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USA: Federal courts challenge administration's detention policies

Two federal appeals courts yesterday issued significant challenges to the US administration's detention of so-called "enemy combatants" without charge or trial or access to lawyers or family members. These decisions affirm basic principles of justice which the US government must not ignore.

The US Court of Appeals for the Second Circuit ruled in the case of Jose Padilla that the US government had no inherent constitutional authority to detain a US citizen as an 'enemy combatant' on US soil outside a combat zone. Such a decision by the executive, the court held, could only be taken if authorized by an act of Congress, noting that present law expressly forbids such detentions.

Later the same day, the US Court of Appeals for the Ninth Circuit ruled in the case of a foreign national held in Guantánamo Bay that the US government did not have unchecked power to imprison any persons, including foreign nationals, on territory "under the control of the United States" without recourse to judicial review or access to counsel.

Jose Padilla, a US citizen arrested in Chicago in May 2002 and subsequently designated by President Bush as an 'enemy combatant', has been held incommunicado for the past 18 months in untried military detention in South Carolina without access to his lawyer or family. The Second Circuit ruled that he should be released within 30 days unless transferred to civilian custody where he could be charged with a criminal offence. The Court said that "under any scenario, Padilla will be entitled to the constitutional protections extended to other citizens."

The Second Circuit's ruling is a significant check on the unfettered power claimed by the executive to detain US citizens in the United States as "enemy combatants" in the "war against terrorism". Amnesty International reiterates its concern that the President's removal of Padilla from the criminal justice system had set a dangerous precedent which undermined the whole US justice system.

The appeal court's ruling is an affirmation of rights not only under US law but also under international law. Amnesty International urges the government not to appeal the decision.

Yesterday's Ninth Circuit decision stemmed from an appeal brought on behalf of Falen Gherebi, a Libyan national who has been held in Guantánamo Bay without any sort of legal process for almost two years. He is one of more than 650 foreign nationals from around 40 countries held in the US Naval Base there.

The Ninth Circuit held that detainees at the Guantánamo base should have access to lawyers and the US court system, noting that it is the "obligation of the judicial branch to ensure the preservation of our constitutional values and to prevent the executive branch from running roughshod over the rights of citizens

and aliens alike". It concluded that "the government's position is inconsistent with fundamental tenets of American jurisprudence and raises serious concerns under international law." This is the first US appeal court to issue such a ruling in the case of the Guantánamo detainees. An appeal brought on behalf of others held in Guantánamo is currently pending before the US Supreme Court after a lower appeals court upheld the government's position that the US courts had no jurisdiction over such cases.

The continuing detentions in Guantánamo Bay are a human rights scandal. The Ninth Circuit has now added its voice to the many voices raised around the world opposing this fundamental denial of justice and the rule of law.

The executive need not wait for the Supreme Court's decision before acting. President Bush has repeatedly stated his country's unswerving commitment to the rule of law. The Second and Ninth Circuits have given him another chance to prove it.