

Counsel for Mr. Khaled El-Masri, the American Civil Liberties Union and Yale Law School's Allard K. Lowenstein International Human Rights Law Clinic, respectfully request a hearing on the merits in the case of *Khaled El-Masri v. United States*, Petition No. P13.027, during the Inter-American Commission on Human Rights' 166th Extraordinary Period of Sessions, to be held from November 29, 2017 to December 7, 2017.

For a detailed account of the facts alleged in this case and the human rights violations at issue, Counsel refer the Commission to the petition in this matter, dated April 9, 2008, Additional Information provided by Petitioner in support of that petition, and the Commission's admissibility decision of April 15, 2016. In further support of this request, Counsel provide the following information:

### **The Violations at Issue in Petition No. P13.027**

On April 15, 2016, the Inter-American Commission deemed Mr. El-Masri's petition, P13.027, admissible with regard to Articles I, II, VIII, XVII, XVIII, XXIV, XXV and XXVI of the American Declaration on the Rights and Duties of Man.

As alleged in his petition, and as recognized in the Commission's admissibility decision, Mr. El-Masri's case concerns numerous and unconscionable human rights violations committed by the United States. On December 31, 2003, U.S. agents detained and forcibly disappeared Mr. El-Masri in Macedonia in collaboration with Macedonian officials. Three weeks later, the United States assumed exclusive custody and control of Mr. El-Masri. They did so in brutal fashion: U.S. officials blindfolded, shackled, beat, stripped naked, forced a firm object into his anus, and drugged him, before secretly transporting him to a U.S. Central Intelligence Agency (CIA)-run prison facility in Afghanistan. There Mr. El-Masri was held incommunicado by the United States for over four months, interrogated, and subjected to further torture and other forms of cruel, inhuman, and degrading treatment. A detailed description of Mr. El-Masri's abusive treatment and the rights violations at issue are set forth in Mr. El-Masri's petition and in a declaration filed by Mr. El-Masri in U.S. federal court in April 2006. Declaration of Khaled El-Masri in support of Plaintiff's Opposition to the United States' Motion to Dismiss, *El-Masri v. Tenet et. al*, Apr. 6, 2006 (E.D. Va. 2005) (No. 1:05cv1417) (copy attached).

The United States does not dispute these facts. Partially declassified U.S. Government documents incontrovertibly establish that the United States coordinated and authorized Mr. El-Masri's unlawful detention and abusive treatment. These same documents establish that Mr. El-Masri's capture, unlawful rendition, secret detention and interrogation was part of a CIA-run rendition, detention and interrogation (RDI) program that resulted in the arbitrary detention and abusive interrogation of over one hundred foreign nationals. These documents also establish that the program was authorized at the highest level of the United States' Government, and shuttered in 2009.

Despite internal and unequivocal documentation of these widespread and systemic human rights violations, the United States has denied Mr. El-Masri, or any other victim or survivor of the CIA's RDI program, a remedy. Three separate U.S. administrations have concertedly prevented full public disclosure of these violations and denied victims and survivors any official acknowledgement of wrongdoing or accountability. The U.S. judiciary summarily dismissed Mr.

El-Masri's claims, as well as those of other victims and survivors of the program, foreclosing any opportunity for them to seek an effective legal remedy and ensuring that these abuses will remain in the dark. By granting Mr. El-Masri's request for a hearing, the Commission will help lift this veil of impunity.

### **The Commission Should Grant Mr. El-Masri's Request for a Hearing on the Merits**

Mr. El-Masri's petition presents an opportunity for the Commission to address matters of immediate and regional concern, which the Commission is uniquely placed to address. The Commission and the Inter-American Court pioneered international recognition and development of the core human rights protections grossly violated in this case: the prohibitions of forcible disappearance, arbitrary detention, torture and other cruel, inhuman and degrading treatment, and the rights to truth and to a remedy. The Commission has also played a leading role in recognizing a state's obligations to prevent, punish, investigate, and redress violations of these and other fundamental human rights protections even when they are committed beyond a state's territorial borders. Granting Mr. El-Masri's request for a hearing would allow the Commission to affirm its long-recognized positions on these human rights issues and to apply them in a contemporary context.

Granting a hearing on the merits would also present the Commission with an opportunity to reaffirm the United States' obligation to provide a guarantee of non-repetition to Mr. El-Masri and other survivors of the CIA's RDI program. An integral component of the right to a remedy, a guarantee of non-repetition provides a bulwark against future violations. Despite acknowledging its involvement in egregious human rights violations, the United States has failed to provide Mr. El-Masri and other victims and survivors any meaningful guarantee that it will not return to the use of forcible disappearance, arbitrary detention, torture or other forms of cruel, inhuman or degrading treatment. Indeed, with the United States continuing to detain numerous survivors of the CIA's RDI program at the U.S. Naval Base in Guantanamo Bay, Cuba, human rights violations associated with this illegal program continue to this day.

Instead of taking steps to sufficiently rectify these past and ongoing violations, the current administration has shown contempt for these human rights and redress due to victims, even suggesting it would revive the United States' harshest RDI policies. During his presidential campaign, President Trump vowed to bring back torture, including waterboarding and "a hell of a lot worse." In January 2017, the Trump Administration reportedly drafted an executive order in which it contemplated reinstating the "extraordinary rendition" program and CIA-run "black site" prisons. U.S. courts too have universally failed to provide effective legal remedies and thus any guarantee of non-repetition. And, in June 2017, *The New York Times* reported that the Trump Administration had taken steps to prevent further disclosure of the gross human rights violations that occurred as part of the CIA's RDI program. The Commission then is the only institution available to Mr. El Masri to seek to hold the United States accountable to its international obligation to remedy the violations of his human rights, and to help ensure that they are not repeated in the future..

### **Conclusion and Request**

Counsel for Mr. El-Masri respectfully request that the Commission grant this request for a hearing on the merits of Mr. El-Masri's petition, P13.027, during the 166th Extraordinary

Request for a Hearing on the Merits, 166th Extraordinary Period of Sessions: Document supporting Petitioner's request

Period of Sessions. Given the repeated efforts by the U.S. Government to obscure its violations of Mr. El-Masri's fundamental human rights, and to deny him recourse before U.S. courts, immediate action by this Commission is necessary to prevent further harm to Mr. El-Masri and to prevent future violations of these rights.

Attachments:

- 1) OFFICE OF INSPECTOR GENERAL, REPORT OF INVESTIGATION: THE RENDITION AND DETENTION OF GERMAN CITIZEN KHALID AL-MASRI, CENTRAL INTELLIGENCE AGENCY (July 16, 2007).
- 2) Declaration of Khaled El-Masri in support of Plaintiff's Opposition to the United States' Motion to Dismiss, *El-Masri v. Tenet et. al*, Apr. 6, 2006 (E.D. Va. 2005) (No. 1:05cv1417).