



Written by [Joe Wolverton, II, J.D.](#) on April 27, 2012

## Padilla Asks SCOTUS to Reinstate Torture Suit Against Rumsfeld, Panetta

Earlier this year, the U.S. Court of Appeals for the Fourth Circuit in Richmond, Virginia [upheld a lower court's dismissal](#) of the complaint. In his suit, Padilla claimed that, as an American citizen captured within the United States, he was unconstitutionally designated as an "enemy combatant," and alleged a range of other constitutional violations arising from his detention at a military prison in South Carolina. Additionally, Padilla said that he was denied access to legal counsel in contravention of his civil rights as guaranteed by the First, Fifth, and Sixth Amendments to the U.S. Constitution.



Padilla also asserted that he was denied access to the courts in violation of his constitutional rights as set out in Article III, the First Amendment, the Fifth Amendment, and that the government of the United States refused to permit his writ of habeas corpus in violation of the the Habeas Corpus Suspension Clause of Article I.

Further allegations made in Padilla's amended complaint included being confined in conditions that were "cruel and unusual;" being tortured during interrogations; and being denied his right to freely exercise the religion of his choice, among other similar claims of actionable deprivation of constitutionally-protected civil rights.

As relief, Padilla sought only *de minimis* pecuniary damages, but he had asked that the court declare that his designation as an enemy combatant, his subsequent detention, as well as his treatment while in detention were all unconstitutional and that the government be enjoined from categorizing him as an "enemy combatant" in the future.

In his petition to the Supreme Court, Padilla asks the justices to decide whether he has standing to bring his suit: specifically the filing asks if "federal officials responsible for the torture of an American citizen on American soil may be sued for damages under the Constitution."

Plaintiffs in the case are Padilla and his mother, Estela Lebron. Attorneys representing Padilla are from the American Civil Liberties Union. Ben Wizner, the counsel of record on the petition and the attorney who argued the case before the Fourth Circuit Court of Appeals, [issued a statement](#) in support of his client's petition:

If the appeals court's ruling is allowed to stand, government officials will have a blank check to commit any abuse in the name of national security, even the brutal torture of an American citizen in an American prison. It is



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precisely the role of the courts to ensure that allegations of grave misconduct by Executive Branch officials receive fair adjudication. That vital role does not evaporate simply because those officials insist that their actions are too sensitive for judicial review.

Relying on what amounted to a separation of powers rationale, the Fourth Circuit found against Padilla and held that:

[a] proper regard for the constitutional structure requires us to decline to recognize this novel suit. The designations of persons and groups as special threats to national security may be subject to a variety of checks and to habeas corpus proceedings. But they are not reviewable by the judiciary by means of implied civil actions for money damages.

That is to say, Judge J. Harvie Wilkinson (a Reagan appointee), writing on behalf of the three-judge panel, decided that the identification of individuals as threats to national security was not an action that a court could overturn.

Further along those same lines, the Court, citing among others the case of [Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics](#), 403 U.S. 388 (1971), unanimously held that "bedrock principles of separation of powers dictate that the judiciary refrain from implying a remedy when special factors counsel hesitation in the absence of affirmative action by Congress...."

If Congress makes a designation such as the one known as "enemy combatant," then that is one of the "special factors" which judiciary should not undo by permitting lawsuits which challenge the authority of Congress to make such designations. Simply put: if Congress did it, then only Congress can undo it.

Allowing the prosecution of such lawsuits, the Court reasoned, "would expose past executive deliberations affecting sensitive matters of national security to the prospect of searching judicial scrutiny."

Born in Brooklyn and raised in Chicago, Padilla is accused by the government of the United States of being a member of al-Qaeda. It is asserted that he has actively participated in that organization since the late 1990s. He has been convicted of conspiring to further al-Qaeda's "global campaign of terror."

The government says that in late 2000, Padilla traveled to Afghanistan in order to receive training at the al-Farooq camp run by members of al-Qaeda.

In 2002, Padilla left Afghanistan and, after stopping in Pakistan, Egypt, and Switzerland, he arrived back home in Chicago on May 8. Upon arriving at Chicago's O'Hare International Airport, Padilla was arrested by FBI agents. After his interrogation by the FBI at O'Hare, Padilla was transferred to a federal detention facility in New York and was appointed counsel.

On June 9, 2002, acting pursuant to his authority under the Authorization for the Use of Military Force (AUMF), President George W. Bush classified Padilla as an "enemy combatant" and ordered then-Secretary of Defense Donald Rumsfeld to detain Padilla. In the detention order, President Bush insisted that Padilla had "vital intelligence and posed an ongoing threat to the national security of the United States." Later that very day, Padilla was transferred from the civilian holding center to the Naval Consolidated Brig at Charleston, South Carolina.

Three years later, on November 17, 2005, Padilla was indicted on criminal terrorism charges in the U.S. District Court for the Southern District of Florida. After about two months, the Supreme Court authorized his transfer from the Naval Consolidated Brig back into civilian custody.

Finally, on August, 16, 2007, over five years after his arrest in Chicago, Padilla was convicted of one count of conspiracy to murder, kidnap, or maim persons overseas and two counts of providing material support to al Qaeda. He is presently serving a 17-year sentence for those crimes at the ADX Supermax Prison in Florence, Colorado.

Padilla's original complaint challenging the constitutionality of the foregoing actions on the part of the federal



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government was filed in the U.S. District Court for the District of South Carolina, where it was dismissed. In its decision, the district court held that the Bush administration officials named as defendants had qualified immunity given the special circumstances involved in the case (i.e., the threat to national security).

Several other cases alleging similar misconduct on the part of officials of the federal government in its prosecution of the "War on Terror" have been dealt with in like manner, protecting those agents of the federal government from liability under the theory of "qualified immunity."

In [a comment to the \*Washington Post\*](#), David B. Rivkin Jr., the attorney representing former Secretary of Defense Donald Rumsfeld, expressed confidence that the Supreme Court would not reinstate Padilla's complaint. "This lawsuit is yet another example of 'lawfare' that seeks to harass and distract those officials, military and civilian, responsible for ensuring our national security," Rivkin said.

Regardless of the merits of José Padilla's specific allegations against the federal government or its charges of conspiracy against him (charges one judge called "light on facts"), the passage of the [National Defense Authorization Act](#) (NDAA) and the consideration of the equally oppressive [Enemy Expatriation Act](#) make it clear that the government of the United States will not allow constitutional impediments to stand in the way of the President branding as an "enemy combatant" any citizen he suspects of possibly posing a threat to the security of the homeland.



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