

FILED *UR*

JUL - 2 2004

LARRY W. PROPPS, CLERK
CHARLESTON, SC

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

-----X
JOSE PADILLA :

Petitioner,

: 04 Civ. _____

-against-

2 04 2221 26AJ

COMMANDER C.T. HANFT, USN
Commander, Consolidated Naval Brig
1050 Remount Road
Charleston, South Carolina :

Respondent.

-----X

PETITION FOR WRIT OF HABEAS CORPUS

1. Jose Padilla, a citizen of the United States of America, has been unlawfully imprisoned without trial for over two years as an "enemy combatant" in violation of his rights under the laws and Constitution of the United States of America. He respectfully requests that this Court issue a writ of habeas corpus.
2. A Petition for Writ of Habeas Corpus on Padilla's behalf was previously filed with Southern District of New York. That Petition was ordered dismissed without prejudice by the U.S. Supreme Court on the grounds that it should have been brought in the District of South Carolina rather than New York. Rumsfeld v. Padilla, ___ U.S. ___, bench op. at 23 (June 28, 2004). In light of the two years of unlawful confinement Petitioner has already suffered, this Court should act expeditiously to grant the writ and order his release.

PARTIES

3. Petitioner Jose Padilla is an American citizen presently incarcerated and unlawfully held by Respondent at the Consolidated Naval Brig in Charleston, South Carolina.

|

4. Respondent C.T. Hanft is a Commander in the United States Navy and is in command of the Consolidated Naval Brig in Charleston, South Carolina. Commander Hanft is Padilla's immediate custodian and the proper respondent in this proceeding. See Rumsfeld v. Padilla, ___ U.S. ___, bench op. at 13.

JURISDICTION

5. Petitioner brings this petition under 28 U.S.C. §§ 2241 and 2242, and invokes this Court's jurisdiction under 28 U.S.C. §§ 1331, 1651, 2201 and 2202, as well as under the United States Constitution.
6. This Court is empowered under 28 U.S.C. § 2241 to grant a Writ of Habeas Corpus.

VENUE

7. Venue is proper in the United States District Court for the District of South Carolina, the district in which Padilla is currently detained as well as the location of Commander Hanft, the person with day to day control over Padilla. See Rumsfeld v. Padilla, ___ U.S. ___, bench op. at 23.

STATEMENT OF FACTS

8. Petitioner Jose Padilla was born in Brooklyn, New York, and is an American citizen.
9. On May 8, 2002, Padilla was arrested by agents of the Federal Bureau of Investigation ["FBI"] at O'Hare Airport in Chicago, Illinois, upon a material witness warrant signed by the Honorable Michael B. Mukasey, Chief Judge of the United States District Court for the Southern District of New York. That warrant was issued at the request of the United States Attorney's Office for the Southern District of New York in connection with a grand jury investigation in that district.
10. On information and belief, Padilla was transported by agents of the FBI from Chicago to

New York.

11. On or about May 15, 2002, Padilla appeared before the Honorable Michael B. Mukasey, who assigned counsel. Over the next several weeks, Padilla met with counsel, who filed pleadings on his behalf in the Southern District of New York in connection with the material witness proceedings.
12. On information and belief, on or about June 9, 2002, George W. Bush, the President of the United States signed an order declaring Padilla to be an “enemy combatant” and directing Secretary of Defense Rumsfeld to take custody of him and detain him indefinitely for interrogation. See Exhibit A, Redacted Commander-in-Chief Order of June 9, 2002.
13. On information and belief, on or about June 9, 2002, Padilla was transferred from the custody of the civilian authorities of the Department of Justice in New York to the military authorities and taken to the Consolidated Naval Brig at Charleston, South Carolina.
14. From June 9, 2002, until March 2004, Padilla was not allowed to meet with or communicate with his lawyers. Since March 2004, Padilla has had limited meetings with his lawyers.
15. Padilla has not been given fair notice of the Government’s case against him. Padilla has been given no opportunity to be heard by a neutral decision maker and contest the factual grounds for his imprisonment.
16. Padilla is not an “enemy combatant.” He has never joined a foreign Army and was not arrested on a foreign battlefield. He was arrested in a civilian setting within the United States. Padilla carried no weapons or explosives when he was arrested. He disputes the factual allegations underlying the Government’s designation of him as an “enemy combatant.”
17. The courts of the United States have been “open for business” without interruption

throughout Padilla's imprisonment.

