

USA: Who are the Guantánamo detainees?

Case Sheet 6

Turkish/German detainee: Murat Kurnaz

*“Thank God, I am well, but just God that created us knows when I will come back” –
Murat Kurnaz’ last postcard home, in May 2002*

Full Name: Murat Kurnaz

Nationality: Turkish

Age: 22

Family status: Married

Occupation: Apprentice Shipbuilder

Information: Murat Kurnaz was born in Bremen, Germany in 1982. His parents Rabiye and Metin Kurnaz had emigrated from Turkey in the 1970’s.

Murat Kurnaz was schooled in Bremen, was interested in sports, played keyboard and guitar in a band with friends, attended the local Turkish Mosque, and had gained an apprenticeship to be a shipbuilder. His mother describes him as a “helpful, credulous and cordial person, who always treated everyone with respect”. In July 2001 he married his fiancée at a ceremony in Turkey.

After his marriage, Murat Kurnaz became an increasingly devout Muslim. He started attending a Moroccan mosque called Abu Bakr instead of the family mosque, and also became increasingly incensed at what he saw as the persecution of Muslims around the world.

Less than a month after the 11 September 2001 attacks in the United States, Murat Kurnaz suddenly left his parents home to go to Pakistan. His mother, Rabiye Kurnaz, later recalled him saying he wanted to travel there “to see and live the Koran”.

On arrival in Pakistan, Murat Kurnaz went from one Madrassa (Islamic school) to another. He was arrested by Pakistani authorities sometime in late November 2001. Little else is known about his arrest, except that he was transferred to US custody not long afterwards.

Rabiye Kurnaz received a postcard from her son stating that he was in a prison camp in Afghanistan. The next postcard she received was in January 2002, from Guantánamo Naval Base in Cuba. Murat was a designated “enemy combatant” and was at the beginning of his indefinite detention without charge or trial in the US prison camp in Guantánamo, where he has been held virtually incommunicado.

*“We were not able to prove anything” Uwe Picard, State Attorney in Bremen,
on investigating Murat Kurnaz’s alleged links to terrorism*

German investigators have cast doubt on whether Murat Kurnaz was involved in any illegal activity. They have stated that in all likelihood he had never been in Afghanistan, much less that he had become involved in the international conflict there. His German lawyer, Bernhard Docke, has stressed that Murat Kurnaz spoke no Arabic, very little English, and had no weapons or military training. German investigators familiar with Murat Kurnaz’s case have said that there is no evidence that he had any contact at all with Islamist opposition groups while in Pakistan.

“For over two years I have been begging for a sign that my son is alive, that he is being treated justly, that he has not been tortured, that his dignity has been preserved as he sits alone in a cell

in Guantánamo” – Rabiye Kurnaz

After the postcard of January 2002, Murat has corresponded very little with the outside world. The last postcard his mother received was in May 2002. According to released detainees, correspondence is censored and restricted, letters often being withheld unless detainees “co-operate” with US interrogators. Murat Kurnaz’s postcards only briefly mentioned his health, and did not indicate whether he had received the letters his family had been sending him.

Murat Kurnaz’s inability or unwillingness to write home has caused his family and lawyer to become increasingly concerned about his mental and physical condition, especially in light of allegations of torture and ill-treatment made by released detainees, and the cruel, inhuman and degrading conditions of detention experienced by many in the camp itself.

“Everything is surreal. I don’t know my client. I cannot write, visit or contact him. Will it end tomorrow or last a lifetime? This is like defending a phantom.” Bernhard Docke, Murat Kurnaz’s civilian lawyer

Following the US Supreme Court’s decision in June 2004 that the prison camp at Guantánamo falls under the jurisdiction of the US federal courts, the Center for Constitutional Rights in New York filed a *habeas corpus* petition in a US District Court on behalf of Murat Kurnaz in July 2004. The petition seeks to enforce Murat Kurnaz’s right to a judicial determination of whether there is a factual or legal basis for the US government’s position that he is an “enemy combatant”.

Background

The legal limbo which Murat Kurnaz is enduring in Guantánamo is compounded by problems over his citizenship status. Though he was born and brought up in Germany and lived there all his life, he is the son of Turkish “Gastarbeiter” or guest-workers, and therefore not a German citizen.

Joschka Fischer, the German Foreign Minister, wrote to the Kurnaz family saying that there was no possibility of making diplomatic representations on his behalf. US authorities regard the status of detainees at Guantánamo as a bilateral diplomatic matter between them and the government of the detainee.

However, the Turkish government viewed Murat Kurnaz as “German-Turkish”, and only after intense lobbying by Rabiye Kurnaz has the Turkish government come to view him as their responsibility. Despite this recognition, the Turkish government has shown little interest in pressuring the US government over Murat Kurnaz’s case.

