

Judge in Padilla case orders mental evaluation

Tom Carter**21 December 2006**

On Monday, US District Court Judge Marcia G. Cooke ordered an independent evaluation of the mental state of Jose Padilla, the US citizen who was held for years without charge as an “enemy combatant” and now faces trial in Miami on charges of providing aid to a terrorist organization.

The evaluation may lead to a competency hearing. If Padilla is deemed incompetent, the charges must either be thrown out, or else the trial delayed while he undergoes psychiatric treatment.

Cooke’s decision itself will likely delay the trial, which has already been put off until January. The judge refrained from ruling on a separate motion by Padilla’s defense lawyers, who are asking that the case be dropped due to the outrageous treatment and torture of Padilla by the US government.

Padilla, a US citizen imprisoned for almost four years by the Bush administration, now suffers from severe post-traumatic stress disorder (PTSD), according to psychiatric experts hired by his attorneys. He is unable to differentiate, for example, between his own attorneys and government interrogators.

According to his attorneys, Padilla’s current mental condition is the result of a conscious and deliberate policy on the part of his captors who, under direct orders from the White House, made every attempt to “break” him during his captivity at a South Carolina naval brig, employing diverse forms of torture on an hourly and daily basis.

For almost four years, a brief filed by his lawyers stated, Padilla was forced to take “truth serum” drugs such as LSD and PCP, kept in solitary confinement in a tiny cell under 24-hour surveillance, deprived of all human contact, forced into “stress positions,” regularly deprived of sleep, manacled and hooded for extremely long periods of time, and routinely subjected to

intensive interrogation.

Dr. Angela Hegarty, who examined Padilla, said that he was not in fact able to understand legal proceedings, that he exhibited “impairment in reasoning” that was “complicated by the effects of prolonged isolation.” Hegarty found that Padilla outwardly exhibits classic symptoms of PTSD, including hypervigilance, facial tics, and extreme paranoia.

According to Hegarty, Padilla “has large memory gaps related to his detention, and he is unable to place events in chronological order.” She told the judge in the case that Padilla “periodically concludes that no matter what, win or lose, he will be going back to the brig, where he will die.”

The *Los Angeles Times*, in an article published on December 17, interviewed Andrew Patel, one of Padilla’s lawyers. Patel described the reaction of Padilla while he was being interviewed by his lawyers. According to the newspaper, “He coughed up blood, Patel said. He repeatedly scratched the back of his hand. He rapidly blinked his eyes. Goose pumps dotted his arms and neck. Sometimes he sat bold upright in his chair, as ‘if he had been stuck by a cattle prod.’ He showed little emotion about his trial, Patel said, seeming more like ‘a piece of furniture.’”

According to Patel, when he tried to discuss his case, Padilla would refuse. “‘Please, please, please’ he would say, fearful that if he helped his lawyers, he would be returned to the brig and solitary confinement,” the *Times* reported.

While a competency hearing may corroborate the statements made by psychiatrists hired by Padilla’s lawyer, it has had the effect of delaying the other motion filed by the defense, which argues that the charges against Padilla must be dropped because the government’s conduct “shocks the conscience.” His

attorneys argue that Padilla's treatment was so appalling that the government has forfeited the right to prosecute him, and that any such prosecution would violate his due process rights. The brief cites precedents in US law indicating that when treatment is so outrageous that it "shocks the conscience," the entire case must be thrown out, though such motions are rarely granted.

The government's response argued that the legal principle of "shocks the conscience" could not be invoked in this way, and that Padilla's motion fails as a matter of law. More than anything else, the government's lawyers do not want any discussion of its practices at the South Carolina naval brig. The government is also arguing that Padilla's treatment cannot be made public because this would damage national security.

Judge Cooke earlier decided to delay the trial until January pending the resolution of an appeal of her decision to throw out certain conspiracy charges brought by the government, an appeal that is currently in the Eleventh Circuit Court of Appeals. She has meanwhile overruled various attempts by government lawyers to introduce classified evidence, which would be kept secret from the defense.

The Padilla case as a whole highlights the general contempt for law and democratic rights exhibited by the present government of the US, which used Padilla as a test case in its drive to scrap the framework of democratic and legal rights and introduce methods of rule more traditionally associated with police states.

In June 2002, the Bush administration made headlines around the world by claiming that Padilla was plotting with Al Qaeda to manufacture and explode radioactive "dirty bombs" in unnamed cities in the United States. At the time, then-Attorney General John Ashcroft appeared on national television with sensational and lurid details of the alleged plot, as well as to take credit for "foiling" the operation.

Simultaneously, President Bush officially declared Padilla an "enemy combatant"—the term invented by the Bush administration to place a person outside the protection of both American and international law. Padilla was held incommunicado without charges and without any means of legal recourse in violation of his basic democratic rights.

Meanwhile, Ashcroft's "dirty bomb" plot case began

to fall apart under increased scrutiny, as the government failed to provide any evidence indicating that there actually was such a plot. The government introduced a new allegation—that Padilla was planning to fill apartment buildings with natural gas and then detonate them. This allegation, like the "dirty bomb" allegation, does not appear in the indictment; one can only assume that this was another government fiction.

In November 2005, when Padilla's challenge to the Bush administration's right to hold him without charges threatened to reach the Supreme Court, the administration sought to head off a potentially unfavorable ruling by filing the present criminal charges against Padilla. The government presently alleges that Padilla conspired to perpetrate terrorist acts overseas, and that he provided financial support to terrorists. This was the first time that formal charges were actually brought against Padilla.

This maneuver, while saving the administration from a ruling that could call into question the whole extra-legal framework ostensibly established for the purposes of the so-called "war on terror," forced them into a courtroom where they would be required to provide at least some evidence to substantiate its various charges against Padilla.

In fact, as the history of the government's legal maneuverings itself demonstrates, no such evidence exists. Even Judge Cooke, herself a 2004 Bush appointee, was forced to acknowledge that the government's case was "light on facts."



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