

URGENT ACTION

MAN SEIZED IN LIBYA HELD INCOMMUNICADO

A Libyan man facing capital charges in the USA was seized by US forces in Libya on 29 October and taken to a ship. Although he may be flown to the USA, in a related case in 2014, the suspect was held incommunicado for 13 days before being brought to court.

On 30 October, President Donald Trump announced that “yesterday, on my orders, United States forces captured **Mustafa al-Imam** in Libya” and he “will face justice in the United States”. US forces seized this Libyan national in the area of Misurata, a coastal city in northwest Libya. According to reports, they transferred him to a ship, but it is not yet clear if, as in a related case in 2014, the US authorities will hold him there for the transatlantic journey or transfer him to a plane for a flight to the USA. The US Department of Justice issued a statement that “Al-Imam is in US custody, and upon his arrival to the US he will be presented before a federal judge in Washington, DC”, but did not say when this would happen. Mustafa al-Imam is facing charges under a criminal complaint filed in US District Court in DC on 19 May 2015, which was unsealed on 31 October 2017. The charges relate to the attack on 11-12 September 2012 on the US Special Mission and Annex in Benghazi, resulting in the deaths of four US nationals, Ambassador Christopher Stevens, Sean Smith, Tyrone Woods and Glen Doherty. The lead charge (killing a person during an attack on a federal facility) is punishable by the death penalty in the USA. The US Attorney General has to authorize any federal pursuit of the death penalty.

In August 2017, the DC District Court ruled in the case of another Libyan national, Ahmed Abu Khatallah, who US Special Forces seized near Benghazi on 15 June 2014, transferred to a US naval vessel anchored off the Libyan coast, held incommunicado and interrogated over the course of a 13-day sea voyage to the USA. The judge denied a pre-trial motion to suppress any statements Ahmed Abu Khatallah made during this time, on the grounds that his right to be brought promptly before a judge had been violated and that the reliability of his waiver of his right to remain silent and to have a lawyer present (given to FBI agents after he had been interrogated for several days by intelligence agents), had been undermined by his prior treatment.

Prolonged incommunicado detention facilitates torture or other ill-treatment, and depending on the circumstances can itself constitute torture or other cruel, inhuman or degrading treatment. The right under international human rights law to be brought promptly before a judge after arrest should mean no delay beyond a few days.

Please write immediately in English or your own language:

- Calling on the authorities to inform Mustafa al-Imam of his right to, and provide him with, immediate access to legal counsel, independent medical care, consular assistance and visits by relatives;
- Calling on the authorities to allow access to independent detention monitors;
- Calling for him to be brought promptly before a judge and treated in full compliance with international human rights law and standards, including during any pre-trial custody after arrival in the USA;
- Urging that the US government not seek the death penalty against him in any forthcoming trial.

PLEASE SEND APPEALS BEFORE 13 DECEMBER 2017 TO:

Jim Mattis, US Secretary of Defense

1000 Defense Pentagon

Washington DC 20301-1000, USA

Fax: +1 703 571 8951

Email: via website

<https://kb.defense.gov/app/ask>

Salutation: **Dear Secretary of Defense**

Jeff Sessions, US Attorney General

Department of Justice,

950 Pennsylvania Avenue NW,

Washington DC 20530 0001, USA

Fax: +1 202 514 4507

Email: AskDOJ@usdoj.gov

Salutation: **Dear Attorney General**

Rex Tillerson, US Secretary of State

Department of State, 2201 C Street

N.W., Washington DC 20520, USA

Fax: +1 202 647 2283

E-mail: via website

<https://register.state.gov/contactus/contactusform>

Salutation: **Dear Secretary of State**

Also send copies to diplomatic representatives accredited to your country. His Excellency Woody Johnson, Embassy of the United States of America, 24 Grosvenor Square W1A 6AE, tel: 020 7499 9000,

Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

As in similar prior seizures of suspects conducted by the USA, no extradition proceedings have taken place. Mustafa al-Imam is the third Libyan national since 2013 who US forces seized in Libya to bring to the USA. US forces seized Nazih Abdul-Hamed al-Ruqai, also known as Abu Anas al-Libi, in Tripoli on 5 October 2013 and interrogated him aboard the USS San Antonio before bringing him to the USA and charging him in relation to the 1998 bombings of US embassies in Kenya and Tanzania. His lawyer alleged in court in 2014 that US forces held his client incommunicado on the ship and Central Intelligence Agency (CIA) personnel and others interrogated him daily for the next week. He alleged that they subjected him, effectively, to sleep deprivation, through the use of prolonged back-to-back interrogations. US authorities cut his incommunicado detention short due to a life-threatening illness. He died in the USA on 2 January 2015 before his trial.

US forces seized Abu Khatallah near Benghazi on 15 June 2014. In 2017 the US government saw off a defence motion to suppress any statements made by Abu Khatallah during his interrogations over 13 days of incommunicado detention on board the USS New York. The motion argued that the government had deliberately engineered a slow transatlantic voyage to maximize the interrogation time, but the government claimed it could not have flown the detainee to the USA because that would have required his transfer to and through a European Union country, any of which would likely have rejected such a request because of the potential applicability of the death penalty in the case. Any country in the Middle East or North Africa, according to the US government, would also have been “doubtful participants given the potential domestic backlash they could face from cooperating with the United States on an anti-terrorism operation”. The judge also accepted the government’s explanation that the voyage had taken longer because of engine trouble on the ship. In February 2016, the judge denied a defence motion to either order the defendant’s return to Libya or block the US government from seeking the death penalty against him as remedy for the manner in which it took custody of him. However, in May 2016, the Obama administration filed notice that it would not seek the death penalty. Abu Khatallah’s trial in District Court in DC began in October 2017.

On 17 June 2014, the US administration informed the UN Security Council that the US operation to take Abu Khatallah into custody had been conducted under the USA’s “inherent right to self-defense” on the grounds that he “continued to plan further armed attacks against US persons”. Meanwhile, in May 2014, the Department of Defense pointed to the case of Abu Anas al-Libi as one where the Obama administration had applied the 2001 Authorization for Use of Military Force (AUMF), the broadly worded resolution passed with little debate in the immediate wake of the 9/11 attacks and which successive administrations have used to underpin detentions in Guantánamo and “capture or lethal operations” elsewhere.

For further information on Abu Khatallah, see <https://www.amnesty.org/en/documents/amr51/050/2014/en/>. For further information on Abu Anas al-Libi, see <https://www.amnesty.org/en/documents/amr51/071/2013/en/>.

The USA has long resorted to seizing suspects overseas to gain custody over them. For example, in Karachi in 1997 Federal Bureau of Intelligence agents seized Pakistan national Mir Aimal Kasi, wanted for the 1993 murder of two CIA employees. They hooded, gagged and shackled him, flew him to Virginia and handed him over to the state authorities who tried, sentenced him to death, and executed him in 2002.

UA: 246/17 Index: AMR 51/7373/2017 Issue Date: 1 November 2017

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