

Citing torture, lawyers for Jose Padilla argue case should be dismissed

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Lawyers for José Padilla filed a motion October 4 asking a US District Court to throw out charges against Padilla on the grounds that he has been tortured while in the custody of the US military. Padilla is a US citizen who spent 42 months, mainly in solitary confinement, at a US Navy brig after being arrested in Chicago and declared an “unlawful enemy combatant” by the Bush administration.

The motion was filed by Michael Caruso, Padilla’s lawyer, in the US District Court in the Southern District of Florida. This is the first time that any details have been released on the nature of Padilla’s detention. The legal brief provides a harrowing description of systematic mental and physical torture, including prolonged isolation, shackling and stress positions, and the administration of psychotropic drugs.

Only a week before the filing of the brief, the US Congress passed the Military Commissions Act of 2006, which codifies in US law the concept of “unlawful enemy combatant” and sanctions the continued torture of prisoners held by the American military and intelligence agencies. It denies people held at Guantanamo Bay and other US prison camps the fundamental right of habeas corpus—the right to challenge their detention in court—and deprives them of basic due process protections guaranteed by the US Constitution.

In signing the act into law on Tuesday, President Bush called it a “vital tool” in the so-called “war on terror.” The treatment of Padilla demonstrates the type of methods that are sanctioned as the “law of the land” under the Military Commissions Act.

Like many caught up in the “war on terror,” Padilla has been used as a test case for asserting vastly expanded executive powers and undermining fundamental democratic rights. He has been particularly important for the Bush administration because he is a US citizen and was arrested on US territory.

Padilla was arrested in May 2002 at Chicago’s O’Hare Airport and declared a “material witness” in the investigation into the attacks of September 11. Thousands of people who had no connection to the September 11 attacks were rounded up as material witnesses and held for prolonged periods.

In June 2002, based on sensational charges that he was an Al Qaeda operative and had been plotting to explode a “dirty bomb” in the United States, Padilla was declared an “enemy combatant” by the Bush administration. He was transferred to

military custody at a Navy brig in South Carolina, where he was held incommunicado for months.

In November 2005, following a series of court rulings rejecting the administration’s assertion that Padilla could be held indefinitely without being charged and without access to legal counsel, the government abruptly transferred Padilla from military to civilian custody, and produced new charges that had no connection to the original reports of a “dirty bomb.”

The indictment announced by Attorney General Alberto Gonzales charged Padilla with being part of a “North American support cell” that worked to support violent jihad campaigns outside the US. It said nothing about dirty bombs, an Al Qaeda link, or a plot to carry out an attack within the US.

This move came only a week before the government was due to file legal arguments in a US Supreme Court appeal by Padilla. It was a transparent attempt to remove the possibility that the Supreme Court would decide against the government. The fact that entirely new charges were introduced was a clear indication that the “dirty bomb” claims used to detain Padilla for over three-and-a-half years would not stand up in a court of law.

In April 2006, the Supreme Court denied a petition from Padilla for a high court review of his case, sanctioning the government’s maneuvers and leaving in place an appellate court decision supporting the administration’s assertion of vast executive powers to arrest and detain American citizens without charge.

The motion filed this month by Padilla’s lawyers does not address the substance of the government’s new charges, but rather his treatment while in military custody. The filing deserves to be quoted at some length for what it reveals both about crimes already committed by the US government, as well as the crimes that are being prepared for the future.

The premise of the lawyers’ argument is that Padilla’s treatment was so egregious that the government has forfeited the right to prosecute him, and that any such prosecution would be a violation of his due process rights. There is a tradition in US law that when treatment “shocks the conscience,” not only must the specific evidence obtained during the treatment be rejected, but the entire case must be thrown out.

The military has openly admitted that its treatment of Padilla

has been designed to create a sense of complete helplessness. The filing quotes Vice Admiral Lowell Jacoby, director of the Defense Intelligence Agency, as stating in January 2003 that “only after such time as Padilla has perceived that help is not on the way can the United States reasonably expect to obtain all possible intelligence information” from him. He was deprived access to a lawyer for two years because communication would disrupt “the sense of dependency and trust” necessary for the interrogation.

