

Exiled on mere suspicion

Abousfian Abdelrazik is a Canadian citizen and has a right to come home

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The government of Canada acted as if citizenship meant nothing when it refused to allow Abousfian Abdelrazik, a suspected terrorist holed up in the embassy in Sudan, back into this country for six years. That is why its losing streak in four major foreign-policy cases continued this week when the Federal Court of Canada ordered it to bring Mr. Abdelrazik home within 30 days. Ottawa acted arbitrarily, went into court virtually empty-handed, and said, "Trust us."

Mr. Abdelrazik may or may not be a danger to Canada. But if he is, Ottawa surely has lawful processes to bring to bear in this country. It could charge him with a crime; failing that, it could have security agencies monitor him. At this point, nothing is on the public record against him except a stain from two acquaintanceships, and an alleged link to the senior al-Qaeda terrorist Abu Zubaydah that emerged, unreliably, from the U.S. use of torture techniques on Mr. Zubaydah. Ottawa acts as if a citizen can be treated as a non-person - barred from home and family, his assets frozen, with no realistic means of appeal - on the basis of suspicion.

Ottawa could show that it understands the errors of its arbitrary and unconstitutional ways by agreeing to take back Mr. Abdelrazik, rather than seeking a stay and appealing the ruling. Justice Minister Rob Nicholson could do what he does not seem to have done thus far, or at least, not done effectively: push the cabinet to act within accepted legal norms. Based on the Conservative government's track record, expect it to take "trust us" to a higher court.

Having asked a known torture state, Sudan, to detain a Canadian citizen - a citizen never accused of anything in a public forum where he could defend himself, or where evidence could be heard against him - Canada threw up its hands and said it had no obligation to bring that citizen home once he was set free. But when that citizen arranged for a flight home himself, Ottawa declared him a national security risk and wouldn't issue him an emergency passport. It never explained why.

The Federal Court ruling was not a case of judicial activism, as some in the Conservative government may wish to characterize it. The government stood up in court and equivocated. It said Mr. Abdelrazik was on the UN's no-fly list, but Mr. Justice Russel Zinn said that list did not bar Canada from bringing him home. It said Canada's foreign-affairs department did not have Mr. Abdelrazik arrested in Sudan, but Judge Zinn said the Canadian Security Intelligence Service probably did. "One cannot prove that fairies and goblins do not exist any more than Mr. Abdelrazik or any other person can prove that they are not an al-Qaeda associate," Judge Zinn wrote. "It is a fundamental principle of Canadian and international justice that the accused does not have the burden of proving his innocence; the accuser has the burden of proving guilt."

One after another, judges on the Federal Court and the Supreme Court have chastened, rather than trusted, the federal government. Perhaps judicial activism on these benches is rampant; more likely, Ottawa is consistently wrong. Abousfian Abdelrazik is a citizen and has a right to come home.

