

PUBLIC

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UA 166/03 Incommunicado detention/detention without charge/legal concern

USA Jose Padilla (also known as Abdullah Al Mujahir) (m)

Jose Padilla, a US citizen, has been held incommunicado in US military custody for a year without charge or trial. He is being held as an “enemy combatant”, even though he was arrested far from a battlefield. An appeal by the US government is currently pending against a US district court’s order that Jose Padilla be given access to his lawyer. The outcome of this case could set an important legal precedent regarding the government’s power to detain people on national security grounds.

Jose Padilla is a US citizen, born in New York, who converted to Islam. He was arrested at Chicago airport on 8 May 2002 on alleged 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, where he was given access to an attorney. However, on 9 June 2002 he was transferred to military custody on the basis of a one-page order by President Bush designating him to be an “enemy combatant” closely associated with *al-Qa’ida*, whose detention was necessary to prevent him from aiding an attack on the United States. Since then, he has been held in solitary confinement without charge or trial, and without access to an attorney or to his family in a navy jail in Charleston, South Carolina.

Jose Padilla’s lawyer filed a *habeas corpus* application (challenging the legal basis for his detention) on his behalf, in which she also sought access to her client. In ruling on the case in December 2002, a US district court upheld the president’s authority to detain enemy combatants, even if they were US citizens, with only limited right of judicial review. However, the court also ruled that Jose Padilla was entitled to consult with, and be visited by, his lawyer, in order to have some opportunity to present facts to rebut the government’s evidence. The US government has appealed on the ground that granting Jose Padilla access to an attorney would undermine the “trust and dependency” on the military that is “essential to effective interrogation”. Jose Padilla remains in incommunicado detention pending the outcome of the appeal to the 2nd Circuit Court of Appeal.

Jose Padilla’s treatment represents a denial of rights of due process under the US Constitution as well as a violation of international law. In December 2002, the United Nations (UN) Working Group on Arbitrary Detention described his detention as “arbitrary” with regard to articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR). Article 9 of the ICCPR affirms the right of everyone to protection from arbitrary detention and specifies that anyone arrested shall be informed promptly of the reasons for arrest and of any charges, and shall be entitled to take proceedings before a court to challenge the lawfulness of the detention. Article 14 states that all persons are equal before the courts and tribunals, and sets out standards for a fair trial.

The practice of detaining people incommunicado has been condemned by human rights bodies, including the UN Special Rapporteur on Torture, as a human rights violation which can lead to other violations such as torture or ill-treatment or interrogation without due process safeguards. Access to a lawyer is an important safeguard to ensure that detainees’ rights are protected, not only with regard to criminal or other proceedings, but also with regard to conditions of detention and a detainee’s physical and mental health. Prolonged incommunicado detention or solitary confinement can in itself be a form of cruel, inhuman or degrading treatment.

BACKGROUND INFORMATION

Jose Padilla is one of two US citizens currently detained indefinitely as "enemy combatants" in US military custody. The other is Yaser Esam Hamdi, who was arrested during the US-led war in Afghanistan in late 2001 (reportedly after surrendering to the Northern Alliance) and was originally detained in Guantánamo Bay. He was transferred to the USA in April 2002 after the discovery of his US nationality. He too is held incommunicado without access to a lawyer or his family. His case is the subject of separate AI appeals, along with the cases of more than 660 non-US nationals held without charge or trial or access to attorneys in Guantánamo Bay (see AI report: *USA Beyond the Law: Update to Amnesty International's April Memorandum to the US Government on the rights of detainees held in US custody in Guantánamo Bay and other locations*, AI Index: AMR 51/184/2003).

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

- expressing grave concern that Jose Padilla is being held without charge or trial in incommunicado detention in US military custody;
- urging that he be granted immediate access to his attorney and other due process protections under US and international law;
- urging that the government withdraw its opposition to the district court's ruling that Jose Padilla should have access to his attorney;
- calling for Jose Padilla to be either charged with a recognizable offence and brought to trial under fair procedures or released;
- recognizing the right of the United States Government to take action to protect its national security but noting that any such measure must be in accordance with international law and standards;
- pointing out that prolonged incommunicado detention, as well as violating rights to due process and to protection from arbitrary detention, may in itself constitute cruel, inhuman or degrading treatment.

APPEALS TO:

President George W. Bush,
The White House,
Office of the President, 1600 Pennsylvania Avenue
Washington DC 20500, USA

Telegram: President Bush, Washington DC, USA

Fax: + 1 202 456 2461

Salutation: Dear Mr. President

COPIES TO:

The Solicitor General Theodore B. Olsen, Office of the Solicitor General
950 Pennsylvania Avenue, NW,
Washington DC, 20530-0001, USA

Fax: + 1 202 514 8844

The Honorable Donald Rumsfeld
Secretary of Defense,
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The Honorable Colin Powell
Secretary of State
Department of State, 2201 C Street, NW, Washington DC 20520, USA

Fax: + 1 202 261 8577

and 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 23 July 2003.