



Dr. Santiago Canton
Executive Secretary
Inter-American Commission on Human Rights
1889 F Street, NW
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Via U.S. Mail, facsimile: 202.458.3992 and e-mail: cidhoea@oas.org

July 27, 2010

Re: Khaled El Masri v. United States, P-419-08
Petitioner's Additional Information

AMERICAN CIVIL LIBERTIES
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Dear Dr. Canton,

Counsel for Petitioner, Khaled El Masri, write to provide the Inter-American Commission on Human Rights (the "Commission") with an update on certain events that have taken place since Mr. El Masri first filed his petition with the Commission in April 2008. These developments bring a new urgency to the proceedings and we, therefore, request that the Commission contact the government of the United States to request their immediate response to the petition.

Mr. El Masri, a survivor of the U.S. "extraordinary rendition" program, petitioned the Commission seeking redress from the United States for his enforced disappearance, arbitrary detention and torture. Since filing his petition, Mr. El Masri has continued to suffer deep psychological trauma both as a consequence of his enforced disappearance, arbitrary detention and torture, and his inability to obtain any official acknowledgement of these unlawful acts or any other form of administrative or judicial redress from the government of the United States.

Although, to date, the United States has failed to provide Mr. El Masri with such redress --- indeed, the United States has not even conducted an investigation into his credible allegations --- Spain has recently initiated a criminal investigation into the involvement of U.S. officials in Mr. El Masri's "extraordinary rendition", and a case on Mr. El Masri's behalf has been filed with the European Court of Human Rights against Macedonia for the role Macedonian officials played in the incident. We take this opportunity to apprise the Commission of these two recent legal developments.

DETERIORATION IN MR. EL MASRI'S MENTAL HEALTH AND HIS CURRENT INCARCERATION IN GERMANY

As this Commission is aware, Mr. El Masri's inability to obtain an official acknowledgement and apology for his enforced disappearance, arbitrary detention and torture, or any other form of redress for his injuries, have had a significant toll on his psychological well-being.¹ Before his "extraordinary rendition" and torture, Mr. El Masri was a peaceable German citizen, married with five young children and no criminal record. After his ordeal, following his return to Germany in May 2004, this situation changed dramatically due to a deterioration in Mr. El Masri's mental health, which culminated in a number of uncharacteristic and troubling violent outbursts that have tragically resulted in his conviction and recent incarceration. Psychiatrists who have examined and treated Mr. El Masri have concluded that these violent outbursts, typical among survivors of human rights abuses, are directly attributable to the trauma he experienced as a consequence of his "extraordinary rendition" and torture.

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On May 17, 2007, Mr. El Masri was involved in an incident indicating for the first time a significant deterioration in his mental health. On this day, Mr. El Masri attempted to set fire to a small grocery store in his hometown of Neu-Ulm following a dispute with staff of the store over a defective iPod. Mr. El Masri was subsequently charged with arson. At his trial, Mr. El Masri testified that he believed that the store clerk was a secret service agent, assigned to provoke and intimidate him. Mr. El Masri also testified that he believed that he was being followed by government agents. The judge noted that Mr. El Masri's actions were uncharacteristic and primarily the result of his "extraordinary rendition", and determined that, "[w]ithout this intrusion in his life, his conduct could not have been expected."² Nonetheless, Mr. El Masri was found guilty on all charges and sentenced to two years on probation.

Two years after this incident, after observing one of his sons speaking to some workmen when he went to take out the trash, Mr. El Masri accused one of his own sons of being a CIA agent. That same year, Mr. El Masri was briefly admitted to a psychiatric facility in Guenzberg, Germany for evaluation and treatment.³

On September 11, 2009, Mr. El Masri was involved in a second act of violence, again attributable to the severe psychological impact of his "extraordinary rendition" and torture. On this day, together with three of his children, Mr. El Masri went to the mayor of Neu-Ulm's office with the intention of meeting with the mayor, Mr. Gerold Noerenberg. Upon arrival at the mayor's office, staff refused to give Mr. El-Masri an appointment. Mr. El Masri left the building but

¹ See, Declaration of Dr. Katherine Porterfield (Jan. 5, 2009) attached to Amicus Curiae Brief Presented to the Inter-American Commission on Human Rights by the Redress Trust In the Case of Khaled El-Masri v. United States (Mar. 2009).

