

# US judge rejects demand to dismiss Padilla case on grounds of torture

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US District Judge Marcia Cooke ruled Monday that she would not dismiss the government's case against Jose Padilla, the US citizen imprisoned without charges and tortured for three and a half years in a military brig.

In a motion filed last October calling for the case to be dismissed for reasons of "outrageous government misconduct," Padilla's lawyers cited a longstanding legal principle that when the actions of the government in bringing an individual to trial "shock the conscience," the government loses the moral and legal authority to try that individual.

The motion argued that although "the precise contours of what shocks the conscience can be difficult to delineate with certainty, there can be little doubt that the deliberate and repeated torture of an individual over the course of almost four years should and does shock even the most calloused conscience."

Because of this, Padilla's lawyers concluded, "through its illegal conduct, the government has forfeited its right to prosecute Mr. Padilla..."

Judge Cooke, in her 12-page ruling rejecting the motion, argued that dismissing the case on these grounds would "effectively provide a defendant with amnesty for any uncharged crime so long as the government violated the defendant's due process rights at some prior point"—in other words, it would affirm precisely the legal principle Padilla's lawyers were invoking.

Judge Cooke also accepted the government's narrow reading of the legal precedents involving the dismissal of cases on the grounds of government misconduct, according to which the case in question can still proceed to trial provided all evidence obtained illegally is thrown out. Because the prosecution claims it does not plan to use evidence extracted from Padilla during his incarceration in the naval brig, Judge Cooke

concluded, the motion is moot.

Padilla's lawyers had argued for a broader interpretation, maintaining that simply excluding evidence dating from Padilla's time in the brig was "clearly inadequate to make whole the prejudice suffered by Mr. Padilla at the hands of the government's gross misconduct."

This ruling means that there will be no hearing on whether or not Padilla was tortured, so the court "makes no finding with regard to Mr. Padilla's treatment at the Naval Brig," Cooke wrote. "By stating that Mr. Padilla has failed to state a claim of 'outrageous government conduct,' the Court is merely rejecting the merits of Mr. Padilla's legal argument."

Cooke does hold open the possibility that "should the government decide to make use of any such evidence [confessions obtained from Padilla at the brig], an appropriate hearing will be scheduled to determine to what extent it is admissible."

"I'm sure the government is breathing a big sigh of relief this morning," commented Miami lawyer and legal analyst David Oskar Marcus. "The last thing it wanted was these allegations to be aired in open court. What I'm wondering is—if torture isn't outrageous government conduct, then what is?"

Jose Padilla was arrested almost five years ago, in May of 2002, at Chicago's O'Hare airport. He was later transferred to a Charleston, South Carolina maximum-security military prison following his designation by the Bush administration as an "enemy combatant" amid lurid allegations that he was involved in an al-Qaeda plot to detonate a radioactive "dirty bomb" in a US city.

While incarcerated at the brig, according to a brief filed last October, Padilla was force-fed "truth serum" drugs, possibly LSD or PCP; shackled for long periods

of time in “stress positions”; forced to endure unpleasant temperatures, smells, and noise; kept in total isolation under 24-hour surveillance; denied a mattress, the Qur’an, and other basic personal items; and underwent constant interrogation involving threats to his life.

Padilla was only formally charged with a crime last year in a legal maneuver to prevent his case from reaching the US Supreme Court. The “dirty bomb” allegations do not appear in the present indictment, presumably because there was no evidence to back the charges floated in the press.

Judge Cooke, a Bush appointee, also recently ruled that Padilla’s incarceration in a brig without charges or trial for almost four years did not violate his constitutional right to a speedy trial. (See “Federal judge rules terrorism trial against Jose Padilla to proceed”.)

These rulings in the Padilla case have broad and ominous implications for all US citizens. Although the legal forms and arguments involved in the case are by no means unusual in US criminal law, and many common precedents and principles are cited, the circumstances of Padilla’s case are original and extraordinary.

Padilla’s arrest and imprisonment was a test case in the Bush administration’s use of the term “enemy combatant,” within the framework of the so-called “war on terror,” to circumvent the most basic constitutional and democratic protections. When a judge rules that 44 months of torture and solitary confinement without charges or a trial do not violate an individual’s right to a speedy trial and have no bearing on subsequent charges, this sets the most dangerous precedent.

Padilla’s trial is set to begin this coming Monday, April 16. Judge Cooke recently granted a government request to allow a CIA agent to appear in court and testify in disguise, despite protests from Padilla’s lawyers. Cooke has also decided to allow the prosecution to use loaded words, names, and phrases like “violent jihad,” “Osama bin Laden,” and “terrorist” during the trial.

An impartial jury may prove difficult to convene, however, as Padilla has been universally vilified in the media as an “al-Qaeda operative.”

During the trial, Padilla’s lawyers will likely argue

that the government does not have sufficient evidence to support its claim that Padilla was part of a North American terrorist network dedicated to supporting Islamic extremist groups. Even Cooke has acknowledged that the government’s case is “light on facts.” Padilla has pled not guilty to the charges.



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