

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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LARRY W. PROPES, CLERK
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Jose Padilla,)	
)	
Petitioner)	
)	
v.)	C/A No. 02:04-2221-26AJ
)	
Commander C.T. Hanft,)	Respondent's Answer to the
U.S.N. Commander,)	Petition for Writ of Habeas Corpus
Consolidated Naval Brig,)	
)	
Respondent)	
_____)	

Respondent Commander C.T. Hanft, Commanding Officer of the Consolidated Naval Brig in Charleston, South Carolina, by and through undersigned counsel, respectfully submits this Answer to the petition for writ of habeas corpus. The petition challenges the legality of petitioner's detention as an enemy combatant, alleging, *inter alia*, that petitioner's detention violates the Fourth, Fifth, and Sixth Amendments to the United States Constitution, the Suspension Clause of Article I, the Treason Clause of Article III, and 18 U.S.C. 4001(a). Those legal challenges fail. As is made clear by the Supreme Court's decisions in *Hamdi v. Rumsfeld*, 124 S. Ct. 2633 (2004) and *Ex parte Quirin*, 317 U.S. 1 (1942), the President has authority as Commander in Chief and pursuant to Congress's Authorization for Use of Military Force (AUMF), Pub. L. No. 107-40, 115 Stat. 224 (2001), to detain petitioner as an enemy combatant in the course of the ongoing conflict against al Qaeda.

STATEMENT

1. In the wake of al Qaeda's massive attacks against the United States on September 11, 2001, the President, pursuant to his authority as Commander in Chief, undertook to prevent further al Qaeda strikes by launching a major military response. One week after the September 11 attacks,

Congress enacted a resolution embodying its support of the President's use of "all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, * * * in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." AUMF, 115 Stat. 224, § 2(a). Congress specifically recognized the President's "authority under the Constitution * * * to deter and prevent acts of international terrorism against the United States," and Congress emphasized that the forces responsible for the September 11 attacks "continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States," "render[ing] it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad." *Id.*, Preamble. The President soon made it express that the September 11 attacks "created a state of armed conflict" with al Qaeda. Military Order of November 13, 2001: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism (November 13 Military Order), 66 Fed. Reg. 57,833, § 1(a).

2. The United States military, consistent with the Nation's settled historical practice in times of war, has seized and detained numerous persons fighting for and associated with the enemy in the course of the ongoing conflict against al Qaeda and the Taliban regime that supported it. Petitioner Jose Padilla, a.k.a., Abdullah Al Muhajir, is being held by the military as an enemy combatant in connection with that conflict.

a. On April 5, 2002, petitioner flew from Pakistan bound for the United States. On May 8, 2002, after spending a month in Egypt, petitioner traveled to Chicago. Upon his arrival, he was arrested pursuant to a material witness warrant issued in the United States District Court for the

Southern District of New York in connection with grand jury proceedings investigating the September 11 attacks. Petitioner was then transferred to New York and assigned counsel.

b. On June 9, 2002, the President, expressly invoking his constitutional powers as Commander in Chief as well as the authority granted him in the AUMF, made a formal determination that petitioner “is, and at the time he entered the United States in May 2002 was, an enemy combatant.” President’s Order, ¶ 1 (attached hereto as Attachment A). The President found, in particular, that petitioner: is “closely associated with al Qaeda, an international terrorist organization with which the United States is at war,” *id.*, ¶ 2; has “engaged in * * * hostile and war-like acts, including conduct in preparation for acts of international terrorism” against the United States, *id.*, ¶ 3; “possesses intelligence” about al Qaeda that “would aid U.S. efforts to prevent attacks by al Qaeda on the United States,” *id.*, ¶ 4; and “represents a continuing, present and grave danger to the national security of the United States,” such that his detention “is necessary to prevent him from aiding al Qaeda in its efforts to attack the United States or its armed forces, other governmental personnel, or citizens,” *id.*, ¶ 5. The President accordingly directed the Department of Defense “to receive Mr. Padilla from the Department of Justice and to detain him as an enemy combatant.” *Ibid.*

The President’s determination was the culmination of a thorough deliberative process in the Executive Branch involving several layers of review. See 150 Cong. Rec. S2701, S2703-S2704 (daily ed. Mar. 11, 2004) (reprinting Feb. 24, 2004, remarks of Alberto Gonzales, Counsel to the President, before the American Bar Association’s Standing Committee on Law and National Security). When a United States citizen is suspected of being an enemy combatant, the Office of Legal Counsel (OLC) within the Department of Justice makes an initial determination concerning

whether the individual, based on the information then available, satisfies the legal standards for designation as an enemy combatant. See *Quirin*, 317 U.S. at 37-38. Following OLC's initial determination, the Director of the Central Intelligence Agency (CIA), based on all available CIA intelligence information concerning the individual, makes a recommendation to the Department of Defense (DoD) as to whether the person should be detained as an enemy combatant. The Secretary of Defense makes his own independent assessment based on information provided by the CIA and other intelligence information developed within DoD. The Secretary of Defense then transmits his assessment to the Attorney General with a request for an opinion concerning whether the individual may lawfully be detained as an enemy combatant and whether such a course is recommended as a matter of policy. The Attorney General bases his opinion on a memorandum from the Criminal Division setting out all information about the individual available from the FBI and other sources, and on a formal legal opinion from OLC addressing whether the individual satisfies the legal standards for designation as an enemy combatant. See 150 Cong. Rec. at S2703-2704.

The Secretary of Defense transmits all of the recommendations and intelligence information to the President, and the Counsel to the President forwards the materials to the President along with a written recommendation. The President then reviews the materials and, if, as in this case, the President determines that the individual should be detained as an enemy combatant, the President executes a formal order to that effect. See 150 S. Rec. at 2704.

c. The factual basis for petitioner's detention as an enemy combatant is elaborated in the attached declaration of Jeffrey N. Rapp, Director, Joint Intelligence Task Force for Combating Terrorism (Aug. 27, 2004) (Rapp Dec.) (attached hereto as Attachment B). As the declaration explains, petitioner is closely associated with al Qaeda, he trained with al Qaeda and met repeatedly

with senior al Qaeda leaders after the September 11 attacks to discuss the conduct of terrorist operations within and against the United States, and he came to the United States at the direction and with the assistance of al Qaeda operatives to advance the conduct of terrorist operations on al Qaeda's behalf. Rapp Dec. ¶¶ 7-15.

