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USA: Government attempts to dismiss appeals of Ali-Saleh Kahlah al-Marri, held in conditions of extreme isolation for over four and a half years

Amnesty International is deeply concerned that the US government is seeking to have Ali-Saleh Kahlah al-Marri's case dismissed from the appeals courts.

Ali Saleh Kahlah al-Marri, a Qatari national and US immigrant, has been held in US military custody without charge or trial since June 2003, under an executive order signed by President Bush designating him an "enemy combatant." Initially arrested in December 2001 and charged with fraud and making false statements to the FBI, he remains in conditions of extreme isolation in a military prison in South Carolina. He had reportedly entered the USA legally with his wife and five children on 10 September 2001, to pursue post-graduate studies.

A petition for habeas corpus challenging the legality of Ali al-Marri's detention is currently pending before the US federal courts. So far, the lower courts have ruled that the President has authority to detain him as an "enemy combatant" provided al-Marri has some opportunity to challenge the factual basis for such a designation. In August 2006, a US district court dismissed Ali al-Marri's petition for habeas corpus on the ground that he had failed to rebut the largely hearsay-based allegations contained in US government declarations. An appeal against this decision is currently pending before the US Court of Appeals for the Fourth Circuit.

However, in a brief filed before the appeals court on 13 November 2006, the government is seeking to have Ali al-Marri's case dismissed on the ground that the federal courts no longer have jurisdiction. The government based its motion on the Military Commissions Act (MCA), signed into law by President Bush on 17 October 2006 which, among other things, removes federal court jurisdiction over habeas corpus or any other actions filed by or on behalf of alien "enemy combatants" anywhere in US custody (except as provided under the Detainee Treatment Act, see below). The MCA applies retroactively to pending cases.

If the government's motion is successful, this will void not only Ali al-Marri's present challenge to the legality of his detention but also any court review of his conditions of confinement. He will thus be effectively removed from the protection of the US courts as regards both his detention and his treatment in custody.

This will be unprecedented as non-citizens arrested in the USA generally have the right to contest their detention or treatment in the US courts.

Combatant Status Review Tribunal

The government has told the court that, if the case is removed from federal court jurisdiction, they will place al-Marri before a Combatant Status Review Tribunal (CSRT), an administrative body set up in July 2004 to review the detentions of detainees held in Guantánamo Bay. If this happens, al-Marri would have the right of appeal only against a final decision by the CSRT under the exclusive jurisdiction of the District of Columbia (DC) Circuit Court of Appeals. This limitation on the right of appeal was initially introduced under the Detainee Treatment Act of 2005 (1), and is far narrower than the scope of court review in al-Marri's case at present.

Furthermore, as AI has repeatedly stated in its various reports, the CSRTs are a wholly inadequate procedure which fall far short of standards for judicial review of the legality of a detention required under international standards. Detainees appearing before them have no access to legal counsel or to secret evidence and there is no rule excluding evidence extracted under torture or other ill-treatment.

It remains to be seen whether the US courts will uphold the constitutionality of the relevant provisions of the MCA or the interpretation by the US government that they apply equally to non-citizens in the USA as to "enemy combatants" held outside the USA. A ruling is expected by the Court of Appeals in al-Marri's case before the end of the year, after which the case could go all the way to the US Supreme Court.

Amnesty International is campaigning for the repeal of the MCA on a number of grounds, including the habeas-stripping provisions which it considers to be in breach of international law and standards.

In its report on the USA issued on 19 May 2006, the United Nations Committee against Torture stated that detaining people indefinitely without charge constitutes per se a violation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Al-Marri's conditions of confinement

Al-Marri remains in conditions of severe isolation, with no contact with anyone from the outside world other than his attorneys and occasional visits from representatives of the International Committee of the Red Cross. For more than three years, he has not been allowed visits or even telephone communication with his family. Letters to and from his family are heavily censored and delayed.

The prison authorities have also periodically subjected him to further harsh treatment, such as denial of books and, earlier this year, removal of a special mattress to alleviate back pain. While he currently has access to some library items and the mattress has been returned, his treatment remains entirely at the whim of the detaining authorities, and further deprivations could be imposed at any time. His lawyers maintain in court documents that his immediate environment, from adjusting the lights to turning the water supply on and off in his cell have been "deliberately manipulated to degrade him" and that no rules or regulations govern his treatment in custody.

Prolonged isolation in itself can cause severe physical and psychological damage, and international standards increasingly favour the elimination of solitary confinement. A complaint filed in the US federal courts in August 2005 described how al-Marri's physical and mental state had deteriorated due to his conditions of confinement. His symptoms included "sharp and debilitating tingling pains in his leg". "vision problems, including seeing flickering lights and white spots ... constant headaches, back pain, dizziness, uncontrollable tremors ... and ringing in his ears".

Amnesty International considers that his prolonged and indefinite isolation constitutes cruel, inhuman or degrading, in violation of international standards.

AI is calling on the US government to release Ali al-Marri, or to charge him with a recognizable criminal offence and bring him to trial without further delay, in accordance with international law and standards. It is also calling on the government to alleviate his conditions of incarceration so that he is not held in isolation and is allowed visits from and communication with his family.

(1) The review process under the DTA applied specifically to the Guantánamo detainees but was extended under the MCA to "enemy combatants" regardless of location. Detainees tried by military commissions may also appeal the final decision of the commission to the DC Circuit Court of Appeals.