

January 2010

Close Guantanamo!
Demand Justice for Kuwaiti Nationals in Guantanamo!

Summary

Of the four Kuwaitis incarcerated at Guantanamo Bay, Cuba, for more than 7 years, two remain there. One, Khaled Al Mutairi, was returned to Kuwait on October 8, 2009, more than 2 months after a judge ruled there was no basis for his detention. A second, Fouad Al Rabiah, was returned to Kuwait in December 2009. The other two Kuwaitis remain in Guantanamo.

These cases are summarized as follows:

Khaled Al Mutairi, age 34, traveled to Afghanistan in September 2001 with money intended to help finance the construction of a mosque. In late September he tried to return home by crossing into Pakistan, but the border was closed. When he tried again later that year, he was captured by Pakistani guards who turned him over to U.S. forces. Judge Colleen Kollar-Kotelly ruled on July 29, 2009, that he Al Mutairi should be released because the government had not presented sufficiently credible and reliable evidence that he was part of al-Qaida or forces associated with it. One of the government's allegations, for example, was that Al Mutairi had fought with Osama bin Laden in 1991, when he would have been a 16-year-old high school student in Kuwait. The judge quoted the following from the government's own record of its interrogation of Al Mutairi:

ISN 213 [Al Mutairi] was uncooperative. He stated that he wished to be called Osama bin Laden. . .ISN 213 stated that he was an enemy of America because Americans had told him so. Americans had cursed his parents. Prior to the war, he'd had no problem with Americans. But due to the situation at Guantanamo Bay, Cuba, and his detention, America had made him their enemy. . .He stated that with all this legal process being so useless, he might as well be Osama bin Laden, since he was never going to be freed from US custody.

Judge Kollar-Kotelly went on to note that "the Government does not rely on Al Mutairi's 'admission' that he is actually Osama bin Laden to support his detention, and the Court finds that its reliance on his alleged fighting in Afghanistan in 1991 is similarly implausible and unsupported by the record."

More than 2 months after the judge ordered Al Mutairi's release and in the face of the threat of a contempt motion by Al Mutairi's attorneys, the Obama Administration promised to return Al Mutairi to Kuwait by October 10, 2009, and did so on October 8.

Fouad Al Rabiah, age 50, was an aviation engineer for Kuwait Airlines. On several occasions, he had taken leave from his job to work on charitable projects in other countries, including Kosovo and Bangladesh. He traveled to Afghanistan for 10 days in July 2001. He returned in October of that year to complete fact-finding related to Afghan

refugee problems and the lack of medical infrastructure. He tried to return home via Iran, but found the border closed. He then traveled toward Peshawar and was apprehended by villagers outside Jalalabad, who turned him over to US forces.

Judge Kollar-Kotelly ordered the government to release Al Rabiah in a September 17, 2009, decision on his petition for a writ of habeas corpus. She harshly criticized the government for relying on “confessions” by Al Rabiah that were clearly coerced and incredible. The government’s own documents indicated that Al Rabiah’s interrogators did not believe his “confessions,” yet the Obama Administration was now asking the court to accept as evidence the very same “confessions” that the government itself clearly did not believe.

The judge also commented on some of the interrogation techniques that were used on Al Rabiah, noting that certain of these techniques were not authorized to be used on him by the officials whose approval was supposed to be sought, under the Bush Administration’s own protocols. She observed that “the record contains evidence that Al Rabiah’s interrogators became increasingly frustrated because his confessions contained numerous inconsistencies or implausibilities. As a result, Al Rabiah’s interrogators began using abusive techniques that violated the Army Field Manual and the 1949 Geneva Convention Relative to the Treatment of Prisoners of War.” These techniques included the threat of rendition to places where he would either be tortured or never be found. Al Rabiah was also subjected to the “frequent flyer program” (i.e., sleep deprivation and manipulation). Judge Kollar-Kotelly also took notice of the fact that Al Rabiah’s lead interrogator was disciplined for making similar threats against another detainee who was also an alleged eyewitness against Al Rabiah. The Obama Administration decided not to appeal the judge’s decision and returned Fouad Al Rabiah to Kuwait in December 2009.

