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## **A Judicial Green Light for Torture**

Editorial  
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The administration's tendency to dodge accountability for lawless actions by resorting to secrecy and claims of national security is on sharp display in the case of a Syrian-born Canadian, Maher Arar, who spent months under torture because of United States action. A federal trial judge in Brooklyn has refused to stand up to the executive branch, in a decision that is both chilling and ripe for prompt overturning.

Mr. Arar, a 35-year-old software engineer whose case has been detailed in a pair of columns by Bob Herbert, was detained at Kennedy Airport in 2002 while on his way home from a family vacation. He was held in solitary confinement in a Brooklyn detention center and interrogated without proper access to legal counsel. Finally, he was shipped off to a Syrian prison. There, he was held for 10 months in an underground rat-infested dungeon and brutally tortured because officials suspected that he was a member of Al Qaeda. All this was part of a morally and legally unsupportable United States practice known as "extraordinary rendition," in which the federal government outsources interrogations to regimes known to use torture and lacking fundamental human rights protections.

The maltreatment of Mr. Arar would be reprehensible -- and illegal under the United States Constitution and applicable treaties -- even had the suspicions of terrorist involvement proven true. But no link to any terrorist organization or activity emerged, which is why the Syrians eventually released him. Mr. Arar then sued for damages.

The judge in the case, David Trager of Federal District Court in Brooklyn, did not dispute that United States officials had reason to know that Mr. Arar faced a likelihood of torture in Syria. But he took the rare step of blocking the lawsuit entirely, saying that the use of torture in rendition cases is a foreign policy question not appropriate for court review, and that going forward would mean disclosing state secrets.

It is hard to see why resolving Mr. Arar's case would necessitate the revelation of privileged material. Moreover, as the Supreme Court made clear in a pair of 2004 decisions rebuking the government for its policies of holding foreign terrorism suspects in an indefinite legal limbo in Guantanamo and elsewhere, even during the war on terror, the government's actions are subject to court review and must adhere to the rule of law.

With the Bush administration claiming imperial powers to detain, spy on and even torture people, and the Republican Congress stuck largely in enabling mode, the role of judges in checking executive branch excesses becomes all the more crucial. If the courts collapse when confronted with spurious government claims about the needs of national security, so will basic American liberties.