

BREAKING: OBAMA CONTINUES BUSH POLICY ON STATE SECRETS

✖ Earlier this morning, Looseheadprop wrote about the case of Binyam Mohamed, the British subject tortured at the hands of the United States at Gitmo, including having his genitals carved selectively with a scalpel. The Mohamed case is of critical significance for a variety of reasons, not the least of which is the fact that there was an oral argument in the Ninth Circuit Court of Appeals in San Francisco this morning that was to provide a crucial test of the new Obama Administration's willingness to continue the Bush policy of concealing torture, wiretapping and other crimes by the assertion of the state secrets privilege.

From an excellent article by Daphne Eviatar at the Washington Independent at the end of January:

President Obama's sweeping reversals of torture and state secret policies are about to face an early test.

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The test of those commitments will come soon in key court cases involving CIA "black sites" and torture that the Bush administration had quashed by claiming they would reveal state secrets and endanger national security. Legal experts say that the Bush Department of Justice used what's known as the "state secrets privilege" – created originally as a narrow evidentiary privilege for sensitive national security information – as a broad shield to protect the government from exposure of its own misconduct.

One such case, dealing with the gruesome

realities of the CIA's so-called "extraordinary rendition" program, is scheduled for oral argument before a federal appeals court in early February. The position the Obama administration takes in this case may be the first major test of its new policies on transparency in government.

Mohamed v. Jeppesen Dataplan, Inc. involves five victims of CIA rendition, or "torture by proxy," as it's also known. Abducted abroad, the men were flown by the CIA to cooperating countries whose agents interrogated them under torture. Because federal officials are usually immune from lawsuits, the men later sued the private aviation data company, Jeppesen – a subsidiary of Boeing, one of the largest federal defense contractors – that knowingly provided the flight plans and other assistance necessary for the CIA to carry out its clandestine operations.

Well, the news being reported out of Courtroom One in San Francisco is not good and indicates that the Obama Administration has continued the walk of the oppressive shoes of the Bush/Cheney regime and has formally continued the assertion of state secrets.

The best hope for transparency on torture cases, wiretapping cases, and a whole host of illegal Bush/Cheney conduct was for Obama to pull back on the previous policy of concealment via the assertion of state secrets. From the official press release of the ACLU, and their attorney Ben Wizner who argued the case this morning:

The Justice Department today repeated Bush administration claims of "state secrets" in a lawsuit against Boeing subsidiary Jeppesen DataPlan for its role in the extraordinary rendition program. *Mohamed et al. v. Jeppesen* was brought on behalf of five men who were

kidnapped and secretly transferred to U.S.-run prisons or foreign intelligence agencies overseas where they were interrogated under torture. The Bush administration intervened in the case, inappropriately asserting the “state secrets” privilege and claiming the case would undermine national security. Oral arguments were presented today in the American Civil Liberties Union’s appeal of the dismissal, and the Obama administration opted not to change the government position in the case, instead reasserting that the entire subject matter of the case is a state secret.

The following can be attributed to Anthony D. Romero, Executive Director of the ACLU:

“Eric Holder’s Justice Department stood up in court today and said that it would continue the Bush policy of invoking state secrets to hide the reprehensible history of torture, rendition and the most grievous human rights violations committed by the American government. This is not change. This is definitely more of the same. Candidate Obama ran on a platform that would reform the abuse of state secrets, but President Obama’s Justice Department has disappointingly reneged on that important civil liberties issue. If this is a harbinger of things to come, it will be a long and arduous road to give us back an America we can be proud of again.”

The following can be attributed to Ben Wizner, a staff attorney with the ACLU, who argued the case for the plaintiffs:

“We are shocked and deeply disappointed that the Justice Department has chosen to continue the Bush administration’s practice of dodging judicial scrutiny of extraordinary rendition and torture. This was an opportunity for the new

administration to act on its condemnation of torture and rendition, but instead it has chosen to stay the course. Now we must hope that the court will assert its independence by rejecting the government's false claims of state secrets and allowing the victims of torture and rendition their day in court."

In fairness, the Obama DOJ may view this as protecting information on rendition flights, not details of torture; however, the result is the same, and just as heinous. Meet the new boss, same as the old boss.