Petitioner traveled from the United States to Egypt in September 1998. Rapp Dec. ¶ 7. In February 2000, while in Saudi Arabia on a religious pilgrimage, petitioner met with an al Qaeda recruiter and discussed al Qaeda training opportunities in Afghanistan. Ibid. In the summer of 2000, petitioner traveled to Pakistan and to a Taliban safehouse in Quetta. Id. ¶ 8. From there, petitioner traveled to Kandahar, Afghanistan, in the company of Taliban operatives and other recruits to train for jihad. Ibid. In July 2000, petitioner completed a training camp application, using one of his aliases, Abdullah Al Muhajir. Ibid. In September and October 2000, petitioner attended the al Qaeda-affiliated al-Farouq training camp, where he received training in, *inter alia*, explosives, weapons, and communications. Ibid. While at the camp, petitioner met several times with Mohammed Atef, a senior al Qaeda operative and military commander. Ibid. After completing the training, petitioner, along with other new recruits, spent three months in the fall of 2000 guarding what he understood to be a Taliban outpost north of Kabul. Ibid. Petitioner was armed with a Kalashnikov assault rifle and ammunition for that purpose. Ibid. In the spring of 2001, petitioner returned to Egypt. Ibid.

In June 2001, petitioner traveled to Quetta where he stayed at an al Qaeda safehouse before returning to Kandahar. Rapp Dec. ¶ 9. In Kandahar, petitioner met with Atef. Id. ¶ 11. Atef asked whether petitioner would undertake a mission to blow up apartment buildings in the United States through the use of natural gas. Ibid. Petitioner agreed to the mission. Ibid. Atef then sent petitioner

to an al Qaeda training camp near Kandahar, where petitioner received further training from an al Qaeda explosives expert. Ibid. After that further training in explosives, petitioner spent much of September 2001, including after the September 11 attacks, with Atef at an al Qaeda safehouse near Kandahar. Id. ¶ 9. After the United States commenced combat operations against the Taliban and al Qaeda, petitioner and other al Qaeda operatives moved from safehouse to safehouse to avoid bombing or capture. Ibid. In November 2001, United States forces bombed the safehouse where Atef was staying, killing Atef. Id. ¶ 10. Petitioner was staying at a different al Qaeda safehouse on that day, but returned to assist with digging through the rubble and retrieving Atef's body. Ibid.

After the attack, petitioner, together with numerous other al Qaeda operatives, began moving towards the mountainous border with Pakistan in order to evade United States forces and avoid United States air strikes. Rapp Dec. ¶ 10. Petitioner was armed with an assault rifle during this time. Ibid. After taking cover in a network of caves and bunkers, petitioner and other al Qaeda operatives were escorted by Taliban personnel into Pakistan in groups of 15 or 20. Ibid. Petitioner crossed into Pakistan in January 2002. Ibid. After crossing into Pakistan, petitioner met with senior Osama bin Laden lieutenant Abu Zubaydah at a safehouse in Lahore, Pakistan, and then met again with Zubaydah at a safehouse in Faisalabad, Pakistan. Ibid. Petitioner discussed with Zubaydah the conduct of terrorist operations involving detonation of explosives within the United States. Ibid. At an al Qaeda safehouse in Pakistan, petitioner conducted what he called "research" on the construction of an atomic bomb. Ibid.

In March 2002, Zubaydah sent petitioner and an accomplice to Pakistan to see Kalid Sheik Mohammad (KSM), al Qaeda's operations leader, to present the atomic bomb operation. Rapp Dec. ¶ 12. Zubaydah gave petitioner money and wrote a reference letter to KSM about petitioner. Ibid.

KSM met with petitioner and his accomplice at an al Qaeda safehouse. Ibid. While KSM believed that the atomic bomb plot was too complicated, KSM suggested that petitioner and his accomplice revive the plan to detonate apartment buildings through use of natural gas, as petitioner had initially discussed with Mohammed Atef. Ibid. Petitioner accepted the assignment. Ibid. KSM gave petitioner full authority to conduct an operation if he and his accomplice were successful in entering the United States. Ibid. Petitioner then received training from Ramzi Bin al-Shibh, a senior al Qaeda operative, on the secure use of telephones and e-mail protocols. Ibid. Petitioner was given \$5,000 by KSM and an additional \$10,000 by al Qaeda facilitator and planner Ammar al-Baluchi. Ibid. Petitioner was also given travel documents, a cell phone, and an e-mail address to use to notify al-Baluchi upon petitioner's return to the United States. Ibid. The night before his departure, petitioner attended a dinner with KSM, al-Baluchi, and al-Shibh. Ibid. When seized upon his arrival in Chicago on May 8, 2002, petitioner was carrying over \$10,000 in currency, the cell phone given to him by al-Baluchi, and an e-mail addressees for al-Baluchi. Id. ¶ 13.

3. Immediately upon issuance of the President's order of June 9, 2002, directing the Department of Defense to receive petitioner from the Department of Justice and to detain petitioner as an enemy combatant, the Department of Justice moved the district court to vacate the material witness warrant, which motion was granted. That same day, petitioner was transferred to military control and taken to the Consolidated Naval Brig, Charleston, South Carolina, where he has since been detained. On June 11, 2002, petitioner's counsel filed a habeas corpus petition on his behalf in the United States District Court for the Southern District of New York.

a. The government moved on jurisdictional grounds to dismiss the petition or transfer it to this Court, arguing that habeas jurisdiction over the petition properly lay in this Court. The

district court denied the motion. *Padilla ex rel. Newman v. Rumsfeld*, 233 F. Supp. 2d 564, 575-587 (S.D.N.Y. 2002). The court concluded on the merits that the President has legal authority to detain petitioner as an enemy combatant. *Id.* at 587-599. The court also ordered that petitioner be afforded access to counsel to facilitate any factual challenge to the determination that he is an enemy combatant. *Id.* at 599-610.

b. On interlocutory appeal, the United States Court of Appeals for the Second Circuit agreed that the District Court for the Southern District of New York had jurisdiction. *Padilla v. Rumsfeld*, 352 F.3d 695, 702-710 (2d Cir. 2003). On the merits, the court held in a divided opinion that the President lacks authority to detain petitioner as an enemy combatant. See *id.* at 710-724 (majority opinion); *id.* at 726-733 (Wesley, J., dissenting).

c. The government filed a petition for writ of certiorari in the Supreme Court, and the Court granted review of two questions: “First, did Padilla properly file his habeas petition in the Southern District of New York; and second, did the President possess authority to detain Padilla militarily.” *Rumsfeld v. Padilla*, 124 S. Ct. 2711, 2715 (2004). On June 28, 2004, the Court issued a decision holding that the district court lacked jurisdiction over the habeas petition and that the petition instead should have been filed in this Court. *Id.* at 2717-2727. Having found jurisdiction lacking, the Supreme Court declined to reach the question whether the President has authority to detain petitioner as an enemy combatant. *Id.* at 2715.

