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Ten years on, Kuwaiti inmates fear indefinite Guantanamo detention

By **Jenifer Fenton**, for CNN
August 16, 2011 -- Updated 0952 GMT (1752 HKT)

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STORY HIGHLIGHTS

- Fayiz Mohammed Ahmed Al Kandari was captured by U.S. forces in Afghanistan in 2001
- Kuwait claims he was doing charity work; has been held in Guantanamo Bay for 10 years
- One of two Kuwaitis lawyers say are being detained indefinitely without trial
- Kuwait has built rehabilitation center to house them if returned

Abu Dhabi, UAE (CNN) -- In the summer of 2001, Fayiz Mohammed Ahmed Al Kandari, the eldest son of a large family, left Kuwait to travel to Afghanistan. His stated purpose was to do charitable work, assisting with the reconstruction of two wells and the repair of a mosque.

His trip was for the sake of his mother who had cancer so there would be "more blessings from God on her behalf," according to a member of the Al Kandari family. He had traveled to Afghanistan before on charitable work in 1997 -- and to Bosnia in 1994.

But this visit would end up with a much longer and unintended journey -- to Guantanamo Bay in Cuba. Nearly 10 years later, Al Kandari remains incarcerated at the U.S. detention facility. And his case illustrates the difficulties of establishing who may have had links with al Qaeda and similar groups in the chaotic aftermath of 9/11, the strength of evidence against them, and whether they might remain or become a threat today if freed from detention.

Kuwait is an important U.S. ally in the Gulf: During the first Gulf War in the early 1990s, the U.S. led the counteroffensive that pushed Saddam Hussein's invading Iraqi forces out of Kuwait, and Kuwait allowed U.S. troops to enter Iraq from its territory during the 2003 invasion.

The detainee (Al Kandari) recruited

According to his passport Al Kandari left Kuwait at the end of June 2001. He traveled to Pakistan, where he stayed for two months and then he traveled on to Afghanistan,

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personnel to participate in jihad in Afghanistan

--2004 Combatant Status Review Board

according to legal transcripts.

Lt. Col. Barry Wingard is defending Al Kandari before the military commission that is hearing his case at Guantanamo Bay. He says that after the 9/11 attacks, Al Kandari remembers leaflets falling all around him. On the leaflet there was a picture of an Afghan man, who was holding a bag of money. The leaflet read, "You turn in your Arabs and we will give you money."

Local Afghan officials advised Al Kandari to leave, according to Wingard. But in October 2001, he was captured by the Northern Alliance -- along with many other Arabs -- and "sold" to U.S. forces in Afghanistan, Wingard said.

Prosecutors say the story about Al Kandari's charitable work is not true. Al Kandari is accused of giving material support to terrorism and conspiracy to materially support terrorism.

A September 2004 Combatant Status Review Board said: "The detainee (Al Kandari) recruited personnel to participate in jihad in Afghanistan ... traveled into Afghanistan and received weapons training at the Khaldan training camp. Osama bin Laden personally provided religious instruction and trainee (sic) at this camp." The Board concluded Al Kandari was a member of al Qaeda and "the detainee was in the Tora Bora mountain region in October or November 2001."

Al Kandari, now 36, has always denied the accusations. According to legal transcripts, he said: "I looked at all the unclassified accusations; I was laughing so hard."

He said he'd been accused of fighting with the Taliban and al Qaeda and that he'd spent most of his time in Afghanistan alongside Osama bin Laden.

"All this happened in a period of three months ... I ask, 'Are these accusations against Faiz or against Superman?' It seems to me that whoever wrote these accusations he must (have) been drinking and he must have been drunk when he wrote it."

Moazzam Begg, a British Muslim who was also held at Guantanamo, says Al Kandari was taken to an American detention center in Kandahar. Begg told CNN he remembered Al Kandari from Kandahar because the Americans would bring him from cell to cell to collect trash.

Begg says others in the detention center told him Al Kandari was knowledgeable about Islamic issues. Begg was transferred to Bagram Air Force Base and then to Guantanamo and says he never saw Al Kandari again. But he says he never heard another detainee say anything about Al Kandari being associated with known terrorists or terrorists activities.

Al Kandari's friends and relatives also insist he never had any affiliation with terrorist organizations, according to legal documents. Despite years of interrogations, Al Kandari has maintained his innocence, Wingard said.

Al Kandari is only allowed a phone call to his family every several months. His mother, Fatima Yusuf, is still alive, 10 years after Al Kandari left for Afghanistan.

"I have lost my son for years and I am longing for him," she wrote in testimony for her son. Al Kandari "used to divide his daily pocket expenses into two halves, one for him and he used to distribute the other half to the poor. Sometimes, he spent his whole pocket expenses to the needy, without withholding anything for him."

Presently, Al Kandari is not making the calls to his family because he

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has been locked in solitary confinement for going on a hunger strike after his personal belongings, including his mail, was taken, according to his Wingard, his lawyer.

Al Kandari is one of two remaining Kuwaiti detainees. Ten Kuwaiti detainees have been released from Guantanamo.

At its peak, Guantanamo held at least 779 men. But over the years some 600 men have been sent to their country of origin or to a country willing to take them. There are now fewer than 200 held at the facility. Some are likely to be released, but in March, U.S. President Barack Obama signed an executive order that allows for "indefinite detention" with periodic reviews for dozens of detainees. The Obama administration also announced that military commission trials against other detainees will resume. President Obama had previously signed an executive order in 2009 promising to close the detention facility within a year.

