

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

KHALED EL-MASRI,)
)
 Plaintiff,)
) Civil Action No.
 v.)
)
 GEORGE J. TENET; PREMIER EXECUTIVE)
 TRANSPORT SERVICES, INC.; KEELER AND)
 TATE MANAGEMENT LLC; AERO)
 CONTRACTORS LIMITED; DOES 1-20,)
)
 Defendants.)

COMPLAINT

INTRODUCTION

1. On December 31, 2003, Khaled El-Masri, a German citizen of Lebanese descent, was forcibly abducted while on holiday in Macedonia, detained incommunicado, handed over to United States agents, then beaten, drugged, and transported to a secret prison in Afghanistan, where he was subjected to inhumane conditions and coercive interrogation and was detained without charge or public disclosure for several months. Five months after his abduction, Mr. El-Masri was deposited at night, without explanation, on a hill in Albania.

2. Not long after Mr. El-Masri was flown to Afghanistan, Central Intelligence Agency (“CIA”) officials realized that they had abducted, detained, and interrogated an innocent man. Defendant George Tenet, former director of the CIA, was notified about the mistake, yet Mr. El-Masri’s unlawful detention and inhumane treatment continued for two additional months.

3. Mr. El-Masri’s abduction, detention, and interrogation without legal process were carried out pursuant to an unlawful policy and practice devised and implemented by defendant Tenet known as “extraordinary rendition”: the clandestine abduction and detention outside the

United States of persons suspected of involvement in terrorist activities, and their subsequent interrogation using methods impermissible under U.S. and international laws. The current Director of Central Intelligence, Porter Goss, has described this practice in congressional testimony as “a ‘kinetic’ solution on foreign soil.”

4. Mr. El-Masri brings this action against Mr. Tenet, who promulgated this unlawful policy and who directed the agents and subordinates who carried out the unlawful acts described herein; against current and former employees of the Central Intelligence Agency who participated directly in Mr. El-Masri’s abduction, detention, and interrogation; and against the aviation corporations that supplied the aircraft and personnel used in the unlawful transfer, knowing that they were to be used in Mr. El-Masri’s secret detention and interrogation in Afghanistan, thereby conspiring in and aiding and abetting the violation of Mr. El-Masri’s rights under the United States Constitution and the law of nations, including his right to be free from prolonged arbitrary detention, torture and other cruel, inhuman, or degrading treatment.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1332 (diversity jurisdiction); 28 U.S.C. § 1350 (Alien Tort Statute); and directly under the United States Constitution. This case arises under the Fifth Amendment to the United States Constitution and the Alien Tort Statute.

6. Venue is proper pursuant to 18 U.S.C. § 1391(b)(2) and (c).

PARTIES

7. Plaintiff Khaled El-Masri is a German citizen who resides near Neu-Ulm, Germany. Mr. El-Masri was born in Kuwait on June 29, 1963, to Lebanese parents. He moved to Germany in 1985 and became a citizen in 1995. He married in 1996 and has five young children.

8. Defendant George Tenet was Director of the Central Intelligence Agency throughout the period during which the events described herein occurred. Defendant Tenet is sued in his individual capacity.

9. Defendant Premier Executive Transport Services, Inc. (“PETS”) is a corporation doing business in Massachusetts, with corporate headquarters in Dedham, MA. PETS was the owner of a Boeing business jet, 737-7ET, formerly registered with the Federal Aviation Authority (“FAA”) as N313P and now as N4476S, when the jet was used to transport plaintiff from Skopje, Macedonia to detention and interrogation in Afghanistan. On or around November 14, 2004, Federal Aviation Authority records show that PETS sold the Boeing business jet, to defendant Keeler and Tate Management LLC.

10. Defendant Keeler and Tate Management LLC (“KTM”) is a corporation doing business in Nevada, with corporate headquarters in Reno. Defendant KTM is the current owner of a Boeing business jet, now registered with the FAA as N4476S, which was used to transport plaintiff from Skopje, Macedonia to detention and interrogation in Afghanistan. Defendant KTM is corporate successor to defendant PETS.

11. Defendant Aero Contractors Limited (“ACL”) is a corporation doing business in North Carolina, with corporate headquarters at Johnston County Airport, North Carolina. Defendant ACL was contracted by defendant PETS to operate the above-mentioned Boeing business jet, and specifically to transport plaintiff from Skopje, Macedonia to detention and interrogation in Afghanistan.

