

GRAYZONE PROJECT

Why Is Canada Sacrificing the Rights of Its Citizen, Hassan Diab, for France's War on Terror?

Abandoned by his government, Canadian academic Hassan Diab could face an unfair terrorism trial in France.

By **Sarah Lazare** / **AlterNet** | **May 30, 2016**

A Canadian former sociology professor named Hassan Diab has been charged with committing an act of terror 36 years ago, but he says he knows nothing about it. Now Diab finds himself in the legal crosshairs of Canada and France in a post 9/11 world, and his life and freedom are at stake.



Photo Credit: Friends of Hassan Diab

A supposed cradle of égalité, France has a proven track record of using information obtained through torture as evidence for judicial proceedings. The country has demonstrated “a willingness (even eagerness) to cooperate with foreign intelligence services in countries like Uzbekistan and Pakistan—notorious for abusive practices, both in general and against terrorism suspects in particular,” Human Rights Watch (HRW) noted in a 2010 [report](#). In [a separate investigation](#) published in 2008, HRW determined that France’s overreaching counterterrorism laws and procedures require an unacceptably low standard of proof and undermine the most basic right to a fair trial, largely due to the

close links between “special investigative judges and the intelligence services.”

Yet, in 2014, Canadian judges and appointees of former prime minister Stephen Harper **allowed** France to extradite Diab, a Canadian citizen, to face questioning on decades-old terrorism charges. French prosecutors accuse Diab of playing a role in a 1980 bombing near a synagogue on the Rue Copernic in Paris that killed four people, but they have presented no firm evidence to buttress their claims, and Diab has consistently maintained his innocence. Despite the lack of concrete proof, Diab’s government handed him over to France without first demanding the most basic assurances that a Canadian citizen would receive a fair trial and that prosecutors would not use intelligence obtained through torture against him.



Diab’s deportation is the product of asymmetrical international relations that give France the power to extradite citizens from countries like Canada but allow it to refuse similar demands. On top of these geopolitical inequities, many of Diab’s supporters are convinced that the Canadian government was willing to sacrifice him because he is a Muslim man of Lebanese origin who was subjected to

a fear-mongering smear campaign. Now, Diab awaits his fate while incarcerated in France—a nation in the throes of an **ever-broadening** “anti-terror” crackdown tainted by bias against Muslims, refugees and people of color.

When asked by a journalist last fall to describe his experience since his ordeal began in 2008, a bespectacled Diab, then almost 62 years old, **replied** in a soft and halting voice that it is “like a continuous nightmare. You don’t know whether you will wake up one day out of this whole process or not. But most of the time I feel like, one day, I will get up and I will write something about this nightmare, I will explain everything.”

Abandoned by His Government

Throughout Diab's tribulations, many colleagues and friends have stood loyally by his side as he waged his ultimately unsuccessful battle against extradition. The crisis began in November 2008 when Diab, working at the time as a sociology professor, was **arrested** by a Royal Canadian Mounted Police (RCMP) SWAT team at the **request** of French authorities. Diab was eventually granted bail yet released to restrictive **conditions** under which he was ordered to wear—and even pay for—an electronic ankle monitoring device. Then, in 2009, Carleton University **fired** Diab from his position as an instructor in sociology, depriving his family of significant income for a six-year legal fight against extradition that they would eventually lose.

At the core of France's case against Diab is secret intelligence whose source was concealed even from the Canadian officials who oversaw the extradition. As the Ottawa Citizen **explained** in 2008, "much of the evidence is not detailed in the submission, relying instead on assurances from the DST [French intelligence agency] that the agency had received 'clear information' that Hassan Diab... had a major role in the Copernic attack."

Following **concerns** over reliance on unsourced intelligence, it was eventually dropped from the extradition case. However, one of Diab's Canadian lawyers, Donald Bayne, told AlterNet that the Canadian government still ultimately "surrendered him to France knowing that secret intelligence (unconstitutional in Canada) would be used in the case against him" across the Atlantic.

A modern Alfred Dreyfus?


Besides this mysterious intelligence, the rest of the evidence against Diab consists of samples supposedly linking a **registration card** at a Paris hotel that French

prosecutors say was written by the suspected bomber to Diab's writing from years later. During the extradition process, the Canadian prosecutor was forced to withdraw the handwriting evidence when it was **revealed** in May 2010 that some of the comparison documents belonged to another individual, not Diab. Despite this failure, French prosecutors did not withdraw their extradition request but instead submitted an additional analysis of Diab's writing samples that was then rejected as unreliable and unscientific by three renowned handwriting experts (their analyses can be read **here**, **here** and **here**).

But because the secret intelligence was eventually dropped from the extradition case, this questionable handwriting evidence became the main justification for Diab's ultimate deportation. For his advocates, Diab is a modern Captain Alfred Dreyfus, the Jewish French officer who was convicted of treason on baseless charges rooted in anti-Jewish bias at the turn of the 20th century. Like Diab, flawed handwriting analysis played a part in the Dreyfus affair, which eventually resulted in his exoneration but has lived through history as a poignant example of injustice and discrimination.

Diab, who has a common Arabic name, says this is a clear case of mistaken identity. Even Ontario Superior Court Justice Robert Maranger, who rubber-stamped Diab's extradition, **wrote** in 2011 that "the case presented by the Republic of France against Mr. Diab is a weak case; the prospects of conviction in the context of a fair trial, seem unlikely." What's more, he determined that the handwriting evidence was "convoluted, confusing, with conclusions that were difficult to understand." However, he claimed that his hands were tied by Canada's deferential extradition laws, writing that "it matters not that I hold this view. The law is clear that in such circumstances a committal order is mandated."

