

## Bush faces court ruling over CIA prisons

By Patti Waldmeir and Demetri Sevastopulo in Washington

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The administration of President George W. Bush could face a further challenge to its anti-terrorism policies from the Supreme Court, which is expected to say on Tuesday whether it will take up a case involving US secret prisons overseas.

The court met on Friday to discuss whether to hear *El-Masri v US*, a case of mistaken identity involving a German citizen who claims he was held for months and tortured at a secret prison in Afghanistan, even after US intelligence officials realised they had the wrong man.

The court's decision will come at a time when the administration is facing renewed criticism over its interrogation policies, in the wake of revelations last week that the department of justice authorised controversial interrogation techniques in 2005. In 2004 the department had denounced torture as "abhorrent".

Civil liberties groups are urging the justices to hear the Masri case, which was dismissed by a federal appeals court on the grounds that it would require disclosure of state secrets.

Mr Masri claims he was detained while on holiday in Macedonia, because his name was similar to that of a wanted al-Qaeda terrorist. He says he was turned over to CIA agents who flew him to a secret prison in Kabul where he was held for five months. He claims to have been drugged, beaten and tortured – and fitted with a nappy by his captors – before being released in Albania.

The Council of Europe, which conducted an investigation into Mr Masri's allegations, has filed a brief in the case. Senator Dick Marty, chairman of the council's legal affairs and human rights committee, argues in the brief that "the US government has hidden behind the state secrets doctrine in order to escape judicial accountability for its actions" in the "war on terror" and that it should not be allowed to do so in the Masri case.

The issue in the case is whether the government can avoid answering Mr Masri's allegations, or whether it must respond to them – even if the evidence is kept out of open court. "How can it be that the whole world can talk about this case and the only place it can't be talked about is in a federal courtroom? It's outrageous," says Steven Shapiro, legal director of the American Civil Liberties Union (ACLU).

The ACLU is also bringing another case challenging the government's right to use its state secrets privilege to stay out of court. *ACLU v NSA*, involves the administration's secret surveillance programme. The government faces litigation around the country on this issue and has sought to avoid defending itself in court on the grounds that national security would be jeopardised. The justices will decide whether to hear the ACLU case later this year.

They have already agreed to consider whether detainees at Guantánamo Bay in Cuba have the right to challenge their imprisonment in federal court. The US Congress stripped them of that right with the Military Commissions Act of 2006. The country's top court must decide whether that law violates the constitution.

If the court agrees to hear both the renditions case and the surveillance case, it could pose a challenge to the powers employed by the administration to wage the "war on terror".

The White House has already been rebuffed by the conservative court in several rulings on its powers in the terror war, including the 2006 ruling in *Hamdan v Rumsfeld*, which struck down as unlawful the military tribunal system set up for Guantánamo prisoners.

■ In Baghdad, Iraq's government raised the death toll from a shooting involving security contractor Blackwater to 17, from 11 previously. A spokesman accused the US firm of "deliberate killing" and said its guards fired without provocation.