelligence gathering methods and harm national security and foreign relations.
March 15, 2005	CCR filed a response to the US government's "state secrets" motion, arguing that Mr. Arar could prove his case without privileged information, and even if

such information were necessary to establish a defense, procedural safeguards could protect such information.

- February 16, 2006 Judge David G. Trager of 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. In so doing, Judge Trager found, *inter alia*, 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. He declined to rule on the "state secrets" motion at that time.
- August 17, 2006 Final judgment was entered, after Mr. Arar declined to re-plead his domestic detention claim, opting instead to proceed with the allegations contained in the complaint.
- September 12, 2006 Mr. Arar's notice of appeal was filed in the Second Circuit.
- September 18, 2006 The Canadian Commission of Inquiry established by the Canadian Government to Investigate the Actions of Canadian Officials in Relation to Mr. Arar issued its report. The Commissioner 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." Canadian investigators, with U.S. cooperation, exhaustively investigated Mr. Arar, and found no information that could implicate Mr. Arar in terrorist activities. The Commission also found no evidence that Canadian officials acquiesced in the U.S. decision to detain and remove Mr. Arar to Syria, but that it is very likely that the U.S. relied on inaccurate and unfair information about Mr. Arar that was provided by Canadian officials.
- December 12, 2006 Mr. Arar's opening appeal brief is filed in the Second Circuit.
- December 21, 2006 U.S. Secretary of State Condoleezza Rice said that the U.S. would re-examine Mr. Arar's placement on the U.S. government's watch list.
- January 22, 2007 The Department of Justice publicly released a week-old letter to Canada's Minister of Public Safety, Stockwell Day, claiming that the U.S. still had reason to keep Mr. Arar on the government watch list. The letter, signed by Attorney General Alberto Gonzales and Secretary of Homeland Security Michael Chertoff also offered to share "U.S. derived" information with the Canadians in a confidential meeting. The release of the letter came four days after Minister Day had examined all the U.S.-held information and declared that such information "has not altered our opinion on this at all."
- January 26, 2007 Canadian Prime Minister Stephen Harper and the RCMP Commissioner apologized to Mr. Arar and his family. Prime Minister Harper also announced that the government had agreed to compensate Mr. Arar in the amount of approximately \$10 million.
- February 22, 2007 Defendants file their response to Mr. Arar's opening appellate brief.
- April 19, 2007 Mr. Arar's reply brief is filed before the Second Circuit.

- August 9, 2007 The Canadian government released new information regarding Mr. Arar's rendition. In response to a court order, the government released some portions of a report that it had previously redacted due to "national security" concerns. The unredacted portions showed 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. They also revealed that in mid-2002, Canadian investigators were not able to convince the FBI to institute a criminal investigation of the subjects of their investigation, much less Mr. Arar, who had been identified as a potential witness.
- October 18, 2007 Mr. Arar testified via video-link before a House Joint Committee Hearing convened to discuss his rendition by the U.S. to Syria for interrogation under torture. During the hearing, members of Congress publicly apologized to him. The next week, Secretary of State Condoleezza Rice admitted during a House Foreign Affairs Committee Hearing that the U.S. government mishandled the case of Mr. Arar.
- November 9, 2007: The appeal was argued before a three-judge panel of the Second Circuit Court of Appeals.
- June 5, 2008 The Office of the Inspector General (OIG) of the Department of Homeland Security issued its Report on the actions of U.S. immigration officials surrounding the decision to send Maher Arar to Syria. The same day, Inspector General (IG) Richard Skinner testified before Subcommittees of the House Foreign Affairs and Judiciary Committees to answer questions about the Report. The Report found that the "operations order" to remove Mr. Arar was prepared and flight clearances were sent to Rome and Amman before Maher's Convention Against Torture (CAT) interview or assessment took place, and before INS received so-called "assurances" to protect him. In fact, the INS determined that if Maher were sent to Syria he would likely be tortured, but that decision was later overridden. The IG testified that he could not get a satisfactory answer as to why Maher was sent to Syria, and he could not rule out the possibility that it was for the purpose of interrogation under unlawful conditions.
- June 30, 2008 The three-judge panel of the Second Circuit Court of Appeals issued its decision. The majority opinion found that adjudicating Mr. Arar's claims would interfere with national security and foreign policy, a decision that the dissenting judge found gives federal officials the license to "violate constitutional rights with virtual impunity." The majority also found that, as a foreigner who had not been formally admitted to the U.S., Mr. Arar had no constitutional due process rights with respect to the government's interference with his access to a lawyer. The Court dismissed Mr. Arar's TVPA claims by finding that the federal officials would have had to have acted under the control of the Syrian officials to be held liable.
- July 10, 2008 Members of Congress wrote to Attorney General Michael Mukasey requesting that he appoint an outside special counsel to investigate and prosecute any crimes committed by United States officials in sending Maher to Syria. On July 23rd, Mr. Mukasey testified before Congress that DOJ would not be appointing special counsel "at this time."