18. As of the date of this Petition, Padilla has been imprisoned for more than two years without being charged with any criminal offense. On information and belief, since his designation as an "enemy combatant," no grand jury sitting in any district in the United States has returned an indictment charging him with any criminal conduct, including treason. No complaint has been filed in any United States District Court that charges him with any criminal conduct, including treason.
19. Padilla's court-appointed attorney, acting as next friend, filed a habeas petition on his behalf in the Southern District of New York while Padilla was being held in incommunicado military detention. That petition was ordered dismissed without prejudice by the U.S. Supreme Court on June 28, 2004, on the grounds that it should have been brought in the District of South Carolina. Rumsfeld v. Padilla, ___ U.S. ___, bench op. at 23.

CLAIMS AS TO THE UNLAWFULNESS OF PETITIONER'S DETENTION

FIRST CLAIM FOR RELIEF

PETITIONER'S DETENTION WITHOUT CRIMINAL CHARGES VIOLATES THE UNITED STATES CONSTITUTION, INCLUDING THE FOURTH, FIFTH AND SIXTH AMENDMENTS, THE HABEAS SUSPENSION CLAUSE OF ARTICLE I, AND THE TREASON CLAUSE OF ARTICLE III

20. Petitioner incorporates paragraphs 1-19 by reference.
21. Petitioner's ongoing detention without criminal charges violates the Fourth, Fifth and Sixth Amendments to the United States Constitution, as well as the Treason Clause of Article III, and the Habeas Suspension Clause of Article I. See Ex Parte Milligan, 71 U.S. 2, 122-23 (1866).
22. Although the U.S. Supreme Court ordered Padilla's habeas petition dismissed without

prejudice on the grounds it had been brought in the wrong district, the Court's opinions in Rumsfeld v. Padilla and Hamdi v. Rumsfeld, ___ U.S. ___ (2004), clearly indicate absent a valid suspension of habeas corpus by Congress, American citizens arrested in the U.S. can only be deprived of liberty through criminal process. See Milligan, 71 U.S. at 123; Hamdi, ___ U.S. ___, bench op. at 12. Neither the Constitution nor the laws of the United States authorize Padilla's detention as an "enemy combatant." Congress has not suspended the writ of habeas corpus pursuant to Article I, § 9, cl.2 of the Constitution. Accordingly, Padilla must be charged with a crime or released immediately.

SECOND CLAIM FOR RELIEF
PETITIONER'S DETENTION VIOLATES THE NON-DETENTION ACT,
U.S.C. § 4001(a)

23. Petitioner incorporates paragraphs 1-22 by reference.
24. The Non-Detention Act, 18 U.S. 4001(a), prohibits the detention of any American citizen "except pursuant to an Act of Congress."
25. Congress has enacted no legislation authorizing the detention of American citizens arrested on American soil as "enemy combatants."

THIRD CLAIM FOR RELIEF
DUE PROCESS AND RIGHT TO COUNSEL

26. Petitioner incorporates by reference the allegations of paragraphs 1-25.
27. In violation of his rights under the Due Process Clause of the Fifth Amendment of the U.S. Constitution, Petitioner has been imprisoned for more than two years without receiving "notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker." Hamdi, ___ U.S. ___, bench op. at 26 (O'Connor, J.) (plurality op.)
28. Petitioner disputes the factual allegations underlying the Government's designation of him as

an “enemy combatant” and is entitled to a hearing on those allegations and is entitled to be released if the Government fails to establish that he is an “enemy combatant” by a standard of proof that comports with the Constitution.

