

AMNESTY INTERNATIONAL

PRESS RELEASE

AI Index: AMR 51/068/2004 (Public)
News Service No: 106
27 April 2004

USA: Supreme Court must reject indefinite detention

Arbitrary detentions violate a bedrock principle of international human rights law, emphasized Amnesty International on the eve of the United States Supreme Court hearing into the detention of "enemy combatants" Jose Padilla and Yaser Esam Hamdi, both US nationals held without charge or trial in military detention on US soil.

The hearing opens a second avenue for the Supreme Court to reject the US administration's open-ended policy of indefinite, untried detention for those deemed a threat to US security. Last week, the Court heard arguments relating to foreign nationals in US custody in legal limbo in Guantánamo Bay, Cuba.

The issue before the Court tomorrow is whether the US President has the power to place US citizens in detention effectively outside the reach of the courts and to hold them indefinitely.

"Extrajudicial military detention of US citizens is an unprecedented expansion of executive power, and flouts fundamental principles under international law," Amnesty International said, "Although the threat to human rights represented by al-Qa'ida is real, it cannot be dealt with by throwing away the rule book and depriving individuals of essential safeguards."

Any ruling in favour of the US administration in these cases would set a disturbing precedent allowing anyone to be stripped of their liberty and rights under US and international law, should the President declare them to be "enemy combatants".

The right to judicial review is a fundamental protection against arbitrary detention, which is absolutely prohibited under international law, even in time of war or emergency. An essential component of this is the right of anyone in detention to have an adequate opportunity to challenge the basis for their detention.

"Not only has the government failed to charge or try Hamdi and Padilla but it has actively hindered the process of judicial review. It has failed to provide the courts with a detailed factual basis for their detention; failed to provide them with access to their lawyers during the procedures; and denied them full access to the courts."

Background Information

Yaser Hamdi was arrested in Afghanistan in late 2001, reportedly after surrendering to Northern Alliance forces, and transferred to the US, via Guantánamo, in April 2002. Jose Padilla was arrested at Chicago airport in May 2002 and was abruptly transferred from the judicial system to military detention in June 2002. Both men have been held in solitary confinement in a US naval prison ever since - and denied access to

their lawyers for most of this period.

The US government contends it is entitled to hold them as "enemy combatants" under the President's war powers in the context of the ongoing threat from al-Qa'ida. To date, neither of the detainees has been allowed to appear in person before the courts, and the government has provided only the most limited information to support its designation of the detainees as "enemy combatants".

In January 2003 the US Court of Appeals for the Fourth Circuit supported the US government's right to hold Hamdi as an "enemy combatant" with only limited judicial review, on the ground that Hamdi was clearly arrested in an active combat zone. However, the Court of Appeals for the Second Circuit rejected the government's position in Padilla's case, ordering his release or transfer back to the judicial system for possible trial.

The Supreme Court is to consider both cases at separate hearings tomorrow.

Public Document

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