4. On July 2, 2004, petitioner filed a habeas petition in this Court. The petition raises four claims for relief. First, the petition asserts that petitioner’s detention “without criminal charges” violates the Fourth, Fifth, and Sixth Amendments to the United States Constitution, the Treason Clause of Article III, and the Habeas Suspension Clause of Article I. Pet. 4-5, ¶¶ 20-22. Second,

the petition alleges that petitioner's detention violates 18 U.S.C. 4001(a). Pet. 5, ¶¶ 23-25. Third, the petition asserts that petitioner is entitled by the Due Process Clause of the Fifth Amendment to receive notice of the factual basis for his detention as an enemy combatant, to contest those facts, and to communicate freely with counsel. Pet. 5-6, ¶¶ 26-29. Fourth, the petition claims that petitioner's "ongoing interrogation" by the military violates the Fifth, Sixth, and Eighth Amendments to the Constitution. Pet. 6, ¶¶ 30-32.

The petition seeks separate forms of relief on each of those claims. With respect to the first two claims, the petition seeks an order that petitioner be immediately released or charged with a crime. Pet. 6-7, ¶ 1. On the third claim, the petition requests that petitioner be afforded an opportunity to contest the factual basis for his detention at an evidentiary hearing and that petitioner's counsel be permitted to meet and confer with petitioner freely. Pet. 7, ¶¶ 2-3. Finally, as relief on the fourth claim, the petition seeks an order that the military cease all interrogation of petitioner during the pendency of this litigation. Pet. 7, ¶ 4.

ARGUMENT

I. The President Has Authority As Commander In Chief And Pursuant To Congress's AUMF To Detain Petitioner As An Enemy Combatant.

Petitioner's first claim is that his detention as an enemy combatant "without criminal charges" infringes the Constitution, and that "American citizens arrested in the U.S. can only be deprived of liberty through criminal process." Pet. 4-5, ¶¶ 20-22. That claim lacks merit. The Supreme Court's decisions in *Hamdi*, 124 S. Ct. at 2633, and *Quirin*, 317 U.S. at 1, confirm the military's long-settled authority -- independent of and distinct from criminal process -- to detain enemy combatants for the duration of an armed conflict. Those decisions also establish that the

authority is fully applicable in the factual circumstances of this case.

A. The military has authority to detain enemy combatants in the course of the conflict against al Qaeda.

1. *Hamdi* makes clear that the military has authority to seize and detain enemy combatants for the duration of the present conflict. The decision upholds the President's authority to detain as an enemy combatant a presumed American citizen who "was 'part of or supporting forces hostile to the United States or coalition partners' in Afghanistan and who 'engaged in an armed conflict against the United States' there." 124 S. Ct. at 2639 (plurality). The Court did not reach the question whether the President has "plenary authority to detain pursuant to Article II of the Constitution," resting its decision instead on the conclusion that "Congress has in fact authorized Hamdi's detention, through the AUMF." *Ibid.*; see *id.* at 2679 (Thomas, J., dissenting) (agreeing with plurality that AUMF authorizes Hamdi's detention). The plurality opinion of Justice O'Connor is the controlling opinion with respect to the President's authority to detain enemy combatants because Justice Thomas concurred on grounds that were even more deferential to the President. See *id.* at 2674-2685 (Thomas, J., dissenting).

As the Court's controlling opinion explains, the "capture and detention of lawful combatants and the capture, detention, and trial of unlawful combatants, by 'universal agreement and practice' are 'important incident[s] of war.'" 124 S. Ct. at 2640 (plurality) (quoting *Quirin*, 317 U.S. at 28); accord *id.* at 2679 (Thomas, J., dissenting); see *Johnson v. Eisentrager*, 339 U.S. 763, 786 (1950) ("This Court has characterized as 'well-established' the 'power of the military to exercise jurisdiction over * * * enemy belligerents [and] prisoners of war.' ") (quoting *Duncan v. Kahanamoku*, 327 U.S. 304, 313 (1946)). The Executive's long-settled authority to detain

combatants is not for the purpose of imposing criminal or other punishment, but instead serves to “prevent captured individuals from returning to the field of battle and taking up arms once again.” *Hamdi*, 124 S.Ct. at 2640 (plurality).

“Because detention to prevent a combatant’s return to the battlefield is a fundamental incident of waging war,” the *Hamdi* Court held, “it is of no moment that the AUMF does not use specific language of detention.” *Id.* at 2641 (plurality); see *id.* at 2679 (Thomas, J., dissenting). Rather, “Congress’ grant of authority for the use of ‘necessary and appropriate force’ * * * include[s] the authority to detain for the duration of the relevant conflict,” an “understanding * * * based on longstanding law-of-war principles.” *Id.* at 2641 (plurality); see *id.* at 2679 (Thomas, J., dissenting). It therefore is clear after *Hamdi* that the President has authority pursuant to the AUMF to detain enemy combatants for the duration of the current conflict.¹

2. Because the *Hamdi* Court concluded that the detention was authorized by the AUMF, the Court found no occasion to address the President’s independent authority as Commander in Chief to detain a citizen as an enemy combatant. See 124 S. Ct. at 2639 (plurality). The issue likewise need not be reached in this case because the AUMF supplies an ample statutory predicate for

¹ The Court’s holding that the AUMF encompasses the detention of Hamdi, a Taliban combatant, applies *a fortiori* to al Qaeda combatants. As the controlling opinion explains, “[t]here can be no doubt that individuals who fought against the United States in Afghanistan as part of the Taliban, an organization known to have supported *the al Qaeda terrorist network responsible for those attacks*, are individuals Congress sought to target in passing the AUMF.” 124 S. Ct. at 2640 (emphasis added). There could be even less doubt that Congress in the AUMF sought to target combatants for al Qaeda, the organization directly responsible for the September 11 attacks. See § 2(a), 115 Stat. 224 (supporting use of “all necessary and appropriate force against,” *inter alia*, those “organizations” that the President “determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001”); see also President’s Order, ¶ 2 (stating that “al Qaeda” is “an international terrorist organization with which the United States is at war”).

petitioner's detention as an enemy combatant. See pp. 18-21, *infra*.

Nonetheless, Congress specifically recognized in the AUMF that “the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States,” Preamble, 115 Stat. 224, and that authority supplies an independent basis for petitioner's detention as an enemy combatant. The Commander-in-Chief Clause grants the President authority to defend the Nation when it is attacked, and the President “is bound to accept the challenge without waiting for any special legislative authority.” *The Prize Cases*, 67 U.S. (2 Black) 635, 668 (1862). An essential aspect of the President's authority in that regard is to “determine what degree of force the crisis demands.” *Id.* at 670; see *Campbell v. Clinton*, 203 F.3d 19, 27 (D.C. Cir.) (Silberman, J., concurring) (“[T]he President has independent authority to repel aggressive acts by third parties even without specific congressional authorization, and courts may not review the level of force selected.”), cert. denied, 531 U.S. 815 (2000). The President's decision to detain petitioner as an enemy combatant represents a basic exercise of his authority as Commander in Chief to determine the level of force needed to prosecute the conflict against al Qaeda.

