

# Justice Dept. Convicts Padilla in the Press

By Edward Spannaus

Since he was whisked out of the Federal court system into a military prison two years ago, José Padilla—a U.S. citizen arrested on U.S. soil—has languished without any prospect of due process, much less a trial. Until recently, he was held incommunicado, with no access to his lawyer, and he still has no access to the courts.

On June 1, the Justice Department gave Padilla a trial, of sorts. Deputy Attorney General James Comey indicted, tried, and convicted Padilla—not in a court of law, but in an *ex parte* press conference for the benefit of the news media.

Comey purported to present “the full story of José Padilla,” how he was allegedly recruited by al-Qaeda, and trained to make a radiological “dirty bomb,” and how he supposedly came to the United States with the intention of using the natural gas system of selected apartment buildings to cause massive explosions.

Comey presented a seven-page memorandum, purporting to contain declassified information obtained from interrogations of al-Qaeda leaders and of Padilla himself. (Unmentioned by Comey, were recent news reports indicating that some of the information on Padilla was obtained through “stress and duress” torture of top al-Qaeda detainees, who are being held at undisclosed locations.)

## No Constitutional Rights

Comey openly admitted, that all this alleged information was obtained by denying any Constitutional rights to Padilla. “Had we tried to make a case against José Padilla through our criminal justice system,” which Comey claimed could not have been done without jeopardizing intelligence sources, “he would have very likely followed his lawyer’s advice and said nothing, which would have been his Constitutional right.”

This is the closest confirmation to what *EIR* and others have said all along, that the government moved Padilla out of the Federal civilian courts, and into military detention, because they faced a preliminary hearing in Federal court in Manhattan, in which they would have had to present their evidence against Padilla, which the government was either unable, or unwilling, to do.

Of course this didn’t stop Ashcroft from jumping in front of TV cameras at the time to announce that “We have captured a known terrorist who was exploring a plan to build and explode a radiological dispersion device, or ‘dirty bomb,’ in the United States.”

Comey acknowledged that it will now be very difficult to ever put Padilla on trial, because prosecutors could not use the statements he has made (or allegedly made) while in military custody, and Comey also admitted that Padilla might deny having even made the statements attributed to him.

Covered up in Comey’s press conference—and in the ensuing press coverage—is a revealing footnote in the DOJ memorandum, which says that Padilla maintained that he was not part of al-Qaeda, and that he never made a pledge of loyalty to Osama bin Laden. It further states, that Padilla says that he proposed the “dirty bomb” plot only as a way to get out of Pakistan, in order to avoid combat in Afghanistan, and that “he returned to the U.S. with no intention of carrying out the apartment building operation.”

## Back-Door Brief to the Supreme Court

Many observers noted that the Justice Department’s release of information concerning José Padilla came as the U.S. Supreme Court is close to deciding on the government’s appeal of a ruling by the U.S. 2nd Circuit Court of Appeals, which had ordered that Padilla be released. Specifically, the Appeals Court ruled that the President has no power to detain an American citizen without explicit Congressional authorization—citing the Non-Detention Act, which was passed by Congress in 1971 as part of the repeal of the notorious Emergency Detention Act of 1950. As the *New York Times* noted, many legal analysts believe the Justice Department is in danger of losing the Padilla case.

The timing of the Justice Department’s disclosures was thus considered highly suspect. “I see no reason why they would announce that today,” said Scott Silliman, a law professor at Duke University’s Center on Law and National Security. “I think it is probably yet another attempt to put the most favorable face on the government’s argument that is being considered by the Supreme Court.”

## ‘A Black Hole’

Padilla’s lawyers angrily described the Justice Department press conference as “an opening statement without a trial.” One of his lawyers, Andrew Patel, said: “We are in the same position we’ve been in for two years, where the government says bad things about Mr. Padilla and there’s no forum for him to defend himself.”

Another of his lawyers, Donna Newman, pointed out that they are under a gag order from the courts and the Pentagon, barring them from speaking openly and fully about the case. “They control everything . . . They zip our lips, they unzip [Padilla’s] lips for their own purposes, and they do whatever they want, whenever they want. This is not what the U.S. Constitution had in mind.”

Newman and Patel challenged the government to put Padilla on trial if they think their evidence is so strong. But instead, Newman said, “If we believe someone is bad, there’s a new form of justice: we put them in a black hole.”