12. Plaintiff does not know the true names and capacities of defendants sued herein as Does 1-20, inclusive, and therefore sues these defendants by such fictitious names and capacities. Does 1-10 are current or former employees of the Central Intelligence Agency who directed or

participated in the unlawful seizure, transport, detention, and interrogation of plaintiff. Does 11-20 are current or former employees of defendant corporations who directed or participated in the unlawful transport of plaintiff for the purpose of detaining and interrogating plaintiff outside the law. Plaintiff will amend this complaint to allege the true names and capacities of Doe defendants when ascertained. Each Doe defendant is responsible in some manner for the occurrence of the unlawful actions herein alleged and that the injuries suffered by plaintiff were proximately caused by the conduct of such defendants.

LEGAL FRAMEWORK

13. Plaintiff's constitutional claims arise under the Fifth Amendment to the United States Constitution, which prohibits any person acting under color of U.S. law from subjecting or allowing the subjection of any person in U.S. custody or control to conduct that shocks the conscience, or from depriving any person of liberty in the absence of legal process. Defendants' violations of plaintiff's due process rights give rise to a cause of action for damages under the Fifth Amendment pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

14. The Alien Tort Statute (ATS), 28 U.S.C. § 1350, adopted in 1789, permits aliens to bring suit in United States courts for violations of the law of nations or a treaty of the United States. The ATS recognizes as federal common law those international norms that have definite content and acceptance among civilized nations. *Sosa v. Alvarez Machain*, 542 U.S. 692 (2004).

15. The acts described herein, constituting prolonged arbitrary detention, torture and other cruel, inhuman, or degrading treatment, are within the body of acts that violate such definite and accepted international norms, as codified in numerous conventions, declarations, and other international instruments, including, *inter alia*:

- the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987;
- the Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc. A/810 at 71 (1948);
- the International Convention on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976;
- the Geneva Convention relative to the Treatment of Prisoners of War, 75 U.N.T.S. 135, *entered into force* Oct. 21, 1950; and
- the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, *entered into force* Oct. 21, 1950.

Accordingly, the challenged conduct falls within the body of acts deemed actionable under the federal common law by the United States Supreme Court in *Sosa v. Alvarez Machain*, 542 U.S. 692 (2004).

EXTRAORDINARY RENDITION POLICY

16. On information and belief, beginning in the early 1990s and continuing to this day, the Central Intelligence Agency (“CIA”), together with other U.S. government agencies, has developed an intelligence-gathering program involving the transfer of foreign nationals suspected of involvement in terrorism to detention and interrogation in countries where, in the CIA’s view, federal and international legal safeguards do not apply.

17. Suspects are detained and interrogated either by U.S. personnel at U.S.-run detention facilities outside U.S. sovereign territory or, alternatively, are handed over to the custody of foreign agents for interrogation. In both instances, interrogation methods are employed that do not comport with federal and internationally recognized standards. This program is commonly known as “extraordinary rendition.”

18. During the September 11 Commission of Inquiry, defendant Tenet, then Director of Central Intelligence, described “rendition to justice” as a key counterterrorism tool and testified

that, in an unspecified period before September 11, 2001, the United States had undertaken 70 such renditions.

19. On information and belief, since the September 11, 2001 attacks, the use of this policy and practice by the United States has expanded considerably. Extraordinary rendition has become a routine means of abducting and detaining foreign nationals suspected of involvement in terrorism. On information and belief, defendant Tenet was one of the persons primarily responsible for the expansion of the program and for devising the specific methods employed in its implementation.

20. Pursuant to the policy, foreign nationals suspected of terrorism have been transported to U.S.-run detention and interrogation facilities in Jordan, Iraq, Egypt, Diego Garcia, Afghanistan, Guantánamo, and elsewhere. Memoranda prepared by the U.S. Department of Justice's Office of Legal Counsel have consistently advanced the position that foreign nationals held at such facilities, outside U.S. sovereign territory, are unprotected by federal or international laws. Government lawyers have advanced the same argument in habeas corpus proceedings brought on behalf of foreign nationals detained and interrogated at Guantánamo Bay, Cuba.

21. On information and belief, the "extraordinary rendition" program serves two discrete functions: it permits agents of the United States to detain foreign nationals that it considers terrorist suspects outside U.S. sovereign territory and without legal process; and it permits those agents, primarily through counterparts in foreign intelligence agencies, to employ interrogation methods on suspects that would not be permissible under federal or international law as a means of obtaining information from suspects.

FACTUAL ALLEGATIONS

Abduction and Detention in Macedonia

22. Plaintiff Khaled El-Masri was born in Kuwait in 1963, and raised in Lebanon. He fled Lebanon in 1985 to escape the civil war in that country, and settled in Germany, where he became a citizen in 1995. He attended high school for three years before leaving to become a carpenter. He has since been employed as a truck driver and a car salesman, but has been unemployed since the conclusion of the events described below. Mr. El-Masri is married and has five young children.