B. The President's authority to detain enemy combatants in the current conflict is fully applicable in the circumstances of this case.

After *Hamdi*, the petition could not, and does not, challenge the President's authority to detain enemy combatants in the course of the ongoing conflict against al Qaeda. The petition instead argues that, for various reasons, the President's authority does not extend to the particular circumstances of this case. Those arguments cannot be squared with the Supreme Court's decisions in *Hamdi* and *Quirin*.

1. The petition contends that, “absent a valid suspension of habeas corpus by Congress,

American citizens arrested in the U.S. can only be deprived of liberty through criminal process.” See Pet. 5, ¶ 22. That is incorrect. Neither a combatant’s American citizenship nor his capture within the United States diminishes the military’s authority to detain him for the duration of the conflict. With respect to citizenship, *Hamdi* involved a presumed American citizen, and the Court reiterated the long-settled rule that “[t]here is no bar to this Nation’s holding one of its own citizens as an enemy combatant.” 124 S. Ct. at 2640 (plurality); accord *id.* at 2679 (Thomas, J., dissenting); see *Quirin*, 317 U.S. at 37 (“Citizenship in the United States of an enemy belligerent does not relieve him from the consequences of [his] belligerency.”); *Colepaugh v. Looney*, 235 F.2d 429, 432 (10th Cir. 1956), cert. denied, 352 U.S. 1014 (1957); *In re Territo*, 156 F.2d 142, 142-143 (9th Cir. 1946).

With respect to the location of a combatant’s capture, because *Hamdi* involved a citizen who “engaged in an armed conflict against the United States” in Afghanistan, the Court described its holding in those particular terms. See 124 S. Ct. at 2639 (plurality). But nothing in *Hamdi* suggests that the authority to detain enemy combatants in the current conflict would be inapplicable in the context of a citizen captured within the United States’s borders. To the contrary, the Court strongly reaffirmed its prior decision in *Quirin*, see *id.* at 2642-2643 (plurality); *id.* at 2682 (Thomas, J., dissenting), which had recognized the military’s authority to seize and detain enemy combatants in factual circumstances indistinguishable from this case; and the Court relied on the AUMF, a congressional response to attacks launched from within the United States.

a. *Quirin* upheld the President’s assertion of military control over a group of German combatants who were seized by FBI agents in the United States before carrying out plans to sabotage domestic war facilities during World War II. At least one of the saboteurs, Haupt, was a presumed American citizen, see 317 U.S. at 20, and all of the saboteurs had undergone training in Germany

on the use of explosives. The President appointed a military commission to try the combatants for violating the laws of war, whereupon the FBI transferred custody over them to the military. See *id.* at 22-23. The Supreme Court unanimously upheld the President's authority in the circumstances to treat an American citizen as an enemy combatant. The Court explained: "Citizens who associate themselves with the military arm of the enemy government, and with its aid, guidance and direction enter this country bent on hostile acts are enemy belligerents within the meaning of * * * the law of war." *Id.* at 37-38.

That holding squarely applies to petitioner. The President determined, in terms indistinguishable from those used by the Court in *Quirin*, that petitioner is "closely associated with al Qaeda" and has "engaged in * * * hostile and war-like acts, including conduct in preparation for acts of international terrorism that had the aim to cause injury to or adverse effects on the United States." President's Order, ¶¶ 2-3. Indeed, the factual parallels are striking. The *Quirin* combatants affiliated with German forces during World War II, received explosives training in Germany, and came to the United States with plans to destroy war facilities. Petitioner was closely associated with al Qaeda after September 11, 2001, received explosives training at al Qaeda training camps, and then came to the United States at al Qaeda's direction and with al Qaeda's assistance to advance the conduct of further attacks against the United States.

b. In light of the Supreme Court's decision in *Quirin*, petitioner errs in relying (Pet. 5, ¶ 22) on the Court's prior decision in *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866). *Milligan* held that the military lacked authority to subject to trial by military commission a citizen who was alleged to have conspired against the United States in the Civil War. Unlike petitioner and the *Quirin* combatants, Milligan had not affiliated or trained with enemy forces (and in fact had never resided

in any State in the Confederacy). See *id.* at 121-122. In *Quirin*, the Court unanimously confined *Milligan* to its specific facts, “constru[ing] the Court’s statement as to the inapplicability of the law of war to Milligan’s case as having particular reference to the facts before it.” 317 U.S. at 45. The Court found *Milligan* “inapplicable” to the circumstances in *Quirin*, explaining that Milligan, “not being a part of or associated with the armed forces of the enemy, was a non-belligerent, not subject to the law of war.” *Ibid.* Petitioner, by contrast, was closely associated with al Qaeda, and his actions directly parallel those of the *Quirin* combatants. Accordingly, petitioner, as much as the *Quirin* saboteurs, is an “enemy belligerent[] within the meaning of * * * the law of war.” *Id.* at 38.

Hamdi fortifies that conclusion. The controlling opinion in *Hamdi* explains that “*Quirin* was a unanimous opinion” and “both postdates and clarifies *Milligan*, providing us with the most apposite precedent that we have on the question of whether citizens may be detained in such circumstances.” 124 S. Ct. at 2643 (plurality); see *id.* at 2682 (Thomas, J., dissenting). *Hamdi* cautions that “[b]rushing aside such precedent -- particularly when doing so gives rise to a host of new questions never dealt with by this Court -- is unjustified and unwise.” *Id.* at 2643 (plurality). *Hamdi* also confirms that, while *Quirin* involved the detention of enemy combatants for trial by military commission, the authority recognized in *Quirin* necessarily includes the basic authority to detain for the duration of a conflict without bringing any such charges. See *id.* at 2640 (plurality) (“While Haupt was tried for violations of the law of war, nothing in *Quirin* suggests that his citizenship would have precluded his mere detention for the duration of the relevant hostilities.”).

c. In light of *Hamdi* and *Quirin*, there is no merit to petitioner’s contention that he “must be charged with a crime or released immediately.” Pet. 5, ¶ 22. To be sure, a dissenting opinion in *Hamdi* expressed the view of two Justices that, in the absence of a suspension of the writ, an

American citizen detained in the United States must be afforded criminal process. See 124 S. Ct. at 2660-2674 (Scalia, J., joined by Stevens, J., dissenting). No other Justice adopted that approach, however, and a majority of the Court specifically rejected it. See *id.* at 2643 (plurality) (rejecting approach “in which the only options are congressional suspension of the writ of habeas corpus or prosecution for treason or some other crime”); *id.* at 2682 (Thomas, J., dissenting) (rejecting “conclusion that the Government must choose between using standard criminal processes and suspending the writ”). This Court need go no further to reject petitioner’s claim.

