



The Government Let a U.S. Citizen Spend Months in a Foreign Prison for No Good Reason

Amir Meshal was never charged with a crime.

Patrick Eddington

September 21st, 2021

Would the U.S. government deliberately allow an American citizen to languish in a foreign intelligence service prison in the hopes of getting an admission (true or otherwise) of involvement with Al Qaeda? Based on a State Department cable obtained by the Cato Institute via a Freedom of Information Act (FOIA) lawsuit, the answer appears to be yes.

In mid-March 2007, while I was working for then–Rep. Rush Holt (D–N.J.), journalist Jonathan Landay alerted me to the fact that one of Holt's constituents, Amir Mohamed Meshal of Tinton Falls, New Jersey, had apparently been in the custody of Ethiopia's National Intelligence and Security Service for more than a month. The State Department had apparently done little, if anything, to get him out.

As Landay would later report, Meshal's own actions had contributed to his plight. In late 2006, after visiting relatives in Egypt, Meshal told his parents he was going to Dubai to become a tour guide. His real destination was Somalia, where he intended to assist the Islamic Courts Union (ICU) in establishing an Islamic government in Somalia, though allegedly in a noncombatant role.

The Bush administration had viewed the ICU as an Al Qaeda affiliate and persuaded the Ethiopian government to launch a military campaign against ICU forces. In the wake of the fighting, Meshal ended up as one of the refugees pushed from Somalia into neighboring Kenya in late January 2007. It was at this time that the FBI learned of Meshal and presumably asked Kenyan authorities to detain him until FBI agents could question him, which happened on multiple occasions according to State Department officials I spoke with at the time and Landay's reporting.

During March and April 2007 in conversations and email exchanges I had with State Department and FBI officials, it became clear that a U.S. government element other than the State

Department had sought Meshal's involuntary transfer to Ethiopia. Whether the FBI legal attachés in Nairobi, Kenya, and Addis Ababa, Ethiopia, had conspired to transfer Meshal there, or whether the CIA had played a role—this happened during the height of the CIA's infamous torture program—was unclear.

What was clear was that by late March 2007, FBI agents had been able to interrogate Meshal multiple times—and never with counsel present, despite his American citizenship. On March 22, 2007, I emailed FBI Special Agent Thomas J. Bailey, asking point-blank whether Meshal was in fact the target of an investigation. Bailey responded the next day.

"In regards to charges," he wrote, "Meshal has never been in FBI custody, and we are not in a position to comment on his status. He has never been the 'target' of an FBI Investigation, and FBI Agents were given access to interview him as a 'courtesy' by the local government."

If that was true—and I doubted the FBI's claim at the time—why was he being held by a foreign intelligence service in a country he'd never visited? Fourteen years ago, Meshal never got a straight answer to that question.

His incarceration finally ended in late May 2007, as the Ethiopians released him without ever charging him and the State Department facilitated his travel back to New Jersey.

Upon his return, Meshal claimed he'd been repeatedly interrogated by FBI agents and at one point threatened with death if he didn't confess to being an Al Qaeda operative. By November 2009, he filed suit in federal court, under what's known as a Bivens claim, against several FBI agents who he said had abused him.

Bivens claims get their name from the 1971 Supreme Court case *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, in which the court held that the victim, Webster Bivens, could sue federal agents for damages because his home was warrantlessly searched and he was arrested, interrogated, and abused while in the custody of federal agents. If half of what Meshal said about his alleged FBI captors were true, it would make Webster Bivens' mistreatment pale by comparison. That's why, on the face of it, Meshal's case seemed so strong.

When the case finally came before D.C. Circuit Judge Emmet Sullivan in 2014, he found a sympathetic audience on the merits. But as Sullivan noted in his reluctant and clearly professionally painful decision granting the FBI's motion to dismiss the case, the judge claimed his hands were tied.

Sullivan noted that "in the past two years, three federal courts of appeals, including the United States Court of Appeals for the District of Columbia Circuit, have expressly rejected a Bivens remedy for citizens who allege they have been mistreated, and even tortured, by the United States of America in the name of intelligence gathering, national security, or military affairs. This Court is constrained by that precedent."

On appeal, Meshal suffered the same defeat in 2015. His petition to the Supreme Court to hear his case was denied in 2017.

For nearly 15 years, Meshal's case has haunted me—not only for what it did to him, but for what it means for any other American overseas who the FBI decides to try to detain and coerce a terrorism-related confession out of. In an attempt to get at the truth of who was responsible for Meshal's fate, the Cato Institute has had FOIA lawsuits underway against the departments of State and Justice for the last two years, attempting to retrieve records on the Meshal case.

Earlier this month, the State Department released an April 2007 cable that proves U.S. government officials let Meshal languish in an Ethiopian intelligence service prison, despite that government's offer to free him unconditionally.

The cable, from State Department headquarters to the American embassy in Addis Ababa, acknowledged that via prior cables U.S. officials in Ethiopia had "explained that if the United States were to request the release of Amir Meshal, an AMCIT [American citizen] detained by the Ethiopians, the GoE [government of Ethiopia] would comply. In Ref B [a prior cable] Post informed the Department that if Meshal is not removed from Ethiopian custody by Friday, the GoE [government of Ethiopia] will likely convene a tribunal that day to determine his legal status in Ethiopia. No decision has been made as to next USG [U.S. government] steps in this matter."

Less than three weeks prior to that, Tom Bailey of the FBI had told me Meshal was not "a target" of an FBI investigation. Unless the FBI had, in fact, lied to a member of Congress and his staff and Meshal was being kept in Ethiopia at the FBI's insistence, the State Department had a duty to request Meshal's immediate release. It didn't—and Meshal would spend the next six weeks in an Ethiopian prison, without charge, before the State Department would finally get him home.

When I recently shared this cable with Meshal's attorney, Jonathan Hafetz of Seton Hall Law School, he did not mince words: "The cable confirms that the U.S. government was, in fact, deliberately using foreign proxies to secretly detain an American citizen without due process, access to a court, and other guarantees under the Bill of Rights. Mr. Meshal's case remains a stark warning about this dangerous practice, in which the U.S. government seeks an end-run around the Constitution."

Going forward, two things should happen.

First, the federal government needs to declassify and release every document on the Meshal case. Second, Congress needs to investigate in detail not only how this episode happened and who was responsible for it, but it must also provide an explicit legal cause of action for an American citizen wrongly detained overseas by the U.S. government in any so-called "national security" case. Any kind of unofficial "proxy detention," as Hafetz described it, should also be explicitly barred.

Based on his actions, you may not find Meshal to be a very sympathetic character. But the Constitution and the Bill of Rights were created to protect everyone, not only those we find sympathetic. Meshal was never charged with a crime, but the crime perpetrated against him by his own government is something no American should ever have to endure.

Patrick Eddington is a senior fellow at the Cato Institute, a former CIA analyst, and a former senior policy adviser to Rep. Rush Holt (D-N.J.).