23. On December 31, 2003, Mr. El-Masri boarded a bus in Ulm, Germany, intending to visit Skopje, Macedonia, for a brief holiday. Mr. El-Masri's journey was uneventful, passing through several European border inspections without incident, until the bus crossed the Serbian border into Macedonia. There, Macedonian law enforcement officials confiscated Mr. El-Masri's passport and detained him for several hours. He was thereafter transferred by armed plainclothes officers to a hotel in Skopje.

24. Mr. El-Masri was detained in the hotel for 23 days, guarded at all hours by rotating shifts of armed Macedonian officers. The curtains were closed day and night, and Mr. El-Masri was never permitted to leave the room. His frequent requests to see a lawyer, translator, or German consular official, or to contact his wife, were denied. When he once moved toward the door and stated that he intended to leave, three of his captors pointed pistols at his head and threatened to shoot him.

25. Mr. El-Masri was interrogated repeatedly by Macedonian agents throughout the course of his detention. The interrogations were conducted in English, despite Mr. El-Masri's limited English proficiency. He was questioned about what he did in Ulm, the persons with

whom he associated there, and the persons who attended his mosque, the Ulm Multicultural Center and Mosque. Mr. El-Masri's interrogators pressed him continuously about a meeting he allegedly had in Jalalabad, Afghanistan with an Egyptian man, and about possible Norwegian contacts. Mr. El-Masri responded that he had never been to Jalalabad and knew no one from Norway.

26. On the seventh day of his confinement, a man who appeared to be in charge of the interrogators proposed to Mr. El-Masri that if he confessed his involvement with Al Qaeda, he would be returned to Germany. Mr. El-Masri refused. On the thirteenth day of his confinement, Mr. El-Masri commenced a hunger strike to protest his continued unlawful detention, and he did not eat again during the remaining ten days of detention in Macedonia.

Transfer to Airport and Flight to Afghanistan

27. On January 23, 2004, seven or eight Macedonian men dressed in civilian clothes whom Mr. El-Masri had not seen before entered the hotel room. The men recorded a 15-minute video of Mr. El-Masri. They instructed him to say that he had been treated well, had not been harmed in any way, and would shortly to be flown back to Germany. The men then handcuffed and blindfolded him and placed him in a car.

28. After a drive of approximately one hour, the car came to a halt, and Mr. El-Masri could hear the sound of airplanes. He was removed from the vehicle, still handcuffed and blindfolded, and was led to a building. Inside, he was told that he would be medically examined. Instead, he was beaten severely from all sides with fists and what felt like a thick stick. His clothes were sliced from his body with scissors or a knife, leaving him in his underwear. He was told to remove his underwear and he refused. He was beaten again, and his underwear was forcibly removed. He heard the sound of pictures being taken. He was thrown to the floor. His

hands were pulled back and a boot was placed on his back. He then felt a firm object being forced into his anus.

29. Mr. El-Masri was pulled from the floor and dragged to a corner of the room. His blindfold was removed. A flash went off and temporarily blinded him. When he recovered his sight, he saw seven or eight men dressed in black and wearing black ski masks. One of the men placed him in a diaper. He was then dressed in a dark blue short-sleeved track suit, and placed in a belt with chains that attached to his wrists and ankles. The men put earmuffs and eye pads on him, blindfolded him, and hooded him.

30. Mr. El-Masri was marched to a waiting plane, with the shackles cutting into his ankles. Once inside, he was thrown to the floor face down and his legs and arms were spread-eagled and secured to the sides of the plane. He felt an injection in his shoulder, and became lightheaded. He felt a second injection that rendered him nearly unconscious.

31. On information and belief, the men dressed in black clothing and ski masks were members of a CIA “black renditions” team, operating pursuant to unlawful CIA policies and at the direction of defendant Tenet.

32. Mr. El-Masri was dimly aware of the plane landing and taking off again. When the plane landed for the final time, he was unchained and taken off the plane. It was warmer outside than it had been in Macedonia, and Mr. El-Masri realized that he had not been returned to Germany. He believed he might be in Guantánamo, or possibly Iraq. He learned later that he was in Afghanistan.

33. Aviation documents show that a Boeing business jet owned by defendant PETS and operated by defendant ACL, then registered by the FAA as N313P, took off from Palma, Majorca, Spain on January 23, 2004, and landed at the Skopje airport at 8:51 p.m. that evening.

The jet left Skopje more than three hours later, flying to Baghdad and then on to Kabul, the Afghan capital. On Sunday, January 25, the jet left Kabul, flying to Timisoara, Romania.