August 12, 2008	The Second Circuit <i>sua sponte</i> issued an order that the case will be reheard en banc.
September 23, 2008	Mr. Arar's replacement opening brief is filed in the Second Circuit.
October 2008	Six amicus briefs in support of Mr. Arar are filed in the Second Circuit.
November 4, 2008	Defendants' replacement briefs are filed in the Second Circuit.
November 14, 2008	Mr. Arar's replacement reply brief is filed in the Second Circuit.
December 9, 2008	Oral arguments heard by Second Circuit Court of Appeals en banc.

Canadian Inquiry Findings Related to Maher Arar

Upon Mr. Arar's release and in response to public pressure, the Canadian government launched an extensive public Commission of Inquiry to investigate the responsibility of Canadian officials in his rendition to Syria. After reviewing over 20,000 government documents and taking testimony from over 70 government witnesses, the Commission released a 1,200 page report in September 2006. The Commission concluded:

1. There is "no evidence" indicating the Mr. Arar committed any offense or implicating him in terrorist activity.
2. There is no evidence that Canadian officials participated in the U.S. decision to detain Mr. Arar and send him to Syria.
3. The U.S. decision to detain Mr. Arar very likely relied on inaccurate and unfair information about Mr. Arar that had been provided by Canadian officials.
4. Canadian officials had not acted quickly enough to get Mr. Arar out of Syria and leaked false information which tarnished Mr. Arar's reputation upon his return.

Justice O'Connor, who headed the Commission, stated: "*Canadian investigators made extensive efforts to find any information that could implicate Mr. Arar in terrorist activities. They did so over a lengthy period of time, even after Mr. Arar's case became a **cause célèbre**. The results speak for themselves: they found none.*"

In January 2007, the Canadian government settled Mr. Arar's civil case in Canada, apologizing to him and paying him nearly \$10 million. Prime Minister Harper of Canada and the Commissioner of the Royal Canadian Mounted Police apologized to Maher Arar and his family for the "terrible ordeal" they suffered. He has also called on the US to "come clean" and acknowledge "the deficiencies and inappropriate conduct that occurred in this case."

Recommendations to the United States

While the Canadian government has found that Mr. Arar is indeed innocent and cleared his name, and determined that his civil and human rights were grossly violated, the Bush Administration refused to cooperate with the Canadian Inquiry, and continues to insist that Mr. Arar belongs on the “no-fly” watch list, while fighting to have Mr. Arar’s lawsuit dismissed.

Recommendations:

1. Make an official, public apology to Maher Arar.
2. Launch an independent commission to investigate Maher Arar’s rendition.
3. Demand that the Administration disclose what it did to Maher Arar and why, including releasing all documents.
4. Demand that Maher Arar be removed from the Watch List immediately.

“The Bush Administration refuses to acknowledge any responsibility, instead offering tepid explanation that Syrian officials assured the U.S. that Arar would not be tortured. These are the same Syrian officials with whom our government now says it will not negotiate because they are not trustworthy. Mr. Arar’s cases stands as a sad symbol of the of how we have been too willing to sacrifice our core principles to overarching government power in the name of security, when doing so only undermines the principles we stand for and makes us less safe.”

- *Senator Patrick Leahy, Time Magazine*