

PUBLIC

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Further information on UA 201/07 (AMR 51/130/2007, 6 August 2007) – Fear of forcible return/Fear for safety/Fear of torture

USA/ UK Ahmed Belbacha (m), former UK resident of Algerian origin, aged 38

On 10 August, the US Supreme Court refused to intervene in the case of Ahmed Belbacha, an Algerian national in US custody in Guantánamo Bay who is feared to be in imminent danger of forcible return to Algeria, where he would be at risk of secret detention and torture. The Supreme Court denied his appeal for an injunction against his repatriation, without comment.

Ahmed Belbacha, who has been held without charge or trial in Guantánamo since February 2002 after being taken into custody in Pakistan in December 2001, previously lived in the United Kingdom, where he sought asylum on the grounds that in Algeria he had faced persecution from an armed opposition group. Ahmed Belbacha's safety has been further jeopardized by the US government's labelling of him as an "enemy combatant" and the stigma that attaches to Guantánamo detainees, whom the US authorities have collectively and repeatedly labelled "terrorists". Anyone suspected of involvement in terrorist activities, or who is believed to possess information about terrorist activities in Algeria or abroad, faces a real risk of secret detention and torture at the hands of Algerian military intelligence agency the Department for Information and Security (*Département du renseignement et de la sécurité*, DRS). Amnesty International has received dozens of reports of detainees treated in this way, among them people who had returned to Algeria from overseas, either voluntarily or at the hands of foreign governments.

In 2006, the UN Human Rights Committee urged the USA to "take all necessary measures" to ensure that it transferred no-one to another country "if there are substantial reasons for believing that they would be in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment." In its report to the UN Committee Against Torture in 2006, the USA stated that it does not transfer people to countries where it believes it is "more likely than not that they will be tortured", a lesser standard than international law requires. The USA, the report continued, "obtains assurances, as appropriate, from the foreign government to which a detainee is transferred that it will not torture the individual being transferred". Amnesty International opposes reliance on "diplomatic assurances" as a basis for sending anyone to countries where forcible return would expose them to a real risk of torture or other ill-treatment. Such assurances are unreliable and unenforceable. Amnesty International understands that the US authorities have been attempting to obtain assurances from the Algerian authorities about the treatment of returnees, but the organization does not know what assurances, if any, they have obtained. In early July, Algerian Foreign Minister Mourad Medelci expressed strong reservations about the US government's proposed conditions for handing over Algerian detainees held in Guantánamo. In any event, Amnesty International reiterates that, irrespective of any assurances that are obtained from the Algerian authorities, Ahmed Belbacha or any other Algerian nationals held in Guantánamo must not be forcibly returned to their country of origin.

On 7 August, in a change of policy, the UK government announced that it had decided to request the release from Guantánamo and return to the UK of five detainees who "were legally resident here prior to their detention". However, Ahmed Belbacha was not among them. The UK authorities revealed that they had written to the US Secretary of State requesting the release of Shaker Aamer, Jamil el Banna, Omar Deghayes, Binyam Mohamed and Abdennour Sameur, who had been "granted refugee status, indefinite leave or exceptional leave to remain" in the UK prior to being taken into US custody. It appears that the UK government did not include Ahmed Belbacha in its request to the US authorities because it understood that he was not legally resident in the UK prior to his detention. His lawyers believe that he was legally in the UK with leave to remain while final resolution of his asylum application was pending. A judge dismissed his

appeal in 2002 when Ahmed Belbacha failed to appear at the hearing. The reason for his non-appearance was that he was in US custody.

In its announcement on 7 August, the UK government said that previously “the US had made clear that they did not intend to negotiate with third countries regarding non-nationals. We judged that it would also have been counter-productive, at that time, to our wider aim of securing closure of the detention facility”. Because “the situation has now changed”, the UK government changed its policy in relation to the former residents. On 9 August, President Bush said that “part of the delay” in the USA’s failure to close the Guantánamo detention facility is “the reluctance of some nations to take back some of the people being held there. In other words, in order to make it work, we’ve got to have a place for these people to go.”

Amnesty International has no further information on other Algerian nationals at risk of forcible transfer from Guantánamo to Algeria.

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

- calling on the US authorities not to forcibly return to Algeria Ahmed Belbacha or any other Algerian nationals held in Guantánamo;
- expressing concern that Ahmed Belbacha’s safety would be at serious risk if he was returned to Algeria;
- noting that diplomatic assurances are inherently unreliable and unenforceable, and should not be relied upon by the US authorities in such cases.

APPEALS TO:

The Honorable Condoleezza Rice, Secretary of State,
Department of State, 2201 C Street, N.W., Washington DC 20520, USA

Fax: +1 202 261 8577

Salutation: Dear Secretary of State

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

Fax: +1 703 697 8339

Salutation: Dear Secretary of Defense

If possible, please appeal to the UK authorities, in English or your own language, in your own words:

- welcoming the UK government’s change in policy and its request for the release from Guantánamo and return to the UK of five former UK residents, but expressing concern that former resident Ahmed Belbacha was not among those whose release was requested, and noting the urgency that his case has assumed because of his possible imminent forcible return to Algeria, where his safety would be at serious risk;
- seeking clarification as to why the UK authorities have not asked for his return to the UK, noting that he had leave to remain while final resolution of his asylum application was pending which did not occur until after he was in detention;
- seeking reconsideration of this decision, given the threat of forcible return that this detainee is under.

Rt Hon Jacqui Smith MP, Secretary of State for the Home Department
Home Office, 2 Marsham Street, London SW1P 4DF, United Kingdom

Fax: +44 20 7035 4745

Email: homesecretary.submissions@homeoffice.gsi.gov.uk

Salutation: Dear Secretary of State

Rt Hon David Miliband MP, Secretary of State for Foreign and Commonwealth Affairs
Foreign and Commonwealth Office, King Charles Street, London SW1A 2AH, United Kingdom

Fax: +44 20 7008 4463

Email: Sosfa-action@fco.gov.uk

Salutation: Dear Secretary of State

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

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 24 September 2007.