# Jurors begin deliberations in Jose Padilla trial

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Arguments have ended in the trial of Jose Padilla, and jury deliberations began Wednesday morning. The three-month trial in a US district court in southern Florida has capped a five-and-a-half year ordeal in which Padilla, a US citizen, has been held incommunicado, tortured, subject to trumped-up charges and outlandish public accusations, and otherwise denied the most basic of democratic rights.

Padilla is being tried along with two co-defendants, Adham Amin Hassoun and Kifah Wael Jayyousi. The government alleges that the three conspired to commit acts of murder and provide material support to terrorist organizations. In particular, Padilla is said to have traveled to Afghanistan in 1998 to take part in an Al Qaeda training camp, with support from Hassoun and Jayyousi.

Padilla was arrested in May 2002, declared an "enemy combatant" in June, and imprisoned in a military brig for three-and-a-half years without chargers or access to a lawyer. During that entire period, his lawyers say he was kept in solitary confinement and subjected to torture, including stress positions, sleep and sensory deprivation, and the use of psychoactive drugs.

The Bush administration first insisted that Padilla was planning to explode a radioactive "dirty bomb." To avoid a Supreme Court decision on the government's claim that it could continue to hold Padilla indefinitely and without counsel, his case was shifted to a civilian court in 2005. Allegations of a "dirty bomb" were dropped, in part to avoid any examination of Padilla's past treatment by the government. They were replaced by the current set of charges, and his civilian trial began in May of this year.

In closing arguments on Tuesday, defense lawyers for Padilla picked apart the government's extremely threadbare case.

Countering claims by the prosecution that Padilla was a "star recruit" of the alleged South Florida group, who had been "trained to kill" in Afghanistan, Padilla attorney Michael Caruso said, "He had the intent to study, not to murder." To justify conviction on the conspiracy charges, which include the possibility of a life sentence, the government must prove not only that Padilla participated in an Al Qaeda training camp, but that he developed plans there to maim and murder.

Padilla's lawyers did not present any witnesses or evidence on their client's behalf, apparently relying on the fact that the government's case against him was so thin.

The principal evidence presented by the prosecution included a document alleged to have been signed by Padilla for application to an Al Qaeda camp and wiretapped phone conversations that the government claims included coded language about plans for terrorist attacks.

In his closing arguments, Caruso argued that the application, which the government says was discovered in Afghanistan, is a fraud. It does not contain Padilla's name, though it does include some biographical information (including birthday and language abilities) that match Padilla's. Caruso noted that the document includes several different types of ink and at least three different types of handwriting.

Caruso also noted that Padilla's fingerprints are only on the front and back of the form, and not on the inside pages, suggesting that Padilla only handled it while in custody and did not fill it out himself. There is a palm print next to the signature line, but the government did not attempt to verify that it was Padilla's. "They were not trying to find the truth," Caruso said. "They were trying to create a case."

The defense acknowledges that Padilla traveled to Egypt in 1998, but they say that he did so only to learn Arabic, and that he never traveled to Afghanistan. The government has produced no direct or eyewitness

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evidence that Padilla was ever in Afghanistan.

Defense lawyers have also argued that even if Padilla was in Afghanistan and attended the camp, this does not in any way prove that he conspired to murder. In cross examination, one of the prosecution witnesses said that he had attended an Al Qaeda camp, but only to get training in defending Muslims, not in committing terrorist acts.

The government also presented selections from more than 300,000 intercepted phone conversations over a period of several years. However, Padilla is heard on only seven of these recordings, and he only speaks of difficulties with his studies and other personal matters. Noting this fact, Caruso asked, “Where are the violent words of Jose Padilla?”

In an effort to tie the phone conversations to alleged terrorist plots, the government brought forward witnesses who presented a somewhat outlandish interpretation of “code words,” in which such terms as “football” and “tourism” supposedly refer to plans for violent attacks.

Even more damaging to the government’s case, however, was the acknowledgement of FBI agent James Kavanaugh, a prosecution witness, that Padilla was never heard to use any of the supposed code words.

Throughout the case, the government has relied more on insinuation and guilt by association than on any real evidence. In particular, the prosecution has sought to connect Padilla to the attacks of September 11 in the minds of the jury. Earlier in the trial, Judge Marcia Cooke agreed to allow the prosecution to show a 1997 interview of Osama Bin Laden with CNN reporter Peter Arnett. Padilla’s co-defendants had discussed the interview, but it had no direct relevance to the case.

One of the defense lawyers noted that the prosecution used the term “Al Qaeda” more than 100 times in its closing arguments. “The government is trying to appeal to your fears,” Jayyousi’s lawyer, William Swor, said. “It’s snake oil.”

Even if the jury acquits him, Padilla’s entire case will stand as a testament to the extraordinary decay of democratic rights in the United States.

For the government, the case has been critical as a test of the claim that the president, as “commander in chief” in the “war on terror,” has the right to arrest and detain any individuals and deny them democratic rights.

Defending the government’s position in the cases of Padilla and Hamdi, then-White House counsel and current attorney general Alberto Gonzales said in February 2004 that the right of habeas corpus and the right to have an attorney “must give way to the national security needs of this country to gather intelligence from captured enemy combatants.” In other words, the president assumes dictatorial powers to arrest and detain anyone identified by the government as an “enemy combatant.”

While the administration has suffered some legal setbacks—and the removal of Padilla from military detention was motivated in part to avoid a direct decision on this argument—it still claims this antidemocratic authority. If Padilla is convicted, it will be seen as a vindication of the government’s claims.

The case has also addressed the ability of the government to torture US citizens on US soil. Padilla’s lawyers sought to have the case dismissed, arguing that Padilla’s treatment “shocks the conscience” and therefore to try him for any crime would be a violation of his due process rights. They have also argued that Padilla was incompetent to stand trial due to the psychological consequences of his treatment. Judge Cooke rejected both of these arguments.

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