

MAHER REFAAT AL-KHAWARY (MAHER EL-FALESTENY)*
STATELESS PALESTINIAN GUANTÁNAMO DETAINEE IN NEED OF PROTECTION



Maher Refaat Al-Khawary is a stateless Palestinian without identification papers or official status in any country. Maher left Jordan to seek refugee papers to allow him to travel freely with his family, but he was captured by villagers in Afghanistan, and transferred to the Northern Alliance soldiers who beat him brutally and then likely sold him to the U.S. forces seeking a bounty. He has been held in Guantánamo for seven years, and cleared to leave for at least two years. But he has no country to which he can return, or which has accepted him.

Summary

Maher El Falesteny (Maher Refaat Al-Khawary) is a stateless Palestinian seeking residence in a safe country upon release from Guantánamo Bay. Maher has been held at the Guantánamo Bay prison since June 14, 2002 and has been cleared for release long ago even by U.S. authorities.

Personal History

Maher was born in Gaza in 1965. He has no siblings, and his parents and grandparents are now all deceased. In his late adolescence, he moved with his parents from Gaza to southern Lebanon. When he was a teenager and on his own, he moved briefly in Lebanon before going to Zarqaa, Jordan, where he was married. He and his wife returned to Lebanon for several years before relocating to Jordan permanently when Maher was in his twenties. Maher worked mainly as a supermarket cashier. The entire time he was in Lebanon and Jordan, Maher did not have identification papers of any kind. He had no official status in either country.

In the summer of 2001, Maher traveled to Pakistan hoping to obtain papers from the United Nations that would enable him to immigrate to a European country where he could resettle with his family. He did not take his family on this journey because he felt it would be difficult for them, given how young his children were at the time. In the course of this trip, while making arrangements to enter Pakistan, Maher stayed in Jalalabad, Afghanistan. During this period, Maher worked as a sheep trader. Once the United States and coalition forces attacked Afghanistan, and as the Northern Alliance approached Jalalabad, Maher fled to avoid the fighting and for his own safety. During his flight, villagers captured him and sold him to the Northern Alliance for a bounty.

When Maher was held by the Northern Alliance, he was interrogated multiple times. During at least three of these interrogations, he was beaten with a chain wrapped in a hose. After the beatings were finished, the interrogator presented a document written in Farsi to Maher. Maher does not read, write or speak Farsi, but he was required to sign the document without knowing what it said. After about thirty days as a prisoner of the Northern Alliance, Maher was turned over to American troops. First, he was taken to Bagram Air Force Base, and then on to Kandahar, where he was beaten. While at Kandahar, a soldier strangled him almost to the point of death. After about six months, he was sent to Guantánamo. At Guantánamo, the interrogations and mistreatment continued.

* Maher El Falesteny is represented by Charles Carpenter at Pepper Hamilton LLP and Steve Truitt. His profile was prepared by his counsel and the Center for Constitutional Rights. For more information about Guantánamo's abandoned, contact emaclean@ccrjustice.org.

Allegations

Maher was not captured by American forces, but rather was captured by villagers and turned over to the Northern Alliance for a bounty. He has never been associated in any way with Al Qaeda, the Taliban, or any group that advocates violence. His Combatant Status Review Tribunal (CSRT) does not suggest that he engaged in combat, knows how to use a weapon, or has received weapons training. Indeed, he has been cleared for release for at least two years.

Statelessness and Fear of Torture or Persecution

Maher is a man without a country. He is stateless, with no recognized country of origin and no country that claims him as a citizen. He was born in Gaza and lived in Jordan for most of his adult life. However, he was without legal documents during the entire time that he lived there. Furthermore, the only countries where he has ties – Jordan and Israel – are not countries to which he could safely return. Maher experienced threats of torture during his detention, including threats that he would be rendered to another country and tortured. Indeed, during Maher's imprisonment in Guantánamo, the United States government has allowed Jordanian officials and possibly Israeli officials access to him. They have threatened him with torture if he is sent to either Israel or Jordan.

After his transfer to Guantánamo, Maher was interrogated by an American who called himself "Torture." During an interrogation session, this American threatened Maher with rendition to Israel, stating that all Palestinians would be "returned" there and falsely accusing Maher of belonging to the terrorist group Hamas. Maher has also since been interrogated by Jordanian officials, one of whom posed as a Palestinian U.N. employee in an attempt to elicit information. When Maher refused to answer these officials' questions, the officials assured him that they knew "how to get this information out of [him] when [he] came to Jordan." There is substantial evidence that Israel and Jordan mistreat Palestinian detainees. The U.S. State Department reports that in 2006 "reputable NGOs filed numerous credible complaints . . . alleging that [Israeli] security forces tortured and abused Palestinian detainees." According to the Public Committee Against Torture in Israel, the Israeli Security Agency regularly used torture in a significant percentage of their interrogations. Jordan's record also reflects chronic detainee abuse. After a recent visit to Jordan, United Nations envoy Manfred Nowak concluded that "torture is systematically practiced" by Jordanian security services. Furthermore, reports demonstrate a greater risk of torture for those of Palestinian origin in Jordanian custody.

Urgent Need for Humanitarian Protection

On February 8, 2007, the United States government notified Maher's counsel that Maher is eligible for transfer out of Guantánamo Bay. Because of Maher's status as a stateless person (with no papers for residency in any country), it is not clear to what country the United States can release him or intends to release him. Consequently, Maher needs the protection of a third country where he can live without fear of persecution, torture or imprisonment.

Although wrongly imprisoned at Guantánamo Bay, Maher has been a model prisoner, demonstrating both a surprising lack of animosity toward the United States, and that he would not pose a threat when released. He has now been cleared for release from Guantánamo, which indicates that even the U.S. acknowledges that he does not pose any security threat to the United States or any other country. During his imprisonment, Maher has sought to mediate disputes between the guards and the prisoners. Maher needs only a country in which he can live safely in order to restart his life.