

Judge rules Jose Padilla competent for trial

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2 March 2007

US District Court Judge Marcia Cooke ruled February 28 that Jose Padilla is mentally fit for trial, following a competency hearing during which his lawyers argued that the damage to his mental faculties is so severe that he is legally unable to stand trial or assist in his own defense. The trial is scheduled to begin April 16.

Padilla, a US citizen, was arrested by the federal government in May 2002. He was subsequently declared an “illegal enemy combatant” and held for more than three years in a South Carolina naval brig without ever being charged with a crime. During that time, according to a motion filed by his lawyers, he was systematically tortured by the US government.

According to Padilla’s lawyers, whenever they attempted to question him about the details of his experience on the naval brig, he would freeze, break into a sweat, shiver, and become otherwise unresponsive. “Because of that,” argued defense attorney Anthony Natale, “he is not going to be able to get a fair trial and we are not going to be able to competently represent him.”

Padilla’s attorneys had hoped that he would be found mentally incompetent, in which case the trial would have been unable to go forward. The government would have no doubt appealed such a decision, but in the meantime Padilla would have been given psychiatric treatment.

Judge Cooke’s ruling comes in the wake of the testimony of psychiatric experts Angela Hegarty and Patricia Zapf, who confirmed that Padilla has many of the classic symptoms of severe post-traumatic stress disorder (PTSD), including involuntary tics and debilitating paranoia. Dr. Zapf found that Padilla had “strong indication of cognitive impairment,” and testified that there was a “98 percent chance” that he had suffered brain damage during his incarceration.

Judge Cooke pointed out, however, that Padilla must

have been able to communicate with his lawyers at some point—this was after all the basis for an October 2006 pre-trial motion detailing the torture he suffered at the hands of the US government. (See “Citing torture, lawyers for Jose Padilla argue case should be dismissed”) “This defendant clearly has the capacity to assist his attorneys,” she said. “He had to communicate something to his lawyers in order for counsel to file that motion.”

Communication on some level with one’s lawyers is usually all that is required to establish competency; statistically, federal court pre-trial competency motions for dismissal are rarely granted.

Judge Cooke has not yet ruled on this due process motion citing torture, which argues that the charges against Padilla must be dropped because the government’s conduct “shocks the conscience.” In other words, Padilla’s treatment was so atrocious that the government has forfeited the right to prosecute him, and that any prosecution would violate his due process rights. Cooke has held open the possibility that a hearing could be held on this motion before the commencement of the trial on April 16.

“That discussion is for another day,” she said.

Although the structure and forms of these legal proceedings—competency hearings, due process motions, and so on—are not uncommon in the US criminal justice system, the circumstances of Padilla’s case are original and extraordinary. And given these circumstances, that Padilla could be on trial at all is a caricature of justice.

Padilla was originally picked up at Chicago’s O’Hare International Airport in May 2002 as a material witness in the September 11 attacks. In June 2002, on national television, then attorney general John Ashcroft declared that the Bush administration had foiled a “dirty bomb plot,” at the center of which was Padilla, to explode a radioactive bomb in a major US city.

Padilla was subsequently declared an “enemy combatant”—a term introduced by the Bush administration that places a person outside the protection of the US legal system.

Padilla was never taken before a judge, never allowed to contact an attorney, and never charged with a crime. He was whisked away to a South Carolina naval brig, where he was held in solitary confinement in a nine-foot by seven-foot cell that had no view to the outside world, with only a steel bunk and no mattress to sleep on. He was not allowed to read or watch television, he was even denied a clock or watch, and he was under surveillance for 24 hours a day.

According to his lawyers, in these environs he was regularly forced into “stress positions,” deliberately deprived of sleep, subjected to extreme temperatures and noise, and was manacled and hooded for long periods of time. His lawyers have also charged that Padilla was force-fed “truth serum” drugs such as LSD and PCP, although government witnesses called these “flu shots.”

For three-and-a-half years, Padilla was denied the most basic democratic rights, including the right of habeas corpus—the right to have the accusations against a person presented in a court of law.

During this time, Ashcroft’s “dirty bomb plot” accusation began to fall apart for lack of evidence, so the government began circulating new charges—that Padilla had been planning to fill apartment buildings with natural gas and then detonate them.

In November of 2005, a challenge to the unlawful detention of Padilla threatened to reach the Supreme Court. Fearful of the implications of an unfavorable ruling on the entire practice of extra-legal detention associated with the so-called “war on terror,” the Bush administration preempted a ruling by hastily bringing charges against Padilla in a Florida criminal court and transferring him to a Florida jailhouse.

Both the “dirty bomb” and “natural gas” allegations are entirely absent in the new charges—the first ever to be formally brought against Padilla. One can only assume that this is because there was no factual basis for the “dirty bomb” and “natural gas” charges in the first place.

The government presently alleges that Padilla conspired to perpetrate terrorist acts overseas, and that he provided financial support to terrorists. Even Judge

Cooke called these allegations “light on facts.” Padilla pled not guilty.

Padilla should not be on trial. His captors, including those who occupy the highest positions in the US government, those who deliberately facilitated and carried out his torture for 42 months, should be the ones standing before a judge.



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