

Canada: Federal Court of Appeal upholds order to repatriate Guantánamo detainee Omar Khadr

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Canadian Prime Minister Stephen Harper has signalled that his Conservative government will once again flout a court decision ordering Ottawa to seek the repatriation of 22-year-old Guantánamo Bay detainee and Canadian citizen Omar Khadr.

In 2002, when he was just 15 years old, Khadr was shot and captured in a firefight with US forces in Afghanistan.

In flagrant violation of international law, the US has detained Khadr at its Guantánamo concentration camp since 2003, has subjected him to torture, and is proposing to try him before a special military tribunal with rules of evidence that violate elementary juridical principles. Yet, Harper and other Conservative ministers, continuing the policy of the preceding Chrétien-Martin Liberal government, have repeatedly voiced support for the fairness and legality of the “judicial process” to which US authorities have subjected Khadr, invariably adding that he faces “very serious charges.”

On Friday, August 14, the Federal Court of Appeal ruled 2-1 to uphold a Federal Court decision that instructed the Canadian government to “present a request to the United States for Mr. Khadr’s repatriation to Canada as soon as practicable.”

In his April ruling, Federal Court Justice James O’Reilly found that the Canadian government has been complicit in the violation of Khadr’s human rights and in so doing violated Khadr’s rights under the Canadian Constitution’s Charter of Rights and Freedoms.

O’Reilly noted that agents from the Canadian Security Intelligence Service (CSIS) had interrogated the then 16-year-old Khadr in February 2003. Prior to their meeting, Khadr had been subject to three weeks of sleep deprivation by his US captors—a practice condemned as torture by international law and the Geneva Conventions.

Video of the CSIS interrogation, released last year and widely reported in the media, showed Khadr crying for his mother and blood seeping from unhealed bullet wounds. After Khadr’s CSIS interrogation, Canadian officials handed over any information they had obtained to US security forces. (See: Canada reaffirms support for Khadr’s Guantánamo Bay detention and prosecution)

These actions, O’Reilly ruled, constituted a breach of Khadr’s rights under Section 7 of the Canadian Charter, which stipulates that “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

O’Reilly further found that the Canadian government’s failure to protest his treatment by US authorities and obstinate refusal to demand his repatriation implicated the Canadian government in the denial of Khadr’s liberty in breach of numerous principles of fundamental justice.

O’Reilly ruled that Khadr’s incarceration and treatment at Guantánamo Bay violated the principle of fundamental justice because of his “youth; his need for medical attention; his lack of education, [lack of] access to consular assistance, and legal counsel; his inability to challenge his detention or conditions of confinement in a court of law; and his presence in an unfamiliar, remote and isolated prison, with no family contact.”

Last Friday’s Federal Court of Appeal ruling dismissed the Conservative government’s appeal of O’Reilly’s decision, affirming that “Canada cannot avoid responsibility for its participation in the process at the Guantánamo Bay prison by relying on the fact that Mr. Khadr was mistreated by officials of the United States, because Canadian officials knew of the abuse when they conducted the [CSIS] interviews, and sought to take advantage of it.”

Speaking to reporters last Saturday, Prime Minister Harper strongly hinted that his government will pursue its last legal option to prevent Khadr's return: an appeal to the Supreme Court of Canada. Such an appeal would at the very least ensure that Khadr remains incarcerated by his US torturers for months to come and would likely serve as an incentive for Washington to expedite its attempt to have the 22-year-old Canadian convicted by a drumhead military court.

"I'm aware," said Harper, "there is a decision that has been rendered. Apparently it is a split decision. The Department of Justice will be examining that decision and obviously I won't be commenting until we see their analysis and their recommendations."

Harper twice called attention to the lone dissenting opinion, from Justice Marc Nadon. Nadon defended the actions of the CSIS, arguing that "the fact that Canada had been made aware that US authorities were using sleep deprivation as an interrogation technique, cannot, *per se*, lead to the conclusion that Canada participated therein or was somehow culpable in regard thereto."

Judge Nadon agreed with government lawyers that O'Reilly's order for Khadr's repatriation would interfere with Canada's relations with the United States, Canada's closest ally. "It is clear," wrote Nadon, "that Canada has decided not to seek Mr. Khadr's repatriation at the present time. Why Canada has taken that position is, in my respectful view, not for [the judiciary] to criticize or inquire into. Whether Canada should seek Mr. Khadr's repatriation at the present is a matter best left to the Executive."

Since O'Reilly's ruling in April, the official opposition Liberal Party has called for Khadr's repatriation, suggesting that he could be tried under Canadian law for his terrorist ties. (Khadr's father was an associate of Osama bin Laden.) "It is simply wrong for Mr. Harper to refuse to recognize the facts of this situation, and the fact that it's time for Mr. Khadr to be brought home," said Liberal member of Parliament and former NDP premier of Ontario Bob Rae. Rae claimed that the government had a "moral obligation" to ask for Khadr's release.

When last in power, the Liberal Party made no such moral claims. In the years after the September 11, 2001 attacks, Liberal Prime Ministers Jean Chrétien and later Paul Martin oversaw a reactionary assault on democratic rights. Generously expanding the budget and mandate of the CSIS and the Royal Canadian Mounted Police (RCMP), the Liberal government presided over Khadr's 2003 CSIS interrogation and, during their remaining three

years in office, never raised any objection, however tepid, to Khadr's torture and incarceration at Guantánamo Bay. (Last year, Khadr testified that while at Guantánamo Bay, he was threatened with rape, shackled in stress positions, and physically coerced into making false statements.)

The Canadian government's mistreatment of Omar Khadr is part of a broader pattern of Canadian complicity in the torture and illegal detention of its citizens, including Maher Arar and Abousfian Abdelrazik. The Conservative government has only continued and defended the policies of the previous Liberal government in service of their shared constituency among Canada's ruling elite.

In the face of mounting popular anger, sections of the legal establishment and the Liberal Party, Canada's traditional party of government, have sought to distance themselves from the most egregious post-2001 violations of democratic rights. This is 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.

Liberal leader Michael Ignatieff has also called for Khadr's release. Before becoming the leader of the opposition, Ignatieff was an enthusiastic promoter of the Iraq war and wrote academic treatises on the permissibility of using torture and suspending basic civil rights in pursuing the "war on terror."

Under conditions of mounting social inequality and class tension, no section of the bourgeoisie can be relied upon to act within or uphold democratic norms. Only an independent movement of the working class, armed with a socialist program, can defend basic democratic rights.



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