

**FOR IMMEDIATE RELEASE****May 18, 2005**

## **COURT URGED TO UPHOLD DETENTION OF "ENEMY COMBATANT" JOSE PADILLA**

*(Padilla v. Hanft)*

The Washington Legal Foundation (WLF) yesterday urged the U.S Court of Appeals for the Fourth Circuit in Richmond to uphold the federal government's detention of Jose Padilla, the "dirty bomber" accused of being an al Qaeda operative.

In a brief filed in *Padilla v. Hanft*, WLF argued that the government is entitled to detain Padilla without trial just as it is entitled to detain any enemy soldier captured in time of war. WLF argued that the government's right to detain Padilla is not diminished simply because he is a U.S. citizen and was captured in Chicago rather than on some overseas battlefield. WLF noted that Padilla fought with al Qaeda/Taliban forces in Afghanistan against the United States; WLF argued that he should not be exempt from detention simply because he managed to elude capture and make his way out of the country.

"When American military leaders determine that individuals should be detained as enemy combatants, the courts should be highly deferential to such decisions," WLF Chief Counsel Richard Samp said after filing WLF's brief. "The courts are ill-equipped to second-guess the President when, acting in his capacity as Commander in Chief, he makes decisions implicating sensitive matters of foreign policy, national security, or military affairs," Samp said.

Padilla was arrested at Chicago's O'Hare Airport in May 2002 while returning from an extended trip to Afghanistan and Pakistan. The government alleges, based on statements by captured al Qaeda leaders, that Padilla plotted to build and detonate a "radiological dispersal device" (a "dirty bomb") in a major American city; or, alternatively, to blow up an apartment building. The government further alleges that Padilla armed himself with a rifle and joined with enemy forces in Afghanistan during periods of active combat in late 2001. Padilla has not been charged with any crime. Rather, he is being held in a South Carolina military facility.

Padilla initially filed a habeas corpus petition in June 2002 in New York City, seeking release from custody. The case reached the Supreme Court which, in June 2004, determined that Padilla had filed in the wrong court (he should have filed in South Carolina where he was

being held) and dismissed his case. Padilla then filed a new petition in federal district court in South Carolina. In February 2005, the district judge granted the petition and ordered him released within 45 days. The judge ruled that a 1970 law, the Non Detention Act, prohibits detention of Americans outside the criminal justice system except when otherwise specifically authorized by Congress. The court ruled that a second law adopted in the immediate aftermath of the September 11, 2001 terrorist attacks, the Authorization for the Use of Military Force (AUMF), did not constitute specific authorization to detain Americans as enemy combatants unless they are captured on an overseas battlefield. The federal government appealed that decision. The appeals court stayed the trial court's order pending appeal.

In its brief supporting the federal government, WLF argued that the centuries-old laws of war and Supreme Court precedent both support the government's decision to hold enemy combatants such as Padilla, regardless of their citizenship. WLF argued that the courts should grant extreme deference to the government's decision to hold Padilla; the decision should be overturned only if Padilla can demonstrate that the government has been acting in bad faith. WLF argued that the courts need to be vigilant to guard against government abuse of power but that there is no evidence of such abuse here.

WLF also argued that when Congress adopted the AUMF, it intended to authorize the President to detain those fighting against the United States, even if they are U.S. citizens. WLF noted that the Supreme Court last year held that the AUMF authorized the detention of Yasser Hamdi, another American who fought with the Taliban in Afghanistan (and was captured there). WLF argued that Congress never suggested, in adopting the AUMF, that the President's detention authority only extends to those captured on the battlefield and that Padilla's escape from Afghanistan before being captured somehow exempts him from being detained.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a significant portion of its resources to promoting America's national security and to ensuring that the United States government is not deprived of the tools necessary to protect the country from those who would seek to destroy it and/or harm its citizens.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its website, [www.wlf.org](http://www.wlf.org).