2. The petition suggests that petitioner may not be detained as an enemy combatant because he “has never joined a foreign Army,” he was “arrested in a civilian setting” rather than “on a foreign battlefield,” and he “carried no weapons or explosives” at the time of his seizure. Pet. 3, ¶ 16. Those arguments are foreclosed by *Quirin*.

a. As an initial matter, it is of no consequence whether petitioner has formally joined al Qaeda. Of the *Quirin* saboteurs, “only two of them, Burger and Neubauer, were formally enrolled in the German army.” Michael Dobbs, *Saboteurs: The Nazi Raid on America* 204 (2004). The *Quirin* saboteurs, like petitioner, were recruited because of their ability to assimilate into the United States to effectuate plans of sabotage, and, whether or not formally inducted into military service, received explosives training at the hands of the enemy. The Court in *Quirin* thus did not rest its decision on the formal status of the saboteurs. Rather, the Court held that the saboteurs -- as distinct from a “non-belligerent” who is not “a part of *or associated with* the armed forces of the enemy” -- were subject to military jurisdiction. 317 U.S. at 45; see *Hamdi*, 124 S. Ct. at 2639-2640 (plurality) (holding that an individual who is, *inter alia*, “part of *or supporting* forces hostile to the United States” is an enemy combatant).

The President found in this case that petitioner is “closely associated with al Qaeda.” President’s Order, ¶ 2. And there can be no doubt that a person who stays at al Qaeda safehouses, travels with other al Qaeda operatives while armed with an assault rifle in an effort to evade United States forces, meets repeatedly with senior al Qaeda operatives to discuss the conduct of terrorist operations on al Qaeda’s behalf, and receives explosives training from al Qaeda operatives at the direction of al Qaeda leaders, is sufficiently associated with al Qaeda by any measure to qualify as an enemy combatant.²

b. The circumstances surrounding petitioner’s initial seizure upon arriving in Chicago likewise are indistinguishable from those in *Quirin*. Although the petition submits that the seizure occurred in a “civilian setting” rather than “on a foreign battlefield” (Pet. 3, ¶ 16), the *Quirin* saboteurs similarly were seized by civilian authorities in Chicago and New York before the President later ordered their transfer to military control. 317 U.S. at 21-23. Moreover, the *Quirin* Court rejected any suggestion that the saboteurs were “any the less belligerents if, as they argue, they have not actually committed or attempted to commit any act of depredation or entered the theatre or zone of active military operations.” *Id.* at 38. And while petitioner was not carrying explosives when he was seized, the *Quirin* saboteurs likewise were not armed with explosives when arrested because

² Any questions concerning formal membership are especially irrelevant in the context of al Qaeda because “Al Qaeda has no clear membership standards.” Audrey Kurth Cronin, *CRS Report RS21529, Al Qaeda After the Iraq Conflict*, at 3 n.10 (May 23, 2003). Cf. *Reid v. Covert*, 354 U.S. 1, 22-23 (1957) (“We recognize that there might be circumstances where a person could be ‘in’ the armed services * * * even though he had not formally been inducted into the military or did not wear a uniform.”) (plurality).

they had buried their explosives upon coming ashore in the United States. *Id.* at 21.³ Consequently, the Court’s conclusion in *Quirin* that the saboteurs were enemy combatants subject to military detention is equally applicable in this case.

II. Section 4001(a) Does Not Constrain The President’s Authority To Detain Petitioner As An Enemy Combatant.

Petitioner’s second claim (Pet. 5, ¶¶ 23-25) is that his detention as an enemy combatant violates 18 U.S.C. 4001(a), which states that “[n]o citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.” That claim lacks merit. Petitioner’s detention could raise no issue under Section 4001(a) because the AUMF is an “Act of Congress” that authorizes the detention. Petitioner’s claim also fails for the independent reason that Section 4001(a) does not apply to the military’s wartime detention of enemy combatants.

A. The President’s determination that petitioner should be detained as an enemy combatant falls squarely within the authority conferred by the AUMF.

The Supreme Court held in *Hamdi* that the AUMF authorizes Hamdi’s detention, and that the detention therefore is “pursuant to an Act of Congress” within the meaning of Section 4001(a). 124 S. Ct. at 2639-2640 (plurality); *id.* at 2679 (Thomas, J., dissenting). While *Hamdi* thus establishes that the AUMF authorizes the detention of enemy combatants who are American citizens, the petition seeks to distinguish *Hamdi* on the ground that Congress did not authorize “the detention of American citizens arrested on American soil.” Pet. 5, ¶ 25. Petitioner’s reading of the AUMF is untenable.

³ At the time of their arrest, the *Quirin* combatants were in possession of “substantial sums in United States currency” that had been given to them by the German government. 317 U.S. at 21-22. Petitioner likewise had been given \$15,000 by al Qaeda operatives and was carrying over \$10,000 when arrested. See Rapp Dec. ¶¶ 12-13.

1. The AUMF recognizes the President’s constitutional authority to “take action to deter and prevent acts of international terrorism,” Preamble, 115 Stat. 224, and it broadly authorizes the President “to use *all* necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001 * * * in order to prevent *any* future acts of international terrorism against the United States by such nations, organizations or persons,” § 2(a), 115 Stat. 224 (emphasis added). There is no indication in the broad terms of the AUMF that it authorizes the detention of combatants seized abroad but not combatants seized on United States soil. To the contrary, Congress was acting in direct response to attacks on the United States launched by combatants who were within the Nation’s borders. Congress thus cannot plausibly be assumed to have intended to withhold support for the detention of combatants found within the United States -- *i.e.*, combatants identically situated to those that carried out the September 11 attacks. See *Reves v. Ernst & Young*, 494 U.S. 56, 63 (1990) (a statute “must be understood against the backdrop of what Congress was attempting to accomplish in enacting” it).