Detention and Interrogation in Afghanistan

34. Mr. El-Masri was removed from the plane and shoved into the back of a waiting vehicle. The car drove for about ten minutes. Mr. El-Masri was then dragged from the vehicle, pushed into a building, thrown to the floor, and kicked and beaten on the head and the small of his back. He was left in a small, dirty, concrete cell. When he adjusted his eyes to the light, he saw that the walls were covered in crude Arabic, Urdu, and Farsi writing. The cell did not contain a bed. It was cold, but Mr. El-Masri had been provided only one dirty, military-style blanket and some old, torn clothes bundled into a thin pillow. Through a window at the top of the cell, Mr. El-Masri saw a red, setting sun, and realized that he had been traveling for 24 hours.

35. On information and belief, the prison to which Mr. El-Masri was transferred was a CIA-run facility known as the “Salt Pit,” an abandoned brick factory north of the Kabul business district that was used by the CIA for detention of some high-level terror suspects.

36. Mr. El-Masri was thirsty. Through the small, barred window of his cell, Mr. El-Masri saw a man dressed in Afghan clothing. He shouted to the man for water, and the man pointed to a bottle of putrid water in the corner of the cell. Mr. El-Masri asked for fresh water, but was told he could drink from the bottle or go thirsty.

37. That night, Mr. El-Masri was removed from his cell and transferred to an interrogation room. There were six or eight men dressed in the same black clothing and ski masks as the men in the Macedonian airport, as well as a masked doctor who spoke American-accented English and a translator who spoke Arabic with a Palestinian accent. Mr. El-Masri was stripped naked, photographed, and medically examined by one of the masked men. Blood and

urine samples were taken. Mr. El-Masri complained to the man who seemed to be a doctor about the unhygienic water and poor conditions in his cell. The man responded that the Afghans were responsible for the conditions of his confinement. Then Mr. El-Masri was returned to his cell, where he would be detained in a single-person cell, with no reading or writing materials, and without once being permitted outside to breathe fresh air, for more than four months.

38. On his second night in the Salt Pit, Mr. El-Masri was woken by masked men and once again brought to the interrogation room. Again, six or eight masked, black-clad men were in the room. Mr. El-Masri was interrogated by a masked man who spoke Arabic with a South Lebanese accent. The man asked him if he knew why he had been detained; Mr. El-Masri said he did not. The man then stated that Mr. El-Masri was in a country with no laws, and that no one knew where he was, and asked whether Mr. El-Masri understood what that meant.

39. Mr. El-Masri was interrogated about whether he had taken a trip to Jalalabad using a false passport; whether he had attended Palestinian training camps; whether he was acquainted with September 11 conspirators Mohammed Atta and Ramzi Binalshibh; and whether he associated with alleged extremists in Ulm, Germany. Mr. El-Masri, who has never knowingly associated with any terrorist or terrorist organization, answered these questions truthfully, just as he had in Macedonia. Mr. El-Masri asked why he had been transported to Afghanistan, when he was a German citizen with no ties to that country. His interrogator did not answer.

40. In all, Mr. El-Masri was interrogated on three or four occasions, each time by the same man, and each time at night. His interrogations were accompanied by threats, insults, pushing, and shoving. Two men who participated in the interrogations identified themselves as Americans. Mr. El-Masri repeatedly demanded that he be permitted to meet with a representative of the German government, but these requests were ignored.

41. In March, Mr. El-Masri and several other inmates with whom he communicated through cell walls commenced a hunger strike to protest their continued confinement without charges. After 27 days without food, Mr. El-Masri was given an audience with two unmasked Americans, one of whom was the prison director and the second an even higher official whom other inmates referred to as “the Boss.” The Afghan prison director was also present, along with the translator with the Palestinian accent. Mr. El-Masri insisted that the Americans either release him, bring him before a court, allow him access to a German official, or watch him starve to death. The American prison director replied that he could not release Mr. El-Masri without permission from Washington, but stated that Mr. El-Masri should not be detained in the prison. Mr. El-Masri was returned to his cell, where he continued his hunger strike.

42. Mr. El-Masri’s health deteriorated on a daily basis. He received no medical treatment during his confinement, despite repeated requests.

43. On information and belief, CIA officials at the “Salt Pit” believed early on that they had detained the wrong person. In March, Mr. El-Masri’s passport was examined by CIA officials in Langley, Virginia and determined to be valid. Defendant Tenet was notified in April that the CIA had detained the wrong person. By early May, Condoleezza Rice, then the President’s National Security Advisor, had been informed that the CIA was detaining an innocent German citizen. Nonetheless, Mr. El-Masri was detained in the “Salt Pit” until May 28.