Al Kandari, his lawyers believe, is likely to be indefinitely detained. "Forty-eight unfortunate souls in Guantanamo Bay will never get a trial, will be presumed guilty and will die in Guantanamo without ever having stepped into a courtroom," Wingard said. Al Kandari has an appeal before the Court of Appeals for the D.C. Circuit, but David Cynamon, the lead attorney for the Kuwaiti detainees at Guantanamo Bay Prison, believes that the court is a "black hole" for the detainees.

Earlier this year, the U.S. Supreme Court rejected an appeal from another Kuwaiti -- Fawzi Al Odah -- challenging his indefinite detention. Al Odah, who Cynamon represents, also claims he was traveling to the Pakistan-Afghanistan region in 2001 to teach and for charity work.

According to Al Odah's combatant status review board in 2004, Al Odah was associated with al Qaeda and the Taliban. Additionally, "The detainee admits carrying an AK-47 through the Tora Bora mountains for 10 to 11 days during the U.S. air campaign in that region."

I looked at all the unclassified accusations (against me and) I was laughing so hard

--Fayiz Mohammed Ahmed Al Kandari, Guantanamo Bay inmate



Al Odah, now 34, has maintained his innocence throughout his detention. His father Khalid Al Odah told CNN that he was carrying a weapon when he was detained, but only for for self defense.

The difficulty with the Guantanamo cases is the government relies on hearsay, Cynamon said. There is no way of "testing the truthfulness of the people making the allegations."

According to diplomatic cables from the U.S. Embassy in 2009, published by WikiLeaks, the U.S. Ambassador in Kuwait dismissed the Kuwaiti detainees "as nasty, unrepentant individuals" and added: "Kuwait's record had been tarnished by the example of former GTMO detainee al-Ajmi, who'd allegedly (blew) himself up in Mosul following his release to the Kuwaiti authorities."

Kuwait's Minister of Interior Sheikh Jaber al-Khalid Al Sabah noted according to the same cable: "We are not Saudi Arabia; we cannot isolate these people in desert camps or somewhere on an island. We cannot compel them to stay. If they are rotten, they are rotten and the best thing to do is get rid of them. You picked them up in Afghanistan; you should drop them off in Afghanistan, in the middle of the war zone."

Adel Abdul Hadi, one of Al Kandari's defense lawyers, said of Sheikh al Sabah's comments: "Those charged with having Fayiz (Al Kandari) and Fawzi (Al Odah) returned were actually suggesting they be murdered instead (of) being returned to Kuwait."

The nine other Kuwaiti detainees who have been repatriated to

Kuwait between 2005 and 2009 have reintegrated well said Khalid Al Odah, who works with the Kuwait Family Committee, which lobbies on behalf of the remaining Kuwaiti prisoners in Guantanamo. "They are productive. Some have children, they are working and we are in contact with them all the time," Khalid Al Odah said.

I have lost my son for years and I am longing for him

--Fatima Yusuf, mother of Guantanamo inmate



Fouad Mahmoud Al Rabiah was the last Kuwaiti detainee released from Guantanamo in December 2009. In his case a U.S. District Court concluded at the time that Al Rabiah's uncorroborated confessions, which his counsel attributed to abuse and coercion, were "not credible or reliable, and that the Government has failed to provide the Court with sufficiently credible and reliable evidence to meet its burden of persuasion. If there exists a basis for Al Rabiah's indefinite detention, it most certainly has not been presented to this Court." His petition for habeas corpus was granted.

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Al Rabiah was repatriated to Kuwait where he was supposed to live in a rehabilitation center, according to Cynamon, his lawyer. But after a few days of interrogation, the Kuwaiti authorities decided there was no case against Al Rabiah and they allowed him to go free.

If Al Kandari and Al Odah were released they would be sent to a rehabilitation center in Kuwait's central prison, Khalid Al Odah said. They would not be allowed to leave the country and they would be under surveillance, Khalid Al Odah said.

Khalid Al Odah said his son may have lost his legal battle, but "Kuwait has other cards to play with."

On May 18, Kuwait's parliament descended into a brawl during a debate about the fate of Al Kandari and Al Odah. According to press reports, a Shiite MP referred to the Kuwait detainees as "al Qaeda" militants. That provoked an argument with a Muslim Brotherhood MP -- and blows were exchanged -- leading Assembly Speaker Jassem Al-Kharafi to suspend the session.

The majority of Kuwaiti MPs and thousands of others have signed a petition asking the U.S. to give the Kuwaiti detainees a fair trial or release them.

Kuwaiti MP Rola Al-Dashti said it was impossible to know if Al Kandari was guilty or innocent: "I don't see a fair trial ... nobody knows why the U.S. is keeping them," she said, referring to Al Kandari and Al Odah. It is very important to the people of Kuwait and to the families of the detainees that the U.S. abide by democratic principles, she said. "It doesn't look good to look into the U.S. and see this kind of practice."

Al Odah's father Khalid said "Ten years is long enough to keep them without a trial."

The recently departed U.S. Ambassador to Kuwait Deborah Jones, who was serving in her post when the WikiLeaks cables were allegedly sent, said the remaining two Kuwaiti detainees in Guantanamo represent a threat to both the U.S. and Kuwait, according to Kuwaiti press reports. (The U.S. embassy in Kuwait declined to comment on the remarks or provide a transcript of the ambassador's press event in which the comments were reportedly made).

Al Kandari has maintained that after finishing the repairs on the mosque back in 2001, he placed a plaque there. His defense team are still trying to trace that mosque. Adel Abdul Hadi, his lawyer, says that "if found, it will be yet more proof that U.S. intelligence is again wrong."

