

Honigsberg, P. J. (2009). Our nation unhinged the human consequences of the War on Terror. University of California Press

### **CASE STUDY: KHALID EL-MASRI**

Khaled El-Masri is a German citizen of Lebanese descent.<sup>40</sup> He was born in Kuwait in 1963 and raised in Lebanon. After fleeing the civil war in Lebanon in 1985, he settled in Germany and became a citizen in 1995. Married with five children, he worked as a truck driver and car salesman.

On December 31, 2003, El-Masri boarded a bus in Ulm, Germany, and headed to Macedonia. Ulm, on the Danube River, had been known as a center of Islamic activity for years, hence German and American officials presumably maintained surveillance over the local community.

When El-Masri reached Macedonia, local officials detained and questioned him. He had no idea why, and no one explained the reason. After several hours of interrogation, the officials transferred him to a hotel in Skopje. El-Masri was detained in the hotel for twenty-three days. The curtains were drawn. He was not permitted to leave the room. He was continually interrogated in English, although his English was limited. During his twenty-three days of confinement in the hotel room, he was not allowed to contact a lawyer, a translator, consular officials, or his wife.

Much of the interrogation focused on what he knew about his mosque in Ulm and the people who attended it. The interrogators continually pressed him about a meeting in Jalalabad, Afghanistan, that he supposedly had with an Egyptian. El-Masri had never been to Jalalabad and could not explain the meeting. On the tenth day of his detention, an unidentified interrogator proposed to El-Masri that if he confessed to involvement with al Qaeda, he would be permitted to return home. El-Masri refused, again denying that he had any connection to al Qaeda or any other terrorist organization.

On January 23, 2004, several Macedonian agents recorded a fifteen-minute video of El-Masri. They instructed him to say that he had been treated well and that he would soon be returning to Germany. The agents then handcuffed and blindfolded him and drove him to a building near the local airport. Inside the building, El-Masri's clothes were cut off with scissors and knives, and he was beaten. Pictures were taken of him. He was then thrown to the floor and, according to his recollection, a firm object was shoved into his anus.

El-Masri was then dragged to a corner of the room and his blindfold removed. Several men dressed in black pants and shirts and wearing black ski masks appeared before him. One man put a diaper on El-Masri. They dressed him in a track suit and attached a belt with chains to his wrists and ankles. They covered his ears with earmuffs, put eye pads over his eyes, and slipped a hood over his head. He was packed onto an airplane, apparently a Boeing 737 jet operated by Aero Contractors and owned by Premier Executive Transport Services, both CIA-controlled dummy corporations.<sup>41</sup> Once on the plane, El-Masri was thrown to the floor, positioned spread-eagled, and his arms and legs secured to the plane. After being given two injections, he passed out.

The plane landed in Afghanistan. He was taken to a small, dirty concrete cell. There was no bed. A dirty blanket and some old, torn clothes that he could use as a pillow were on the floor. A bottle of

putrid water stood in the corner. El-Masri's lawyers from the American Civil Liberties Union (ACLU) believe that El-Masri was in a CIA black site facility known as the "Salt Pit," an abandoned brick factory north of the Kabul business district.

That night, El-Masri was taken to an interrogation room, stripped naked, photographed, and medically examined. On the following nights, El-Masri was again interrogated about a trip allegedly taken to Jalalabad, about attending Palestinian training camps, and about whether he knew 9/11 conspirators Mohammed Atta and Ramzi bin al-Shibh. Two interrogators identified themselves as Americans. When El-Masri asked to meet with a German representative, his requests were refused. The interrogatories continued. When El-Masri went on a hunger strike to protest the mistreatment, a feeding tube was forced through his nose into his stomach.

