

Date: March 21, 2007

To: Michael Easley, Governor  
Roy Cooper, Attorney General  
Robin Pendergraft, Director, State Bureau of Investigation  
George E.B. Holding, United States Attorney, Eastern District of North Carolina  
Johnston County Board of Commissioners  
Global TransPark Authority Board members  
Members of the North Carolina General Assembly

From: Non-profit civil and human rights, professional, community and faith-based organizations

Re: Involvement of Aero Contractors in abduction and torture

As representatives of non-profit civil and human rights, professional, community and faith-based organizations in North Carolina, we call on our state and federal leaders, Johnston County Board of Commissioners, and Board members of Global Transpark Authority to investigate the actions of Aero Contractors, a contract air carrier that has been identified as a participant in the CIA-sponsored "extraordinary rendition" program and which uses the facilities of the state-funded Global TransPark as well as the Johnston County airport in Smithfield.

Working for the CIA, Aero has flown persons kidnapped in various countries to secret locations in other countries for the purpose of detention and extracting information. There, the abductees were held incommunicado and tortured.<sup>1</sup> In September 2006, President Bush acknowledged that the CIA has operated a secret prison system outside the United States territory<sup>2</sup> and outside the mandates of U.S. and international law. Victims of "extraordinary rendition" have also been transported to detention and interrogation facilities in Jordan, Iraq, Egypt, Afghanistan, and elsewhere.<sup>3</sup>

The best-known "extraordinary rendition" targeted Khaled El-Masri, a German citizen of Lebanese descent. Mr. El-Masri's ordeal began on December 31, 2003, when he boarded a bus in Ulm, Germany for a holiday in Skopje, Macedonia. When the bus crossed the border, Macedonian officials confiscated his passport. He was detained in a hotel in Macedonia and interrogated for 23 days. On January 23, 2004, a group of CIA agents beat, drugged, and bounded Mr. El-Masri and transported him to a secret CIA facility in Afghanistan, on a flight operated by Aero Contractors.<sup>4</sup> The CIA continued to hold Mr. El-Masri incommunicado in inhumane conditions, even though his innocence became apparent within two months of his abduction. Five months after his abduction, he was taken to Albania and released on a hill in the

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<sup>1</sup> "Fact Sheet: Extraordinary Rendition." December 6, 2005. Available at: <http://www.aclu.org/safefree/extraordinaryrendition/22203res20051206.html>

<sup>2</sup> Sheryl Gay Stolberg, "President Moves 14 Held in Secret to Guantanamo." *The New York Times*. September 7, 2006.

<sup>3</sup> "Fact Sheet: Extraordinary Rendition." December 6, 2005. Available at: <http://www.aclu.org/safefree/extraordinaryrendition/22203res20051206.html>

<sup>4</sup> Scott Shane, Stephen Grey, Margot Williams, and Ford Fessenden, "CIA Expanding Terror Battle Under Guise of Charter Flights." *The New York Times*. May 31, 2005.

middle of the night,<sup>5</sup> without ever having been charged. To this day, he has received no explanation or apology for the egregious treatment he suffered.

The American Civil Liberties Union has brought a lawsuit against Aero Contractors and other U.S.-based aviation corporations as well as former CIA Director George Tenet and other CIA officials on behalf of Mr. El-Masri. According to the legal complaint in *El Masri v. Tenet*, Aero Contractors and its employees conspired with Tenet and other U.S. government officials to kidnap, detain, and torture El-Masri and aided and abetted the violation of his rights under the Constitution and international norms, including the right to be free from prolonged arbitrary detention, torture, and other cruel, inhuman, or degrading treatment. The operators of the flight transporting Mr. El-Masri from Macedonia to Afghanistan knew or should have known that the individual they were transporting “will be subjected to prolonged arbitrary detention, torture, and other forms of cruel, inhuman, or degrading treatment.”<sup>6</sup>

In May 2006, a Virginia district judge dismissed Mr. El-Masri’s lawsuit, agreeing with the defendants that “state secrets” were at issue. An appeal was then filed with the Fourth Circuit Court of Appeals in Richmond on Mr. El-Masri’s behalf, arguing that based on the official acknowledgment of the “extraordinary rendition” program and the information already available on his case, allowing Mr. El-Masri to get his day in court will not impinge upon national security.<sup>7</sup> The appeal was heard on November 28, 2006. On March 2, 2007, the Fourth Circuit Court of Appeals upheld the dismissal of Mr. El-Masri’s lawsuit. An appeal to the United States Supreme Court on Mr. El Masri’s behalf is being considered.<sup>8</sup>

