

# Italy Rules in Rendition Case

## Court Convicts 23 U.S. Operatives of Milan Kidnapping of Imam

An Italian court convicted 23 U.S. intelligence operatives on charges of kidnapping an Egyptian imam on a Milan street, prosecutors and lawyers said. The decision is a landmark ruling on the controversial U.S. practice of abducting suspected terrorists and flying them to other countries for interrogation.

By Stacy Meichtry  
in Rome and Siobhan  
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Robert Seldon Lady, a former Central Intelligence Agency station chief in Milan, was sentenced Wednesday in absentia to eight years in prison, according to his court-appointed lawyer Arianna Barbazza. Twenty-one other CIA operatives and an Air Force official, all tried in absentia, received five-year prison sentences, Ms. Barbazza said, adding that she planned to appeal the verdict.

The judge, Oscar Magi, issued an order for the immediate arrest of the convicted operatives, Ms. Barbazza added. A European Union arrest warrant for the 23 U.S. intelligence operatives is already outstanding.

Italy hasn't issued an extradition request for any of the Americans implicated, however, and the Italian appeals process could take several years, making it unlikely that any of the convicted operatives will actually serve time.

The case of Osama Moustafa Hassan Nasr, also known as Abu Omar, is the first trial to reach a ruling related to the so-called extraordinary rendition program of the U.S., under which terrorism suspects have been ferreted out of Europe to other nations, some of which use torture.

The rendition practice was used by the CIA under President Bill Clinton and then more aggressively during the George W. Bush administration.

Obama administration officials voiced dissatisfaction with the ruling. "We are disappointed by the verdicts," said State Department spokesman Ian Kelly, who declined to comment further because the judge hasn't issued a written decision. A CIA spokesman declined to comment.

Abu Omar was abducted on the street in Milan on Feb. 17, 2003, in a joint operation between CIA agents and Italian intelligence services. Italian prosecutors said during the trial that Mr. Nasr was sent to a U.S. air base in Aviano, Italy, then placed on a flight to Ramstein Air Base, in Germany, and then shipped to Egypt where he was held in detention. Mr. Nasr's lawyers argued during the trial that he was tortured in Egypt.

Over the past year, the Obama administration has made several efforts to sweep away contentious Bush-era counterterrorism controversies that have dogged the CIA and Justice Department. But other countries' justice systems continue to pursue their own investigations. Spain's best-known investigating magistrate, Judge Baltasar Garzón, for example, has launched a formal criminal probe into allegations of torture at U.S. naval base Guantanamo Bay.

The number of people ferried out of Europe under the rendition program isn't known. A 2006 report by the European Council, a human-rights body, estimated that 100 people had been taken

**'We are disappointed by the verdicts,' said U.S. State Department spokesman Ian Kelly.**

out of the EU under the program. A February 2007 report by the European Parliament said the CIA had conducted 1,245 flights from Europe to nations where detainees could face torture.

The issue of rendition has been difficult for the Obama administration because the president decided to continue the practice of transferring detainees to other countries for interrogation. When taking the helm of the CIA in February, Director Leon Panetta said the agency would continue to use rendition, but would seek assurances that the detainee wouldn't be tortured—which has been the standing U.S. policy.

"This [verdict] is a warning, a reminder that human rights can't be compromised in any situation—even the fight against terrorism," said Carmelo Scambia, Mr. Nasr's lawyer.

Tom Parker, an official with human-rights group Amnesty International, called on the Obama administration to repudiate the extraordinary-rendition program. "Continuing these practices will inevitably have a chilling effect on countries' willingness to work with the United States," he said, adding: "The United States shouldn't need a foreign court to distinguish right from wrong."

Since the trial started in 2007, prosecutors have faced a legal and diplomatic minefield. Successive Italian governments didn't act on a request by prosecutors, lodged in 2006, seeking the extradition of the Americans ordered to stand trial. Furthermore, classified Italian documents that made up a large chunk of the trial's evidence were ruled inadmissible on the grounds that their use would reveal top-secret information.

Prosecutors pressed on, relying on evidence gathered from records of cellphone communications among the U.S. operatives, allegedly discussing the operation.

In his verdict, Judge Magi ordered the convicted U.S. operatives and Italian intelligence officials to pay collective damages of €1 million (\$1.47 million) to Mr. Nasr and €500,000 to his wife, Mr. Scambia said.

