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The Torture That Flourishes From Gitmo to an American Supermax

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Image

The ADX prison in Florence, Colorado, where inmates are held in solitary confinement for twenty-two to twenty-four hours per day. (Reuters/Rick Wilking)

America After 9/11 ^[1]

*Since 9/11, the Department of Justice has prosecuted more than 500 terrorism cases, yet there remains scant public understanding of what these federal cases have actually looked like and the impact they have had on communities and families. Published by The Nation in collaboration with Educators for Civil Liberties, the **America After 9/11 series** features contributions from scholars, researchers and advocates to provide a systematic look at the patterns of civil rights abuses in the United States' domestic "war on terror."*

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I just returned from Guantánamo, where I met with my client Ghaleb Al-Bihani, a Yemeni citizen who began his thirteenth year of detention without charge there this month. He has been deprived of a third of his life, from ages 22 to 35, because the United States government says that in 2001 he was a cook for a Taliban affiliate that no longer exists. In a few months, he will go through another government review that will either recommend his transfer from Guantánamo or his continued and indefinite imprisonment. We have words and images to describe waterboarding; it is harder to convey the suffocation of perpetual detention.

The crisis of Ghaleb's continuing detention—its injustice and pain—was at one time more visible. Guantánamo began as a prison the Bush administration declared was outside the law, and there was little pretense about it. People were shoved off the first transport planes in shackles and hoods and locked into outdoor cages. For two years, they were held incommunicado and denied the right to

know or contest why they were being detained. When it came to torture, the “gloves were off,” to paraphrase top military and civilian officials.

The wrongful detention and abuse of the men who remain are less overt now. Today, as the result of years of legal challenges and advocacy, detainees have the right to challenge the legality of their detention in federal court; indeed, it is a federal court that sanctioned Ghaleb’s indefinite detention for being a cook. Today, the cages of the makeshift “Camp X-Ray” are overgrown with weeds; the majority of detainees are held in “state-of-the-art” facilities that resemble maximum-security prisons in the United States and mask similar cruelties. Today, torture is the mental torment of 4,380 days behind the walls of an island prison without good reason or end. It is that which Ghaleb says is excruciating.

A colleague, the first civilian attorney allowed access to the prison in 2004, talks of that first visit. The barbarity of the way human beings were being treated was raw and exposed. My visits nowadays begin with a mint on my pillow in my lodging quarters. I can bring pizza to my clients. The crisis at Guantánamo is as present now as ever, but it has been given legal cover, sanitized, normalized. It took a mass hunger strike at the prison last year to wake us up to it.

A few years ago, at an event in January marking yet another anniversary of the Guantánamo prison’s existence, I met the father of Fahad Hashmi, a US citizen of Pakistani descent who grew up in New York City. Fahad is incarcerated at another infamous US prison—the Administrative Maximum Facility (ADX) in Colorado. As a lawyer, I had spent the last several years trying to extend the protections of the American legal system to Guantánamo. But that meeting was an introduction to a slice of unjust punishment and torture on American soil—another outrage born of the “War on Terror,” where government zealotry produces grotesque outcomes, the façade of legal process can legitimize profound unfairness, and barbarity is masked by utter normality.

ADX sits a few minutes from Main Street in Florence, a small southern Colorado town with antique shops and a good diner. Down the road is a Super 8 motel, which provides accommodations for family members from across the country visiting the prison. Just outside the massive prison complex that contains ADX, there is a duck pond.

The prison itself is a gleaming \$60 million structure. The lobby is pleasant and light, with big windows and clear views of the mountains, an efficient front desk attendant, a stand selling T-shirts, and framed pictures of the prison leadership, including President Barack Obama, Attorney General Eric Holder, and employees of the month. “The Best Prize that Life Offers Is the Chance to Work Hard at Work Worth Doing,” reads a large plaque that hovers above a doorway leading down two flights of stairs to a sub-basement where over 400 human beings are decaying in single cells for 22 to 24 hours a day, some for as long as thirty years. More plaques decorate the long hall to the meeting booths where I “visit” Fahad from across a thick pane of glass while he remains shackled at five points—wrists, waist, ankles—tires easily, and forgets basic vocabulary: “Dignity of All,” “Integrity,” “Responsiveness.”

Last September, the man in the cell next to Fahad hung himself from the bars in his cell. His dead body was shackled before it was carried out. Above ground, in the lobby, an employee mopped the floors. The desk attendant answered the phone. The prison leadership smiled from their framed

photos.

Fahad was transferred to this harshest of federal prisons—this “cleaner version of hell,” in the words of a former ADX warden—after a conviction in 2010 for material support to Al Qaeda. Since 9/11, the government has deployed the material support statute as the most common basis for charges in terrorism prosecutions, turning it into a catchall to prosecute conduct ranging from weapons training to the translation of public texts.