Maranger's ruling was upheld by then-justice minister Rob Nicholson, a Conservative Harper appointee, and confirmed by the Ontario Court of Appeal.



In its submission to the Supreme Court, the federal government **argued** that "Surrender should only be refused owing to trial fairness concerns if it is demonstrated that the criminal laws or procedures in the requesting state shock the Canadian conscience." In other words, the government said it would only halt Diab's extradition if he could prove that his trial in France would be wildly unfair.

On November 13, 2014, Hassan and his supporters **expressed shock** when the Supreme Court refused to hear his case, giving no explanation. In perhaps the clearest illustration of the Canadian government's refusal to fight for Diab, the Harper administration shipped him off to France just one day after the Supreme Court turned him away.

Handed Over to a Foreign State

"Unfortunately, Canadians have very limited rights when they are sought by a foreign state," Diab **lamented** in May 2014, when the Court of Appeal upheld his extradition order.

Dr. Gary Botting, an internationally-recognized Canadian legal scholar and barrister, told AlterNet he agrees. "Extradition is overwhelmingly a matter of rubber stamping," he said. "First of all, the way it works is a prosecutor in a requesting country can bring an application any time he wants to have someone extradited, as long as it is for a crime punishable by two years or more. In the case of the United States, it's one year, and that of course covers everything."

Under this system, the bar for extradition is set remarkably low. "The charges are not

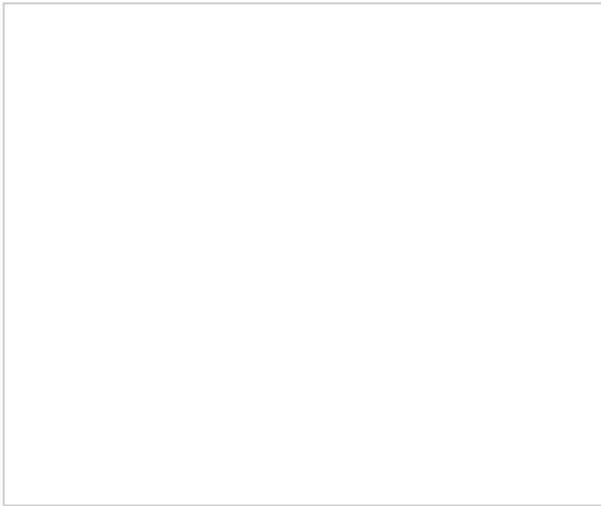
allowed to hear any evidence of the accused unless it goes to the reliability to the record of the case or the reliability of the evidence described,” Botting explained. In other words, countries demanding extradition merely have to outline their allegations, not substantively prove their case according to Canadian legal standards.

Canada’s 1999 Extradition Act is a key culprit in this skewed system because it “replaced a process akin to a criminal preliminary hearing, where the person ‘sought’ could present evidence and have it weighed fairly, with a process that significantly lowered the threshold for countries seeking to extradite Canadians from Canada,” explained journalist Chris Cobb in an article published in the immediate aftermath of Diab’s extradition. Meanwhile, a separate 2006 Supreme Court ruling meant to address the problem of rubber-stamping extradition requests goes largely unheeded.

According to Cobb’s count, Canada green-lights roughly 100 extraditions a year and 1,500 since 1999. And while Canada has extradition agreements with 50 countries, 90 percent of extradition cases involve the United States, Cobb says.

Yet, these extradition laws alone cannot account for Diab’s extradition. As Monia Mazigh, national coordinator for the International Civil Liberties Monitoring Group, put it in an interview with AlterNet, “This occurred at a moment when the Harper administration had already shown their disregard of our legal system with a long history of going after the Arab and Muslim community here in Canada.”

For example, after Canadian citizen Omar Khadr’s rights were severely violated while in U.S. military custody at Guantanamo Bay, Harper initially resisted Khadr’s repatriation to Canada and only agreed after facing pressure from the United States. Last year, Harper even sought to make it a crime for Canadian citizens to travel to countries like Syria and Iraq, labelling these destinations “terrorist hotpots” despite the fact that many immigrants to Canada hail from them.



To date, Prime Minister Justin Trudeau's Liberal government has not lifted a finger to help Diab, ignoring calls from organizations including Canadian Association of University Teachers, the Canadian Civil Liberties Association and prominent civil society leaders like Noam Chomsky. In France, where Diab now languishes, his case is lesser-known among social justice

advocates, and his supporters worry he will not receive the support he deserves.

Diab is now being held in pretrial detention in a Paris jail, ordered back into incarceration after a brief reprieve because he was deemed a flight risk and threat to civil order in France. His wife, Rania Tfaily, had reportedly planned to travel to Paris with their young children, so that Diab could be with them outside of his cell. But now, that reunion will not be immediately realized.

As the journalist Cobb recently noted, "French authorities have so far presented little concrete evidence against Diab other than unsourced intelligence reports that Canadian federal prosecutors representing France were forced to withdraw because they couldn't prove they were not gleaned from torture."

Abandoned by his government, Diab's fate is now in the hands of that foreign judicial system. He sits in jail awaiting the outcome of nearly a decade of legal tribulations, and vehemently maintaining his innocence.

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