² Martin Knobbe, Let Down, 13 Stern (Germany), 2010.

³ *Id.*

returned soon after, barged into the office and struck Mr. Noerenberg with his fist several times on the head until Mr. Noerenberg collapsed to the floor. Mr. El Masri was subsequently restrained by other staff and arrested by German authorities.

While waiting to stand trial on assault charges, Mr. El Masri was held in solitary confinement in a small cell at a correctional facility in Keptem, Germany. Angry and frustrated, he refused to speak to his defense lawyer who had been representing him for the past six years. Describing his confinement, Mr. El Masri wrote that he felt as though he was “being locked up in a space shuttle trying to reach the moon.”⁴ In another letter to his family, Mr. El Masri spoke of his loss of faith in the legal system: “No one is so hopelessly enslaved as those who still believe that they live in a state under the rule of law.”⁵

Despite a court-appointed psychiatrist’s findings that Mr. El Masri suffers from “acute reactions stemming from stress” related to his abduction as well as an “increasing instability of his emotions,” on March 30, 2010, Mr. El Masri was sentenced to two years in prison.⁶

MR. EL MASRI’S NEED FOR A COMPREHENSIVE PSYCHOLOGICAL AND PSYCHIATRIC EVALUATION

Attached to this submission is a letter by Dr. Katherine A. Porterfield. Dr. Porterfield is a senior psychologist at the Bellevue/New York University Program for Survivors of Torture, a clinical instructor at NYU Medical School and serves as Chair of the American Psychological Association’s Task Force on the Psychosocial Effects of War on Children Residing in the United States. Dr. Porterfield has extensive experience evaluating and treating torture survivors, including individuals held at the Guantanamo Detention Center, Bagram Collection Point, and the former prison at Abu Ghraib.

In her letter, Dr. Porterfield recommends that the Commission move forward with the petition and as part of the process ensure that Mr. El Masri undergoes a thorough psychological and psychiatric evaluation. In 2008 and 2009, Dr. Porterfield had several lengthy telephone conversations with Mr. El Masri to assess his current mental health. Dr. Porterfield documented Mr. El Masri’s acute psychological trauma, his need for immediate psychological treatment, and the negative psychological impact on him of not receiving any official acknowledgement of or apology for his enforced disappearance and torture.⁷ Based on her assessment, Dr. Porterfield assisted Mr. El Masri to find a suitable trauma counselor in Germany to treat him. Having now been apprised of the

⁴ *Id.*

⁵ *Id.*

⁶ *German CIA Rendition Victim Sentenced to Jail for Assault*, The Local, March 31, 2010.

⁷ Decl. of Dr. Katherine Porterfield (Jan. 5, 2009), Amicus Curiae Brief Presented to the Inter-American Commission on Human Rights by the Redress Trust In the Case of Khaled El-Masri v. United States (Mar. 2009).

events above, Dr. Porterfield reaffirms her earlier “clinical opinion that Mr. El Masri is in need of psychological and psychiatric treatment to address his emotional difficulties”, and concludes that the incidents of violence in which he has been involved are the result of the “lasting and severe psychological effects” of his “extraordinary rendition” and torture. It is Dr. Porterfield’s considered opinion that Mr. El Masri “is urgently in need of a thorough psychological assessment and an attendant treatment plan.”