44. On the thirty-seventh day of his hunger strike, hooded men entered Mr. El-Masri’s cell, dragged him from his bed, and bound his hands and feet. They dragged him into the interrogation room, sat him on a chair, and tied him to it. A feeding tube was then forced through his nose to his stomach and a liquid was poured through it. After this procedure, Mr. El-Masri was given some canned food as well as some books to read. Mr. El-Masri was weighed.

Since the time of his seizure in December of 2003, Mr. El-Masri had lost more than sixty pounds.

45. Following his force-feeding, Mr. El-Masri became extremely ill and suffered very severe pain. A doctor visited Mr. El-Masri's cell in the middle of the night and administered medication, but Mr. El-Masri remained bedridden for several days.

46. Around the beginning of May, the prison director brought Mr. El-Masri to the interrogation room, where he met an American who identified himself as a psychologist, accompanied by a female interpreter with a Syrian accent. The psychologist told Mr. El-Masri that he had traveled from Washington D.C. to check on him and ask him some questions. At the conclusion of the conversation, the man promised that Mr. El-Masri would be released from the facility very soon.

47. Soon thereafter, Mr. El-Masri was visited by a German speaker who identified himself only as "Sam." "Sam" was accompanied by the American prison director and an American translator. Mr. El-Masri asked "Sam" whether he was a representative of the German government, and whether the German government knew that Mr. El-Masri was being held in Afghanistan, but "Sam," after consulting with the Americans, declined to answer. He asked "Sam" whether his wife knew where he was; "Sam" replied that she did not. "Sam" then proceeded to ask Mr. El-Masri many of the same questions he had previously been asked regarding his alleged associations with extremists in Neu Ulm, Germany.

48. "Sam" visited Mr. El-Masri three more times. In late May, Mr. El-Masri received a visit from "Sam," the American prison director, and an American doctor. He was informed that he would be released in eight days. "Sam" warned him that, as a condition of his release, he was

never to mention what had happened to him, because the Americans were determined to keep the affair a secret.

Release from the Salt Pit and Flight to Albania

49. On May 27, the American doctor visited Mr. El-Masri's cell. He instructed Mr. El-Masri not to eat or drink anything, as the next day he would be transported back to Germany, and during the transit back, he would not be permitted to use the bathroom. The next morning, the doctor and the American prison director arrived in his cell. Mr. El-Masri was blindfolded and cuffed, led out of his cell, and driven for about ten minutes. He was then locked in what seemed to be a shipping container until he heard the sound of an aircraft arriving.

50. Mr. El-Masri was released from the shipping container, and his belongings were returned to him. He was told to change back into the clothes he had worn in Macedonia, and was given two new t-shirts. He was then driven to the waiting plane, blindfolded and ear-muffled, and led onto the plane, where he was chained to his seat.

51. The man named "Sam" accompanied Mr. El-Masri on the plane. Mr. El-Masri also heard the muffled voices of two or three Americans. Shortly after take-off, Mr. El-Masri asked "Sam" if he could have the earmuffs removed; "Sam" obliged, after consulting with the Americans. Sam informed Mr. El-Masri that Germany had a new President. He said that the plane would land in a European country other than Germany, because the Americans did not want to leave clear traces of their involvement in Mr. El-Masri's ordeal, but that Mr. El-Masri would eventually continue on to Germany. Mr. El-Masri feared that he would not be returned home, but rather taken to another country and executed.

52. When the plane landed, Mr. El-Masri, still blindfolded, was taken off the plane and placed in the back seat of a vehicle. He was not told where he was. He was driven in the vehicle

up and down mountains, on paved and unpaved roads, for more than three hours. The vehicle came to a halt, and Mr. El-Masri was aware of the men in the car getting out and closing the doors, and then of men climbing into the vehicle. All of the men had Slavic-sounding accents but said very little.

53. The vehicle proceeded to drive for another three hours, again up and down mountains and on paved and unpaved roads. Eventually, the vehicle was brought to a halt. Mr. El-Masri was taken from the car, and his blindfold was removed. His captors gave him his belongings and passport, removed his handcuffs, and directed him to walk down the path without turning back. It was dark, and the road was deserted. Mr. El-Masri believed he would be shot in the back and left to die.

54. Mr. El-Masri rounded a corner and came across three armed men. They immediately asked for his passport. They saw that his German passport had no visa in it, and asked him why he was in Albania without legal permission. Mr. El-Masri replied that he had no idea where he was. He was told that he was near the borders with Macedonia and Serbia. The men led Mr. El-Masri to a small building with an Albanian flag, and he was presented to a superior officer. The officer observed Mr. El-Masri's long hair and long beard and told him he looked like a terrorist. Mr. El-Masri asked to be taken to the German embassy, but the man told him he would be taken to the airport instead.

