

FILED

JUL - 6 2004

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

LARRY W. PROPPES, CLERK
CHARLESTON, SC

Jose Padilla,)	C/A No. 2:04-2221-26AJ
)	
Petitioner,)	
)	ENTERED
)	7/6/04
)	ORDER
vs.)	
)	
Commander C. T. Hanft, USN Commander,)	
Consolidated Naval Brig,)	
)	
)	
Respondent.)	
)	
)	

A petition for writ of habeas corpus has been submitted to the court under 28 U.S.C. § 2241 by a federal prisoner confined as an enemy combatant in the Consolidated Naval Brig. See Rumsfeld v. Padilla, 2004 U.S. LEXIS® 4759, 72 U.S.L.W. 4584, 2004 WESTLAW® 1432135 (U.S., June 28, 2004). Andrew G. Patel, Esq., a member of the Bar of the United States District Court for the Southern District of New York, paid the five-dollar (\$5) filing fee and has served the Office of the Solicitor General and the respondent by Certified Mail.

The Office of the Clerk of Court is directed to serve this order upon the respondent. *i.e.*, the Commander of the Consolidated Naval Brig, who has already been served with a copy of the petition via Certified Mail by Mr. Patel, is to receive a copy of this order by Certified Mail (return receipt requested).

The "AFFIRMATION OF SERVICE" completed by Mr. Patel does not reflect actual service of process upon the *Attorney General of the United States* and the *United States Attorney for the District of South*

Carolina. See Rule 4(i). The Clerk of Court, therefore, shall serve the petition and this order upon the Attorney General of the United States and the United States Attorney for the District of South Carolina, in accordance with Rule 4(i), by Certified Mail (return receipt requested).¹

¹Fed. R. Civ. P. 4(i) provides:

(i) Service Upon the United States, and Its Agencies, Corporations, or Officers.

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(2) Service upon an officer, agency, or corporation of the United States, shall be effected by serving the United States in the manner prescribed by paragraph (1) of this subdivision and by also sending a copy of the summons and of the complaint by registered or certified mail to the officer, agency, or corporation.

(3) The court shall allow a reasonable time for service of process under this subdivision for the purpose of curing the failure to serve multiple officers,

(continued...)

The respondent shall file an answer, return, or other response to the petition as soon as reasonably possible, but in no event beyond **fifty (50) days** from service of this order. See Kramer v. Jenkins, 108 F.R.D. 429, 430-433, 1985 U.S. Dist. LEXIS® 12533 (N.D.Ill. 1985)(district court may use Section 2254 Rules in setting a time for a response in Section 2241 cases); and Rule 4, Rules Governing Section 2254 Cases.²

Since only the petitioner signed the petition and the petition was not signed by counsel admitted to practice before this court, the above-captioned case is, procedurally, a case with a *pro se* petitioner. Cf. Roseboro v. Garrison, 528 F.2d 309, 310, 1975 U.S.App. LEXIS® 12361 (4th Cir. 1975).

In the event that the parties intend to submit matters under seal, the attention of the parties is directed to new Local Civil Rule 5.03.³ Cf. Local Criminal Rule 49.01.

Petitions for writs of habeas corpus under 28 U.S.C. § 2254 or 28 U.S.C. § 2241 in the District of South Carolina are automatically referred

(...continued)

agencies, or corporations of the United States if the plaintiff has effected service on either the United States attorney or the Attorney General of the United States.

The mailing address of the United States Attorney for the District of South Carolina is 1441 Main Street — Suite 500, Columbia, South Carolina 29201. The mailing address of the Attorney General of the United States is 5111 Main Justice Building, 10th Street & Constitution Avenue, NW, Washington, D.C. 20530.

²Prior to amendment in 2002 (eff. December 1, 2002), Rule 81(a)(2) of the Federal Rules of Civil Procedure provided a return-time of forty (40) days for respondents to answer petitions brought under 28 U.S.C. § 2254. Under Rule 4 of the Rules for Section 2254 Cases, and in light of customary practice in the United States District Court for the District of South Carolina, a fifty (50) day period for filing answers or other pleadings has been adopted as standard.

³The most recent editions of the Local Civil Rules and the Local Criminal Rules were promulgated on June 24, 2004.

to a United States Magistrate Judge.⁴ Local Civil Rule 73.02(B)(2)(c). This case has been referred to the undersigned magistrate judge under Local Civil Rule 73.02(B)(2)(c). The case file for the above-captioned case will be maintained in the Office of the Clerk of Court in Charleston (Post Office Box 835, Charleston, South Carolina 29402).

IT IS SO ORDERED.

July 6, 2004
(Date)
Charleston, South Carolina

Robert S. Carr
Robert S. Carr
United States Magistrate Judge

⁴In civil cases in this district, the alphabetical suffix in the civil action number indicates the United States Magistrate Judge assignment. See the Explanation of Case Numbers, which appears in the Case Filing Section on this court's public website (www.scd.uscourts.gov). The numerical suffix in the civil action number reflects the United States District Judge assignment.