

9TH CIRCUIT: THE GOVERNMENT CAN KIDNAP AND TORTURE YOU AND THEN HIDE IT UNDER STATE SECRETS

This—a decision in the Jeppesen Dataplan suit upholding the government’s invocation of state secrets—is really bad news.

This case requires us to address the difficult balance the state secrets doctrine strikes between fundamental principles of our liberty, including justice, transparency, accountability and national security. Although as judges we strive to honor all of these principles, there are times when exceptional circumstances create an irreconcilable conflict between them. On those rare occasions, we are bound to follow the Supreme Court’s admonition that “even the most compelling necessity cannot overcome the claim of privilege if the court is ultimately satisfied that [state] secrets are at stake.” *United States v. Reynolds*, 345 U.S. 1, 11 (1953). After much deliberation, we reluctantly conclude this is such a case, and the plaintiffs’ action must be dismissed. Accordingly, we affirm the judgment of the district court.

So basically, the government can kidnap you and send you to be tortured—as they did with Binyam Mohamed—yet even if your contractors acknowledge what they were doing, if the government wants to call their own law-breaking a secret, the most liberal Circuit Court in the country agrees they can.

Update: The ACLU’s Ben Wizner on the decision:

This is a sad day not only for the torture victims whose attempt to seek justice has been extinguished, but for all Americans who care about the rule of law and our nation's reputation in the world. To date, not a single victim of the Bush administration's torture program has had his day in court. If today's decision is allowed to stand, the United States will have closed its courtroom doors to torture victims while providing complete immunity to their torturers. The torture architects and their enablers may have escaped the judgment of this court, but they will not escape the judgment of history.