In Fahad’s case, the government alleged that he had allowed an acquaintance to keep a suitcase with socks and ponchos meant for Al Qaeda in Pakistan in his apartment for two weeks, which the indictment characterized as “military gear,” and allowed the acquaintance to use his cell phone to call co-conspirators. It charged him with four separate counts of material support and conspiracy, carrying a possible sentence of seventy years. There was no trial. After three years in pre-trial solitary confinement at the Metropolitan Correctional Center (MCC) in Manhattan, layered with Special Administrative Measures (SAMs)—a euphemism for gagging Fahad and a small circle of people permitted access to him only after agreeing to be gagged as well—Fahad pleaded guilty on the eve of his trial to spare himself an effective life sentence. In exchange for fifteen years of his life, the government got a conviction. This plea deal followed the predictable path of most criminal convictions, terrorism cases being no exception. Of terrorism convictions since 9/11, more than 65 percent resulted from plea bargains by defendants facing the stark possibility of decades in prison.

Unlike during the early period at Guantánamo, the injustice of Fahad’s punishment did not result from being rendered to an offshore prison and held in blatant violation of the law; it emerged out of the warp of the legal process itself. Fahad’s prosecution was based on a broad theory of guilt by association, not individual culpable conduct. It achieved in peacetime, on American soil, the breadth of detention usually only permitted in wartime, and meant to be temporary, reserved for the exigency of battlefields, and not punitive. Fahad’s conviction came from the compromised calculation of a young man of 30 facing the prospect of imprisonment until age 100 and deciding not to take that risk, not the government proving its case against the panoply of Fahad’s rights as a criminal defendant.

Fahad’s torture has also not been flagrant; it has been silently mind-crushing. For over 2,100 days, he has been alone in a space he can touch both sides of simultaneously. He has not touched another human being since 2007. While he has been at ADX for nearly three years, he has no sense of his surroundings, because all he can see of the natural world is a patch of sky through steel mesh from an outdoor “recreation” cage two to three times a week, if that. He has not set foot on anything other than concrete in over six years. The image of Fahad’s torture is not that of a person being led around an interrogation room on a dog leash, or held in a stress position with heavy-metal music blasting. It is a person sitting still in a small cell, slowly deteriorating in a modern prison on the outskirts of a small Colorado town.

To the extent that Fahad’s story is unknown to the broader public, that is additionally because he and his experience have been walled off by deliberate government barriers, including the prohibitions of Special Administrative Measures as well as tightly controlled access to prisons like ADX and the MCC. When Fahad was under Special Administrative Measures during his pre-trial detention at the MCC and for a year after his conviction at ADX, no member of the public except

for his attorneys and three family members—not a reporter, researcher, or United Nation expert—was able to communicate with him in any form, even by sending a letter. The few people allowed to communicate with him were also forbidden, under threat of criminal sanction, from speaking about him to the public.

During Fahad’s pre-trial proceedings, his criminal defense attorney gave media interviews about the injustice of Fahad’s case, but he could not relate any information from Fahad, including about his crushing conditions at the MCC. If I had wanted to write this article after my first visit to Fahad at ADX, I would not have been able to incorporate any detail he had said to me during our meeting about what was happening in the prison. His father, if he had needed to seek solace in a friend after a call with Fahad, would have been prohibited from discussing that conversation. The gag on advocacy and speech under Special Administrative Measures is in a way even more restrictive than what I experience at Guantánamo, because notes from my Guantánamo visits can be “cleared” for public consumption after a process of government review.

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Even now that Fahad’s Special Administrative Measures have been lifted, he remains mostly cut off and inaccessible, because direct access to prisoners at ADX, as at the MCC, is extremely restricted under the most basic circumstances. Independent human rights monitors like the UN expert on Torture have made repeated requests to visit both prisons but to no avail. No journalist has yet been allowed direct access to inmates at these prisons. These denials mirror the experience of the press and human rights monitors vis-à-vis Guantánamo.

Fahad is one of more than 400 people who have been convicted on terrorism charges by the Department of Justice since 9/11. As with his case, many of these cases raise sobering questions that need to be examined. We recognize, to a certain extent at least, that the criminal justice system produces unjust results in other contexts—that there is often a wide gap between personal culpability and the punishment deemed deserved; that the process is often not meaningfully adversarial, but stacked against defendants; that conditions of confinement are sub-human for thousands of prisoners. Yet, paradoxically, the dominant narrative in the context of these terrorism cases has been largely limited to praising the strength and competence of the civilian system. That narrative developed in opposition to the ad-hoc, illegal military system at Guantánamo. But a fair critique of one cannot continue to wait for the dismantling of the other.

There are times after particularly hard days—after an upsetting visit to ADX, or after missing a phone call from Fahad, knowing it will be at least two weeks before Fahad can attempt another 15-minute call—when Fahad’s father asks me questions, rhetorically, about whether his son’s punishment is just, whether his conditions are fit for human beings. I gather he is asking more fundamentally whether we see the injustice he does.

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