Congress, moreover, observed that the September 11 attacks “continue to pose an unusual and extraordinary threat to the national security,” and Congress specifically expressed that it was “necessary and appropriate that the United States exercise its rights * * * to protect United States citizens both *at home* and abroad.” Preamble, 115 Stat. 224 (emphasis added). Congress also was acting against the backdrop of *Quirin*, which had long ago established that the military’s authority to seize and detain enemy combatants fully applies to combatants seized within the United States. See *Bowen v. Massachusetts*, 487 U.S. 879, 896 (1988) (noting the “well-settled presumption that Congress understands the state of existing law when it legislates”). Congress gave no indication that

it intended to depart from that settled understanding, and the nature of the September 11 attacks as well as the terms of the AUMF foreclose any such interpretation.⁴

2. Even if there were any doubt concerning whether the AUMF encompasses combatants seized within the United States, such a doubt would be resolved in favor of concluding that petitioner's detention falls within the authority conferred by Congress. Congressional authorizations of Executive action in the area of foreign policy must be read broadly, especially as here where the President enjoys his own constitutional authority. As the Supreme Court has explained, "Congress cannot anticipate and legislate with regard to every possible action the President may find it necessary to take," and "[s]uch failure of Congress * * * does not, '*especially . . . in the areas of foreign policy and national security*, imply 'congressional disapproval' of action taken by the Executive." *Dames & Moore v. Regan*, 453 U.S. 654, 678 (1981) (emphasis added) (quoting *Haig v. Agee*, 453 U.S. 280, 291 (1981)).

In this case, moreover, the President explicitly found that petitioner's detention as an enemy combatant is "consistent with" the AUMF. President's Order (June 9, 2002). The issue thus is not whether petitioner's detention in the abstract falls within the authority conferred by the AUMF, but whether the President could permissibly conclude that it does. And when the President acts pursuant to a broad grant of authority by Congress in an area in which he possesses independent constitutional responsibility, courts may set aside the President's actions as beyond the scope of authority conferred

⁴ The debates in Congress reflect the understanding that the President may be required to take action against the enemy within the Nation's borders. See Cong. Rec. H5660 (Sept. 14, 2001) ("This will be a battle unlike any other, fought with new tools and methods; fought with intelligence and brute force, rooting out the enemies among us and those outside our borders.") (Rep. Menendez); H5669 ("We are facing a different kind of war requiring a different kind of response. We will need more vigilance at home and more cooperation abroad.") (Rep. Velasquez).

by Congress only in exceptionally narrow situations. See *Dames & Moore*, 463 U.S. at 678 (“[T]he enactment of legislation closely related to the question of the President’s authority in a particular case which evinces legislative intent to accord the President broad discretion may be considered to ‘invite’ ‘measures on independent presidential responsibility.’”) (quoting *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring)). Cf. *Quirin*, 317 U.S. at 25 (explaining that a “detention * * * ordered by the President in the declared exercise of his powers as Commander in Chief of the Army in time of war” is “not to set aside by the courts without the clear conviction that [it is] in conflict with,” *inter alia*, the “laws of Congress”).

B. Section 4001(a) does not apply to the wartime detention of enemy combatants by the military.

Because the Court in *Hamdi* concluded that the AUMF authorizes Hamdi’s detention, the Court had no need to address whether Section 4001(a) applies to the military detention of enemy combatants. See 124 S. Ct. at 2639 (plurality). This Court, for the same reason, likewise need not reach the issue here.

In any event, even if this case required this Court to construe the scope of Section 4001(a), that provision, properly construed, has no bearing on the military’s authority to detain enemy combatants in wartime. Congress deliberately styled Section 4001(a) as an amendment to an existing provision in Title 18 (“Crimes and Criminal Procedure”), rather than Title 10 (“Armed Forces”) or Title 50 (“War and National Defense”). Section 4001(a) was appended to an existing provision directed exclusively to the Attorney General’s control over federal prisons, see 18 U.S.C. 4001 (1970), and the terms of that provision, which remain unchanged, stated that the “control and management of Federal penal and correctional institutions, *except military or naval institutions*, shall

be vested in the Attorney General.” 18 U.S.C. 4001(b)(1) (emphasis added). Congress’s decision to add Section 4001(a) to a provision addressing the Attorney General’s control over correctional institutions and specifically exempting military institutions gives strong indication that Congress had no intention to affect the military’s detention of enemy combatants under the laws of war.

The legislative history reinforces that conclusion. Section 4001(a) was intended to address the detention of citizens by civilian authority -- in particular, the detention authority given the Attorney General in the Emergency Detention Act of 1950 and the detention camps instituted for Japanese-American citizens in World War II. See H.R. Rep. No. 116, 92d Cong., 1st Sess. 2 (1971); see also *Ex parte Endo*, 323 U.S. 283, 298 (1944) (observing that World War II detentions were conducted “by a civilian agency, the War Relocation Authority, not by the military,” and that, “[a]ccordingly, no questions of military law are involved”). Conversely, there simply is no mention in the legislative history of any intention to constrain the military’s long-settled authority under *Quirin* to detain enemy combatants who are American citizens. Any such reading of Section 4001(a) not only would be inconsistent with the provision’s evident purpose, structure, and location in the Code, but also would raise serious constitutional questions concerning the extent to which Congress may restrict the President’s basic authority as Commander in Chief to seize and detain enemy combatants. See *Public Citizen v. Department of Justice*, 491 U.S. 440, 466 (1989) (canon of constitutional avoidance applies with added force when the “constitutional issues * * * concern the relative powers of coordinate branches of government”).

III. There Is No Warrant For Granting Relief On Petitioner's Remaining Claims.

In addition to seeking petitioner's release under the first two claims for relief, the petition also seeks: (a) an evidentiary hearing and unimpeded counsel-client interactions, in connection with the third claim for relief; and (b) a cessation by the military of any interrogations of petitioner, in connection with the fourth claim for relief. There is no warrant for granting relief on those claims at this time.

A. Petitioner argues in his third claim for relief that he is entitled to notice of the factual basis for his detention as an enemy combatant and an opportunity to contest those facts, and that he has a right to access to counsel, including an entitlement to unrestricted communications with his lawyers and unrestricted transfer of documents related to the litigation. Pet. 5-6, ¶¶ 27-29. The government does not dispute that petitioner is entitled to "receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker." *Hamdi*, 124 S. Ct. at 2648 (plurality). This answer, and the declaration attached hereto, provide the requisite notice of the factual basis for petitioner's detention. While the petition seeks an evidentiary hearing to challenge the government's factual assertions, there is no need to determine the nature of any evidentiary proceedings that may be necessary to resolve the petition until petitioner has reviewed the government's factual submission and has specified the extent of any factual challenges. See *id.* at 2652 ("We anticipate that a District Court would proceed with the caution that we have indicated is necessary in this setting, engaging in a factfinding process that is both prudent and incremental.").

