

Indictment of Jose Padilla: another chapter in Bush's war on democratic rights

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On Tuesday, six days before the Bush administration faced a deadline to file legal arguments with the Supreme Court in the case of Jose Padilla, a US citizen named by Bush as an "enemy combatant" and held for three-and-a-half years in a military brig, Attorney General Alberto Gonzales announced that Padilla had been indicted on terrorist charges and would face trial in criminal court.

The indictment followed an order signed Sunday by Bush, with no public announcement, releasing Padilla from military detention so that his case could be moved into the criminal justice system.

In announcing the indictment, Gonzales said the Justice Department now considered the Supreme Court case "moot". This made clear that the government's decision to drop its insistence that it had a right to hold Padilla indefinitely, without charges and without access to the courts, simply on the say-so of the president, was a maneuver designed to avert the possibility of the high court limiting or rejecting the "enemy combatant" designation for US citizens and the Bush White House's use of it to claim quasi-dictatorial powers.

The category "enemy combatant" is without precedent in US or international law, having been fabricated by the Bush administration to imprison people without reference to acts of Congress, judicial protections for criminal defendants or the Geneva Conventions protecting prisoners of war.

That this latest turn in the Padilla case is motivated entirely by political considerations of the most anti-democratic character is confirmed by the content of the indictment itself. The indictment, which charges Padilla with being part of a "North American support cell" that worked to support violent jihad campaigns outside the US, makes no mention of the alleged crimes that were initially cited to justify his being thrown into a black hole of indefinite military detention.

Padilla was arrested in May of 2002 at Chicago's O'Hare Airport, and initially held as a material witness in connection with the government's investigations into the September 11, 2001 hijack bombings. In June of 2002, then-Attorney General John Ashcroft interrupted a trip to Moscow to announce on US television that officials had thwarted an effort by Padilla and other Al Qaeda operatives to explode a radioactive or "dirty" bomb on American streets.

On the basis of this sensational charge, Bush declared Padilla to be an "enemy combatant," had him transferred to a Naval brig, and denied him any right to contest the allegations against him or

legally defend himself.

But the indictment released Tuesday by Gonzales says nothing about dirty bombs, an Al Qaeda link, or a plot to carry out an attack within the US.

In June of 2004, after the government had suffered court reverses and was forced to allow Padilla to meet with his legal counsel, the Justice Department came up with new charges, now claiming that Padilla plotted to blow up apartment buildings and hotels in US cities.

But no such charges appear in the indictment released Tuesday.

At the Washington DC press conference where he announced the indictment, Gonzales refused to answer reporters' questions about these wild discrepancies, blandly declaring the charges leading to "the designation as an enemy combatant ... legally irrelevant".

The clear fact is that the government could not include in a criminal case headed for open court the allegations it used to imprison Padilla without legal recourse, because those charges would not stand the slightest judicial scrutiny. They would not stand scrutiny because they are based neither on provable fact nor serious evidence.

The Padilla case, from the time Bush declared the Brooklyn-born citizen an enemy combatant and Ashcroft went on national television with the "dirty" bomb allegations, was a politically motivated operation aimed at spreading fear and panic within the population in order to justify an unprecedented attack on democratic rights at home and an explosion of US militarism abroad.

It was part and parcel of the campaign, in the name of the so-called "war on terrorism," to expand the police powers of the state, establish something approaching a presidential dictatorship, and gut Constitutionally mandated civil liberties. This has taken the form of the Patriot Act, which drastically erodes protections against government spying, illegal searches and seizures and invasions of privacy, and the establishment of the Homeland Security Department, an overarching apparatus for domestic control and repression.

At the same time, the drive to create an atmosphere of fear and insecurity was essential to manipulating public opinion in advance of the launching of a war, nine months after Ashcroft's televised announcement, to topple Saddam Hussein, occupy Iraq and seize control of the country's oil assets.

The indictment announced Tuesday charges that Padilla conspired with Adham Amin Hassoun, Kifah Wael Jayyousi,

Mohammed Hesham Youssef and Kassem Daher in a cell that sent money, physical assets and mujahideen recruits for the purpose of fighting “violent jihad” in Afghanistan, Algeria, Bosnia, Chechnya, Lebanon, Libya and Somalia, and that they did so through the operation of various front groups, including the American Islamic Group, the Islamic Center of the Americas, and Save Bosnia Now.

