

## “The Not-So-Secret Man”

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In November of 2006, our client, Khaled El-Masri, traveled to the United States to observe oral arguments in his lawsuit against U.S. officials and contractors. Under normal circumstances, such a visit could hardly be more ordinary. But there was nothing ordinary about El-Masri’s visit. Remarkably, El-Masri may be the only victim of the Bush administration’s torture and detention regime to have been present in a U.S. courtroom to witness his case being presented.

El-Masri, a German citizen of Lebanese descent, is among the more well-known, and ill-fated, victims of the Bush administration’s warped anti-terrorism policies. On a December 2003 bus trip from his home in Ulm, Germany to Skopje, Macedonia, El-Masri was detained by Macedonian border guards who mistakenly questioned the validity of his passport, then turned over to local CIA officials who thought—again, mistakenly—that they had landed a big fish. He was handcuffed, blindfolded, and beaten; his clothes were sliced from his body; he was photographed, shackled, and dressed in a diaper; and he was chained to the floor of a plane and injected with drugs. He was flown to Afghanistan, a country in which he had never set foot and with which he had no ties.

El-Masri was imprisoned in a secret CIA-run dungeon outside Kabul known as the “Salt Pit,” where he remained for nearly five months—even though the CIA was soon aware that it had ensnared the wrong man. (In her indispensable book *The Dark Side*, Jane Mayer reports that CIA agents on the rendition flight to Afghanistan were *already* certain that El-Masri was not a terrorist, but he was nonetheless held in brutal conditions for many months.) In May of 2004—long after El-Masri’s wife and children had left Germany for Lebanon, convinced they’d been abandoned—he was again blindfolded, put on a plane, and flown to Albania, where he was dropped off on a mountain road.

By the time the ACLU filed suit on El-Masri’s behalf against former CIA director George Tenet and others in December of 2005, the details of his ordeal were known throughout the world. And his story was an important one. The public debate about the Bush administration’s rendition and torture policies had been dominated by discussion of what rights “terrorists” should receive. To place an inarguably innocent victim of the administration’s so-called war on terror before the world as the public face of the CIA’s rendition program might help reframe the debate, we believed, and create more room for discussion of due process and the rule of law.

We knew, though, that the Bush administration would seek to dismiss our legal challenge by asserting the “state secrets privilege.” There might never be a trial, and we might have to reach the public in other ways. So we asked El-Masri—tentatively, at first—whether he would consider traveling to the United States to tell his story. Because El-Masri had never been charged with any crime—and because he was a citizen of a close European ally, Germany—we believed there should be no legal obstacle to his traveling to the U.S. to announce the filing of the suit. As El-Masri himself joked, his prior experience involving the U.S. and planes had not exactly been a good one. But he was eager to present himself to the American people, to share his experiences, and to demand answers. We booked his flight and scheduled a news conference.

U.S. authorities had other plans. El-Masri never made it further than Immigration and Customs Enforcement. He was briefly detained by U.S. agents—“I thought they might take me to Guantanamo,” he later told us—and placed on a return flight to Germany. But the administration had not silenced El-Masri. At our press conference, El-Masri appeared “live” by satellite, and the image of him addressing a crowd of reporters was published worldwide.

Even after such a potentially traumatic experience, and even after his suit was dismissed on the dubious ground that discussion in a U.S. court of what had been discussed throughout the world would reveal “state secrets,” El-Masri was willing to try again. The Fourth Circuit had scheduled oral argument on his appeal for November of 2006, and the State Department assured us that he would be admitted. And so El-Masri himself was present in a Richmond, Virginia courthouse as we demanded that he get his day in court. Even as the government’s lawyers insisted that El-Masri’s allegations could not be brought forward in court without harm to national security, his simple presence in the courtroom served as powerful rebuttal.

El-Masri was an eloquent ambassador for other victims who either remained detained or, like his fellow rendition victim Maher Arar, are still perversely barred from the U.S. even after release without charge. On Capitol Hill, he spoke to members of Congress and their staff about the brutality of his ordeal and his simple demand for acknowledgement and explanation. In New York, he met with scholars, activists, and supporters, many of whom were grateful for the chance to thank him for his courage and tenacity.

There were occasional reminders that his recovery will be a lifelong process. As we exited the Virginia courthouse, a crowd of television cameras stood waiting for comment. It was a warm day, and El-Masri had his overcoat folded over his arm. We offered to hold it for him, but he clutched it tightly, as if to create a barrier between himself and the cameras. It was impossible not to remember that less than three years earlier, the CIA had stripped him of his clothes and dignity before photographing him repeatedly.

We knew that El-Masri’s presence in the U.S. would provide invaluable benefits to our advocacy against torture and arbitrary detention. We hoped it would provide some benefits to him as well—that he would see that many Americans were distressed by the Bush administration’s policies and supported his demand for justice. In an op-ed published in the *Los Angeles Times* some months after his visit, El-Masri contrasted his hostile treatment from U.S. courts with his warm treatment from the Americans he met:

During my visit in November, many Americans offered me their personal apologies for the brutality that had been perpetrated against me in their name. I saw in their faces the true America, an America that is not held captive by fear of unknown enemies and that understands the strength and power of justice. That is the America that, I hope, one day will see me as a human being—not a state secret.