Fawzi Al Odah, age 32, went to Pakistan in the spring of 2000 to teach. He went on to Afghanistan in August 2001 with money his grandmother had given him for that purpose. His stated intention was to stay for only a couple of weeks. He was among a group of non-Pakistanis detained in Pakistan in late 2001, who were subsequently turned over to US forces, detained in Kandahar, and later flown to Guantanamo. He alleges having been tortured by US forces and was subjected to forced feeding during a hunger strike at Guantanamo. After his capture, Fawzi Al Odah’s father organized the Kuwaiti Family Committee, an organization of relatives of Kuwaitis detained by the US. As a member of the Kuwaiti Air Force, he had flown missions with US servicemen during the Persian Gulf War.

Judge Kollar-Kotelly did not find some of the information Al Odah had provided about his travels to be credible and, on that basis, denied his petition for a writ of habeas corpus on August 24, 2009. The denial of his habeas petition is being appealed.

Fayiz Al Kandari, went to Afghanistan as a student in 2001 during his summer vacation, to deliver humanitarian aid. He claimed that he believed helping others might honor his grandmother, who had recently died, and help restore his mother’s health after a bout with cancer. After being captured by US forces, he wrote in a message to his family that

an American investigator had questioned him and found nothing against him, and he believed he would soon be freed. He wrote in a letter conveyed by the Red Cross that “if the construction of a mosque. . .or the digging of a well is the sin that makes me a detainee, then I willingly accept my detention.”

In justifying Al Kandari’s detention, a military review panel cited \$15,000 he took to Afghanistan and a Casio watch he wore that investigators say is a type often used by terrorists to set off bombs. “If I had known that, I would have thrown the watch away,” Al Kandari said. He explained that the watch is popular because its compass can be used to help Muslims pray in the direction of Mecca and its alarm can be set to remind them to pray five times a day.

A hearing on Al Kandari’s petition for habeas corpus took place in October but the case has been continued until January 22, pending consideration of additional information.

Recommended Action

Please send emails or letters to the officials listed below, making the following points:

- Express support for President Obama’s stated goal of closing Guantanamo and bringing the treatment of detainees into compliance with the law, but note with disappointment that some of the specific actions of the Administration in these cases do not appear to be consistent with those goals, including the reluctance to return the Kuwaiti detainees to their home country.
- Regarding Khaled Al Mutairi, express appreciation that he was returned to Kuwait on October 8, 2009.
- Regarding Fouad Al Rabiah—
 - Express appreciation that he was returned to Kuwait in December.
 - Note that the judge found that Al Rabiah had been subjected to treatment that appears to constitute torture or cruel, inhuman, and degrading treatment, including techniques that were not authorized to be inflicted on him by the officials whose approval was supposed to be sought under the Bush Administration policies then in effect.
 - Note that this case is one of many that illustrate why it is imperative to have an independent commission of inquiry conduct a comprehensive, impartial investigation of US counterterrorism detention and interrogation policies and practices. State that international law requires the US to conduct an investigation and to make restitution to victims of torture like Fouad Al Rabiah. Note that the Obama Administration also owes an explanation to Fouad Al Rabiah, his family, the government of Kuwait, and the American people of why it has argued in court for the right to continue to detain Fouad Al Rabiah, based on coerced “confessions” that Al Rabiah’s interrogators themselves did not find credible – “confessions” that were elicited using tactics that President Obama himself has publicly repudiated as inconsistent with American values.
- Regarding Fawzi Al Odah, respectfully urge that he be returned to Kuwait, despite the fact that Judge Kollar-Kotelly declined to order his release. Note that

the government of Kuwait has repeatedly requested Al Odah's return and has established a rehabilitation program for returning detainees. Emphasize that, unlike some of the detainees who have been repatriated, Fawzi Al Odah has spent more than 7 years in detention without being charged with a crime and that the US apparently has no intention of ever charging him with a crime. Note that the United Nations Committee Against Torture has held that indefinite detention without charges constitutes, per se, a violation of the Convention Against Torture. It is certainly contrary to American values. Note also that Al Odah has alleged being subjected to treatment during his detention that may constitute torture or cruel, inhuman, and degrading treatment, which the US has an obligation to investigate, under domestic and international law.

- Urge that Fayiz Al Kandari be returned to Kuwait for the same reasons – i.e., that he has spent more than 7 years in detention without ever being charged with or convicted of a crime. Check www.amnestyusa.org for updates on his case.

Whom to Contact

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