

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2012/03/02/hidden-torture-behind-plea-bargain-majid-khan>

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When Majid Khan [entered](#) the cavernous "expeditionary legal complex" at [Guantanamo](#) Wednesday, there was a palpable sense of surprise. This was the first time he had appeared in public since his 2003 arrest in Pakistan, but unlike [many other detainees](#) who have appeared before the commission in prison jumpsuits and long beards, Khan, 32, was relatively clean-shaven, with a small goatee and short cropped hair. He wore a dark suit, white shirt and burnt red tie and spoke nearly perfect English having spent his teen years in a suburb of Baltimore, Maryland.

Khan was facing charges for, among other things, conspiracy and murder in violation of the laws of war for his role in an alleged series of post-September 11, 2001 al Qaeda operations. He had been held for nine years without charge until February when formal proceedings finally began against him. For more than three of those nine years he was in secret CIA detention. He faced a possible life sentence but yesterday he pleaded guilty in exchange for a promise of a reduced sentence if he agreed to cooperate, presumably by providing evidence against other Guantanamo detainees. Khan's plea is a great win for the government, but not for the reasons one would assume. While it is true the prosecution can tout a new conviction at Guantanamo, the real win is that the [CIA detention and torture program](#) will not be put on trial.

Now the public likely will not hear his testimony about his alleged torture and ill-treatment. Some of this was detailed in a 2007 leaked report by the International Committee of the Red Cross on how 14 former CIA detainees transferred to Guantanamo in 2006 had been treated while in US custody. That report indicated Khan had been, among other things, held in incommunicado detention, placed in prolonged stress positions, kept naked and denied solid food. When Khan appeared before a Combatant Status Review Tribunal in Guantanamo in 2007, he submitted a lengthy document, nine pages of which were blacked out, where he detailed what he experienced in CIA custody for three-and-a-half years (although he notes that in the final 10 months of his secret detention he was treated "with respect"). Mental torture continued in Guantanamo, he alleged, driving him to twice attempt suicide by chewing through his own arteries.

According to media reports, Khan's plea agreement requires substantial cooperation with the government including testifying against alleged September 11 mastermind, Khalid Sheikh Mohammed (KSM), among others, over the next four years. In exchange, his sentence will be capped at 19 years; if not, the maximum is 25 years.

The charges against Khan are replete with descriptions of alleged conversations among senior al Qaeda operatives, including KSM and those accused of plotting the bombing of the JW Marriott hotel in Indonesia. If Khan testifies in person, it is less likely that the government will need to rely on statements from other witnesses obtained in coercive circumstances (despite improvements to the military commission rules it is still possible for coerced evidence to be admitted). The more people who testify in person against KSM and others, the less likely it is that the public will learn more about his torture. And Khan's guilty plea means he will not present evidence of his ill-treatment to explain why he may have made any confessions. Instead, with the ink fresh on a plea deal, his years in secret detention will likely only be used at his sentencing in a plea for leniency.

And so the tortured remain in Guantanamo, their claims of mistreatment rarely heard. When former CIA detainees mention their mistreatment, the court audio feed is severed, as happened on Wednesday, so the public cannot hear. Military commissions continue to serve their purpose, prioritizing hiding torture and mistreatment ahead of ensuring adherence to fundamental fair trial principals.

In the end, the military commissions fail even at that. Many details of the CIA detention and interrogation program have been released. And the military commissions have only prosecuted seven cases in the last 10 years. During the same period, federal courts have prosecuted over 400 terrorism cases some of those suspects providing specific information about Khan.

Iyman Faris, arrested in March 2003 in Virginia and prosecuted in federal court, claimed that he visited Khan and his family in 2001, during which time Khan spoke to him about the fight in Afghanistan, and told him that he had met KSM, and that Khan said he wanted

to martyr himself by blowing up President Musharraf of Pakistan. Faris was convicted of conspiracy and providing material support to al Qaeda, and was sentenced to 20 years in prison. Uzair Paracha, whose father, Saifullah, is the oldest detainee in Guantanamo, was arrested in March 2003 in New York City. He too was prosecuted in federal court. Paracha allegedly conspired with members of al Qaeda and Khan to help Khan fraudulently obtain travel documents to enter the US to engage in terrorist acts. Paracha was convicted of conspiracy and providing material support to al Qaeda, and sentenced to 30 years in prison. If these suspects can be handled through normal law enforcement and federal court channels, why not Khan? The most compelling explanation seems to be that the government would like to cover up what happened during the years Khan spent in CIA custody, and will sacrifice real justice in order to do so.

The federal justice system certainly is not perfect. Iyman Faris later claimed he provided false information about Khan to the FBI because they threatened to send him to Guantanamo. And [detention conditions in US prisons](#) also raise serious human rights concerns. But the problems with the federal system do not even come close to those at Guantanamo. And federal civilian trials are based on 200 years of precedent, not founded on a fundamentally flawed statute that the Supreme Court may one day find unconstitutional. Evidence obtained in the civilian system can be used in other trials because, unlike those at Guantanamo and at the secret CIA sites, the policies and practices of the FBI and federal law enforcement do not violate US and international law.

Yes, a man pleaded guilty today to serious crimes. But his plea is no victory, at least not for justice and the rule of law. Instead, it is a reminder that a fundamentally flawed system will continue to produce fundamentally flawed results. Civilian justice works. Let's use it.

Andrea Prasow is senior counterterrorism counsel and advocate at Human Rights Watch. She attended the proceeding of Majid Khan at Guantanamo Bay, Cuba. Prasow investigates and analyzes US counterterrorism policies and practices. She also leads advocacy efforts urging executive and legislative branch officials in Washington to implement counterterrorism policies that respect internationally recognized rights. Prior to joining Human Rights Watch, Andrea was a defense attorney with the Office of Military Commissions.

A Roadmap to Justice for CIA Torture

How Large-Scale US Surveillance is Harming Journalism, Law, and American Democracy

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