

# Canada: Federal Court orders repatriation of torture victim Abousfian Abdelrazik

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Canada's Federal Court has ruled that since 2003 the Canadian government has repeatedly violated Abousfian Abdelrazik's constitutionally-guaranteed right to return to Canada and ordered the Canadian government to repatriate the Sudanese-born Canadian citizen within 30 days.

In a scathing rebuke of the treatment accorded Abdelrazik by the current Conservative government and its Liberal predecessor, Justice Russel Zinn said, "Had it been necessary to determine whether the breach [of Abdelrazik's constitutional rights] was done in bad faith, I would have no hesitation making that finding on the basis of the record before me."

The judge found that the Canadian state had first violated Abdelrazik's right to return to Canada when it was complicit in his prolonged, indefinite detention without charge by the Sudanese state. Later, after his second release from Sudanese prison in July 2006, Abdelrazik, became ensnared in a unconstitutional legal-bureaucratic maze, with Canadian authorities repeatedly introducing new impediments to his return to his home and family in Canada.

To emphasize his disdain for and distrust of the government's conduct in the Abdelrazik case, Justice Zinn has stipulated that the government physically bring him before the court so as to prove that he has in fact been returned to Canada.

Justice Zinn delivered his decision June 4. A week later, the Conservative government is still refusing to say whether it will abide by the ruling that it repatriate Abdelrazik. Replying to opposition demands that Abdelrazik be returned to Canada, Justice Minister Rob Nicholson told the House of Commons last Friday that the decision is "being carefully studied by the Department of Justice... and after we've had an opportunity to review the advice from the Department of Justice, we'll take action."

The Harper Conservative government is already appealing a Federal Court order it repatriate Guantanamo Bay detainee Omar Khadr. A Canadian citizen, Khadr has been held at Guantanamo Bay since he was apprehended seven years ago when he was just 15 years old. While there, Khadr has been subjected to psychological and physical torture. Moreover, US authorities have tried to suppress evidence that would have exonerated him of the trumped-up charges the Pentagon has brought against him. Yet the Harper government, in keeping with its general indifference and hostility toward civil liberties and international law, has repeatedly

expressed support for the US government's persecution of Khadr.

Abdelrazik, a Canadian citizen who had fled Sudan as a political refugee, returned there to visit his ailing mother in 2003. He was subsequently arrested by the Sudanese secret police, held without charge, tortured, and under the Sudanese secret police's auspices, subject to interrogations by Canadian Security Intelligence Service (CSIS) and FBI agents.

After two lengthy detentions, the Sudanese government issued a statement declaring that there is no evidence of Abdelrazik's involvement in any terrorist or other illegal activists. CSIS, which boasted in an internal document obtained by the *Globe and Mail* that it incited the Sudanese government to first arrest Abdelrazik, also ultimately admitted that he is not an al-Qaeda operative or otherwise a national security threat.

But the Canadian government has steadfastly blocked Abdelrazik from returning to Canada, resorting to all manner of subterfuges so as to arbitrarily and illegally strip him of his most elementary citizenship rights.

Justice Zinn ruled that beginning in 2003, the Canadian government acted in such a way as to deny Abdelrazik the right to return to Canada, guaranteed by Section 6 of the Canadian Charter of Rights and Freedoms.

Specifically, he found that, notwithstanding recent CSIS denials of any role in Abdelrazik's initial arrest, that Canada's intelligence service was indeed responsible for his detention without charge or trial.

Wrote Justice Zinn, "An allegation that Canada was complicit in a foreign nation detaining a Canadian citizen is very serious, particularly when no charges are pending against him and in circumstances where he had previously fled that country as a Convention refugee.

"However, in my view, the evidence before the Court establishes, on the balance of probabilities, that the recommendation for the detention of Mr. Abdelrazik by Sudan came either directly or indirectly from CSIS."

After his first release from Sudanese prison in July 2004, Abdelrazik made arrangements to fly back to Canada. However, his plans were frustrated when a commercial airline refused to allow him on their planes, citing his presence on the US government's "no-fly" list.

The court decision establishes that it was at this point, having learned that the US government was intent on barring Abdelrazik

from air travel, that Canadian authorities “determined that they would not take any active steps to assist Mr. Abdelrazik to return to Canada and, in spite of its numerous assurances to the contrary, would consider refusing him an emergency passport if that was required in order to ensure that he could not return to Canada.”