Return to Germany

55. Mr. El-Masri was driven to the Mother Theresa Airport in Tirana, arriving at about 6:00 a.m. One of the Albanian guards took his passport and 320 Euros from his wallet and went into the airport building. When he returned, he instructed Mr. El-Masri to go through a door, where he was met by a person who guided him through customs and immigration control without

inspection. Only after he boarded the plane and it was airborne did Mr. El-Masri finally believe he was returning to Germany.

56. The plane landed at Frankfurt International Airport at 8:40am. Mr. El-Masri was by then about forty pounds lighter than when he had left Germany, his hair was long and unkempt, and he had not shaved since his arrival in Macedonia. From Frankfurt he traveled to Ulm, and from there to his home outside the city. His house was empty and clearly had been so for some time. He proceeded to the Cultural Center in Neu Ulm and asked after his wife and children. He was told that his family had relocated to Lebanon when he failed to return from his holiday in Macedonia.

57. In June 2004, having been notified by Mr. El-Masri's German lawyer, the Office of the Prosecuting Magistrate in Munich, Germany opened an investigation into Mr. El-Masri's allegations that he had been unlawfully abducted, detained, and interrogated in Macedonia and Afghanistan. German officials easily corroborated Mr. El-Masri's account that he had traveled to Macedonia and had been detained shortly after entering that country. To evaluate Mr. El-Masri's account of his detention in Afghanistan, German authorities conducted scientific tests, including radioactive isotope analysis of Mr. El-Masri's hair. Those tests were consistent with Mr. El-Masri's account that he had spent time in a South Asian country and had been deprived of food for an extended period.

58. Mr. El-Masri was and remains deeply traumatized by his treatment during the course of his seizure and detention. He was repeatedly beaten and threatened; had an object forced into his anus; was denied access to counsel, consular officials, or his family; was roughly interrogated on numerous occasions; and was secretly detained in squalid conditions for nearly half a year

without charge or explanation. He suffered physical injuries, pain and suffering, and severe mental anguish, as well as loss of income and livelihood.

DEFENDANT CORPORATIONS

59. On information and belief, U.S.-based, private aviation corporations, including defendants PETS, KTM and ACL, have played and continue to play an integral role in the implementation of the “extraordinary rendition” policy. Defendants PETS, KTM and ACL have authorized the use of aircraft owned by them to transfer terrorist 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. Defendants PETS, KTM and ACL have also furnished staff and other resources to operate the aircraft, knowing that that purpose of the transport is the transfer of suspects to countries known to practice prolonged arbitrary detention, torture, and other forms of cruel, inhuman, or degrading treatment, particularly on terrorist suspects.

60. On information and belief, defendants PETS and ACL entered into an agreement with defendant Tenet to provide an aircraft and crew to transport Mr. El-Masri to detention and interrogation in Afghanistan.

61. In entering into this unlawful agreement, defendants PETS and ACL knew or reasonably should have known that Mr. El-Masri would be subjected to prolonged arbitrary detention, torture and cruel, inhuman, or degrading treatment in violation of federal and international laws during his transport to Afghanistan and while he was detained and interrogated there.

62. On information and belief, the terms of the agreement included flying the aircraft registered by the FAA as N313P from Palma, Majorca, Spain, to Skopje, Macedonia, where Mr.

El-Masri would be picked up, and from there to Afghanistan, where Mr. El-Masri would be detained and interrogated in the CIA's "Salt Pit" detention facility.

63. On information and belief, on or around November 14, 2004, defendant PETS transferred the Boeing business jet aircraft, then registered with the FAA as N313P, to defendant KTM. The transfer occurred shortly after media reports identified the N313P aircraft's involvement in the extraordinary rendition program. That aircraft is now registered with the FAA as N4476S. On information and belief, PETS continues to exist as a corporate entity but no longer possesses any assets.

64. On information and belief, the transfer of the aircraft to KTM was fraudulent in that it was done in order to avoid detection and potential liability for defendant PETS' unlawful acts. In the alternative, on information and belief, KTM's business is merely a continuation of PETS' transportation business. On information and belief, despite the transfer of the aircraft, there remains a continuity of business operations, management, personnel, and assets between the two corporations. KTM continues in the same business as its predecessor PETS.

CAUSES OF ACTION

First Cause of Action: Violation of Due Process

65. Defendants Tenet and Does 1-10 violated plaintiff's rights under the Due Process Clause of the Fifth Amendment to the Constitution, which prohibits any person acting under color of U.S. law from (a) subjecting or allowing the subjection of any person in U.S. custody or control to conduct that "shocks the conscience," or (b) depriving any person of liberty in the absence of legal process.