Padilla’s treatment appears to have been a long experiment in testing different techniques for breaking him down. According to the filing, “In an effort to gain Mr. Padilla’s ‘dependency and trust,’ he was tortured for nearly the entire three years and eight months of his unlawful detention. The torture took myriad forms, each designed to cause pain, anguish, depression and, ultimately, the loss of the will to live.”

The lawyers state that the basic ingredient of this torture was “stark isolation for a substantial portion of his captivity”—from June 9, 2002 to March 2, 2004. It was only in March 2004 that Padilla was provided access to a lawyer.

Throughout his confinement, he was kept in strict isolation: “He was kept in a unit comprising sixteen individual cells, eight on the upper level and eight on the lower level, where Mr. Padilla’s cell was located. No other cells in the unit were occupied. His cell was electronically monitored twenty-four hours a day, eliminating the need for a guard to patrol his unit. His only contact with another person was when a guard would deliver and retrieve trays of food and when the government desired to interrogate him.”

In addition to prolonged solitary confinement, Padilla was subjected to sensory deprivation. “His tiny cell—nine feet by seven feet—had no view to the outside world. The door to his cell had a window. However, it was covered by a magnetic sticker, depriving Mr. Padilla of even a view into the hallway and adjacent common areas of his unit. He was not given a clock or a watch and for most of the time of his captivity, he was unaware whether it was day or night, or what time of year or day it was.”

Scientific studies have found that such measures create profound and lasting psychological trauma, and constitute mental torture. “In addition to his extreme isolation,” the filing states, “Mr. Padilla was also viciously deprived of sleep. This sleep deprivation was achieved in a variety of ways. For a substantial period of his captivity, Mr. Padilla’s cell contained only a steel bunk with no mattress.... A number of ruses were employed to keep Mr. Padilla from getting necessary sleep and rest,” including loud noises throughout the night.

To complete his sense of isolation, Padilla was denied reading material and even, at one point, the mirror in his tiny room. “He was never given any regular recreation time. Often, when he was brought outside for some exercise, it was done at night, depriving Mr. Padilla of sunlight for many months at a time. The disorientation Mr. Padilla experienced due to not seeing

the sun and having no view on the outside world was exacerbated by his captors’ practice of turning on extremely bright lights in his cell or imposing complete darkness for durations of twenty-four hours, or more.”

More direct forms of torture were also used, including being placed in physically stressful positions for extended periods of time. “He would be shackled and manacled, with a belly chain, for hours in his cell. Noxious fumes would be introduced to his room causing his eyes and nose to run. The temperature of his cell would be manipulated, making his cell extremely cold for long stretches of time. Mr. Padilla was denied even the smallest and most personal shreds of human dignity by being deprived of showering for weeks at a time, yet having to endure forced grooming at the whim of his captors.”

Interrogators lied to Padilla about where he was and threatened to deport him to places, including Guantánamo Bay, where they said his treatment would be even worse. “He was threatened with being cut with a knife and having alcohol poured on the wounds. He was also threatened with imminent execution.... Often he had to endure multiple interrogators who would scream, shake, and otherwise assault Mr. Padilla. Additionally, Mr. Padilla was given drugs against his will, believed to be some form of lysergic acid diethylamide (LSD) or phencyclidine (PCP), to act as a sort of truth serum during his interrogations.” The use of mind-altering drugs during interrogation is clearly defined as torture under international and US law.

“Apart from the psychological damage done to Mr. Padilla,” the filing states, “there were numerous health problems brought on by the conditions of his captivity. Mr. Padilla frequently experienced cardiothoracic difficulties while sleeping, or attempting to fall asleep, including a heavy pressure on his chest and an inability to breathe or move his body.

“In one incident Mr. Padilla felt a burning sensation pulsing through his chest. He requested medical care but was given no relief.... The strain brought on by being placed in stress positions caused Mr. Padilla great discomfort and agony. Many times he requested some form of pain relief but was denied by the guards.”

Only after 20 months in solitary confinement was Padilla allowed very limited access to an attorney. Some of his conditions were ameliorated slightly, however the basic circumstances of his confinement remained.



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