

THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

## **Constitution Project Disappointed that U.S. Supreme Court Declined Review in State Secrets Case**

**Supreme Court misses opportunity to reevaluate state secrets doctrine and permit cases to proceed to litigation**

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WASHINGTON – Today the U.S. Supreme Court denied *certiorari* in *Mohamed v. Jeppesen Dataplan*, thereby ending the litigation in this case. The U.S. Court of Appeals for the Ninth Circuit had held that the government’s broad assertion of the “state secrets” privilege requires dismissal of a lawsuit alleging that the plaintiffs were tortured through the government’s “extraordinary rendition” program. Today’s order makes that decision final.

The following may be attributed to Sharon Bradford Franklin, Senior Counsel, Constitution Project: “We are disappointed that the U.S. Supreme Court refused to accept review to consider the Ninth Circuit’s overly-expansive interpretation of the state secrets privilege. The Court has missed an opportunity to reexamine this doctrine, and restore the state secrets privilege to its proper and narrower role. The broad secrecy claims upheld by the lower court provide the government with immunity from claims of torture, and undermine accountability and the rule of law. In the wake of this decision, we call on Congress to pass legislation to restore the role of courts as a check on executive power.”

*Mohamed v. Jeppesen Dataplan* concerns allegations by five people that defense contractor Jeppesen Dataplan, a subsidiary of Boeing, flew them to a foreign country where they were tortured as part of the CIA’s extraordinary rendition program. The Bush administration intervened in the case on behalf of Jeppesen, seeking dismissal of the lawsuit on the basis of the state secrets privilege. The Obama administration then adopted the Bush administration’s broad claim for dismissal of the entire lawsuit, claiming the very subject matter is a state secret.

In 2007, the Constitution Project released a report signed by a broad bipartisan coalition that endorsed reforming the state secrets privilege. The report is available at:  
<http://www.constitutionproject.org/manage/file/52.pdf>

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