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Further Information on UA 234/03 (AMR 51/112/2003, 06 August 2003) and follow-ups (AMR51/124/2005, 11 August 2005; AMR51/127/2006, 02 August 2006) - <u>Incommunicado detention/ detention without charge/legal</u> concern/torture/Ill-treatment/Health concern

USA Ali Saleh Kahlah al-Marri (m)

On 11 June 2007 a three-judge panel of the US Court of Appeals for the Fourth Circuit ruled 2-1 that "military detention of al-Marri must cease" as "the President lacks power to order the military to seize and indefinitely detain" him. In its ruling, the court accepted that the President was entitled to hold an individual as an "enemy combatant", but concluded that it had found "no authority for holding that the evidence offered by the government affords a basis for treating al-Marri as an enemy combatant, or as anything other than a civilian." As someone legally residing in the USA, he was entitled to certain constitutional protections, including the right to habeas corpus and due process.

The judges reversed the August 2006 decision by the District Court to dismiss al-Marri's petition for habeas corpus challenging the legality of his detention, ordering the lower court instead to issue a writ of habeas corpus directing the Secretary of Defense to release al-Marri from military custody within a reasonable period of time, to be set by the District Court. The ruling also stated that the government had the option of transferring al-Marri to civilian jurisdiction to face criminal charges, deportation or other measures such as temporary detention under the provisions of the Patriot Act.

In a statement following the ruling, the Justice Department said it would ask the full Fourth Circuit to rehear the case, which could eventually go up to the Supreme Court.

Ali-Sahleh Kahlah al-Marri, a Qatari national who entered the USA with his wife and five children lawfully on 10 September 2001 to pursue postgraduate studies, 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 solitary confinement, with virtually no contact with the outside world, in a military prison in South Carolina. He was held incommunicado for over a year before his first visit from the International Committee of the Red Cross (ICRC) in August 2004, was not granted access to a lawyer until October 2004, and has not been allowed visits or even telephone communication with his family, with whom written communication is heavily censored and delayed.

The prison authorities have periodically subjected al-Marri to further harsh treatment, such as removing a special mattress intended to alleviate back pain and denying him books, and his mental and physical health have deteriorated due to his prolonged isolation. His lawyers have maintained 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.

The US government had sought to have al-Marri's case dismissed altogether by the federal courts, saying that the Military Commissions Act (MCA), signed into law by President Bush on 17 October 2006, had removed the right of habeas corpus in the case of alien "unlawful enemy combatants".

In its 11 June ruling, the Fourth Circuit panel majority concluded that the MCA did not apply to al-Marri.

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

- urging the authorities to release Ali al-Marri, or transfer him to the jurisdiction of the civilian courts, charge him with a recognisably criminal offence and bring him to trial without further delay, in accordance with international law and standards;
- pointing out that the Fourth Circuit Appeals Court ruled on 11 June that "military detention of al-Marri must cease" as "the President lacks power to order the military to seize and indefinitely detain" him;
- urging the US government not to appeal against this ruling, but to afford Ali al-Mari the guarantees provided him under US and international law:
- expressing concern that Ali al-Marri has now been held in military custody without charge or trial, in conditions of extreme isolation, with lack of direct contact with his family for four years;
- urging them to immediately alleviate his conditions so that he is not held in isolation and is allowed visits from, and telephone communication with his family.

APPEALS TO:

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

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Email: president@whitehouse.gov

Alberto Gonzales, Attorney General US Department of Justice 950 Pennsylvania Avenue, NW Washington DC 20530-0001

USA

Fax: +1 202 307 6777 Email: AskDOJ@usdoj.gov Salutation: Dear Attorney General

The Honorable Robert M Gates 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

and to diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.
