

US to hold Jose Padilla indefinitely without charges

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The Bush administration confirmed June 13 that it had no plans either to charge, try or release Jose Padilla, the Brooklyn-born man who was seized by FBI agents last month at O'Hare Airport in Chicago as he returned to the United States from a lengthy stay overseas. Padilla, also known as Abdullah al Muhajir, is the first US citizen to be subjected to indefinite detention by the Bush administration under its unilateral assertion of wartime executive power.

Justice Department officials told a closed-door hearing of the Senate Judiciary Committee that the president had the legal power to order an American citizen detained indefinitely as a preventive measure. Unable to cite any law or constitutional provision that sanctioned such an action, they declared it to be a power inherent in Bush's role as commander in chief.

This declaration was made despite the fact that government sources admitted, on the day that Padilla's transfer to military jurisdiction was announced, that the Bush administration did not have evidence sufficient to warrant indictment, let alone conviction, by a civilian court.

The Justice Department officials said that a final decision had been made not to put Padilla before a military tribunal either. In effect, the US government admitted that the reason Padilla was transferred June 9 to military custody was to avoid bringing him before a federal district court in New York City for a hearing scheduled June 11 on his detention as a "material witness."

These statements amplified the declaration by Defense Secretary Donald Rumsfeld the previous day, who said, referring to Padilla, "We are not interested in trying him at the moment or punishing him at the moment. We are interested in finding out what he knows." Rumsfeld was not asked whether this meant Padilla would be subjected to illegal forms of interrogation, such as torture, to obtain

such information.

The declaration that the executive branch alone has the power to decide when a person qualifies as a combatant concludes a week of brazenly anti-democratic government actions against alleged Al Qaeda prisoners. These are not actions with ominous implications for the future; they are, rather, current, ongoing and expanding violations of the constitutional protections and legal rights of arrested persons.

Besides throwing Padilla in a military brig, the administration has barred him from consulting or communicating in any way with his court-appointed lawyer, Donna Newman of New York City. Newman filed a habeas corpus motion with US District Judge Michael Mukasey, who gave prosecutors until June 21 to respond.

The Pentagon also refused to allow a lawyer to meet with Yaser Esam Hamdi, another US-born detainee who was captured fighting for the Taliban regime in Afghanistan. Hamdi is in military custody in the United States. On June 13 federal prosecutors went before the Fourth Circuit of Appeals, seeking to stay a federal court order requiring the military to grant Hamdi access to a federal public defender. Having barred the public defender from meeting with Hamdi, the government is now arguing that the attorney has no standing to sue on Hamdi's behalf because he has not yet met with him.

In a third case, the *Washington Post* reported June 12 that an Arab immigrant arrested outside Chicago after the September 11 attacks had been held for more than eight months in federal custody without ever being brought before a magistrate or being assigned a lawyer. Nabil Almarabh, 35, a former cab driver in Boston, was picked up on September 18 and did not appear in court until May 22. He was finally arraigned in early June on immigration charges, for which the penalty is less than the time he has already spent in jail.

Justice Department lawyers argued that Almarabah had forfeited all his legal rights by returning to the United States illegally in violation of a previous deportation order. They also cited new powers to detain immigrants for prolonged periods of time under the USA Patriot Act, although the law was not adopted until several months after Almarabah's arrest.

In her petition for a writ of habeas corpus, Jose Padilla's lawyer asserts that the US government has violated such basic constitutional rights as the right to due process, to be free from unreasonable seizure, to obtain counsel, and to appear before a grand jury to hear the charges against him. "In short, the government's latest maneuver, similar to the government's detention here, is an attempt to detain Padilla indefinitely," the petition says. The document declares the evidence against Padilla to be "weak at best" and points out that while the government has classified Padilla as an "enemy combatant," there has been no congressional declaration of war.

Press accounts of the internal discussions concerning Padilla within the Bush administration raise many questions about the nature of the case. The *New York Times* reported June 13 that FBI officials had discussed whether to arrest him as he entered the United States, or follow him in order to track any accomplices or contacts, especially those who might have access to radioactive materials. They allegedly decided that it was too risky to try to track him, even though Padilla had been kept under surveillance for several months in Egypt and Switzerland.

Several officials confirmed that political considerations were uppermost in the decision to arrest Padilla. According to the *Times*: "officials said the arrest was important in demonstrating how the FBI and Central Intelligence Agency could undertake a successful prevention operation. They said that the Justice Department was eager to showcase the Padilla case after weeks in which the FBI had been battered in Congress for missing potential warning signals of the Sept. 11 attacks."



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