In Europe, the El-Masri case has caused an uproar and most recently led to German indictments of CIA operatives alleged to have taken part in Mr. El-Masri’s abduction and transport to secret detention in Afghanistan. Even though only the aliases of the suspects named in the arrest warrants have as yet been revealed, the list of the indicted is believed to include the three pilots who have been traced to North Carolina by German media.<sup>9</sup>

It appears that in flying individuals to overseas torture sites, Aero Contractors and its employees have, in addition to having engaged in a conspiracy to violate Mr. El Masri’s rights under the Constitution and international norms, also violated North Carolina laws. The conduct of Aero and its employees may in fact amount to a criminal conspiracy within our state, placing a duty upon our state officials to investigate such acts (see attached letter).

We also believe that our state, federal, and county leaders have not only a legal but a moral responsibility to act against torture. In addition to violating international norms, including the Convention Against Torture which was ratified by the United States in 1994, the United States Constitution, and state laws, torture is morally repugnant. If Aero Contractors were

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<sup>5</sup> “Statement: Khaled El-Masri.” *Available at*: <http://www.aclu.org/safefree/extraordinaryrendition/22201res20051206.html>.

<sup>6</sup> Complaint, *El-Masri v. Tenet, et. al.* (E.D. Va., filed Dec. 6, 2005).

<sup>7</sup> Appellate Brief, *El-Masri v. Tenet, et. al.* (4th Cir., filed July 24, 2006).

<sup>8</sup> “ACLU Considers Supreme Court Appeal in Case of Khaled El-Masri; Urges Congress to End Human Rights Abuses.” *Available at*: <http://www.aclu.org/safefree/extraordinaryrendition/28772prs20070302.html>

<sup>9</sup> Mark Lander. “German Court Challenges C.I.A. Over Abduction.” *The New York Times*. February 1, 2007.

suspected of trafficking in drugs or child pornography, we are certain that our leaders would take swift action to investigate and remove such a company from public facilities.

If Aero Contractors is found to have taken part in a conspiracy to kidnap and torture, the company's lease with the state-funded Global TransPark in Kinston should be terminated. Aero should also be removed from the Johnston County airport in Smithfield. Criminal charges should be brought against those having taken part in the conspiracy to kidnap and torture.

We ask that you examine the Aero situation immediately and let us know your findings. It is unconscionable that North Carolina taxpayers are asked to continue to host a company that operates torture flights.

Sincerely,

ACRe (Action for Community in Raleigh)  
American Civil Liberties Union of North Carolina  
American Civil Liberties Union of Wake County  
American Civil Liberties Union of Western North Carolina  
Amnesty International, Group 213 - Raleigh, NC  
Ar-Razzaq Islamic Center  
Carolina Interfaith Task Force on Central America  
Chapel Hill Friends Meeting  
Charles M. Jones Peace and Justice Committee of the Community Church of Chapel Hill  
Unitarian Universalist  
Charlotte chapter of Amnesty International  
Charlotte-Mecklenburg CODEPINK  
Coastal Carolina Peace Group  
Coalition for Peace with Justice  
CODEPINK North Carolina  
Durham Bill of Rights Defense Committee  
Durham Friends Meeting  
Elders for Peace, Chapel Hill  
FaithAction International House  
Fr. Charlie Mulholland Catholic Worker House (Garner)  
Gandhi Team of the Jubilee! Community  
Greensboro Chapter of the Network of Spiritual Progressives  
Human Rights Coalition of North Carolina  
Israel Committee Against House Demolitions - USA (Durham)  
Jews for a Just Peace-North Carolina  
Lloyd Presbyterian Church of Winston-Salem  
Mothers Against War  
Muslim American Society-Charlotte  
Muslim American Society-Raleigh  
Muslim American Society Freedom Foundation, North Carolina  
Muslim-American Public Affairs Council  
Muslims for a Better North Carolina

