Canadian court rejects indefinite detention of man under anti-democratic Security Certificate

By Roger Jordan
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A Canadian Federal Court judge has overturned the latest in a series of National Security Certificates used by successive Liberal and Conservative governments to detain an Egyptian man—without trial or charge—for close to 15 years on the spurious claim that he is a threat to national security.

Mahmoud Jaballah was accused of being a sympathizer of an al-Qaeda-aligned Egyptian group shortly after he arrived in Canada in 1996 and applied for refugee status. In August 2001, the government issued a National Security Certificate (NSC) against Jaballah, officially designating the father of six a threat to national security. Under NSCs, any non-Canadian citizen, whether landed immigrant, refugee claimant or visitor, can be held indefinitely without charge and without any right to see and challenge the evidence on which the government has declared them a security threat.

Jaballah was imprisoned for more than six years, including much of the time in solitary confinement. More recently, he has been subject to house arrest.

In her May 24 ruling, Federal Court Judge Dolores Hansen found that the government had presented no credible evidence to substantiate its claim that Jaballah is a threat to Canadian security.

While much of Hansen's findings remain secret, in conformity with the antidemocratic legislation governing NSCs, the vetted version of her ruling that has been made public trashed the allegations that the Canadian Security Intelligence Service (CSIS) has made against Jaballah and the government has invoked to justify detaining him for the past 15 years.

The government, wrote Hansen, had "not established that there are reasonable grounds to believe [Jaballah] was or is a member of al-Jihad (AJ)." Nor, she continued, have they "shown there are reasonable grounds to believe he provided material support to AJ, that he distributed propaganda or other materials, or that he engaged in recruitment on behalf of AJ. Moreover, there is no evidence [he] supported the objectives of global terrorism."

Even more damning were Hansen's public comments on the investigation that CSIS, the country's premier domestic spy agency, had conducted. CSIS agents had failed to take adequate notes from their interviews and misinterpreted information provided through an interpreter. CSIS, for example, cited the fact that Jaballah had been in an "Afghan" refugee camp as proof he had visited Afghanistan, even though many such camps exist outside the war-torn, impoverished Central Asian country.

According to a Canadian government website, 27 people have been subjected to NSC proceedings since 1991. Since its inception, the system has been heavily criticized by civil liberties groups for breaking with fundamental democratic rights. Especially contentious is the stipulation that the government can deny those held under a security certificate from seeing and challenging the evidence against them.

In 2007 the Supreme Court of Canada declared the NSC system unconstitutional because of its use of "secret evidence," but in its ruling suggested a mechanism by which the government could provide a legal fig leaf for violating basic democratic rights. This suggestion was subsequently taken up by the Harper Conservative government, which authorized "special advocates"—that is, specially designated, government-vetted lawyers—to advocate on behalf of those held under NSC certificates. These advocates can review the secret evidence, but are prohibited from discussing it with their clients, making it impossible to properly interrogate the state's allegations.

The fate of Jaballah shows how the government, with the assistance of the courts, has repeatedly rigged the already undemocratic NSC system to perpetuate his detention. He was detained under an NSC that a court struck down, citing a lack of evidence. Soon after, the government issued a second NSC, citing new unspecified secret evidence. That second certificate was voided by the Supreme Court ruling of 2007, but the court gave the government a year to rewrite

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the rules for NSCs, during which time Jaballah remained under house arrest. In 2008, a third NSC—the certificate thrown out by Hansen's ruling last week—was issued against him.

The NSC system was put in place prior to 9/11, but the state's authoritarian powers were vastly augmented in the wake of the terrorist attacks in New York and Washington. Legislation rushed through parliament by the Chretien Liberal government did away with a series of longstanding, core legal norms, including the right to remain silent and the presumption of innocence. Under the Martin Liberal government, the Communications Security Establishment (CSE), Canada's signals intelligence agency, was authorized to spy on Canadians' electronic communications. This week, it was revealed that from 2005 to 2014 CSE illegally passed information on Canadians' phone calls and emails to allied intelligence agencies in the "Five Eyes," due to what it has rather improbably claimed was a software glitch.

In early 2015, in the aftermath of the twin shootings of armed forces personnel the previous October, the Harper government rushed Bill C-51 into law. With the support of the Liberals, parliament voted to dramatically expand the powers of CSIS by allowing it to disrupt perceived threats and violate virtually any law to do so. Such "threats" were expanded far beyond "terrorism" to include anything that endangers "public security."

C-51 also expanded the government's powers in relation to NSCs. CSIS was given the power to determine what evidence the special advocates will be allowed to see under a provision that states only "relevant" evidence need be tabled.

The current Trudeau Liberal government has responded to Hansen's ruling striking down the NSC against Jaballah by issuing a statement saying it is reviewing her decision and refusing all further comment.

Nauseating in its hypocrisy, Canada's leading national daily, the *Globe and Mail*, published an editorial in response to Hansen's ruling entitled "No Gitmo [Guantanamo] here, please, we're Canadians."

Commenting on the history of the NSC process, the *Globe* complacently declared, "Within a few years, the fact that several men were being held under 'security certificates' in cases more or less like Mr. Jaballah's, for indefinite time periods, without knowledge of all the evidence against them, was realized to be a scandal against Canada's values and the rule of law."

This is a flagrantly false narrative. Only in 2007 did the Supreme Court ruling compel the government to make changes to the NSC process, and these changes, as Jaballah's own fate demonstrates, had little effect on those being detained. Moreover, those held under NSCs continue to be denied, with the approval of Canada's highest court, the right to see the evidence that is being used to justify their indefinite detention.

The *Globe's* contrasting of "Canada's values and the rule of law" to the US constitutional black hole of Guantanamo is meant to obscure the extent to which in Canada, as south of the border, the ruling elite is attacking civil liberties and breaking with democratic forms of rule. This includes carrying out mass surveillance, complicity in the torture and decade-long internment of the Canadian citizen, Omar Khadr, at Guantanamo Bay, and developing a Canadian form of "rendition" in which CSIS fingered Canadians travelling abroad to be arrested and tortured by despotic regimes in the Middle East and North Africa.

Now under Bill C-51 CSIS and other security agencies that have systematically lied to the courts can act with virtual impunity against vaguely defined security "threats."

And while the *Globe* hails the courts as the guarantor of democratic rights, they have in fact repeatedly issued rulings upholding greater powers for the national security apparatus and the criminalization of worker struggles and popular dissent.

In a 2014 ruling in a case brought by Mohammed Harkat, another security certificate victim, the Supreme Court upheld the NSC system. It declared that the provisions denying him access to the state's evidence against him were in conformity with the constitution and the legal process surrounding his prolonged imprisonment and that the subsequent draconian restrictions on his movements had been fair and reasonable.

That decision cleared the way for the government to deport Harkat to Algeria, where he faces the prospect of detention, torture and possibly death. The Supreme Court avoided defending the obvious violation of the constitution his deportation would represent by cynically declaring in its ruling that his expulsion to Algeria "is not before us in the present appeal."

Harkat reportedly submitted a last-ditch appeal against his deportation to Public Safety Minister Ralph Goodale early last month.

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