

USA



Who are the Guantánamo detainees? **CASE SHEET 20**

Majid Khan

March 2007

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Pakistani National: Majid Khan

Age: 26

Marital Status: Married with one child

“The Committee is concerned by credible and uncontested information that the State party has seen fit to engage in the practice of detaining people secretly and in secret places for months and years on end... In such cases, the rights of the families are also being violated...The State party should immediately cease its practice of secret detention and close all secret detention facilities.”

UN Human Rights Committee, concluding observations on the USA, July 2006.

On 6 September 2006, US President George W. Bush announced that 14 men, previously held in secret custody by the Central Intelligence Agency (CIA), had been transferred to military detention in Guantánamo. Majid Khan, a Pakistani national who had become a victim of enforced disappearance at the hands of the Pakistani and US authorities for more than three and a half years, was one of the 14. Majid Khan migrated to the USA with his family in 1996 where he lived and worked in Baltimore in the US state of Maryland. He was granted asylum in the USA in 1998. In February 2002 Majid Khan returned to Pakistan with his brother to get married. After his wedding he returned to Baltimore in March 2002 where he remained until his return to Pakistan later that year.

Enforced disappearance

During the night of 5 March 2003, Pakistan security officials raided his brother’s house in Karachi and arrested Majid Khan, his brother Muhammad Khan, sister-in-law and their baby. They bound and blindfolded them and took them to an unknown location. At the time, Majid Khan’s wife was with her family in Hyderabad, Pakistan.

Majid Khan’s sister-in-law and her baby were released one week later, and his brother approximately one month later, apparently after he was warned not to make any public statements or enquiries about Majid Khan. Pakistani officials refused to tell his family where

he was being held, or the reasons for his detention. Majid Khan's relatives in the USA were also denied any news about his whereabouts and did not know if he was alive or dead until President Bush's 6 September 2006 announcement.

Transfer to Guantánamo

"If I come back, it will be a miracle of God"

On or around 4 September 2006, Majid Khan was reportedly hooded, shackled, sedated and flown to Guantánamo along with 13 other "high value" detainees. All have been designated as "enemy combatants". Little is known about their current conditions of detention, although they are believed to be held in isolation with little or no contact with other detainees or each other. The International Committee of the Red Cross (ICRC) visited them shortly after their transfer. Apart from this they have continued to be held incommunicado, without access to legal counsel. Amnesty International is seriously concerned for their physical and psychological welfare, due to their prolonged secret detention and possible exposure to torture or ill-treatment, and their continuing isolation and indefinite detention.

Majid Khan has sent a letter to his wife from Guantánamo in which he is reported to have told her that she should not dwell on the thought of his return. The letter was heavily censored by the US military, but he reportedly wrote that he is held in solitary confinement and only allowed to leave his cell for one hour a day and can occasionally talk to other detainees through cell walls.

"High value detainees" in secret detention

"Many specifics of this program, including where these detainees have been held and the details of their confinement, cannot be divulged." President Bush, 6 September 2006

According to President Bush, Majid Khan and the other 13 transferred to Guantánamo in September 2006 are "dangerous men with unparalleled knowledge about terrorist networks and their plans for new attacks." With their transfer, President Bush publicly acknowledged for the first time the existence of a separate "high-value terrorist detainee program" operated by the CIA. He also stated that with the transfer of the 14, there were, at that point, no longer any more people held in the CIA program, but that others could be held in similar conditions in the future. The location of the secret detention facilities where Majid Khan and others were held remains unknown as does the numbers of people who were or are currently held in them.

In his 6 September speech, President Bush also acknowledged that detainees held in the secret CIA program were subjected to an "alternative set of procedures", apparently referring to the "enhanced interrogation techniques" reportedly authorized in 2002 for use by the CIA.

Although the US administration has not elaborated on the techniques, information which it has classified as "top secret", they have been reported to include methods that would clearly violate international law and standards.

The existence of a CIA program of secret detentions had been widely reported by Amnesty International and others but had never previously been confirmed by US authorities. Amnesty International is calling on the US government to clarify the fate and whereabouts of all people who have been secretly detained and to reveal the whereabouts of all secret places of detention. Above all, US authorities must end the practice of secret detention and enforced disappearance, which is a crime under international law.

Legal situation

The US government has said that the reason the existence of the CIA program was confirmed was President Bush's "determination to bring the CIA detainees to trial". Under the Military Commissions Act (MCA), signed into law by President Bush on 17 October 2006, the trials would be by military commissions with the power to admit coerced evidence and hand down death sentences.

The authorities have accused Majid Khan of being an *al-Qa'ida* operative with links to Khalid Sheikh Mohammed, an alleged ringleader of the 11 September 2001 attacks in the USA. However, to date he is still being denied access to a lawyer. At the same time, government lawyers are reported to be working on building a criminal case against Majid Khan and the other 13 detainees. Everyone arrested or detained – whether or not on a criminal charge – and everyone facing a criminal charge – whether or not detained – has the right to the assistance of legal counsel. The USA's denial of such access to Majid Khan and the other 13 transferees not only violates their right to counsel but also jeopardizes their right to adequate time and facilities to prepare a defence. It constitutes a clear breach of the fundamental principle of "equality of arms", sometimes referred to as the most important criterion of a fair trial.

On 6 March 2007, the US authorities announced that, beginning of 9 March, the 14 "high value" detainees will receive a hearing by Combatant Status Review Tribunal (CSRT) to review their status as "enemy combatants". The hearings will take place in secret. The CSRT is a wholly inadequate administrative review procedure consisting of panels of three military officers allowed to rely on classified or coerced evidence against a detainee, who has no access to a lawyer, and who is presumed to be an 'enemy combatant' unless he can prove otherwise.

