



11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030 Phone (703) 934-6101 Fax (703) 352-3678

fff@fff.org www.fff.org

The Cruel Isolation of America’s “Enemy Combatant” **by Andy Worthington**

Last Thursday, U.S. resident Ali al-Marri, the last “enemy combatant” on the U.S. mainland, was indicted by a federal grand jury in Peoria, Illinois, for providing material support for terrorism, bringing to an end the Qatari national’s disturbing imprisonment for five years and eight months without charge or trial in a state of solitary confinement that is unprecedented in the “war on terror.”

Al-Marri — whose story I reported at length [here](#) — arrived in the United States on September 10, 2001, to pursue post-graduate studies in Peoria, and was initially seized by the FBI in December 2001, based on suspicions that he was involved in credit-card fraud. In June 2003, just before he was due to stand trial, he was declared an “enemy combatant” by President Bush, and was moved to the U.S. Naval Consolidated Brig in Charleston, South Carolina, where he has been held ever since. He spent the first 16 months without access to anyone outside the U.S. military or the intelligence services, and his isolation has been so severe that, as his lawyers have explained, he is suffering from “severe damage to his mental and emotional well-being, including hypersensitivity to external stimuli, manic behavior, difficulty concentrating and thinking, obsessional thinking, difficulties with impulse control, difficulty sleeping, difficulty keeping track of time, and agitation.”

Moreover, as Jane Mayer reported in an article for last week’s [New Yorker](#), Lawrence Lustberg, one of al-Marri’s earliest defense lawyers, was at pains to emphasize that last year’s revelation that officials at the brig were ordered to follow the same Standard Operating Procedure used at Guantánamo underplays the exceptional isolation to which al-Marri was subjected. “I’ve been to Guantánamo,” Lustberg said. “Marri was far more isolated. He had *no* contact with any other detainees. Most days, he had no human contact at all.”

So extreme was his treatment that Andrew Savage, his local counsel in Charleston, who is now allowed to speak to him by phone, and to visit him every other week, told Mayer that he “believes that nothing has been tougher on his client than the uncertainty of not knowing if he would ever be released.” He explained “He would have preferred beatings. He’d say, ‘Andy, it’s

worse than beating.’ He wanted to be sent to Egypt to be renditioned. He’d say, ‘Torture me — but end it!’”

Al-Marri also developed allies in the brig who shared the lawyers’ concerns about his treatment. As Mayer described it,

Their mission, as they saw it, was to run a safe, professional, and humane prison, regardless of who was held there. It was the political appointees in Washington, at the Pentagon and the Department of Justice, who wanted Marri to be kept in prolonged isolation.

In 2005, Andrew Savage discovered that Air Force Major Chris Ferry, the head of security at the brig, “would stay all night with Marri. He’d go down to the brig and sit with him, and tell him to hold on. Chris was there at three in the morning, on the darkest nights.” And in December, when John Pucciarelli, the commander of the brig, was moving on to a new assignment, he made a point of arranging for al-Marri to be brought to the brig’s visitors’ center, where he “said that he was sorry that he had been unable to do more for Marri, but he had treated him as well as he could,” and also left him a parting gift: a television.

These are glimpses of humanity after the long years of al-Marri’s almost unbroken isolation, but he still spends most of his time alone in an otherwise empty cell block, and the Obama administration is, therefore, to be congratulated for ending his novel and unjustifiable ordeal and transferring him into the federal-court system, where we will now, perhaps, discover whether there is any truth to the Bush administration’s claims that he was sent to the United States as part of an al-Qaeda sleeper cell.

It may be that the government has evidence that this is the case, but the worry is that the main source for this claim is Khalid Sheikh Mohammed, the self-confessed mastermind of the 9/11 attacks, who made his “confession” in the first few months after his capture, when, as has been made abundantly clear in the last few years, he was subjected to horrendous torture in CIA custody. In her book [*The Dark Side*](#), Jane Mayer explained how, according to sources who had read a classified Red Cross report about the detention and interrogation of Mohammed and the 13 other “high-value detainees” in CIA custody, based on interviews with the men about their treatment in the years before their transfer to Guantánamo in September 2006, “Mohammed was subjected not just to waterboarding but to hundreds of different techniques in just a two-week period soon after his capture,” and a former CIA official told Mayer, “There were some horrible moments. Things went too far. It was awful. Awful.” I have [previously reported](#) my suspicions about other cases in which Mohammed may have falsely implicated other people as a result of his torture — as he himself attempted to explain during his Combatant Status Review Tribunal at Guantánamo in March 2007 ([PDF](#)) — and it may be that al-Marri is another victim of Mohammed’s lies.

