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ACLU Files Lawsuit on Behalf of Man Allegedly Kidnapped by CIA

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Kentucky, Mississippi, North Carolina, North Dakota, Utah, Virginia, and Wyoming.²⁰

However, the Oklahoma law is the only one that specifically severs an adoptive parent-child relationship established legally in another state, should the family find themselves in Oklahoma or dealing with Oklahoman officials.²¹

¹ OKLA. STAT. ANN. tit. 10 § 7502-1.4 (West 2005).

² Press Release, Lambda Legal, *Lambda Legal Asks Federal Court to Fast Track Case Seeking to Strike Down Oklahoma's Extreme Antigay Adoption Law*, Dec. 1, 2005, <http://www.lambdalegal.org/cgi-bin/iowa/news/press.html?record=1840>.

³ OKLA. STAT. ANN. tit. 10 § 7502-1.4 (West 2005).

⁴ Lambda Legal, *supra* note 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Joanna Grossman, *A New York Court Authorizes a Lesbian Couple's Joint Adoption of a Child: Part of a Growing Same-Sex Adoption Trend*, Apr. 19, 2004, <http://writ.news.findlaw.com/grossman/20040419.html> (last visited on Mar. 13, 2006).

¹² *Id.*

¹³ FLA. STAT. ANN. § 63.042(3) (West 2005).

¹⁴ *In re Adoption of Carolyn B.*, 774 N.Y.S.2d 227, 229 (2004).

¹⁵ Telephone Interview with Tina Peot, Attorney, Demastus Law Firm, in Oklahoma City, Okla. (Feb. 24, 2006).

¹⁶ *In re Adoption of Carolyn B.*, 774 N.Y.S.2d at 230.

¹⁷ *Id.* at 229.

¹⁸ Family Pride, *Laws In Your State*, <http://www.familypride.org/site/pp.asp?c=bhKPI7PFImE&b=316280> (last visited on Mar. 13, 2006).

¹⁹ *Id.*

²⁰ *Id.*

²¹ OKLA. STAT. ANN. tit. 10 § 7502-1.4 (West 2005).

ACLU Files Lawsuit on Behalf of Man Allegedly Kidnapped by CIA

By Emily Rozwadowski

In December 2005, the American Civil Liberties Union ("ACLU") filed a lawsuit on behalf of Khaled El-Masri, a German national who was born in Kuwait to Lebanese parents, alleging that El-Masri was kidnaped and detained in Afghanistan for several months without charge.¹

The ACLU suit, which was filed in federal court in the Eastern District of Virginia, was based upon both federal and international law.² Under federal law, the defendants are charged with violating El-Masri's due process rights and subjecting El-Masri to prolonged arbitrary detention.³ The complaint also stated that the defendants violated customary international law by subjecting El-Masri to torture and other cruel, inhuman or degrading treatment.⁴

El-Masri sued under the Alien Tort Statute, which was enacted in 1789.⁵ The Alien Tort Statute has been interpreted to enable "federal courts to hear claims in a very limited category defined by the law of nations and recognized at common law."⁶ Therefore, only claims that would have been recognized at the time of the law's enactment could be heard.⁷ The statute did not create a cause of action for violation of international law.⁸

The complaint alleged that while traveling on vacation to Skopje, Macedonia on December 31, 2003, El-Masri's passport was confiscated and he was detained in a hotel room for 23 days.⁹ On January 23, 2004, El-Masri was removed from the hotel room and beaten.¹⁰ He was then placed on an airplane which, according to the complaint, landed in Kabul, Afghanistan.¹¹ The complaint further alleges that El-Masri was held in a Central Intelligence Agency ("CIA") run facility known as the "Salt Pit."¹² There he was subjected to interrogation and held in inhumane conditions.¹³ He was held there until May 2004, when he was flown to Albania and eventually to Germany.¹⁴ El-Masri was never accused of a crime or terrorist connections.¹⁵ The CIA believed that he was a member of al-Qaida and had trained at a camp run by Osama

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bin Laden in Afghanistan.¹⁶

El-Masri is married and has five children.¹⁷ Before his abduction he was a cars salesman but had recently become unemployed.¹⁸

“I am filing this lawsuit because I believe in the American system of justice,” El-Masri stated in a statement released by the ACLU.¹⁹ “What happened to me was outside the bounds of any legal framework, and should never be allowed to happen to anyone else.”²⁰ El-Masri also stated that he would like an acknowledgment from the CIA that it was responsible for his treatment.²¹



The complaint stated that “extraordinary rendition (kidnapping) has become a routine means of abducting and detaining foreign nationals suspected of terrorism.”

