

# AMNESTY INTERNATIONAL

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### **Five years Now! - No independent hearing; no family contact! Is This The American Way?**

By Khalid Al-Odah

Consider this. Over the course of the past five years, America, the most powerful country on earth, overthrew Saddam Hussein, a ruthless dictator. And after Saddam's fall from power in 2003, US forces captured him, and he was tried, convicted and executed.

In those same five years, Pope John Paul II, Ronald Reagan and Yasser Arafat have died. Kuwait's beloved ruler, Sheik Jaber Alsabab has passed away and we have a new ruler, a new crown prince, a new prime minister and a new parliament.

So much has happened in the past five years, and yet for my son Fawzi -- detained in Guantánamo Bay since January 11, 2002 -- time has stood still. Fawzi has spent his days in a 6.8ft x 8 ft cell, often in solitary confinement and denied all contact with his family. Even death row inmates in U.S. prisons are treated better than this. Fawzi's treatment has irreparably scarred him and our family. And for what?

When my family learned of Fawzi's detention in early 2002, we were optimistic that, within a matter of months, at most, he would be tried, and his innocence would be established. After all, Americans surely believe in justice, in speedy trials, in avoidance of cruel and unusual punishment, that men are innocent until proven guilty, and that no one is above the law. In fact, all of this is written in the U.S. Constitution and established in the American legal system.

However, a quick, fair trial is not what happened. Quite the contrary. The U.S. government did not give any hearing for years. Then, they provided hearings which were a farce because hearing officers were not independent of the jailor. No known democracy has ever acted this way. Why is America doing this?

Believing in the American way, my family and I took our grievances to the U.S. courts. The Bush administration used all its might to block us. Yet, after working with the American legal system for over two years, our diminished hope was renewed when the U.S. Supreme Court ruled in *Rasul v. Bush* that the U.S. court system had the power to determine whether foreign nationals were rightfully imprisoned.

With that court decision, our faith in the American way appeared to have been rewarded. But once again, the Bush administration stonewalled its own federal courts. Instead of a hearing before an independent judge, the U.S. government established military tribunals whose hearing officers report to the administration. No independence; no due process; no justice.

In June 2006, at the same time Saddam Hussein was facing trial in Iraq, the U.S. Supreme Court again ruled against the administration, upholding the challenge of a Guantánamo prisoner against the military commission trials established by President Bush. However, three and a half months later, the U.S. Congress continued to frustrate our access to an independent tribunal by enacting the Military Commissions Act. This act prevents my son from challenging his detention in a habeas corpus petition – a basic right of all prisoners – and reverts to the use of a tribunal for trials that is not independent, is not speedy, does not afford our son a right to counsel of his choosing, does not guarantee him access to evidence used against him, does not exclude evidence that results from torture, and does not give any time frame for release. Thus, this unprecedented American indefinite detention without any family contact continues – now about to achieve a five-year milestone.

As a father, I am devastated by the American system being used to prevent my son from receiving a fair, speedy trial and from any contact with his family. I understand and accept that prisons are not built for comfort. But, our son and the other prisoners in Guantánamo have been punished beyond those who have been convicted of crimes. By being in a legal limbo with absolute uncertainty surrounding their fates and the complete isolation from loved ones. This cannot possibly be the American way, for it is the epitome of cruel and unusual punishment.

Our son is an honourable, charitable man who travelled to the Pakistan/Afghanistan border region in 2001 to do aid work, to help the poor, and to teach. After the attacks of September 11, 2001, our son tried to flee the region and return home to our family in Kuwait. En route, he was captured by Pakistani bounty hunters who immediately turned him over to U.S. forces. Our son is a victim of circumstances, not a threat to America. I am confident that if Fawzi were to be charged and tried by an independent tribunal, he would be acquitted and released.

If the Bush administration believes my son is dangerous, among what U.S. officials have called the “worst of the worst,” what does the president of the most powerful nation on earth fear from sending him to trial in this country’s legal system? What does the president fear from our son coming before an independent U.S. court of law that is good enough to try murderers, rapists, bank robbers, gangsters, and Oklahoma City bomber Timothy McVeigh?

My great faith in American values and the American judicial system remains. But, five years of disappointment have left me with little faith in the Bush administration’s willingness to uphold these American values.

On this fifth anniversary of Guantánamo Bay, I hope and pray that justice will come for the men in Guantánamo before we have the chance to mark the sixth anniversary. I thank Amnesty International and others who are helping me to fight on behalf of the men who cannot fight for themselves.

May God continue to bless America, and may the young men imprisoned in Guantánamo be tried or set free.

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