On May 28, El-Masri was blindfolded and handcuffed, placed in a shipping container, and taken from his room. A plane arrived at the airport near the Salt Pit, and El-Masri was told to change back into the clothes he had worn in Macedonia. He was blindfolded, ear-muffled, and chained to the seat of the plane. Upon landing, he was transferred to the back of a vehicle, still blindfolded. Six hours later, his blindfold was removed, his passport was returned, and he was told to exit the vehicle. He found himself on a deserted road in the hills of Albania. It was night. Soon after, El-Masri was picked up by Albanian officials, who took him to Mother Teresa Airport in Tirana and arranged for him to fly to Frankfurt, Germany. From Frankfurt, El-Masri made his way to his home in Ulm. His wife and children were gone. They had relocated to Lebanon when he failed to return from Macedonia. Having not heard from him in months, they assumed that he had abandoned the family. They have since returned to Germany.

What happened? Why did the CIA return El-Masri to civilization without any explanation after six months? Apparently, in April 2004, three months into the abduction, the CIA realized that it had seized the wrong man. The CIA agents in black had mistaken him for a key al Qaeda operative with a similar name.<sup>42</sup> George Tenet, then director of the CIA, and Condoleezza Rice, the president's national security advisor at that time, were both advised that the CIA had the wrong man. Nevertheless, rather than releasing him immediately and admitting the error, the CIA and the administration held El-Masri at the Salt Pit in Afghanistan for an additional two months. That El-Masri's seizure was a mistake should not be the central theme of this story, however. Our

use of extraordinary rendition, no matter who the victim, reduces us to the level of our enemies.

After El-Masri's story surfaced, the American Civil Liberties Union filed suit on his behalf. The suit was brought against George Tenet, unnamed employees of the CIA, CIA contractors, and the corporate defendants who provided the aircraft and crew to transport El-Masri to Afghanistan. It alleged that the defendants violated the due process clause of the U.S. Constitution by subjecting El-Masri to treatment that "shocks the conscience," and deprived him of his liberty in the absence of legal process. The ACLU also sued on the grounds that the defendants had violated international laws and legal norms that prohibit prolonged arbitrary detention and cruel, inhuman, and degrading treatment. The federal trial court dismissed the ACLU's complaint, ruling—based on the state secrets doctrine—that there was an unreasonable risk that privileged state secrets would be disclosed if the lawsuit proceeded further, especially if the case went to a full trial. The ACLU appealed to the Fourth Circuit Court of Appeals. The higher court agreed with the trial court.<sup>43</sup>

The state secrets doctrine was established in a 1953 Supreme Court case.<sup>44</sup> Essentially, the rule allows the United States to prevent the disclosure of information in a judicial proceeding if "there is a reasonable danger that such disclosure will expose military matters which, in the interest of national security, should not be divulged."<sup>45</sup> Although some of the evidence concerning El-Masri had been made public, the federal court of appeals wrote that how the CIA organizes its personnel and supervises its most sensitive intelligence operations, and how the director participates in such operations, are state secrets. In addition, if the case were to succeed at trial, El-Masri would need to demonstrate and reveal facts that would expose the existence, details, and implementation of CIA espionage contracts. The court went on to say that even if El-Masri were able to make his case without revealing state secrets, the defendants themselves would not be able to properly defend themselves without revealing privileged evidence that would disclose the means and methods of CIA operations. Consequently, the case was barred. The Supreme Court refused to hear the case.<sup>46</sup> Senator Patrick Leahy, chair of the Senate Judiciary Committee, commenting on the state secrets defense, said in February 2008 that the administration "has taken a legal doctrine that was intended to protect sensitive national-security information and seems to be using it to evade accountability for its own misdeeds."<sup>47</sup>

In January 2007, a German court issued an arrest warrant for thirteen people involved in El-Masri's kidnapping and rendition. A Spanish paramilitary police agency provided the names, since the CIA agents had brazenly spent significant amounts of American taxpayer money to enjoy rest and relaxation time at the Spanish island of Palma de Mallorca before rendering El-Masri to the black site in Kabul.<sup>48</sup> German Justice Ministry officials dropped the matter in September 2007, after the U.S. government refused to cooperate with the German request.<sup>49</sup>

El-Masri's lawyer has described him as a "psychological wreck." In May 2007, El-Masri was arrested for allegedly setting fire to a supermarket following an argument over a defective MP3 player that he had purchased.<sup>50</sup>