

AMNESTY INTERNATIONAL PRESS RELEASE

AI Index: AMR 51/085/2003 (Public)
News Service No: 137
9 June 2003

USA: One year in detention without charge

Today marks a full year in which Jose Padilla, a US citizen, has been held incommunicado in military custody in the USA as "enemy combatant" without charge, trial or access to his lawyer or family.

"His rights under international law are being fundamentally violated," Amnesty International said, reiterating its appeal to the US government to charge or release him and to allow him immediate access to his lawyer.

"This case represents an unprecedented suspension of fundamental rights of US citizens in US custody."

"While the US has designated others as 'enemy combatants' Padilla's case is particularly troubling as he was arrested on suspicion of a crime which would clearly place him within the jurisdiction of the ordinary criminal justice system. If his detention is upheld, the government could potentially hold any criminal suspect associated with an alleged terrorist group in military custody for an indefinite period, with none of the usual safeguards in the criminal system," Amnesty International said.

Jose Padilla was arrested at Chicago airport on 8 May 2002. He was originally held as a "material witness" by the Department of Justice during a grand jury probe into an alleged conspiracy to detonate a radioactive "dirty bomb" on a US city. However, on 9 June 2002, the US government abruptly transferred him to military custody and cut off all contact with his attorney.

The transfer to military custody was made on the basis of a one-page order by President Bush designating Padilla to be an "enemy combatant" closely associated with al-Qa'ida, whose detention it said was necessary to prevent him from aiding an attack on the United States. He has been held since that date in solitary confinement on a naval base in Charleston, South Carolina.

In December 2002, a US district court upheld the president's authority to detain enemy combatants, even if 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 appealed, arguing that granting Padilla access to an attorney would hinder its ongoing interrogation of him. Jose Padilla remains without access to his attorney pending the government's appeal.

Background

Last December, the United Nations (UN) Working Group on Arbitrary Detention (WGAD) described Padilla's detention as "arbitrary" in violation of articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), to which the US is a State Party. Article 9 of the Covenant 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 rights for a fair trial.

Incommunicado detention generally 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 and/or solitary confinement can in itself be a form of cruel, inhuman or degrading treatment.

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 before being 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, a situation which has also been held to be arbitrary by the WGAD. 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.

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