

Supreme Court refuses to hear case of German citizen tortured by US

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The US Supreme Court on Tuesday denied without comment a petition brought by Khaled el-Masri, a German citizen who was jailed and tortured by the CIA in 2004. The decision lets stand a lower court ruling that cited the government's "state secrets privilege" in dismissing el-Masri's case against former CIA director George Tenet, other CIA officials and several corporations involved in his rendition.

The decision indicates that the high court is willing to accept the extremely broad state secrets claims being made by the administration to block court review of its illegal and unconstitutional policies. It takes the support of only four of the nine justices to hear a case. There were no recorded dissents on the decision to let the lower court ruling stand.

El-Masri, who is of Lebanese descent, was seized by Macedonian officials while traveling to that country for a vacation in late 2003. He was held incommunicado and interrogated for three weeks on alleged contacts with Islamic extremists, apparently because his name is identical, except for the English spelling, to that of Khalid al-Masri, an alleged member of Al Qaeda.

In early 2004, he was transferred to the CIA. According to his lawsuit, US agents beat and sexually abused him before flying him to a secret prison in Afghanistan, drugged and chained spread-eagle to floor of the plane. He was held for four months in a filthy cell. He was routinely beaten while being denied the right to a lawyer or contact with a German representative.

After a hunger strike that lasted over a month, and several weeks after the US government had learned it was holding the wrong person, el-Masri was dumped on a deserted road in Albania and then flown back to Germany by Albanian officials.

The case of el-Masri offers a glimpse into the secret

program of "extraordinary rendition" and detention operated by the CIA. Prisoners caught up in this system are shipped from one secret prison to the next, often transferred to countries that practice torture or tortured by the CIA, and have no access to the Red Cross or legal representation.

Just days before the Supreme Court made its decision, the *New York Times* reported on secret Bush administration memoranda, drafted in 2005, declaring that the methods used by the CIA do not constitute torture or "cruel, inhuman or degrading treatment." According to the *Times*, the administration has provided explicit authorization "to barrage terror suspects with a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures."

The *Times* also reported that the CIA prison network in which el-Masri was held has resumed its operations, after briefly releasing its prisoners to Guantánamo Bay in 2005. The administration is refusing to release the secret memos on the grounds of "national security."

In December 2005, el-Masri filed a suit against Tenet, several other CIA officials and several companies involved in the rendition. The US government intervened in the lawsuit, claiming that if it were allowed to proceed it would compromise state secrets, a position upheld by US District Court Judge TS Ellis III in May 2006.

In March of 2007, the US Court of Appeals for the Fourth Circuit concurred with Ellis's ruling. With the decision of the Supreme Court not to hear el-Masri's appeal, that decision now stands.

The government has not based its argument for the dismissal of the case on the merits of el-Masri's charges, and US government officials have admitted that they seized el-Masri by mistake. The state secrets

claim was asserted without providing any evidence in order to prevent the details of el-Masri's torture from being adjudicated in the courts.

The Supreme Court decision has implications beyond the case of el-Masri. It essentially upholds the claim of the administration that it can invoke the states secret privilege to cloak its illegality. The brief to the Supreme Court filed by the American Civil Liberties Union (ACLU) on behalf of el-Masri notes, "[S]ince September 11, 2001, the government has invoked the privilege frequently in cases that present serious and plausible allegations of grave executive misconduct."

The government is citing the privilege in an attempt to quash cases involving the National Security Agency's warrantless wiretapping and data mining programs. It was also cited to dismiss a lawsuit brought by former FBI translator Sibel Edmonds, who has charged that the government had foreknowledge of the September 11 attacks.

The state secrets privilege was recognized by the Supreme Court in 1953 in the case of *United States v. Reynolds*, in which the court ruled that accident reports from a B-29 bomber crash could be withheld from family members of those killed. The Bush administration has sought to broaden the privilege extensively, using it not simply to apply to particular pieces of evidence, but to have entire cases thrown out.

The brief for Masri notes, "[T]he privilege as asserted by the government and as construed by the court of appeals ... has permitted dismissal of these suits on the basis of a government affidavit alone—without any judicial examination of the purportedly privileged evidence. Accordingly, a broad range of executive misconduct has been shielded from judicial review after the *perpetrators themselves* have invoked the privilege to avoid adjudication."

The brief concludes with the warning that, without a Supreme Court review, "the government may engage in torture, declare it a state secret, and by virtue of that designation avoid any judicial accountability for conduct that even the government purports to condemn as unlawful under all circumstances."

In a parallel development, the German government announced last month that it would not press for the extradition of CIA operatives who participated in the abduction and detention of el-Masri.

A German criminal investigation into the case had led

to warrants for the arrest of the officials. However, the Bush administration made clear that it would not grant any extradition request, and the German government has indicated that it has no interest in pursuing a case involving the torture of one of its own citizens.



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