The suit was filed against George Tenet, former director of the CIA, in his individual capacity and unnamed current or former employees of the CIA.²² In March 2004, the CIA analyzed El-Masri’s passport and determined that it was valid.²³ In April 2004, Tenet was informed that the CIA, in detaining El-Masri, was detaining the wrong person.²⁴ In May 2004, Condoleezza Rice, then national security advisor, learned that the wrong person was being detained and ordered his immediate release.²⁵

The suit also named several private corporations as defendants. The complaint alleged

that Premier Executive Transport Services, Inc., Keeler and Take Management LLC, and Aero Contractors Limited were the owners of the jet used to transport El-Masri to Afghanistan.²⁶ Finally, the complaint named several unnamed current and former employees of the defendant corporations as defendants.²⁷

Specifically, the complaint alleged that the defendant corporations “authorized the use of aircraft owned by them to transfer terror suspects to detention and interrogation in countries where the corporations know or reasonably should know that the suspects will be subjected to prolonged arbitrary detention, torture and other forms of cruel, inhuman, or degrading treatment.”²⁸ The complaint also alleged that the defendant corporations supplied staff and other resources to operate the aircraft.²⁹ Indeed, a recent Newsweek report shows that the flight plans of the aircraft owned by these companies confirmed El-Masri’s story.³⁰

The ACLU stated that El-Masri’s treatment was a part of the CIA’s extraordinary rendition policy, which is the controversial practice of secretly spiriting suspects to other countries to be interrogated and detained indefinitely without due process.³¹ This policy, according to the ACLU, began in the early 1990s and continues to the present.³² The complaint stated that “extraordinary rendition has become a routine means of abducting and detaining foreign nationals suspected of involvement in terrorism.”³³ Additionally, the complaint stated that Tenet was primarily responsible for expanding the policy.³⁴

Khaled El-Masri has been declared to be a victim of mistaken identity by the United States, yet he and other individuals who may have been wrongly detained and rendered to other countries for being suspected terrorists are seemingly without legal recourse unless the ACLU case sets precedent under federal or international law.

¹ Complaint at page 1, El-Masri v. Tenet et al., Case No. –Civ.- (E.D. Va., Dec. 6, 2005) available at http://www.aclu.org/images/extraordinaryrendition/asset_upload_file829_22211.pdf.

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Lawsuit Doesn't Prevent Medicare Part D from Failing, but States Come to The Rescue

By Michelle Schnidler

Days after the U.S. District Court of Manhattan (“the District Court”) dismissed a suit on behalf of Medicare beneficiaries, Medicare’s new Part D prescription drug plan (“Part D”) went into effect causing many beneficiaries to have difficulties filling their prescriptions.¹

Predicting problems in implementing the new Medicare Part D prescription drug program in November 2005, a group of eight advocacy groups sued the Secretary of the U.S. Department of Health and Human Services (“HHS”), Michael Leavitt, to compel HHS to take action to ensure that beneficiaries were not denied coverage.² However, on December 30, 2005, two days before the implementation of Part D, the District Court denied the advocacy groups their Motion for a Preliminary Injunction and dismissed the case, finding the claim was not ripe and that the court lacked jurisdiction to hear the case.³

The lawsuit alleged that Leavitt had not met his statutory obligation to ensure continued and uninterrupted drug coverage for people enrolled in both Medicaid and Medicare, known as “dual eligibles.”⁴ Before January 1, 2006, Medicare did not have a prescription drug benefit program, so many qualifying low-income seniors obtained prescription drug coverage from Medicaid.⁵ In implementing Part D, Medicare’s new prescription drug program, HHS created an automatic enrollment program in which all eligible Medicare recipients would be enrolled in the new program.⁶ However, the suit alleged that HHS had not taken enough precautionary measures to ensure that the transition would run smoothly and dual eligible beneficiaries would not lose coverage.⁷

The District Court dismissed the suit and stated that the senior citizen advocacy groups could not bring suit on behalf of an unnamed class member and that the action was not ripe as it was commenced before Part D was implemented.⁸

While the injunction failed to compel HHS to

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² *Id.* at 1-2.

³ *Id.* at 4.

⁴ *Id.* at 4.

⁵ 28 U.S.C. § 1350 (2005).

⁶ *Sosa v. Alvarez-Machain*, 542 U.S. 692, 712 (2004).

⁷ *Id.* at 725.

⁸ *Id.* at 713.

⁹ Complaint *supra* note 1, at 7.

¹⁰ *Id.* at 7.

¹¹ *Id.* at 9.

¹² *Id.* at 10.

¹³ *Id.* at 13.

¹⁴ *Id.* at 15.

¹⁵ *Id.* at 17.

¹⁶ David Johnston, *Rice Ordered Release of German Sent to Afghan Prison in Error*, N. Y. TIMES, April 23, 2005, at A3.

¹⁷ Complaint *supra* note 1, at 7.

¹⁸ *Id.* at 7.

¹⁹ Press Release, American Civil Liberties Union, *Extraordinary Rendition-Khaled El-Masri-Statement* (Dec. 6, 2005), available at <http://www.aclu.org/safefree/extraordinaryrendition/22201res20051206.html>.

²⁰ *Id.*

²¹ *Id.*

²² Complaint *supra* note 1, at 3.

²³ *Id.* at 12.

²⁴ *Id.* at 12.

²⁵ Johnston *supra* note 16, at A3.

²⁶ Complaint *supra* note 1, at 3.

²⁷ *Id.* at 3.

²⁸ *Id.* at 17.

²⁹ *Id.* at 17.

³⁰ Michael Hirsh, Mark Hosenball & John Barry, *Aboard Air Cia*, NEWSWEEK (Feb. 28, 2005), at 32; *see also*, Christopher Dickey, *Plane Spotting: How aviation hobbyists put vital evidence about secret CIA flights on the Web—and provided evidence for lawsuits about detainee abuse*, NEWSWEEK (Dec. 14, 2005) World, at 0.

³¹ Complaint *supra* note 1, at 5.

³² *Id.* at 5.

³³ *Id.* at 6.

³⁴ *Id.* at 6.

(Medicare Part D, *continued on page 11*)