To this day, the Canadian government has refused to issue Abdelrazik a temporary travel document—his passport expired long ago—and has repeatedly sought to justify its concerted effort to block Abdelrazik’s return to Canada by citing the fact that Washington had his name added to the UN (Resolution 1267) no-fly list, even while claiming to oppose the US-UN action against him.

Canadian officials had assured Abdelrazik that if he obtained a flight itinerary, he would be issued a temporary passport. But when he arranged a flight on Etihad Airlines in August 2008, the Foreign Affairs Ministry added a new condition: the impoverished Abdelrazik had to obtain a *paid* ticket.

When supporters of Abdelrazik began to donate money towards the purchase of an airline ticket back to Canada, the government intimated that anyone who donated money could be charged with “giving material support to terrorism.”

In April of this year, when Abdelrazik’s supporters, having refused to buckle in the face of the state intimidation campaign, provided him with a fully-paid up ticket, the government again reneged on its promise to issue a temporary passport. Just two hours before the flight was scheduled to leave, Conservative Minister of Foreign Affairs Lawrence Cannon personally refused to issue the requisite document, on the grounds that such action “is necessary for the national security of Canada or another country.”

In executing that decision, Cannon did not follow the legally mandated process for denying a passport application, nor did he offer an explanation of how Abdelrazik, cleared of suspicion by the Sudanese government, the Royal Canadian Mounted Police, and CSIS, constituted a threat to Canada’s national security.

The judge concluded that “when no basis is provided for the opinion, the Court cannot find that the refusal was required and justified given the significant breach of the Charter [of Rights and Freedoms] that refusing a passport to a Canadian citizen entails.

“In this case, the refusal of the emergency passport effectively leaves Mr. Abdelrazik as a prisoner in a foreign land, consigned to live the remainder of his life in the Canadian Embassy or leave and risk detention and torture.” (Abdelrazik, who is destitute and suffers from ill health and fears re-arrest and torture, has taken refuge on the grounds of the Canadian embassy in Khartoum.)

In a brazen attempt to concoct a legal justification for the government’s denial of Abdelrazik’s right to return, federal lawyers have argued that the right of a citizen to return to Canada applies only if a citizen physically presents him or herself at a border-crossing.

As Abdelrazik is barred by the UN 1267 no-fly list from travelling through the territory of any UN member state, it is impossible for him to present himself at the Canadian border and, consequently, or so the Harper government has claimed, it is lawful to deny him a temporary passport allowing him to return to Canada.

Justice Zinn shredded this contrived argument. He noted that contrary to the assertions of the government, the UN 1267 no-fly list contains a stipulation that expressly exempts those returning to their home country from the travel ban.

The government’s “interpretation of the 1267 travel ban leads,” wrote Zinn, “to a nonsensical result ... as there is virtually no possibility that a listed person will be located at a border crossing and there is no possibility under current technology that he will be able to simply transport himself to the border crossing without transiting over land or through the air.”

In direct contradiction to the repeated attempts of Canada’s Conservative government to justify their anti-democratic actions by citing “international obligations,” the judge found that “properly interpreted, the UN travel ban presents no impediment to Mr. Abdelrazik returning home to Canada.”

In refuting the government’s arguments, Zinn did no more than reaffirm basic rights of citizenship.

These and other basic democratic rights have repeatedly come under attack with the complicity of the opposition parties, especially the Canadian elite’s alternate party of government, the Liberals, now led by Michael Ignatieff, a prominent liberal-intellectual proponent of the Iraq war and apologist for the “war on terror.”

A cursory examination of the case of Abousfian Abdelrazik demonstrates the bipartisan character of the Canadian government’s attacks on democratic rights. It was the Liberal government of Jean Chrétien that massively increased the budget, powers and mandate of CSIS, actions which led directly to CSIS’s fingering of Abdelrazik for arrest in 2003. And it was under the Liberal government of Paul Martin that the Foreign Affairs Ministry began to plot to deny him a temporary passport.

Parallel to the shift, almost entirely rhetorical, that the Obama administration has effected in regards to the most flagrant human rights violations of the Bush administration, such as the Guantanamo Bay detention camp, rendition, and the use of water-boarding, sections of the Canadian establishment are now criticizing some of the most egregious anti-democratic actions of the Harper government, including the victimization of Abousfian Abdelrazik.

But this opposition is piecemeal, largely driven by calculations of electoral advantage and aimed at refurbishing the tattered image of Canadian democracy, the better to pursue reaction at home and imperialist war abroad. No confidence should be placed in any section of the ruling class or political establishment to defend basic democratic rights—that task falls to the working class.



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