

# Extraordinary Rendition on Trial

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## ACLU TRIES TO GROUND THE BOEING SUBSIDIARY THAT TRAFFICKED IN TORTURE

On Nov. 1, 2002, Bisher Al-Rawi, a citizen of Iraq, was preparing to board a plane at Gatwick Airport in London, en route to Gambia, when screeners found something suspicious in his luggage.

Al-Rawi--a permanent resident of the United Kingdom who worked sporadically as an interpreter for MI5, the U.K. counterintelligence agency--was traveling to Africa to set up a nut-oil processing venture there, having spent the previous months obtaining the necessary permits and licenses from Gambian authorities.

It took four days for British authorities to conclude the object he was carrying was nothing more than a common store-bought battery charger. On Nov. 4, Al-Rawi was released from custody, but by then, a course of events had been set in motion that would launch Al-Rawi on a five-year Kafkaesque odyssey ending with his March 2007 release from U.S. detention at Guantánamo Bay. Unbeknownst to him, Al-Rawi was about to become the subject of a then-secret CIA program known as "extraordinary rendition."

In August 2007, Al-Rawi and a second man, Mohamed Farag Ahmad Bashmilah--a 38-year-old Yemeni citizen who underwent a similar ordeal in 2003--joined in an ACLU lawsuit against Boeing subsidiary Jeppesen Dataplan, alleging the company played a critical role in their renditions. A total of five plaintiffs are named in the suit, each of whom, it is alleged, was rendered with planning and logistical support from Jeppesen. The other three plaintiffs, Ahmed Agiza, Abou Elkassim Britel and Binyam Mohamed, remain in custody in Egypt, Morocco and Guantánamo Bay, Cuba, respectively. All five say they were subjected to an array of physical and mental abuse--ranging from sleep deprivation to electric shock torture--at the hands of their captors.

This is the second time the ACLU has challenged extraordinary rendition in open court. The first case was that of Khalid El-Masri, a German citizen who, in 2003, the CIA rendered to Afghanistan while El-Masri was vacationing in Macedonia.

The ACLU, on El-Masri's behalf, sued former CIA head George Tenet and several shell companies operated by the agency. In 2006, El-Masri's claim was dismissed after the U.S. government argued that a public trial would "present a grave risk of injury to national security." Last October, the U.S. Supreme Court refused to hear the case on appeal.

But the Jeppesen case is the first time a U.S. public company has been taken to task for its complicity in the rendition program.

According to the company's website, Jeppesen Dataplan is an international flight operations service provider that coordinates everything from landing fees to hotel reservations for commercial and military clients.

Evidence shows that a unit of the company--Jeppesen International Trip Planning Service (JITPS)--provided logistical support to the CIA for the renditions of at least seven people: aid that the ACLU calls "critical" to the program's operational success.

What's more, the complaint alleges that Jeppesen intentionally submitted "dummy flights" to various aviation authorities in order to conceal the true flight paths of the rendition planes.

Among the witnesses for the plaintiffs is a former Jeppesen employee, Sean Belcher, who says that during his orientation as a technical writer at the company's San Jose facility, he was told by the managing director of JITPS that the company provided support services for so-called CIA "torture flights."

Belcher worked for Jeppesen for a little more than a month before resigning, five days after he learned of the company's CIA link, he says.

Jeppesen declined to comment in depth on the case, saying it is against company policy to discuss pending litigation. But in an e-mail, company spokesperson Mike Pound dismissed Belcher's statement as "hearsay," adding that Jeppesen manages flight logistics and planning for thousands of organizations and people, and it is not necessary to know the specific nature of a customer's flight.

"In the event that we learn something about the purpose of a flight, our customers have the reasonable expectation that it will be held in confidence," Pound said. "We do not comment on any work done for any customer without their consent."

To litigate the case, the ACLU is relying on the Alien Tort Claims Act, a federal law dating from 1789 that gives U.S. courts jurisdiction over civil actions filed by foreigners who allege violations of the law of nations or a treaty of the United States. The same law recently enabled three Chinese dissidents to file suit against Yahoo! for sharing information with the Chinese government that led to their arrests. Yahoo! settled that case in December 2007 for an undisclosed sum.

If the Bush administration has its way, the Jeppesen case will never get that far. The government has filed a motion to dismiss the lawsuit, once again evoking the "state secrets" privilege.

