

PUBLIC

AI Index: AMR 51/022/2009

18 February 2009

UA 48/09

Legal concern

USA

**Ali Saleh Kahlah al-Marri (m), Qatari national, aged 43**

---

On 23 March, in what could be a litmus test for the future direction of US counter-terrorism detention policy, the US Justice Department is due to file its legal arguments in the Supreme Court in the case of Ali al-Marri, the only person being held on the US mainland as an “enemy combatant”. In addition, President Barack Obama last month ordered his administration to review Ali al-Marri’s detention in order to identify what the government’s lawful options are in his case, including trial or release.

Ali al-Marri, a Qatari national and US resident, was arrested in Illinois in December 2001 and charged for trial in federal court. That trial never happened, because on 23 June 2003 Ali al-Marri was designated as an “enemy combatant” by presidential order, transferred to the custody of the US Department of Defense, and shut away in a military facility in Charleston, South Carolina. He has been there ever since. The transfer of Ali al-Marri from civilian to military custody appears to have been motivated by the Bush administration’s wish to interrogate him outside the protections of the criminal justice system. During his first 16 months in military detention, he was held incommunicado and allegedly subjected to torture or other ill-treatment.

Despite making a number of serious allegations against Ali al-Marri – including accusing him of being an al-Qa’ida agent – the Bush administration failed to bring him to trial in seven years, defending his detention under its theory of a global “war” in which it systematically disregarded human rights and criminal justice protections. Amnesty International has called since 2003 for Ali al-Marri to be transferred back to the civilian justice system and promptly brought to fair trial in federal court, or immediately released.

In a statement issued through his US lawyers, Ali al-Marri recently said “I am not asking to be taken at my word and to be released, although I very much want to go home to my family. All I am asking for is to be treated like every other person in the United States who is accused of a crime, including terrorism, and to be given a fair trial in an American court”.

In July 2008, the US Court of Appeals for the Fourth Circuit ruled on Ali al-Marri’s case (see *Many words, no justice: Federal court divided on Ali al-Marri, mainland ‘enemy combatant’*, August 2008, <http://www.amnesty.org/en/library/info/AMR51/087/2008/en>). By five votes to four, the court held that “if the Government’s allegations about al-Marri are true, Congress has empowered the President to detain him as an enemy combatant”. This referred to the Authorization for Use of Military Force (AUMF), a resolution passed by US Congress in the immediate aftermath of the attacks of 11 September 2001 authorizing the President to “use all necessary and appropriate force” against anyone involved in the attacks “in order to prevent any future acts of international terrorism against the United States”. Amnesty International considers that the AUMF is open to dangerously expansive interpretation, and was exploited by the Bush administration which did not consider it needed congressional approval for its actions anyway. The organization has called on the new administration to clarify that it will not interpret the AUMF as representing any intent on the part of Congress to authorize violations of international human rights or humanitarian law, to extend authority for detention under the law of war to individuals to whom the law of war would not otherwise apply, or as otherwise providing justification for such violations.

The US Supreme Court has agreed to hear Ali al-Marri’s appeal against the Fourth Circuit’s ruling. The government is due to file its brief on 23 March. Oral arguments would likely be heard during the Supreme Court session that begins on 20 April unless the administration takes action that pre-empts that hearing.

On 22 January, President Obama signed three executive orders on detentions and interrogations (see: *The promise of real change. President Obama's executive orders on detentions and interrogations*, 30 January 2009, <http://www.amnesty.org/en/library/info/AMR51/015/2009/en>). One of the orders required his administration to close the Guantánamo detention facility within a year and to conduct a review of all the cases of detainees held there to decide what should happen to them. The President also signed a memorandum on the case of Ali al-Marri. Noting that his case would not be covered by the Guantánamo review, the memorandum said that it is “equally in the interests of the United States that the executive branch undertake a prompt and thorough review of the factual and legal basis for al-Marri’s detention, and identify and thoroughly evaluate alternative dispositions”. He ordered that the review be started immediately.

The memorandum directs the Attorney General to coordinate the review of al-Marri’s case, with the cooperation and participation of the Secretary of Defense, the Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff, as well as any other relevant officials. The review is required to “expeditiously” determine what the options are in relation to Ali al-Marri. As in the Guantánamo review, these include release, transfer, trial or another “lawful” outcome.

That this case implicates fundamental rule of law issues is illustrated by the number of *amicus curiae* (friend of the court) briefs that have been filed in the Supreme Court in support of Ali al-Marri’s appeal against the Fourth Circuit’s ruling. Among those to have filed briefs are former US federal judges, former senior US Justice Department and national security officials, former US diplomats, counter-terrorism experts, historians, experts in the law of war, retired US military officers, and several US civil rights organizations.

For more information on Amnesty International’s Counter Terror with Justice campaign and to take further action visit <http://obama100days.amnesty.org/>.

**RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in your own words:**

- welcoming President Obama’s order to review the case of Ali Saleh Kahlah al-Marri, and expressing the hope that this will herald a prompt end to his unlawful detention;
- recognizing that the US government should take action to protect the public from security risks but noting that any such measure must be in accordance with international law and standards;
- expressing the view that the treatment of Ali al-Marri since he was designated as an “enemy combatant” by presidential order in 2003 has undermined the rule of law and the criminal justice system;
- calling on the new administration to clarify that it will not interpret the AUMF as authorizing violations of US international human rights obligations or creating new grounds for imprisoning individuals in the USA;
- calling for the immediate release of Ali al-Marri unless he is promptly charged and transferred to the ordinary civilian justice system for fair trial in federal court.

**APPEALS TO:**

The Honorable Eric Holder, Attorney General, US Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001, USA

**Fax:** +1 202 307 6777

**Email:** [AskDOJ@usdoj.gov](mailto:AskDOJ@usdoj.gov)

**Salutation:** Dear Attorney General

The Honorable Robert Gates, US Secretary of Defense, 1000 Defense Pentagon, Washington DC 20301, USA

**Fax:** +1 703 571 8951

**Salutation:** Dear Secretary of Defense

Gregory Craig, Counsel to the President, The White House, 1600 Pennsylvania Avenue NW, Washington, DC 20500, USA

**Fax:** +1 202 456 2461

**Salutation:** Dear Mr Craig

**PLEASE SEND APPEALS IMMEDIATELY.** Check with the International Secretariat, or your section office, if sending appeals after 23 March 2009.