

PUBLIC

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UA 234/03 Incommunicado detention/detention without charge/legal concern

USA Ali-Saleh Kahlah al-Marri (m), aged 37, Qatari national

Ali-Saleh Kahlah al-Marri is the third person to be designated an "enemy combatant" by President Bush and placed in indefinite incommunicado detention in the USA, without charge or trial or access to his family or attorney.

His detention marks a significant extension of the US government's authority to detain individuals as "enemy combatants" as he is the first person to be removed from the judicial system while facing trial on criminal charges. His case could be an important test in establishing how far the US government can go in creating a "parallel" detention system on the US mainland, answerable only to the President.

Ali-Saleh Kahlah al-Marri reportedly entered the USA legally with his wife and five children on 10 September 2001 to pursue post-graduate studies. He was arrested in December 2001 and charged with fraud and making false statements to the FBI. He was due to stand trial on these charges in a federal court in Peoria, Illinois on 21 July 2003. However, on 23 June 2003, the prosecution told the court it was dropping the charges on the grounds that President Bush had issued an order for him to be detained under military custody as an "enemy combatant". The presidential order stated that Ali-Saleh Kahlah al-Marri was closely associated with *al-Qa'ida* and presented "a continuing, present, and grave danger to the national security of the United States". On the same day, al-Marri was removed from the jurisdiction of the Justice Department and transferred to a military detention centre near Charleston, South Carolina, where he has had no contact with his attorneys or family. He now faces indefinite detention without charge or trial.

On 28 July, a federal district judge in Peoria, Illinois, where al-Marri was due to stand trial, denied al-Marri's petition for *habeas corpus*, challenging the legal basis of his detention. The judge ruled that he had no jurisdiction over the case as al-Marri was now in South Carolina. However, the judge criticized as "unseemly" the haste with which al-Marri was transferred out of the criminal system, stating that "Normally the race is to the courthouse. Here, the race was from the courthouse".

International human rights standards provide that anyone detained as a criminal suspect should have access to legal counsel and be tried in court without delay. These rights are a fundamental protection against arbitrary detention, which is prohibited under international law. Amnesty International is gravely concerned by the government's circumvention of the criminal justice system in this case, which it believes has seriously undermined the rule of law and which could have an impact on other similar cases.

BACKGROUND INFORMATION

Ali-Saleh Kahlah al-Marri is the third person to be detained in the USA as an "enemy combatant". The others, both US citizens, are Jose Padilla, arrested in the USA in May 2002 (see UA 166/03, AMR 51/084/2003, 11 June 2003), and Yaser Esam Hamdi, arrested in Afghanistan in late 2001 and transferred to the USA in April 2002. Both men remain in incommunicado military custody and their detention has been condemned as "arbitrary" by the United Nations (UN) Working Group Against Arbitrary Detention.

The practice of detaining people incommunicado has been condemned by human rights bodies, including the UN Special Rapporteur on Torture, as a human rights violation which can lead to other violations such as torture or ill-treatment or interrogation without due process safeguards. Access to a lawyer is an important safeguard to ensure that detainees' rights are protected, not only with regard to criminal or other proceedings, but also with regard to conditions of detention and a detainee's physical and mental health. Prolonged

incommunicado detention or solitary confinement can in itself be a form of cruel, inhuman or degrading treatment.

RECOMMENDED ACTIONS: Please send appeals to arrive as quickly as possible in English or your own language:

- expressing concern that Ali-Saleh Kahlah al-Marri is being held without charge or trial in incommunicado detention;
- stating that his removal from the criminal justice system undermines the rule of law;
- recognizing the right of the United States Government to take action to protect its national security but noting that any such measure must be in accordance with international law and standards;
- noting that Ali-Saleh Kahlah al-Marri had been charged and was facing trial before the US criminal courts and expressing concern that the judicial process was not allowed to run its course;
- urging that Ali-Saleh Kahlah al-Marri be granted immediate access to his attorney and other due process protections under US and international law, in addition to being granted access to his family;
- urging that that all those detained in US custody be afforded basic rights under international law, including access to attorneys and their families, that everyone has meaningful access to the courts and right to assistance of counsel, that everyone suspected of a criminal offence be afforded due process norms and are charged with recognizable offences and tried without undue delay or released;
- pointing out that prolonged incommunicado detention, as well as violating rights to due process and to protection from arbitrary detention, may in itself constitute cruel, inhuman or degrading treatment.

APPEALS TO:

President George W Bush
The White House,
Office of the President, 1600 Pennsylvania Avenue
Washington DC 20500, USA

Telegram: President Bush, Washington DC, USA

Fax: + 1 202 456 2461

Salutation: Dear Mr. President

The Honorable Donald Rumsfeld
Secretary of Defense,
Office of the Secretary of Defense,
The Pentagon, Washington DC 20301, USA

Fax: + 1 703 697 8339

Salutation: Dear Secretary of Defense

The Honorable Colin Powell
Secretary of State
Department of State, 2201 C Street, NW,
Washington DC 20520, USA

Fax: + 1 202 261 8577

Salutation: Dear Secretary of State

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 17 September 2003.