In August of this year Thomas Röwekamp, the Senator for Interior Affairs in Bremen, Germany, declared that Murat Kurnaz’s indefinite residence visa had lapsed. This is because Murat Kurnaz had been out of Germany for over six months and had not reapplied. Röwekamp stated that “if [Murat Kurnaz] were to arrive now at a German airport with his passport and ask for permission to enter, he wouldn’t be allowed to enter the country”. In addition, a new immigration law is due to be enacted in January 2005 in Germany which restricts access to Germany to those who are suspected of any involvement in “terrorism”. This means that even if Murat Kurnaz is released from Guantánamo where the US authorities have by their actions labelled him as a “terrorist”, he will be sent to Turkey, possibly never to be allowed back to the country of his birth, where his family reside and where he spent his youth.

Guantánamo Bay – A Human Rights Scandal

Hundreds of people of around 35 nationalities remain held without charge or trial at the US Naval Base in Guantánamo Bay in Cuba, most without access to any court, legal counsel or family visits.

Denied their rights under international law and held in conditions which may amount to cruel, inhuman or degrading treatment, the detainees face severe psychological distress. There have been numerous suicide attempts. As more evidence surfaces of the physical and psychological torture or ill-treatment of Guantánamo detainees – either in Guantánamo itself, or in Afghanistan prior to their transfer – it is ever more urgent to resolve the plight of the detainees. US authorities must bring all detainees to trial, in full accordance with international law and standards, or else release them.

Many of those held were captured during the international conflict in Afghanistan, from where transfers to the Naval Base began in January 2002 under harsh conditions of transportation. Others were arrested elsewhere and handed over to the US authorities. Sporadic transfers to, and releases from, the base continue, but the precise numbers, identities and nationalities of those held has never been made public.

None of the detainees captured during the international armed conflict in Afghanistan have been granted prisoner of war status or brought before a “competent tribunal” to determine his status, as required by Article 5 of the Third Geneva Convention.

The majority are held in maximum security blocks in small cells, sometimes for up to 24 hours a day and with very little out-of-cell exercise time. They have also been subjected to repeated interrogations sometimes for hours at a time and without the presence of a lawyer, raising fears that statements may have been extracted under coercion. The International Committee of the Red Cross (ICRC) is the only international organization that has been allowed access to the detainees. It is now well over a year since the ICRC first stated that it had observed a “worrying deterioration” in the mental health of a large number of the detainees, not least as a result of the indefinite nature of their detention.

In November 2001, President Bush signed a Military Order establishing trials by military commission which have the power to hand down death sentences and against whose decisions there will be no right of appeal to any court. In addition to the lack of right to appeal, the commissions lack independence and restrict the right of defendants to choose their own counsel and to an effective defence. The commissions also accept a lower standard of evidence than in ordinary courts. This could include evidence extracted under torture or coercion.

On 8 November 2004, a US federal judge, responding to a *habeas corpus* appeal filed on behalf of a Yemeni national facing trial by military commission, ruled that the Third Geneva Convention “applies to all persons detained in Afghanistan during the hostilities there”. The judge ruled that Salim Ahmed Hamdan should be presumed to be a prisoner of war unless a “competent tribunal”, as required under the Third Geneva Convention, decided otherwise. As a presumed prisoner of war, the judge ruled, the Yemeni national could not be tried by military commission. He also ruled that the military commission’s rules allowing defendants to be excluded from certain military commission sessions and with certain evidence withheld from them were unlawful. Military commission proceedings have been suspended while the government appeals the ruling (see <http://web.amnesty.org/library/Index/ENGAMR511572004> for further information).

On 28 June 2004 the United States Supreme Court ruled that US courts have jurisdiction to consider challenges to the lawfulness of detentions at Guantánamo bay. In response the Bush administration announced the formation of the Combatant Status Review Tribunal scheme under which Guantánamo detainees will be able to challenge their so-called “enemy combatant” status. They are not provided with a lawyer for this process, and secret evidence may be used against them. The first pre-trial commission hearings took place in August 2004. Instead of doing all it can to facilitate the full judicial review of the lawfulness of the detentions at Guantánamo bay, the government appears to be trying to narrow the scope of this review and at the same time proceed with its plans to hold trials by military commission that flout basic standards.

AMNESTY INTERNATIONAL DEMANDS THAT

- **The US government end the legal limbo of all detainees**

- **All those held are charged and given fair trials or released**
- **The military order allowing for trial by military commission be revoked**
- **All those detained are granted full access to lawyers and families**
- **All are treated humanely and granted access to their rights including being fully informed of their right to a lawyer and to challenge their detention in US courts**
- **Their families are kept informed of their legal status and well-being**
- **An independent Commission of Inquiry be set up by US Congress into all aspects of the USA's "war on terror" detention and interrogation policies and practices.**