66. Defendants' violations of plaintiff's due process rights give rise to a cause of action for damages under the Fifth Amendment pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

67. Defendant Tenet is liable for the violation of plaintiff's due process rights because he had actual and constructive knowledge that his subordinates were violating the constitutional rights of plaintiff, and had actual and constructive knowledge that it was highly likely that these constitutional violations would occur as a result of his actions. Despite this knowledge, defendant Tenet acted with reckless and deliberate indifference to his subordinates' unconstitutional actions. Through his actions and failures to act, defendant Tenet expressly and tacitly authorized his subordinates' unlawful conduct.

68. Defendants Does 1-10 are liable for the violation of plaintiff's due process rights because, pursuant to defendant Tenet's orders, they directly participated in subjecting plaintiff to conduct that shocks the conscience, and directly participated in the deprivation of plaintiff's liberty in the absence of legal process.

69. Defendants acted under color of official authority in violating plaintiff's due process rights.

70. Defendants' actions were a proximate cause of the violation of plaintiff's substantive due process rights. Plaintiff was a foreseeable victim of these acts.

71. Defendants' violation of plaintiff's due process rights caused plaintiff to suffer damages, including mental and emotional pain and suffering, in an amount to be determined at trial.

72. Defendants' violation of plaintiff's due process rights was deliberate, willful, intentional, wanton, malicious, and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

Second Cause of Action: Prolonged Arbitrary Detention

73. Defendants subjected plaintiff to prolonged arbitrary detention by detaining plaintiff without a warrant, probable cause, articulable suspicion, or notice of charges, and by failing to accord plaintiff due process or any legal, consular, or familial protection and support.

Defendants' prolonged arbitrary detention of plaintiff violates customary international law. The prohibition against prolonged arbitrary detention is a "specific, universal, and obligatory" norm of customary international law cognizable under the Alien Tort Statute.

74. Defendant Tenet is liable for the prolonged arbitrary detention of plaintiff because he ordered, directed, condoned, or ratified the actions of his agents in detaining plaintiff, and because he promulgated the policy of "extraordinary rendition" which authorizes the use of prolonged arbitrary detention.

75. Defendants Does 1-10 are liable for the prolonged arbitrary detention of plaintiff because, pursuant to defendant Tenet's orders, they directly participated in plaintiff's prolonged arbitrary detention in Macedonia and Afghanistan.

76. Defendant Premier Executive Transport Services, Defendant Keeler and Tate Management, defendant Aero Contractors Limited, and defendants Does 11-20 are liable for the prolonged arbitrary detention of plaintiff because they conspired together with defendant Tenet and other U.S government officials to subject plaintiff to prolonged arbitrary detention. Specifically, each defendant conspired together by entering into an agreement to subject plaintiff

to prolonged arbitrary detention and each defendant participated in or committed a wrongful act in furtherance of said conspiracy which resulted in injuries to plaintiff.

77. Further or in the alternative, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited are liable for the prolonged arbitrary detention of plaintiff because they aided and abetted plaintiff's prolonged arbitrary detention. Specifically, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited knew or reasonably should have known that the aircraft and personnel they were supplying would be used to transport plaintiff to prolonged arbitrary detention in Afghanistan. In addition, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited provided substantial assistance to defendant Tenet and other U.S. government officials in plaintiff's prolonged arbitrary detention by, *inter alia*: (1) supplying aircraft and operating staff to said government officials, and (2) authorizing the use of said aircraft and crew to abduct plaintiff in Macedonia and thereafter to transport him to detention and interrogation in Afghanistan.

78. Defendants Does 11-20 are liable for the prolonged arbitrary detention of plaintiff because they aided and abetted defendant Tenet and other U.S. government officials in the prolonged arbitrary detention of plaintiff. Specifically, defendants Does 11-20 knew or reasonably should have known that the aircraft they were supplying or operating would be used to transport plaintiff to prolonged arbitrary detention in Afghanistan. In addition, defendants Does 11-20 provided substantial assistance to defendant Tenet and other U.S. government officials to enable them to subject plaintiff to prolonged arbitrary detention in Afghanistan by

inter alia (1) operating the aircraft (2) participating in plaintiff's abduction in Macedonia and (3) transporting plaintiff to detention and interrogation in Afghanistan.

79. Defendants acted under color of official authority in subjecting plaintiffs to prolonged arbitrary detention.

80. Defendants' actions were a proximate cause of plaintiff's prolonged arbitrary detention. Plaintiff was a foreseeable victim of these acts.

81. Defendants' prolonged arbitrary detention of plaintiff caused plaintiff to suffer damages, including mental and emotional pain and suffering, in an amount to be determined at trial.

