

**PUBLIC**

**AI Index: AMR 51/145/2005**

**13 September 2005**

**Further Information on UA 166/03 (AMR 51/084/2003, 11 June 2003) and follow-ups (AMR 51/030/2004, 16 February 2004, and AMR 51/051/2003, 10 March 2005) - Incommunicado detention/detention without charge/legal concern and new concern fear of torture/ill-treatment**

**USA**

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

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A federal appeals court has ruled that US authorities can continue to hold Jose Padilla as an "enemy combatant" in military detention without charge or trial. This ruling reverses an earlier decision by a US District Court that his detention was unlawful.

Ruling on the US administration's appeal against the District Court decision, on 9 September the three judge panel of the 4<sup>th</sup> US Circuit Court of Appeals ruled unanimously that President Bush has the authority to hold Jose Padilla under the Authorization for Use of Military Force Joint Resolution (AUMF) which was enacted by Congress after the 11 September 2001 attacks in the USA. Jose Padilla may now appeal to the Supreme Court against the decision.

Jose Padilla is a US citizen who has been held in the USA for over 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 as an "enemy combatant" under an executive order signed by President Bush and transferred to military custody on a Naval Brig in Charleston, South Carolina. Since then, Jose Padilla has been held in solitary confinement. He was incommunicado until February 2004.

Jose Padilla is being held on the same Naval Brig as Qatari national Ali Saleh Kahlah al-Marri, who was designated as an "enemy combatant" in 2003 (see UA 234/03, AMR 51/112/2003, 6 August 2003). Ali Saleh Kahlah al-Marri is known to be detained in conditions that appear to amount to torture. He has not received adequate treatment for physical and mental health problems, many of which are apparently caused by his detention. Amnesty International fears that Jose Padilla may be held in similar conditions.

### **BACKGROUND INFORMATION**

The US government maintains that it is entitled to detain individuals, including US citizens as "enemy combatants" without charge or trial in the context of the "war on terror", under the President's wartime powers and to hold them "for the duration of the hostilities". Amnesty International considers that such detentions violate international law and standards, including the prohibition against "arbitrary" detention which is a fundamental principle of international law, even during times of national emergency.

In late 2003, the US Court of Appeals for the Second Circuit in New York ruled that Jose Padilla's detention was unlawful because he was not captured within a zone of combat. He should, the court ruled, be given the constitutional protections extended to other citizens. That court ruled that he should be released and, if necessary, transferred to Justice Department custody to be charged and tried. The government appealed this ruling to the Supreme Court which ruled on a procedural point that the case should have been filed in South Carolina rather than New York.

In his District Court ruling earlier this year, Judge Henry Floyd found that Jose Padilla's continued detention outside the ordinary criminal justice system was "neither necessary nor appropriate" and that his detention was unconstitutional and against the rule of law.

However, the US government has persisted in its contention that the President has the constitutional authority to detain Jose Padilla as an "enemy combatant" without charge or trial regardless of where he was arrested. In the most recent appeal government lawyers argued that the main reason for his detention was that he fought against American forces in Afghanistan, rather than because he planned to detonate a "dirty bomb" in a US city.

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 he was entitled to due process and *habeas corpus* review of his detention by US courts.

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

- expressing grave concern that Jose Padilla continues to be held without charge or trial;
- urging that he be given a full and fair trial or released;
- 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;
- reminding the authorities that, in some cases, long-term solitary confinement may amount to cruel, inhuman or degrading treatment. It can also have serious effects on the physical and mental health of prisoners and may facilitate torture;
- expressing concern for his physical and psychological welfare after over 3 years in solitary confinement.

**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 25 October 2005.

**Cruel. Inhuman. Degrades us all.**

**Stop torture and ill-treatment in the "war on terror"**

For more information on AI's campaign see <http://web.amnesty.org/pages/stoptorture-index-eng>