North Carolina Council of Churches  
North Carolina National Lawyers Guild  
North Carolina Peace Action  
North Carolina Stop Torture Now  
North Carolina Sudan Divestment Campaign  
Orange County Bill of Rights Defense Committee  
Orange County Peace Coalition  
Pax Christi-Central North Carolina  
Peace and Earth Committee of the Asheville Friends Meeting  
Peace and Justice/Community Cross of Nails Mission Group of Pullen Memorial Church  
Peace and Reconciliation Mission Group of Watts Street Baptist Church (Durham)  
Piedmont Center for Peace and Justice  
Progressive Democrats of America for the North Carolina 4th Congressional District  
Progressive Democrats of Buncombe County  
Progressive Democrats of Mecklenburg County  
Progressive Democrats of North Carolina  
Raleigh Food Not Bombs  
Raleigh Friends Meeting  
Silk Hope Catholic Worker, Chatham County  
Social Outreach Committee of the Unitarian Coastal Fellowship, Morehead City  
Social Action Committee of the Unitarian-Universalist Fellowship of Raleigh  
Social Action Committee of the Unitarian-Universalist Peace Fellowship of Raleigh  
Social Concerns Committee of New Garden Friends Meeting  
Social Justice Ministry, Community United Church of Christ  
Social Justice Outreach Commission of the Church of Reconciliation, Chapel Hill  
Students United for a Responsible Global Environment (SURGE)  
The Common Sense Foundation  
The Franciscan Friars of Immaculate Conception Catholic Church, Durham  
Traction  
Triangle Community Works  
Triangle CODEPINK  
Triangle Tikkun  
Unitarian Universalist Church of Asheville Human Rights Team  
Veterans For Peace, Chapter 99  
Wake Lutheran Peace Fellowship (LPF)  
Western North Carolina Grandmothers for Peace  
Western North Carolina Peace Coalition  
Western North Carolina Physicians for Social Responsibility  
Western North Carolina School of the Americas Watch  
Wilkes County Friends Meeting (Quaker)  
Wilmington Peace Meetup  
Witness for Peace SE  
Women Against Violence  
Women's International League for Peace and Freedom, Triangle Branch

June 6, 2006

Mr. Josh McIntyre  
P.O. Box 50224  
Raleigh, N. C 27650

RE: Potential violations of criminal laws of North Carolina by those participating in “extraordinary rendition”

Dear Mr. McIntyre:

You have requested a legal opinion on behalf of yourself and other members of STOP TORTURE NOW with respect to potential criminal conduct by persons within North Carolina who may be participating in the “extraordinary rendition” of Mr. El Masri and others to Eastern European countries or other destinations where the person is tortured.

Since the locus of the actual harm may be outside of the State of North Carolina, the key question is whether or not the State of North Carolina has jurisdiction over the conduct of a person, who within the borders of the State, commits an act that furthers the conspiracy to kidnap, assault, imprison and harm the kidnapped person.

The courts of North Carolina have made it clear that a person:

1. who enters into an agreement with at least one other person, *State v. Lyons*, 102 N.C. App. 174, 401 S.E.2d 776 (1991),
2. to commit an unlawful act, *State v. Wilson*, 160 N.C. App. 342, 416 S.E.2d 603 (1992),
3. with the intent at the time by the defendant and at least one of the others that the agreement be carried out, *State v. Hudson*, 275 N.C. 651 (1969),

is guilty of a conspiracy.

A conspiracy is complete once the agreement is made. It is not necessary that the actual crime be committed. There is no need for an overt act. *State v. Morgan*, 329 N.C. App. 654 (1991). Even if the conspiracy was entered into outside of the borders of the State of North Carolina, a person may be charged with this offense if any co-conspirators commence an overt act in furtherance of the conspiracy. *State v. Goldberg*, 261 N.C. 181 (1964)

Thus if a person who is part of the agreement flies a plane or orders another to fly a plane within the jurisdiction of the State of North Carolina, then such person may be guilty of a conspiracy to commit a felony or a misdemeanor.

The unlawful crimes are numerous. First-degree kidnapping (GS 14-39), felonious restraint (14- 43.3), and false imprisonment (common law crime) are a few of the substantive offenses. In addition, there are a myriad of assault violations.

Pursuant to North Carolina General Statute 114 - 15.1, the person in charge of Global Trans Park must report possible criminal violations to the State Bureau of Investigation. There are reasonable allegations about a conspiracy concerning the kidnapping, false imprisonment and assaults pursuant to “extraordinary rendition” partly being planned and performed within the borders of North Carolina.

If you have any questions, please call.

Sincerely,

Steven R. Edelstein  
State Bar # 8614