

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2010/02/06/denying-arar-opportunity-redress-undermines-us-justice-system>

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On February 1, 2010, Maher Arar asked the US Supreme Court to overturn a lower court ruling that he cannot sue federal officials for damages even though they allegedly conspired with Syrian officials to subject him to torture in Syria. A powerful dissent by Judge Guido Calabresi in the Second Circuit's *en banc* review of the case criticized the majority for "utter subservience to the executive branch" and engaging in "extraordinary judicial activism" to deny Arar relief.

Arar, a Syrian-born Canadian citizen, was mistakenly identified as a terrorist by Canadian authorities while transiting through JFK International Airport in New York. Bush administration officials sent him to Syria where he was detained, interrogated and tortured for almost a year before being sent back to Canada. The Canadian government engaged in an exhaustive public inquiry regarding Canada's involvement in the matter, concluded that Arar had no connection to terrorism, and awarded him a multi-million dollar settlement. Yet the US government has done nothing to provide Arar with any form of redress - nor even acknowledged any wrongdoing.

Arar's case is an important one for the Obama administration. In the past year, the administration has done little to hold former officials accountable for authorizing torture or to provide redress for victims of torture. Attorney General Eric Holder initiated a preliminary investigation into CIA abuses, but it appears to be limited to "unauthorized" interrogation techniques and will not examine wrongdoing up the chain of command. The Justice Department's Office of Professional Responsibility (OPR) investigated possible ethical misconduct by its attorneys in connection with the "torture memos" and completed a draft of its report in December 2008. Yet despite the Attorney General's promise to Congress that the OPR report would be available by the end of last year, it still has not been released. And instead of repudiating renditions to foreign countries based on unenforceable and ineffectual "diplomatic assurances" that a person will not be subjected to torture, the task force charged with reviewing interrogation policy recommended that the US continue such transfers based on those assurances.

Nor have individuals who have suffered abuse been successful at obtaining redress before the courts. In asserting that even meritorious litigation should be summarily dismissed if it might lead to revelations of classified information, the Obama Justice Department has taken what it acknowledged in at least one case is "exactly" the same position as the Bush administration. Its overbroad reading of the "state secrets" privilege denies torture victims the opportunity to even have their case considered by a federal judge.

Civil suit for money damages is but one means of redress for victims of torture. For Maher Arar, it is the only remaining avenue available to him in the US. The Obama administration now has the opportunity to alter its opposition to his suit to permit some form of redress. And if it does not, there is a risk the Supreme Court could interpret statutes granting some officials immunity to mean that victims of torture can never successfully hold their torturers accountable. This would be a great tragedy for the fundamental right to redress for official wrongdoing, a foundation of the US justice system.

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