



## **Constitution Project Dismayed By Federal Court Decision Dismissing Rendition Case Based on State Secrets Privilege**

**Ninth Circuit's decision in *Mohamed v. Jeppesen Dataplan* provides government  
with immunity in torture case**

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WASHINGTON – Today, an eleven-judge or *en banc* panel of the U.S. Court of Appeals for the Ninth Circuit 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 full court opinion in *Mohamed v. Jeppesen Dataplan* replaces the decision of an earlier three-judge panel which had rejected the government's broad claims of government secrecy.

The following may be attributed to Sharon Bradford Franklin, Senior Counsel, Constitution Project:

"We are disturbed that the Ninth Circuit adopted the overly-expansive state secrets claim urged by the Department of Justice. Today's opinion requires dismissal of the case before the trial court can even review the evidence privately, and make an independent assessment of whether the case may be tried. This broad secrecy doctrine provides the government with immunity from claims of torture, and undermines 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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