29. Petitioner also “unquestionably has the right to access to counsel.” Hamdi, ___ U.S. ___, bench op. at 32 (O’Connor, J.) (plurality op.) Petitioner is constitutionally entitled to communicate freely with his lawyers about any topic without restriction imposed by the executive, and those conversations are entitled to protection under the attorney-client privilege.

FOURTH CLAIM FOR RELIEF **INTERROGATION**

30. Petitioner incorporates by reference the allegations of paragraphs 1-29.
31. A majority of the U.S. Supreme Court has indicated that prolonged detention for interrogation purposes is unlawful. Hamdi, ___ U.S. ___, bench op. at 13 (O’Connor, J., plurality op.)
32. The interrogation of a prisoner throughout two years of incommunicado detention shocks the conscience and violates fundamental principles of justice that are implicit in ordered liberty. The ongoing interrogation of Padilla violates his rights under the Fifth, Sixth and Eighth Amendments to the U.S. Constitution, including the right against self-incrimination, the right to counsel, the right not to be subject to cruel or unusual punishment, and substantive and procedural due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for the relief as follows:

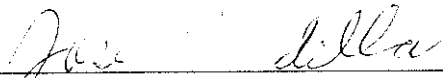
1. Pursuant to Counts 1 and/or 2 of this petition, grant the writ of habeas corpus, declare that Petitioner is being held in violation of the Fourth, Fifth and Sixth Amendments, the Treason

Clause, and the Habeas Suspension Clause of the U.S. Constitution, as well as the Non-Detention Act, 18 U.S.C. § 4001(a), and order that he immediately be released or charged with a crime.

2. In the alternative, pursuant to Count 3 of this petition, grant Petitioner the opportunity to contest the Government's factual allegations at an evidentiary hearing in this Court;
3. Pursuant to Count 3 of the petition, order Respondent to permit counsel to meet and confer with Petitioner freely and under the shield of the attorney-client privilege, and to freely transmit to Petitioner all documents related to this litigation.
4. Pursuant to Count 4 of this petition, order Respondent to cease all interrogation of Petitioner while this litigation is pending.
5. Such other relief as the Court may deem necessary and appropriate.

Dated: Charleston, South Carolina
June 30, 2004

Respectfully submitted,



Jose Padilla

VERIFICATION

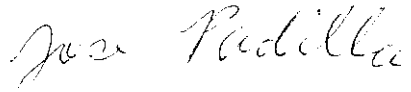
STATE OF SOUTH CAROLINA)
DISTRICT OF SOUTH CAROLINA) ss.:

JOSE PADILLA being duly sworn depose and say:

- I state under pain and penalty of perjury that to the best of my knowledge and belief, the facts set forth in this Petition are true and correct.

Dated: Charleston, South Carolina
June 30, 2004

Respectfully submitted,



Jose Padilla

Sworn to before me this
30th day of June 2004



NOTARY PUBLIC

ANDREW PATEL
Notary Public, State of New York
No. 4829468
Qualified in Westchester County
Commission Expires August 31, ~~2005~~ 2005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOSE PADILLA, :
 :
 Petitioners. :
 :
 -against- :
 :
 COMMANDER C.T. HANFT, USN :
 Commander, Consolidated Naval Brig :
 :
 Respondent. :
-----X

AFFIRMATION OF SERVICE

ANDREW G. PATEL, ESQ., an attorney duly admitted to practice law before the bar of the United States District Court of the Southern District of New York and the State of New York, affirms, under penalties of perjury, that:

1. I am one of the attorneys of record for Jose Padilla.
2. I am not a party to this action, am over 18 years old and have offices at 111 Broadway, New York, New York 10006.
3. On July 1, 2004, I served the within Petition For Writ of Habeas Corpus: by delivering to the United States Postal Service for delivery by Certified Mail, copies thereof enclosed in sealed envelopes, addressed to:

Paul D. Clement, Esq.
Office of the Solicitor General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Commander C.T. Hanft, USN
Commander, Consolidated Naval Brig
1050 Redmount Road
Charleston, SC 29406

Dated: New York, New York
July 1, 2004



Andrew G. Patel, Esq.