

**September 9, 2005**

COURT UPHOLDS DETENTION OF "ENEMY COMBATANT" JOSE PADILLA

(Padilla v. Hanft)

The U.S. Court of Appeals for the Fourth Circuit in Richmond today upheld the federal government's authority to detain Jose Padilla, the "dirty bomber" accused of being an al Qaeda operative.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *Padilla v. Hanft*, urging rejection of challenges to the military's authority to detain enemy combatants. The court agreed with WLF 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. The court held 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. The court noted that Padilla fought with al Qaeda/Taliban forces in Afghanistan against the United States; it held that he should not be exempt from detention simply because he managed to elude capture and make his way out of the country.

"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 ruling. "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; or, alternatively, to blow up an apartment building. The government further alleges that Padilla armed himself with a rifle and joined with enemy forces in Afghanistan during periods of active combat in late 2001. Padilla has not been charged with any crime. Rather, he is being held in a South Carolina military facility.

Padilla initially filed a habeas corpus petition in June 2002 in New York City, seeking release from custody. The case reached the Supreme Court which, in June 2004, determined that Padilla had filed in the wrong court (he should have filed in South Carolina where he was being held) and dismissed his case. Padilla then filed a new petition in federal district court in South Carolina. In February 2005, the district judge granted the petition and ordered him released within 45 days. The judge ruled that a 1970 law, the Non Detention Act, prohibits detention of Americans outside the criminal justice system except when otherwise specifically authorized by Congress. The court ruled that a second law adopted in the immediate aftermath of the September 11, 2001 terrorist attacks, the Authorization for the Use of Military Force (AUMF), did not constitute specific authorization to detain Americans as enemy combatants unless they are captured on an overseas battlefield. Today's decision reverses the trial court's ruling and remanded the case to give Padilla an opportunity to contest the government's finding that he is, in fact, an enemy combatant.

The court agreed with WLF that when Congress adopted the AUMF, it intended to authorize the President to detain those fighting against the United States, even if they are U.S. citizens. The court noted that the Supreme Court last year held that the AUMF authorized the detention of Yasser Hamdi, another American who fought with the Taliban in Afghanistan (and was captured there). The Fourth Circuit said that Congress never suggested, in adopting the AUMF, that the President's detention authority only extends to those captured on the battlefield and that Padilla's escape from Afghanistan before being captured somehow exempted him from being detained.

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.

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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.