The recent incidents of violence together with Dr. Porterfield’s assessment and diagnosis emphasize the pressing need for the Commission to act immediately on the pending petition. Every day that justice is delayed is another day that Mr. El Masri must suffer the psychological consequences of his enforced disappearance, arbitrary detention and torture by the United States. It is now over six years since Mr. El Masri’s “extraordinary rendition”, almost three years since the United States Supreme Court declined to review a lower court’s decision dismissing his case on state secrets grounds, and two years since Mr. El Masri first filed his petition. Despite officially acknowledging that Mr. El Masri’s “extraordinary rendition” was a case of mistaken identity,⁸ the government of the United States has failed to carry out an investigation into his credible allegations. The United States has not provided Mr. El Masri with an explanation as to why he was targeted for such mistreatment. Nor has it offered him an official apology or other form of redress for the violation of his human rights. Thus the Commission process remains Mr. El Masri’s only avenue for redress from the government of the United States, and his only hope for justice and a path to his eventual rehabilitation.

LEGAL DEVELOPMENTS OUTSIDE THE UNITED STATES

Despite the United States’ failure to afford Mr. El Masri redress for his injuries, legal initiatives outside the United States may result in some measure of justice for Mr. El Masri. In June 2010, Spain’s El Pais newspaper reported that prosecutors in Spain have asked a Spanish judge to issue arrest warrants for thirteen CIA agents who they believe were involved in Mr. El Masri’s “extraordinary rendition” and torture. According to the report, prosecutors claim jurisdiction in the case because CIA personnel who handled the rendition had a stopover in Majorca en route to Macedonia.⁹ The thirteen individuals identified by Spanish prosecutors are the same CIA operatives named and indicted by prosecutors in Germany in relation to a criminal investigation in that country into Mr. El Masri’s allegations of kidnapping and torture.¹⁰

⁸ Jerry Markon, *Lawsuit Against CIA Is Dismissed – Mistaken Identity Led to Detention*, Washington Post, May 19, 2006.

⁹ Manuel Altozano, *El fiscal solicita el arresto de 13 espías de EE UU que tripularon los vuelos de la CIA*, ELPAÍS, May 12, 2010, available at, http://www.elpais.com/articulo/espana/fiscal/solicita/arresto/espias/EE/UU/tripularon/vuelos/CIA/elpepiesp/20100512elpepinac_12/Tes.

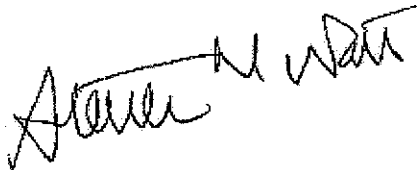
¹⁰ Matthias Gebauer, *Germany Issues Arrest Warrants for 13 CIA Agents in El-Masri Case*, SPIEGEL INTERNATIONAL, Jan. 31, 2007, available at, <http://www.spiegel.de/international/0,1518,463385,00.html>.

In September 2009, lawyers acting on Mr. El-Masri's behalf filed a case against Macedonia with the European Court of Human Rights for the involvement of Macedonian agents in Mr. El Masri's "extraordinary rendition" and torture and Macedonia's failure to investigate and prosecute those persons responsible.¹¹ Last month, the European Court ruled that it will hear the case.

The initiation of these legal proceedings in Spain and before the European Court underscores the need for the government of the United States to begin its own accountability process for the unlawful acts perpetrated against Mr. El Masri. Mr. El Masri has a right to a timely, effective remedy without unwarranted delay.¹² Having effectively blocked all possibility of judicial redress at the domestic level, the United States is further impeding Mr. El Masri's access to justice by failing to cooperate with the Commission in a timely manner or at all. The Commission, therefore, should take additional steps to ensure that the U.S. government responds to Mr. El Masri's petition without further delay.

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Sincerely,



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For and on behalf of Counsel for Khaled El Masri

¹¹ Open Society Institute, *CIA Rendition Case Reaches Top European Court*, available at <http://www.soros.org/initiatives/justice/focus/national-security/news/el-masri-rendition-20100614>.

¹² *Maya Indigenous Community of the Toledo District v. Belize*, Case 12.053, Report No. 40/04, Inter-Am. C.H.R., OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 727, (2004).