Certainly, nothing about al-Marri's response to his imprisonment follows what the Bush administration came to regard as the *modus operandi* of al-Qaeda operatives, which, as well as apparently including an instruction to allege that they were tortured, if given the opportunity, also included an instruction to tell deliberate lies to frustrate their captors and to send them on worthless missions that would consume time, resources, and energy. Instead, al-Marri has persistently refused to concede that he had anything to do with Mohammed or al-Qaeda, to the extent that Jane Mayer concluded in her article that, although the Bush administration could have prosecuted him using conventional means, the real motive for designating him an "enemy combatant," transferring him to the brig, and torturing him was "frustration on the part of the Justice Department at being unable to make Marri confess." Mayer noted that David Kelley, a former U.S. Attorney for the Southern District of New York, who supervised the early stages of his case, "was told to push him hard, which he did, but Marri kept professing his innocence." She also noted that Attorney General John Ashcroft wrote in his 2006 book [Never Again](#), "Al-Marri rejected numerous offers to improve his lot by cooperating with the FBI investigators and providing information. He insisted on becoming a 'hard case.'"

Perhaps, however, instead of becoming a "hard case," al-Marri was not a "hard case" at all, and everything about his treatment was based on projection and presumption from an administration that had opened the door to torture, and, as Mark Berman, another of al-Marri's early lawyers, explained, "really just wanted to interrogate him" in a rough manner. Andrew Savage has no doubt that al-Marri is not who the government thinks he is. "I don't fear him, not personally and not for the United States," he told Mayer. "Is he putting me on? Scamming me? Putting it over on me? I really don't think so. I'm not naïve. I've defended multi-murderers, child murderers, child molesters, and all sorts of violent criminals. But I really don't think Ali's a terrorist."

Quite where this leaves al-Marri's existing court case, based on his long imprisonment without charge or trial, is difficult to say. The American Civil Liberties Union (ACLU) represents him in his case challenging his designation as an "enemy combatant," which was taken up by the Supreme Court in December, and in a [statement](#) issued just before the indictment was announced, pointed out that a criminal indictment "would not automatically resolve the issues that are pending before the Supreme Court."

Jonathan Hafetz, a staff attorney at the ACLU who has represented al-Marri for many years, added,

The decision to charge al-Marri is an important step in restoring the rule of law and is what should have happened seven years ago when he was first arrested. But it is vital that the Supreme Court case go forward because it must be made clear once and for all that indefinite military detention of persons arrested in the U.S. is illegal and that this will never happen again.

I couldn't agree more. Unless the Supreme Court is allowed to review al-Marri's case, [a particularly disturbing ruling](#) that was delivered last summer by the Fourth Circuit Appeals Court will stand as a defense of unfettered executive power — and unconscionable cruelty — that demonstrates complete disdain for the Constitution. The divided court ruled, by a majority of one, that the President is entitled to seize any American — not just a resident like al-Marri, but any citizen — and imprison him indefinitely without charge or trial, even if, as was noted by the principal dissenting judge, Diana Gribbon Motz, “unlike [Yaser] Hamdi and [\[Jose\] Padilla](#) [the other two Americans held as “enemy combatants” between 2002 and 2005], al-Marri is not alleged to have been part of a Taliban unit, not alleged to have stood alongside the Taliban or the armed forces of any other enemy nation, not alleged to have been on the battlefield during the war in Afghanistan, not alleged to have even been in Afghanistan during the armed conflict, and not alleged to have engaged in combat with United States forces anywhere in the world.”

She added:

To sanction such presidential authority to order the military to seize and indefinitely detain civilians, even if the President call them “enemy combatants,” would have disastrous consequences for the Constitution — and the country. For a court to uphold a claim to such extraordinary power would do more than render lifeless the Suspension Clause, the Due Process Clause, and the rights to criminal process in the Fourth, Fifth, Sixth and Eighth Amendments; it would effectively undermine all of the freedoms guaranteed by the Constitution. It is that power — were a court to recognize it — that could lead all our laws “to go unexecuted, and the government itself to go to pieces.” We refuse to recognize a claim to power that would so alter the constitutional foundations of our Republic.

With that, it's clear to me that there is more on trial at the end of this shameful period in U.S. history than just one man, Ali al-Marri. Also on trial, though it will not be addressed in Peoria, is the Bush administration's claim, as Judge Motz put it, that it was entitled to “alter the constitutional foundations of our Republic.”

Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America's Illegal Prison](#) (published by Pluto Press). Visit his website at: www.andyworthington.co.uk.

This article was originally published in March 2009.