

**FOR IMMEDIATE RELEASE****December 19, 2005**

COURT URGED NOT TO REVIEW DETENTION OF "ENEMY COMBATANT" JOSE PADILLA

(Padilla v. Hanft)

The Washington Legal Foundation (WLF) on Friday urged the U.S. Supreme Court not to review a lower court's decision upholding 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 granting review would be particularly inappropriate now that Padilla has been indicted on terrorism charges and is scheduled to be transferred from military custody to the regular criminal justice system. WLF also argued that the lower court was correct: 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. "Now that the President has determined that Padilla should be removed from military custody, there is no reason for the courts to set themselves up for a confrontation with the elected branches of government," 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 is being held in a South Carolina military facility, pending transfer to Miami to face criminal charges.

Following his detention, Padilla filed a habeas corpus petition in federal court. In February 2005, a federal district judge in South Carolina 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 reversed in September, holding that the AUMF did, indeed, authorize Padilla's military detention.

In its brief opposing Supreme Court review, 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 the case was indistinguishable from *Hamdi v. Rumsfeld*, in which the Supreme Court upheld the military detention of an American citizen captured while fighting for the Taliban in Afghanistan. WLF argued that *Hamdi* authorizes detention of any American citizen (such as Padilla) who fought against the U.S in Afghanistan, and that the mere fact that Padilla escaped from Afghanistan prior to his capture does not render *Hamdi* inapplicable. WLF also argued that judicial deference to the Executive Branch in military matters counsels against granting review, particularly now that Padilla's military detention is ending.

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. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

* * *

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.