82. Defendants' prolonged arbitrary detention of plaintiff was deliberate, willful, intentional, wanton, malicious, and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

Third Cause of Action: Torture and other Cruel, Inhuman, or Degrading Treatment

83. Defendants subjected plaintiff to torture and other cruel, inhuman or degrading treatment in violation of customary international law. As an intended result of this treatment, plaintiff was placed in great fear for his life and physical safety, and suffered severe physical and psychological pain and suffering. The prohibition against torture and other cruel, inhuman or degrading treatment is a "specific, universal, and obligatory" norm of customary international law cognizable under the Alien Tort Statute.

84. Defendant Tenet is liable for the torture and other cruel, inhuman or degrading treatment of plaintiff because he ordered, directed, condoned, or ratified the actions of his agents in subjecting plaintiff to such treatment, and because he promulgated the policy of "extraordinary rendition" which authorizes such treatment.

85. Defendants Does 1-10 are liable for the torture and other cruel, inhuman or degrading treatment of plaintiff because, pursuant to defendant Tenet's orders, they directly participated in such treatment of plaintiff in Macedonia and Afghanistan.

86. Defendant Premier Executive Transport Services, defendant Keeler and Tate Management, defendant Aero Contractors Limited, and defendants Does 11-20 are liable for the torture and other cruel, inhuman or degrading treatment of plaintiff because they conspired together with defendant Tenet and other U.S. government officials to subject plaintiff to such treatment. Specifically, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, defendant Aero Contractors Limited, and defendants Does 11-20 conspired together by entering into an agreement, the direct consequence of which were the acts of cruel, inhuman or degrading treatment suffered by plaintiff. Each defendant participated in or committed a wrongful act in furtherance of said conspiracy, which resulted in the injuries to plaintiff.

87. Further or in the alternative, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited are liable for the torture and other cruel, inhuman, or degrading treatment of plaintiff because they aided and abetted defendant Tenet and other U.S. government officials in subjecting plaintiff to such treatment. Specifically, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited knew or reasonably should have known that the aircraft and crew which they provided to defendant Tenet and other U.S. government officials would be used to abduct plaintiff in Macedonia and to transport him to detention and interrogation in Afghanistan, where he would be subjected to acts of cruel, inhuman or degrading treatment. Even with this knowledge, defendant Premier Executive

Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited, authorized the use of their aircraft and operating staff to abduct plaintiff in Macedonia and transport him to detention and interrogation in Afghanistan. In addition, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited provided substantial assistance to defendant Tenet and other U.S. government officials in subjecting plaintiff to cruel, inhuman or degrading treatment in Macedonia and Afghanistan. Such assistance included, *inter alia*: (1) supply of an aircraft and operating staff, and (2) authorization for the use of said aircraft and staff to abduct, detain, and interrogate plaintiff in Macedonia and Afghanistan.

88. Defendants Does 11-20 are liable for the torture and other cruel, inhuman, or degrading treatment of plaintiff because they aided and abetted defendant Tenet and other U.S. government officials in subjecting plaintiff to such treatment. Specifically, defendants Does 11-20 knew or reasonably should have known that the aircraft they were supplying or operating would be used to abduct plaintiff in Macedonia and to transport him to detention and interrogation in Afghanistan, where he would be subjected to acts of cruel, inhuman or degrading treatment. In addition, defendants Does 11-20 provided substantial assistance to defendant Tenet and other U.S. government officials to enable them to subject plaintiff to acts of cruel, inhuman or degrading by *inter alia* (1) operating the aircraft (2) participating in plaintiff's abduction in Macedonia and (3) transporting plaintiff to detention and interrogation in Afghanistan.

89. Defendants acted under color of official authority in subjecting plaintiff to torture and other cruel, inhuman or degrading treatment.

90. Defendants' actions were a proximate cause of the torture and other cruel, inhuman or degrading treatment suffered by plaintiff. Plaintiff was a foreseeable victim of these acts.

91. Defendants' torture and other cruel, inhuman or degrading treatment of plaintiff caused plaintiff to suffer damages, including mental and emotional pain and suffering, in an amount to be determined at trial.

92. Defendants' torture and other cruel, inhuman or degrading treatment of plaintiff was deliberate, willful, intentional, wanton, malicious, and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

REQUEST FOR RELIEF

Plaintiff respectfully requests that this Court grant the following relief:

- A. for compensatory damages in an amount to be proven at trial, but in an amount over \$75,000;
- B. for punitive and exemplary damages in an amount to be proven at trial;
- C. for reasonable attorneys' fees and costs of suit; and
- D. for such other relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted,

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Dated: December 6, 2005

* Pro Hac Vice Admission Pending