Nor is there any ripe issue with respect to access to counsel. Although petitioner's counsel executed (under protest) agreements allowing the government to monitor counsel-client interactions

and review documents, the government has not attempted to monitor counsel's meetings with petitioner and has no plans at present to do so. In addition, the government will no longer review documents relating to the litigation sent between counsel and petitioner. Accordingly, there is no need grant to the relief sought by petitioner or to address any issues concerning restrictions on counsel's interactions with petitioner, unless such issues in fact were to arise in a concrete factual context permitting the Court's informed consideration. Cf. *Hamdi*, 124 S. Ct. at 2652 (plurality) (noting that Hamdi "is now being granted unmonitored meetings" with counsel "and "[n]o further consideration of this issue is necessary at this stage of the case").

B. Petitioner argues in the petition's fourth claim for relief that his "ongoing interrogation" violates various constitutional provisions, and seeks as relief an order requiring cessation of interrogation. Pet. 6, ¶¶ 30-32; Pet. 7, ¶ 4. The military has ceased its interrogation of petitioner, however, and has no present intention to resume interrogation of him. There thus is no warrant for addressing petitioner's claims concerning the legality of such interrogations in the abstract, or for granting the relief sought by petitioner until the issue is squarely raised.

In any event, there is no merit to petitioner's contention that the interrogation of enemy combatants could infringe the Fifth, Sixth, or Eighth Amendments. For instance, the Sixth Amendment applies only to "criminal prosecutions," U.S. Const. amend. VI, and its protections do not attach until the initiation of formal criminal proceedings. See, e.g., *Texas v. Cobb*, 532 U.S. 162, 167-168 (2001); cf. *Middendorf v. Henry*, 425 U.S. 25, 38 (1976) ("[A] proceeding which may result in deprivation of liberty is nonetheless not a 'criminal proceeding' within the meaning of the Sixth Amendment if there are elements about it which sufficiently distinguish it from a traditional civilian criminal trial."). Similarly, the right to counsel associated with the Self-Incrimination Clause of the

Fifth Amendment (see *Miranda v. Arizona*, 384 U.S. 436 (1966)) is a “trial right of criminal defendants.” *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990). And while that right might limit the government’s ability to use the fruits of interrogations in a criminal trial, it would afford no basis for enjoining ongoing interrogations. See *ibid.* (A “constitutional violation occurs only at trial.”).

With respect to the Eighth Amendment, neither the detention of enemy combatants nor their interrogation while detained constitutes “punishment,” see *Hamdi*, 124 S. Ct. at 2640 (plurality), let alone punishment that is “cruel and unusual.” See Int’l Comm. of the Red Cross, Commentary III, Geneva Convention Relative to the Treatment of Prisoners of War, 163-164 (Jean S. Pictet & Jean de Preux eds. 1960) (“[A] state which has captured prisoners of war will always try to obtain information from them.”). Finally, in view of the long-settled historical practice of attempting to elicit information from detained enemy combatants, such interrogations could not be found to infringe general principles of due process. See *Herrerra v. Collins*, 506 U.S. 390, 407-408 (1993); *Medina v. California*, 505 U.S. 437, 445-446 (1992).⁵

CONCLUSION

The petition should be denied.

⁵ Although the plurality in *Hamdi* observed that “indefinite detention for the purpose of interrogation is not authorized,” 124 S. Ct. at 2641, that observation has no application here. The plurality made no suggestion that combatants detained for the purpose of preventing their re-engagement with enemy forces are entitled to be immune from interrogation during their detention. In addition, by “indefinite detention,” the Court was referring to detentions that continue beyond the “duration of the relevant conflict,” *ibid.*, and petitioner does not suggest that the conflict against al Qaeda has ended. At any rate, nothing in *Hamdi* suggests that petitioner’s “two years of * * * detention” (Pet. 6, ¶ 32) is impermissibly “indefinite.”

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party of counsel of record by

Hand Delivery

Mailing

In the manner prescribed by the applicable Rules of Criminal Procedure.

This the 30th day of August 20 04
Miller W. Shealy, Jr.

Exhibit A

**THE WHITE HOUSE
WASHINGTON
FOR OFFICIAL USE ONLY**

TO THE SECRETARY OF DEFENSE:

Based on the information available to me from all sources,

REDACTED

In accordance with the Constitution and consistent with the laws of the United States, including the Authorization for Use of Military Force Joint Resolution (Public Law 107-40);

I, GEORGE W. BUSH, as President of the United States and Commander in Chief of the U.S. armed forces, hereby DETERMINE for the United States of America that:

- (1) Jose Padilla, who is under the control of the Department of Justice and who is a U.S. citizen, is, and at the time he entered the United States in May 2002 was, an enemy combatant;
- (2) Mr. Padilla is closely associated with al Qaeda, an international terrorist organization with which the United States is at war;
- (3) Mr. Padilla engaged in conduct that constituted hostile and war-like acts, including conduct in preparation for acts of international terrorism that had the aim to cause injury to or adverse effects on the United States;
- (4) Mr. Padilla possesses intelligence, including intelligence about personnel and activities of al Qaeda, that, if communicated to the U.S., would aid U.S. efforts to prevent attacks by al Qaeda on the United States or its armed forces, other governmental personnel, or citizens;
- (5) Mr. Padilla represents a continuing, present and grave danger to the national security of the United States, and detention of Mr. Padilla is necessary to prevent him from aiding al Qaeda in its efforts to attack the United States or its armed forces, other governmental personnel, or citizens;
- (6) it is in the interest of the United States that the Secretary of Defense detain Mr. Padilla as an enemy combatant; and
- (7) it is, **REDACTED** consistent with U.S. law and the laws of war for the Secretary of Defense to detain Mr. Padilla as an enemy combatant.

Accordingly, you are directed to receive Mr. Padilla from the Department of Justice and to detain him as an enemy combatant.

DATE:

June 9, 2002

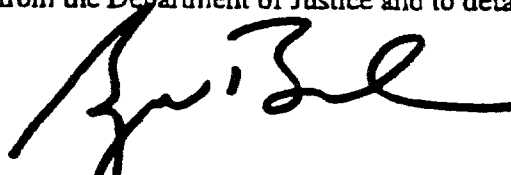


Exhibit B

Declaration of Mr. Jeffrey N. Rapp
Director, Joint Intelligence Task Force for Combating Terrorism

1. Pursuant to 28 U.S.C. § 1746, I, Jeffrey N. Rapp, hereby declare, to the best of my knowledge, information, and belief, and under penalty of perjury, that the following is true and correct:

Preamble

2. I submit this Declaration for the Court's consideration in the matter of Jose Padilla v. Commander C.T. Hanft, USN, Commander, Consolidated Naval Brig, Case Number 04-CV-2221-26AJ, pending in the United States District Court for the District of South Carolina.

