

PUBLIC

AI Index: AMR 51/051/2005

10 March 2005

Further Information on UA 166/03 (AMR 51/084/2003, 11 June 2003) and follow-up (AMR 51/030/2004, 16 February 2004) - Incommunicado detention/detention without charge/legal concern

USA

Jose Padilla (also known as Abdullah al-Mujahir) (m)

A US District judge ruled on 28 February that the US government could not hold Jose Padilla indefinitely as an "enemy combatant", and gave the administration 45 days to either charge or release him. The Justice Department is appealing against this decision.

US Attorney General Alberto Gonzalez has reportedly suggested that the Justice Department may file criminal charges against Jose Padilla if the appeal is unsuccessful, but added, "that decision has not been made yet".

Jose Padilla is a US citizen who has been held in the USA for nearly three years without charge or trial. He is held as an "enemy combatant", although he was detained far from any battlefield. He was arrested at Chicago airport on 8 May 2002 on suspicion of conspiracy to detonate a radioactive "dirty bomb" in a US city. He was originally held in the custody of the US Justice Department as a "material witness" in a grand jury probe. However, on 9 June 2002 he was designated an "enemy combatant" under an executive order signed by President Bush and transferred to military custody in Charleston, South Carolina.

Jose Padilla was held in solitary confinement without access to an attorney or his family until February 2004, when the US Department of Defense announced that he would be granted access to his lawyer "subject to appropriate security restrictions". His case eventually went to the US Supreme Court, but the Court did not get to the merits of his claim that he was unlawfully held. On 28 June 2004, the Court ruled the case should not have originally been filed in federal court in New York, but in South Carolina.

Four of the nine US Supreme Court Justices dissented, saying not only that the case had been filed in the appropriate jurisdiction, but making their opinion clear about unfettered executive power: "At stake in this case is nothing less than the essence of a free society. Even more important than the method of selecting the people's rulers and their successors is the character of the constraints imposed on the Executive by the rule of law...[I]f this Nation is to remain true to the ideals symbolized by its flag, it must not wield the tools of tyrants even to resist an assault by the forces of tyranny."

The Padilla Case was re-filed in the US District Court for the District of South Carolina as the Supreme Court majority had ordered. The government persisted in its contention that the President has the constitutional authority to detain Jose Padilla without charge or trial as an "enemy combatant", and that the place of his arrest was of no consequence. However, District Judge Henry Floyd found that President Bush's decision to remove Padilla from the ordinary criminal justice system and place him in military custody was "neither necessary nor appropriate". In his ruling, Judge Floyd wrote that to rule in favour of the government "would not only offend the rule of law and violate this country's constitutional tradition, but it would also be a betrayal of this Nation's commitment to the separation of powers that safeguards our democratic values and individual liberties".

BACKGROUND INFORMATION

A second US national who was held as an "enemy combatant" on US soil, Yaser al-Hamdi, was released in October 2004 after being held without charge or trial for over three years. As a joint Saudi Arabian/US national, he was returned to Saudi Arabia under various conditions, including that he renounce his US

citizenship. He did not face charges in Saudi Arabia. His release followed a Supreme Court decision that his was entitled to due process and *habeas corpus* review of his detention by US courts. A third man, Qatari national Ali Saleh Kahlah al-Marri, continues to be held on US soil as an “enemy combatant”.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:

- urging the US authorities not to appeal against District Judge Henry Floyd’s ruling, but to charge Jose Padilla without delay or release him;
- seeking assurances that, if charged, the authorities will not seek to use against him in any proceedings any statement which was obtained under torture or duress or without due process.

APPEALS TO:

The Honorable Alberto Gonzalez
Attorney General, Office of the Attorney General
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Fax: +1 202 307 6777

Email: AskDOJ@usdoj.gov

Salutation: Dear Attorney General

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 21 April 2005.