



THE PERMANENT REPRESENTATIVE
OF THE
UNITED STATES OF AMERICA
TO THE
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C.

April 8, 2016

Mr. Emilio Alvarez Icaza L.
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
Washington, D.C. 20006

**Re: Khaled El-Masri, Petition No. P-419-08
Response to Petition**

Dear Mr. Icaza:

On behalf of the United States Government, we take this opportunity to provide certain observations on the communications forwarded to the United States in the above-referenced matter. Among other things, we wish to draw the Commission's attention to reporting recently made publicly available by the U.S. Senate Select Committee on Intelligence (SSCI).¹

Competence of the Commission

We note that the Petitioner in this matter, Mr. El-Masri, alleges that the United States has "violated" certain specific rights recognized in the American Declaration of the Rights and Duties of Man ("American Declaration"). The United States has undertaken a political commitment to uphold the American Declaration, and strongly supports the indispensable role the Commission plays in promoting the Declaration, not only in the United States but throughout the

¹ The SSCI is a Committee of 15 Senators that was created by the Senate in 1976 to oversee and make continuing studies of the intelligence activities and programs of the United States Government, to submit to the Senate appropriate proposals for legislation and report to the Senate concerning such intelligence activities and programs, and to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

Hemisphere. We acknowledge the great impact this work has had on the laws and practices in many countries and the lives of innumerable individuals.

As the American Declaration is a non-binding instrument, however, it does not create legal rights or impose legal obligations on Member States of the Organization of American States (OAS), and the United States understands Mr. El-Masri's allegations in that context. Further, Article 20 of the Statute of the Commission sets forth the Commission's powers that relate specifically to OAS Member States that, like the United States, are not parties to the legally binding American Convention on Human Rights ("American Convention"), including to pay particular attention to observance of certain enumerated human rights set forth in the American Declaration, to examine communications and make recommendations to the State, and to verify whether in such matters domestic legal remedies have been pursued and exhausted. The United States takes its American Declaration commitments and the Commission's recommendations very seriously, but notes that the Commission lacks competence to issue a binding decision vis-à-vis the United States on matters arising under the American Declaration, and also on matters arising under other international human rights treaties (whether or not the United States is a party) or under customary international law.

Domestic Proceedings

Mr. El-Masri filed suit in the U.S. District Court for the Eastern District of Virginia in December 2005 against the former Director of the U.S. Central Intelligence Agency (CIA), three private companies, and several unnamed defendants, seeking damages for his alleged unlawful abduction, detention, and torture.² The U.S. Government intervened in the suit, filing a motion to dismiss based on the state secrets privilege, which is an evidentiary privilege that may be invoked by the U.S. Government in litigation when it is necessary to protect information whose unauthorized disclosure reasonably could be expected to cause significant harm to the national defense or foreign relations of the United States.³ The District Court held oral arguments on this issue, after which it granted the U.S.

² Complaint in *El Masri v. Tenet et al.*, Dec. 6, 2005 (E.D. Va. 2005) (No 1:05-cv-1417).

³ In 2009, several years after the El-Masri suit was dismissed, then-Attorney General Eric Holder issued a public document setting out the Department's policies and procedures relating to the invocation of the state secrets privilege in litigation. This document can be viewed at <http://www.justice.gov/sites/default/files/opa/legacy/2009/09/23/state-secret-privileges.pdf>.

Government's motion to dismiss on May 12, 2006.⁴

Mr. El-Masri appealed this decision to the U.S. Court of Appeals for the Fourth Circuit, which affirmed the dismissal.⁵ He then appealed the decision to the U.S. Supreme Court, which denied Mr. El-Masri's petition for review.

The SSCI Report

The SSCI conducted a review of the CIA's former detention and interrogation program, culminating in the production of a lengthy report. The SSCI asked President Obama to declassify the report's executive summary and findings and conclusions. After these sections were declassified with appropriate redactions necessary to protect national security, the SSCI released them to the public in December 2014. The declassified executive summary and the findings and conclusions of the SSCI report are now available on the Committee's website at <http://www.intelligence.senate.gov/publications/reports>. The factual findings and conclusions in the SSCI Report are the views of the Committee and do not necessarily reflect the views or positions of the Executive Branch of the U.S. Government.

The declassified summary of the report contains a brief discussion of Mr. El-Masri at pages 128–130, and in footnotes 31, 34, and 2491. For more information about the declassified summary of the SSCI Report, we would refer you to the information the United States provided to the Commission at its thematic hearing on this topic on October 23, 2015.

The United States trusts that this information is useful to the Commission. Please accept renewed assurances of my highest consideration.

Sincerely,



Michael J. Fitzpatrick
Interim Permanent Representative

⁴ Order in *El Masri v. Tenet et al.*, May 12, 2006 (E.D. Va. 2005) (No. 1:05-cv-1417).

⁵ *Khaled El Masri v. Tenet*, 479 F.3d 296 (4th Cir. 2007) (No. 06-1667).