Echoing its argument in the El-Masri case, the United States asserts in its filing that disclosure of details of the rendition program--or even admitting that the plaintiffs were rendered--"could be expected to cause serious and, in some cases, exceptionally grave damage to national security."

But the success of the motion rests largely on the government's claim that the rendition program constitutes a state secret, an assertion that is becoming increasingly difficult to maintain.

In its response to the motion to dismiss, the ACLU has presented roughly 1,000 pages of documents that suggest the CIA's rendition program was anything but a secret. Included are everything from actual flight plans to petitions for the release of specific detainees and reports on the rendition program from the European Parliament, the United Nations and the governments of Sweden and the United Kingdom.

"Since El-Masri there is more information in the public domain about the rendition program," says Ben Wizner, one of the ACLU's lead attorneys on the case. "Every month that goes by, it gets harder and harder for the United States to make a straight-faced argument that the rendition program is a black-box clandestine operation."

In addition, says Wizner, increasingly more of that information is coming from the federal government itself.

"You have the president publicly revealing, confirming and defending the rendition and detention program. You have [CIA Director] Mike Hayden giving speeches at the Council on Foreign Relations and going on Charlie Rose to talk about the rendition program.

"It is interesting to see the length the U.S. government is going to try and prevent any accountability for its contractors," Wizner says.

Requests for comment from the U.S. attorney that filed the government's motion to dismiss, Michael Abate, were directed to the Justice Department's public affairs office. Department spokesperson Charles Miller subsequently declined comment.

### **The Dark Prison**

Days after his run-in with airport authorities at Gatwick, Al-Rawi flew without incident to Banjul, Gambia, where--on a tip from the British--he was promptly detained by local intelligence officials. Within a month, he found himself strapped to a stretcher in a CIA-operated Gulfstream V jet aircraft with no idea where he was being taken or by whom.

Flight records show that Bisher Al-Rawi was flown to Kabul, Afghanistan, where intelligence reports confirm that the United States detained him at a secret CIA facility known as the "Dark Prison," and later at Bagram Air Base.

In a sworn affidavit, Al-Rawi describes what happened to him upon his arrival:

From the outset I was held in complete darkness and isolation and kept in leg shackles 24 hours a day. I was given very little water and fed only once every one or two days. Despite the extreme cold, I was not provided with adequate clothing or blankets. Strange music and loud man-made sounds were played around the clock, which in addition to the screams of other prisoners around me, made sleeping extremely difficult.

He says things got worse after U.S. officials transferred him to Bagram. "I was kicked and dragged along the floor ... held in a squalid cell [for two months] and forced to undergo prolonged periods of isolation and sleep deprivation," he testified. "I was threatened with death or transfer to another country to be tortured."

Al-Rawi was finally transferred to the U.S. Naval Base at Guantánamo on Feb. 7, 2003, where he would spend the next four years without being charged. He was released on March 30, 2007, and was flown on a luxury Lear Jet back to the United Kingdom, where he currently resides. He has received neither an apology nor an explanation for his ordeal.

### **Breaking the Code**

Connecting Jeppesen Dataplan to the rendition flights was nothing short of a journalistic grand slam.

In 2005, Italian investigative reporter Claudio Gatti "broke the Jeppesen code" when he managed to trace the company's unique originator identification number to specific rendition planes using public flight databases.

Then in 2006, journalist Stephen Grey further exposed the nuts and bolts of the program with his book *Ghost Plane: The True Story of the CIA Torture Program*, in which he documents the cases of nearly 90 people who were rendered by the CIA.

Between the work of the two journalists and that of the U.N. Committee on Torture and governmental agencies throughout Europe, there's little about extraordinary rendition that hasn't been exposed.

What is clear is that the activities that constitute the program are illegal under universally accepted international standards and conventions.

Among them, U.N. General Assembly Resolution 47/133, ratified in 1992, expressly prohibits "enforced disappearances," and spells out that such operations "render their perpetrators and the state or state authorities which organize, acquiesce in or tolerate such disappearances liable under civil law."

The Jeppesen plaintiffs are seeking compensation of no less than \$75,000 each and unspecified punitive damages.

But the ACLU's Wizner says at the end of the day, the case is about sending a clear message to U.S. companies that they will be held accountable for profiting from human rights violations.

"More and more of our military and security services are turning to private contractors and it might very well be difficult for them to carry out these operations without these contractors," Wizner says. "If some of those private contractors look at the Jeppesen case and think twice before taking the CIA's money to participate in these illegal and immoral operations, then we will have succeeded."