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## **COURT'S MIXED DECISIONS IN ENEMY COMBATANT CASES GENERALLY FAVOR U.S. (Rumsfeld v. Padilla, Hamdi v. Rumsfeld)**

The U.S. Supreme Court this week issued mixed decisions in two cases that examined the government's right to detain American citizens as "enemy combatants" without being required to resort to the criminal justice system. In the case of al Qaeda operative Jose Padilla, the Court threw out Padilla's habeas corpus petition altogether, ruling that Padilla had filed his petition in the wrong court. In the case of Taliban fighter Yasser Hamdi, the Court upheld the government's right to detain American citizens as enemy combatants. However, the Court returned Hamdi's case to the lower courts, ruling that Hamdi should be given a greater opportunity to contest the government's determination that he is, in fact, a Taliban fighter.

The decisions in *Rumsfeld v. Padilla* and *Hamdi v. Rumsfeld* were partial victories for the Washington Legal Foundation (WLF), which had filed briefs in the cases in support of the military. WLF has pledged to continue its involvement in these cases when they return to the lower courts, to ensure that the courts do not intrude unnecessarily into military decision-making.

WLF filed its briefs on behalf of itself, the Allied Educational Foundation, U.S. Rep. Joe Barton (Tex.), U.S. Rep. Walter Jones (N.C.), and U.S. Rep. Lamar Smith (Tex.). WLF's brief in the *Hamdi* case was drafted with the pro bono assistance of Thomas V. Loran and William T. DeVinney, attorneys with Pillsbury Winthrop LLP.

"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 reviewing the Court's decisions. "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. We see nothing in the Court's decisions that licenses the lower courts to conduct more than a deferential review of military decision-making," 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 South Carolina military facility and is being interrogated by military investigators. In June 2002, Padilla's lawyer filed a habeas corpus petition in federal court in New York, seeking Padilla's release. The federal appeals court in New York last year ordered Padilla's release, finding that military detention of Americans captured in this country was not authorized by Congress. The Supreme Court reversed and ordered that the petition be dismissed, ruling that the petition should have been filed in South Carolina. The Court agreed with WLF that allowing detainees to file habeas petitions in any federal court district other than the one in which the petitioner is being detained would encourage forum shopping by detainees who are searching for a sympathetic judge.

Hamdi was turned over to the American military by Northern Alliance forces in December 2001. The military alleges that Hamdi went to Afghanistan in 2001 to train with and fight for the Taliban, and that he surrendered to Northern Alliance forces near Konduz, Afghanistan along with his entire Taliban unit.

Hamdi's father filed a habeas corpus petition on his behalf in June 2002, alleging that his detention without a hearing violated his constitutional rights. The U.S. Court of Appeals for the Fourth Circuit dismissed Hamdi's habeas petition in January 2003, ruling that the Executive Branch is entitled to detain U.S. - citizen enemy combatants until the cessation of hostilities. In its decision this week, the Supreme Court agreed with that ruling, but it held that Hamdi should be given a greater opportunity to prove that he is not an enemy combatant. The Court nonetheless stressed that courts should be highly deferential to the military's determination that someone is an enemy combatant.

In its brief, WLF had 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 Hamdi 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 Hamdi is being held is that the government really believes that he served as a Taliban soldier.

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 U.S. 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.

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