

August 15, 2008

U.S. Appeals Court to Rehear Case of Deported Canadian

By JAMES BARRON

A federal appeals court in New York will take the unusual step of rehearing a case it decided in June, when it dismissed a lawsuit filed by a telecommunications engineer from Canada who was detained at Kennedy Airport in 2002, flown to Jordan and expelled to Syria, where he said he was tortured.

The United States Court of Appeals for the Second Circuit, in Manhattan, notified lawyers for the man, Maher Arar, that arguments would be heard on Dec. 9 in an en banc session, meaning in front of all 12 appeals judges. The June decision was made by three of the judges.

The court routinely assigns a three-judge panel to hear each case. One of Mr. Arar's lawyers, Maria LaHood, of the Center for Constitutional Rights in Manhattan, said it was unusual for the full court to take up a case that had already been decided.

"It's even more unusual for the Second Circuit to hear a case en banc without being asked," she said, noting that neither she nor the Justice Department had requested the rehearing. The court offered no explanation in its three-paragraph order, but said that a majority of the judges had voted to rehear the case.

Carl Tobias, a law professor at the University of Richmond, in Virginia, said the implication was that one of the judges had asked for the vote. He said it was unusual for the full court to hear a case under such circumstances.

"It just isn't done very often," he said, and almost never in New York. Referring to en banc hearings, he added: "The percentage is tiny, minuscule. I think nationwide, there aren't more than 100 a year in the 12 circuits."

Mr. Arar's lawsuit sought civil damages from a number of federal officials, including John Ashcroft, who was attorney general when Mr. Arar was stopped at the airport on his way home to Canada from a vacation in Switzerland because immigration officers found his name on a terrorist watch list. Mr. Arar had accused Mr. Ashcroft and other Bush administration officials at the time — among them Robert S. Mueller III, the director of the Federal Bureau of Investigation, and Tom Ridge, the director of homeland security — of violating federal law and his civil rights.

The three judges, affirming a lower-court decision, ruled 2 to 1 that the federal courts lacked jurisdiction to hear Mr. Arar's complaint. The reason, they said, was that technically, Mr. Arar was never in the United States.

One of the three judges, though, dissented, blasting as "a legal fiction" the idea that Mr. Arar was not in this country when he was apprehended at Kennedy. That judge, Robert D. Sack, said that Mr. Arar's case should continue because Mr. Arar "was, in effect, abducted while attempting to transit at J.F.K. Airport."

Ms. LaHood said that Mr. Arar was held for nearly two weeks and not allowed to call a lawyer or go before a court. Then he was flown to Jordan and turned over to Syrian intelligence officials. He was held in Syria for a year, and says he was beaten.

Mr. Arar, who is in his 30s, immigrated to Canada from Syria as a teenager and became a naturalized Canadian citizen. In 2003, he was taken to Canada, where a high-level commission concluded that the Canadian police and intelligence officials had erroneously linked Mr. Arar to Al Qaeda.

The commission found that the Canadians had provided American officials with the misinformation. The commission also concluded that Canadian officials had been behind a campaign to discredit Mr. Arar after he was released from Syria and arrived in Canada in October 2003.

The Canadian government issued a formal apology in January 2007 and paid Mr. Arar \$9.75 million.

Secretary of State Condoleezza Rice said last year that the matter had not been “handled as it should have been.” In June, the Department of Homeland Security’s inspector general said at a Congressional hearing that the Justice Department’s ethics office was reviewing the decision to send Mr. Arar to Syria.

[Copyright 2008 The New York Times Company](#)

[Privacy Policy](#) | [Search](#) | [Corrections](#) | [RSS](#) | [First Look](#) | [Help](#) | [Contact Us](#) | [Work for Us](#) | [Site Map](#)