

Press Release

Washington Legal Foundation
Advocate for freedom and justice®
2009 Massachusetts Ave., NW
Washington, D.C. 20036
202.588.0302

FOR IMMEDIATE RELEASE

March 18, 2004

COURT URGED TO UPHOLD DETENTION OF "ENEMY COMBATANT" JOSE PADILLA

(Rumsfeld v. Padilla, No. 03-1027)

The Washington Legal Foundation (WLF) yesterday urged the U.S. Supreme Court to uphold the federal government's detention of Jose Padilla, the "dirty bomber" accused of being an al Qaeda operative.

In a brief filed in *Rumsfeld v. Padilla*, WLF argued that the government is entitled to detain Padilla without trial just as it is entitled to detain any enemy soldier captured in time of war. WLF argued that the government's right to detain Padilla is not diminished simply because he is a U.S. citizen and was captured in Chicago rather than on some overseas battlefield.

WLF filed its brief on behalf of itself, the Allied Educational Foundation, U.S. Rep. Walter Jones (N.C.), and U.S. Rep. Lamar Smith (Tex.).

"When American military leaders determine that individuals should be detained as enemy combatants, the courts should be highly deferential to such decisions," WLF Chief Counsel Richard Samp said after filing WLF's brief. "The courts are ill-equipped to second-guess the President when, acting in his capacity as Commander in Chief, he makes decisions implicating sensitive matters of foreign policy, national security, or military affairs," Samp said.

Padilla was arrested at Chicago's O'Hare Airport in May 2002 while returning from an extended trip to Afghanistan and Pakistan. The government alleges, based on statements by captured al Qaeda leaders, that Padilla plotted to build and detonate a "radiological dispersal device" (a "dirty bomb") in a major American city. Padilla has not been charged with any crime. Rather, he is being held in a military facility and is being interrogated by military investigators.

A lawyer who had previously represented Padilla filed a habeas corpus petition on his behalf in June 2002 in New York City. The district judge issued several preliminary rulings, including that: (1) the government has the authority to hold enemy combatants

without charges, even when they are Americans captured in the United States; (2) Americans may file habeas corpus petitions challenging their designation as enemy combatants, but the designation should be upheld if the government can produce "some evidence" in support of its decision; and (3) Padilla should be granted access to his attorney to allow her to assist in pursuing the habeas corpus petition. Padilla appealed from the first two determinations; the government subsequently granted Padilla access to counsel and thus has dropped its appeal from the third determination.

The court of appeals ruled in favor of Padilla on the first issue and thus had no need to reach the other two. It held that the President may not detain American citizens as enemy combatants -- regardless how strong its evidence that the citizen intends to carry out war-like acts against the U.S. -- without the permission of Congress, and that Congress has not granted that permission.

In its brief, WLF supported the President's right to take military action -- including detaining enemy combatants -- without first obtaining permission from Congress. WLF also argued that Congress has, in fact, consented to such action, by adopting on September 14, 2003 a resolution authorizing use of military force against al Qaeda. WLF argued that the centuries-old laws of war and Supreme Court precedent both support the government's decision to hold enemy combatants such as Padilla, regardless of their citizenship. WLF argued that the courts need to be vigilant to guard against government abuse of power but that there is no evidence of such abuse here. WLF argued that there is nothing to suggest that Padilla is being held because of his racial background or in retaliation for any anti-government speech; rather, the evidence suggests that the only reason that Padilla is being held is that the government really believes that he is an al Qaeda operative.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a significant portion of its resources to promoting America's national security and to ensuring that the United States government is not deprived of the tools necessary to protect the country from those who would seek to destroy it and/or harm its citizens. WLF also filed a Supreme Court brief in the support of the government in the pending case involving al Qaeda and Taliban prisoners detained at Guantanamo Bay, Cuba, and will file a brief next week in another "enemy combatant" case, involving Yaser Hamdi (a Louisiana-born Saudi national).

* * *

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its website, www.wlf.org.