On 28 September 2006, the New York-based Center for Constitutional Rights (CCR) filed a *habeas corpus* petition on behalf of Majid Khan, challenging the lawfulness and conditions of his detention, and his designation as an "enemy combatant". On 8 October 2006, CCR followed this with a request for emergency access for legal counsel to Majid Khan, including in order to be able to assess his mental and physical health in the light of his time in secret CIA custody and the use against him of any of the "alternative" interrogation techniques authorized for use in that program.

The US government responded by arguing that under the MCA, the court did not have jurisdiction to consider Majid Khan's petition. The government also filed its opposition to access to legal counsel, arguing that the existing rules for lawyers' access in Guantánamo were insufficient in the cases of the 14 detainees transferred from CIA custody. These 14, the government argued, might be in possession of information about the CIA program classified as "top secret" – including location of facilities, conditions of detention and specific interrogation techniques – which could cause "exceptionally grave damage" to US national security were it to be revealed. The effect, if not the purpose, of this classification is to conceal human rights violations.

On 17 November 2006, the District Court judge denied CCR's motion for access to Majid Khan on the grounds that the question of whether the Court had the jurisdiction to consider *habeas corpus* petitions following the passage of the MCA was still pending before the Court of Appeals for the District of Columbia Circuit. In a footnote, the District Court judge urged the government to address Majid Khan's medical and psychological state but stated that he could not order the government to do this. On 20 February 2007, the Court of Appeals ruled that under the MCA, the US federal courts have no jurisdiction to consider *habeas corpus* appeals from foreign nationals held in Guantánamo. This ruling is being appealed to the US Supreme Court.

On 20 November 2006, Majid Khan's wife, Rabia Yaqoob, filed a constitutional petition in the Sindh High Court in Pakistan requesting to be informed of the details of evidence for her husband Majid Khan's arrest and detention, the grounds for not producing him in any court in Pakistan, the legal basis of his transfer as a Pakistani citizen to US custody and any government efforts to ensure his return to Pakistan and requesting his being brought back to Pakistan and to be tried there if any criminal charges are pending against him. In court, Pakistan's Attorney General suggested that Pakistan had had nothing to do with Majid Khan's original arrest or detention, and was now working to obtain the release of Pakistan nationals held in Guantánamo. On 13 February 2007, the High Court panel dismissed the petition, while urging the Foreign Ministry to make all possible efforts to ensure the well-being of

Majid Khan and to obtain his release. The Court gave the government three months to report back on progress made on Majid Khan's case.

TAKE ACTION FOR Majid Khan

Write to the Pakistani authorities:

- Expressing concern for the well-being and about the legal situation of Majid Khan, a Pakistan national, held in US custody in Guantánamo Bay, Cuba, after more than three years in secret CIA custody at unknown locations;
- noting the Pakistan government's claim in the Sindh High Court that Pakistan was not involved in the arrest and detention of Majid Khan in Karachi on 5 March 2003;
- calling on the Pakistan government to make representations on behalf of Majid Khan with a view to ensuring he either receives a fair trial in full accordance with international standards or is released and returned to Pakistan;
- expressing concern that the USA's proposed military commissions in Guantánamo Bay will not guarantee defendants fair trials as required under international law, and noting that civilians taken into custody outside areas of armed conflict should not be subject to military tribunals;
- seeking assurances that they are keeping Majid Khan's family and the families of all Pakistani nationals detained in Guantánamo informed of any developments in their cases;
- calling on the government of Pakistan to support calls for Guantánamo to be closed.

Write to the US authorities:

- expressing concern that Majid Khan and 13 other detainees transferred to Guantánamo from secret CIA custody are being held without charge or access to lawyers, despite the fact that they were transferred to Guantánamo for the stated purpose of trial, and despite the fact that government lawyers are already working on building a criminal case against these detainees;
- calling for Majid Khan and the other 13 detainees to be granted immediate and continuing access to legal counsel;
- stating that, if charged, he should be brought to trial in a US federal court. As a civilian taken into custody outside a zone of armed conflict, a military commission should not have jurisdiction to try him;
- expressing particular concern for the physical and psychological welfare of these detainees in light of the years held isolated in secret detention; stating that you fear they may have been subjected to torture or ill-treatment and calling for independent medical experts to be able to examine them;
- calling for an end to the US practice of secret detention, which violates the USA's international legal obligations, and for all those held in US custody, including in Guantánamo, to be released if they are not to be charged and brought to trial in full accordance with international standards for fair trial, including the exclusion of evidence obtained under torture or other cruel, inhuman or degrading treatment.

APPEALS TO Pakistani authorities

President Pervez Musharraf
Pakistan Secretariat,
Islamabad, Pakistan

Salutation: Dear President

Fax: + 92 51 9221422

E-mail: via <http://www.presidentofpakistan.gov.pk/WTPresidentMessage.aspx>

Mian Khursheed Mahmud Kasuri
Ministry of Foreign Affairs,
Constitution Avenue,
Islamabad, Pakistan

Salutation: Dear Foreign Minister

Fax: +92 51 920 2518/7600 / +92 51 922 4205/4206,

E-mail: pak.fm@usa.net

APPEALS TO US authorities

Navy Rear Adm. Harry B. Harris
Commander Joint Task Force Guantánamo
Department of Defense
Joint Task Force Guantánamo
Guantánamo Bay, Cuba
APO AE 09360

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Email: harrishb@jftgmo.southcom.mil

Salutation: Dear Rear Admiral

COPIES TO:

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

Fax: + 1 703 697 8339

Email via: <http://www.defenselink.mil/faq/comment.asp>

If you want to take further action on this case, please contact your national AI office
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1 Easton Street, London WC1X 0DW, UK. www.amnesty.org