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NEWS

JOSE PADILLA – GOVERNMENT’S HANDLING OF ALLEGED TERRORIST, U.S. CITIZEN

By Kevin McCloskey

Jose Padilla, a U.S. citizen, has been in the custody of the U.S. government since he was arrested on May 8, 2002 at O’Hare International Airport in Chicago without being charged with a crime. Since June 9, he has been held as an “enemy combatant.”

The classification as an enemy combatant allows the government to hold Padilla indefinitely without being charged, and is constitutional under *Ex Parte Quirin*, a 1942 United States Supreme Court decision. 317 U.S. 1, 11 (1942).

On September 26, 2002, attorneys Donna Newman and Andrew Patel filed motions in federal court asserting that holding Padilla in military custody at a navy brig in Charleston, South Carolina violates Padilla’s constitutional rights.

Through the classification of Padilla as an enemy combatant, he can be brought before a military tribunal rather than the government bringing criminal charges in the court system.

Padilla’s case raises two compelling yet competing issues: the protection of Americans from terrorist attacks and the protection of the civil liberties of American citizens.

Padilla is suspected of plotting with al-Qaeda operatives to release a “dirty bomb” in the United States. A dirty bomb uses conventional explosives to spew potentially lethal radioactive material

across a wide area.

Ruth Wedgewood, a law professor at Yale University, based on the *Ex Parte Quirin* decision states, “If you go to war against your country, you do not have rights to a jury trial, and the answer to the practical question is that we are at war.” Adam Liptak, *Legal Questions on U.S. Action in Bomb Case*, N.Y. TIMES, June 11, 2002, at A18.

Donald Rumsfeld, the U.S. Secretary of Defense, has defended Padilla’s classification based on Padilla’s alleged involvement in terrorist activities. President Bush described Padilla as a “bad guy” who “is where he needs to be — detained.” Mark Potter, *Lawyer: Dirty bomb suspect’s rights violated*, at <http://www.cnn.com/2002/US/06/11/dirty.bomb.suspect/>.

they possess strong evidence connecting Padilla to a construction of a dirty bomb.

Ed Yohnka, Communication Director of the American Civil Liberties Union (ACLU) of Illinois, states, “It is remarkable that after months of holding Mr. Padilla in custody, the government can offer no cogent explanation for his detention. If they have a case, they should charge him and try him in the same way that the government has handled other cases related to terrorism. Such indefinite detention cannot be defended under our constitutional system of government.”

Padilla is being held as an enemy combatant on the basis of hearsay statements, without the access to counsel, and no venue in which to challenge his classification.

Alan Raphael, an Associate

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— Ed Yohnka, Communications Director of the American Civil Liberties Union of Illinois

Federal prosecutors have said in federal court filings that Abu Aubaydah, a lieutenant of Osama Bin Laden, who is also in U.S. custody, informed officials that Padilla had discussed bomb plots with top al-Qaeda leaders in Pakistan. However, Justice Department officials have recently strayed from the indication that

Professor of Law at Loyola University Chicago, says, “Our federal courts are perfectly capable of handling cases involving sensitive information. Holding a U.S. citizen without the assistance of counsel and without bringing charges based upon probable cause displays a lack

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