The “overt acts” alleged in support of the conspiracy begin in 1993 and end in November of 2001. They consist principally of conversations, intercepted by covert US government wiretaps, in which there were discussions about “friends,” “football,” “tourism,” “fresh air,” “picnics” and so forth, supposedly code words for nefarious but undefined activities. The indictment also lists sundry payments in the range of \$1,000 to \$5,000, none of which on its face appears sinister or out of the ordinary.

Padilla is mentioned briefly as a “recruit” who traveled to Egypt and Afghanistan, where he filled out a “Mujahideen Data Form”. He is not alleged to have actually engaged in any “jihad” or other violent activities.

At the press conference, Gonzales claimed the alleged conspiracy encouraged “acts of physical violence such as murder, maiming, kidnapping and hostage-taking against innocent civilians”. However, the indictment fails to identify a single person anywhere in the world who was harmed.

If convicted of the charges laid down in the indictment, Padilla faces a sentence of imprisonment for life.

Whether or not Padilla or any of his co-defendants were involved in or supported Islamist jihadist movements, it should be noted that in the time period specified in the indictment, the United States government was itself collaborating with such forces in a number of countries, openly in Bosnia, for example, and, according to many reports, secretly in Chechnya.

The Supreme Court ruled in June 2004 in the case of Yaser Hamdi, a US citizen captured among Taliban fighters in Afghanistan and declared to be an enemy combatant, that enemy combatants captured on foreign battlefields were entitled to some due process determination of their status. Hamdi was then released on condition that he remain in Saudi Arabia, his parents’ home country.

In another case decided at the same time, the high court ruled that Guantánamo prisoners could seek habeas relief in US courts. It avoided ruling on Padilla’s petition, however, voting 5-4 that Padilla should have been filed his initial appeal in Charleston, South Carolina, where he was being held in military detention, rather than in New York, where he was first held as a material witness.

Padilla’s attorney, Donna Newman, filed a new habeas petition in South Carolina, where United States District Judge Henry F. Floyd ruled that Padilla had to be charged with a crime or released. Himself an appointee of Bush, Floyd wrote that if the administration’s position “were ever adopted by the courts, it would totally eviscerate the limits placed on presidential authority to protect the citizenry’s individual liberties”.

Floyd’s decision, however, was reversed in September of this year by a three-judge panel of the Fourth Circuit Court of Appeals, led by Michael J. Luttig, a prominent figure on Bush’s “short list”

of candidates for upcoming Supreme Court vacancies. Luttig upheld unbridled executive power to imprison “enemy combatants,” claiming that Padilla served as an armed guard for the Taliban and Al Qaeda in Afghanistan at the time when US troops were engaged in combat against them, and then “traveled to the United States for the avowed purpose of further prosecuting that war on American soil, against American citizens and targets”.

Padilla has “avowed” nothing of the sort. He has formally denied the charges, but because of the enemy combatant doctrine has never had a legal forum to challenge them.

Padilla filed a second petition with the Supreme Court last month, appealing Luttig’s ruling. The administration’s response was due next week.

Padilla’s lawyers intend to proceed in the Supreme Court despite the release of their client from military custody. Andrew Patel, Newman’s co-counsel, explained on the radio show *Democracy Now!* that the threat posed by the Bush administration’s invocation of the “enemy combatant” doctrine still exists.

In opposition to the government’s claim that the case is moot, Patel said, “We will ask the Court to consider this very important issue. Not only is it not moot as to Mr. Padilla—for example, suppose he was acquitted of this charge or the case was somehow dismissed, and the government decided that, ‘Well, we don’t want him out,’ and they just declare him to be an enemy combatant and send him back to the brig again. Until the Supreme Court rules that the president does not have that power, that’s an authority, as Justice Jackson said in his dissent to *Korematsu* [the World War II Japanese-American internment case], that lies around like a loaded gun ready to be used or abused at any time.”

There is an obvious and bitter irony in Gonzales charging Padilla, or anyone else, of supporting the kidnapping of individuals and other illegal acts. In his prior role as Bush’s White House counsel, he presided over the drafting of the now infamous torture memoranda and gave legal advice justifying an international gulag for victims of “rendition” snatched by US agents off the streets and taken to secret prisons.



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