

The Emerging Gulag State: What Is Happening to Muslims Will Happen to the Rest of Us

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The decision by the European Court of Human Rights last week to refuse to block the extradition of the radical Muslim cleric Abu Hamza al-Masri and four others to the United States on terrorism charges removes one of the last external checks on our emerging gulag state.

Masri and the four others, all held in British jails, will soon join hundreds of other Muslims tried in Article III federal courts in the United States over the last decade. Fair trials are unlikely. A disturbing pattern of gross infringements on basic civil liberties, put in place in the name of national security, has poisoned our legal system. These infringements include intrusive surveillance, vague material support charges, the use of prolonged pretrial solitary confinement, classified evidence that the accused cannot review, and the use of political activities, normally protected under the First Amendment, to demonstrate mind-set and intent. Muslims caught up in the Article III courts are denied the opportunity to confront their accusers and to have their religious and political associations protected, and they rarely find a judge courageous enough to protect their rights. These violations of fundamental civil liberties will not, in the end, be reserved exclusively for Muslims once the corporate state feels under siege. What is happening to them will happen to the rest of us.

“One of the misapprehensions of the last decade is that the government had to go outside the law to places like Guantanamo or Bagram to abridge the rights of suspects in the name of national security,” said Jeanne Theoharis, a professor of political science at Brooklyn College who has been an outspoken critic of the rights abridgement occurring in Article III courts. “But this is not the case. A similar degradation of rights that has characterized the prison at Guantanamo has also affected the judicial system within the United States. The right to dissent, the right to see the evidence against you, the right to due process, the right to fair and speedy trial, the right to have a judge who will be impartial, the right to fair and not disproportionate punishment, and the right not to be punished before you are convicted have been taken from us in the name of national security. It is not just in special secret prisons that this occurs, but also—dismayingly—within the U.S. federal courts.”

This is not about the guilt or innocence of Masri, an Egyptian who lost an eye and a hand as a mujahedeen fighting in Central Asia and who has repeatedly called for violence against the United States and allegedly helped orchestrate violence. This is about the right of all accused to a fair defense and humane detention conditions. Once Masri arrives on U.S. soil he will receive neither. He will, even before he is tried or convicted, endure prison conditions that replicate the brutality suffered by those in our offshore penal colonies, including the one at Guantanamo Bay. He will enter a world of prolonged and psychologically crippling

isolation, made worse by the likely application of so-called special administrative measures. He will spend his days in a tiny cell under constant electronic surveillance. At New York's Metropolitan Correction Center, where Masri and the other men will most likely first be incarcerated, he will never be allowed outdoors. He will be permitted to spend only one hour a day outside his cell, alone in a cage. Masri and the four other suspects could spend years in these conditions before trial. Because of security restrictions, it will take as long as six months for letters from his family to reach him. His lawyers can be prosecuted if they repeat in public what he tells them, especially about the conditions of his incarceration.

And, once he goes on trial, he will be in an Article III court, where national security provisions will almost certainly guarantee his conviction. Once convicted, he and the others are likely to be sent to the federal Administrative Maximum facility (known as ADX), in Florence, Colo., to spend, potentially, a lifetime in solitary confinement. There he will be permitted, at most, an hour a day out of his cell, in a cramped cage nicknamed "the dog run" because it looks like a dog kennel. His meals will be delivered to his cell through a slot. He will not be permitted to work in prison industries or have congregational prayer, an essential tenet of the Muslim faith.

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