Two Italian intelligence agents were also convicted Wednesday and sentenced to three years for trying to impede the investigation. Tita Madia, a lawyer for one of the agents, Pio Pompa, said he planned to appeal the ruling.

The court dropped charges against three American diplomats accredited through the U.S. Embassy in Rome, ruling that they were shielded from prosecution by diplomatic immunity, according to Matilde Sansalone, a lawyer who represents two of the diplomats.

A spokesman for the Italian government declined to comment on prosecutors' pending 2006 extradition request.

—Margherita Stancati  
contributed to this article.

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tion process.<sup>3</sup> For instance, one turned over to federal or another state's authorities to serve a prison sentence becomes a fugitive when released from prison in another state while charges or a prison term are still pending in the demanding state.<sup>4</sup> Once a prisoner has been returned to the demanding state, the legality of the extradition is no longer subject to legal attack; the proper place for the prisoner to complain about compliance with extradition law is in the asylum state.<sup>5</sup>

## § 25 —Kidnap of individual from asylum nation

### Research References

West's Key Number Digest, Extradition and Detainers ⇨6, 20

An extradition treaty between United States and another country does not prohibit abductions outside of its terms, and general principles of international law provide no basis for interpreting such treaty to include an implied term prohibiting international abductions, and therefore a district court has jurisdiction to try a foreign national who had been forcibly kidnapped and brought to the United States to stand trial for violations of criminal laws of United States.<sup>1</sup> Moreover, an extradition treaty between the United States and an asylum country does not prohibit the defendant's apprehension in and removal from the asylum country to the United States, in which authorities of the asylum country assist,<sup>2</sup> and therefore a United States district court has jurisdiction over the defendant when he pleads guilty, even though he was never extradited,<sup>3</sup> and the defendant's unconditional guilty plea waives all claims based on a lack of extradition.<sup>4</sup> To prevail on an extradition treaty claim, a defendant must demonstrate, by reference to the express language of the treaty and/or established practice thereunder, that the United States affirmatively agreed not to seize foreign nationals from the territory of its treaty partner.<sup>5</sup>

S.W. 170 (1926) (Texas officer forcibly seized suspect in Louisiana, and, without any official papers or other authority, arrested him and took him to Texas, to be held on a Massachusetts extradition request).

<sup>3</sup>Golla v. State, 52 Del. 433, 159 A.2d 585 (1960); Woody v. State, 215 Kan. 353, 524 P.2d 1150 (1974); State v. Wall, 187 Minn. 246, 244 N.W. 811, 85 A.L.R. 114 (1932); Com. ex rel. Bonomo v. Haas, 428 Pa. 167, 236 A.2d 810 (1968).

<sup>4</sup>Chamberlain v. Celeste, 729 F.2d 1071 (6th Cir. 1984); Brewer v. Goff, 138 F.2d 710 (C.C.A. 10th Cir. 1943); Moulthrop v. Matus, 139 Conn. 272, 93 A.2d 149 (1952); King v. Mount, 196 Ga. 461, 26 S.E.2d 419 (1943); Hedge v. Campbell, 192 Kan. 623, 389 P.2d 834 (1964); Com. ex rel. Bonomo v. Haas, 428 Pa. 167, 236 A.2d 810 (1968); Burnette v. State, 536 S.W.2d 353 (Tenn. Crim. App.

1976); State ex rel. O'Connor v. Williams, 95 Wis. 2d 378, 290 N.W.2d 533 (Ct. App. 1980).

<sup>5</sup>Godsey v. Houston, 584 So. 2d 389 (Miss. 1991).

### [Section 25]

<sup>1</sup>U.S. v. Alvarez-Machain, 504 U.S. 655, 112 S. Ct. 2188, 119 L. Ed. 2d 441 (1992), on remand to, 971 F.2d 310 (9th Cir. 1992), as amended. (Nov. 3, 1992).

<sup>2</sup>U.S. v. Torres Gonzalez, 240 F.3d 14 (1st Cir. 2001), cert. denied, 121 S. Ct. 2595, 150 L. Ed. 2d 753 (U.S. 2001).

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<sup>5</sup>U.S. v. Noriega, 117 F.3d 1206, 47 Fed. R. Evid. Serv. 786 (11th Cir. 1997).