3. Based on information that I have acquired in the course of my official duties, I am familiar with all the matters discussed in this Declaration. I am also familiar with the circumstances surrounding Jose Padilla's ("Padilla") arrest at Chicago's O'Hare International Airport and interrogations by agents of the Department of Defense ("DoD") after DoD took control of Padilla on 9 June 2002. The information in this declaration concerning Padilla and his activities with the al-Qaeda terrorist organization is derived from the circumstances surrounding his arrest and Padilla's statements during post-capture interrogation.

Professional Experience as an Intelligence Officer

4. I am a career Defense Intelligence Agency Defense Intelligence Senior Executive Service member appointed by the Director of the Defense Intelligence Agency. I report to the Director of the Defense Intelligence Agency. My current assignment is as the

Director of the Joint Intelligence Task Force for Combating Terrorism (JITF-CT). *JITF-CT directs collection, exploitation, analysis, fusion, and dissemination of the all-source foreign terrorism intelligence effort within DoD.* In addition to my current assignment, I have previously served as the first Director of the National Media Exploitation Center and as the civilian Deputy Director for the Iraq Survey Group in Qatar.

5. My active duty military intelligence career in the United States Army included service as the senior intelligence officer for 1st Infantry Division, when deployed to Bosnia-Herzegovina, Commander of the 101st Military Intelligence Battalion, 1st Infantry Division, Fort Riley Kansas, and the forward-deployed 205th Military Intelligence Brigade in Europe, and Deputy Director for the Battle Command Battle Lab, U.S. Army Intelligence Center at Fort Huachuca, Arizona. I also directed a South Asia regional analytic division in the Defense Intelligence Agency Directorate for Analysis and Production that was awarded the National Intelligence Meritorious Unit Citation for its accomplishments.

6. My military decorations include the Legion of Merit, Defense Superior Service Medal, Defense Meritorious Service Medal, and Army Meritorious Service Medal. I am a graduate of the U.S. Army War College. I hold a Masters degree in strategic intelligence from the Joint Military Intelligence College.

Padilla's Background

7. Padilla, also known as Abdullah al Muhajir, is a U.S. citizen of Hispanic ethnicity who spent time in a juvenile detention facility as a teenager. He joined a local street gang

when he was 13 years old, and was arrested for murder in 1985. During his early life in Chicago and Florida he was arrested for a number of offenses including cannabis possession, weapons charges, and assault. In 1995, he converted to Islam while serving a state prison sentence in Florida. After his release from prison, he joined a mosque in Florida that sponsored his first trip to Egypt in September 1998. While in Egypt, Padilla agreed to an arranged marriage to an Egyptian woman and fathered two sons. He has another son as a result of a previous relationship in Chicago. Padilla studied Arabic in Cairo while earning a subsistence income as a handyman working odd jobs. In February 2000, he traveled to Mecca, Saudi Arabia to complete the Muslim Hajj pilgrimage. At that time, he met with an al Qaeda recruiter, and discussed training opportunities in Afghanistan. In June 2000, Padilla traveled to Yemen to continue his Islamic studies.

Overview of Padilla's al Qaeda Activities

8. In the summer of 2000, Padilla first entered Pakistan, and traveled to a Taliban safehouse in Quetta. From there, he traveled across the border to Kandahar, Afghanistan in the company of Taliban operatives and five other recruits to train for jihad. In July 2000, Padilla completed a training camp application using his alias, Abdullah al Muhajir. Padilla then traveled to the al Qaeda-affiliated training camp, al-Farouq, north of Kandahar. In September and October of 2000, at al-Farouq, he received training in the use of firearms and other weapons, explosives, land navigation, camouflage techniques, communications, and physical conditioning. While at the camp, Padilla met several times with Mohammed Atef ("Atef"), who was a senior al Qaeda operative and military commander. After completing this initial training, Padilla and other recruits were returned to Kandahar and later transported to Kabul. For approximately three months in

the fall of 2000, Padilla and other recruits guarded what he understood to be a Taliban outpost north of Kabul. Padilla was armed with a Kalashnikov assault rifle and ammunition for that purpose. He subsequently returned to Pakistan and, from there, traveled back to Egypt to reunite with his wife in the spring of 2001.

9. In June 2001, Padilla again left his family in Egypt and traveled to Quetta where he stayed in an al Qaeda safehouse before traveling back to Kandahar. During the summer, Padilla received additional training relating to future plots to attack U.S.-based apartment buildings described below. In the fall of 2001, Padilla was staying at an al Qaeda safehouse in or near Kandahar when he and his fellow al Qaeda operatives learned of the September 11 terrorist attacks on the United States. Padilla spent much of September 2001, including after the September 11 attacks, with Atef at an al Qaeda safehouse in or near Kandahar. Once the United States commenced combat operations against the Taliban and al Qaeda in Afghanistan, Padilla and his fellow al Qaeda operatives began moving from safehouse to safehouse in an effort to avoid being bombed or captured by U.S. or coalition forces.

10. In mid-November 2001, an air strike destroyed a safehouse in Afghanistan and killed Atef. Padilla was staying at a different al Qaeda safehouse that day, but he and other al Qaeda operatives participated in an attempt to rescue survivors and retrieve Atef's body from the rubble. After this attack, Padilla, armed with an assault rifle, along with numerous other al Qaeda operatives, began moving toward the mountainous border with Pakistan near Khowst, Afghanistan, in a further effort to avoid U.S. air strikes and

capture by U.S. forces. Padilla was thus armed and present in a combat zone during armed conflict between al Qaeda/Taliban forces and the armed forces of the United States and its coalition partners. After taking cover in a network of caves and bunkers near Khowst, the al Qaeda operatives, including Padilla, were escorted by Taliban personnel across the border into Pakistan in groups of 15 to 20. Padilla crossed into Pakistan in January 2002. After crossing into Pakistan, Padilla met with senior Osama bin Laden lieutenant Abu Zubaydah ("Zubaydah") at a safehouse in Lahore, Pakistan, and met Zubaydah again at a safehouse in Faisalabad, Pakistan. Padilla discussed with Zubaydah the idea of conducting terrorist operations involving the detonation of explosive devices in the United States. While in Pakistan, he conducted what he called "research" on the construction of an atomic bomb at an al Qaeda safehouse in Pakistan.

Padilla's Plan to Kill Apartment Building Residents

11. Padilla admits that he was first tasked with an operation to blow up apartment buildings in the United States with natural gas by Atef at a meeting in Kandahar in the summer of 2001. Padilla accepted this tasking. Atef advised Padilla that he was sending Padilla to a location outside the Kandahar Airport where Padilla would train with, a still at large, senior al Qaeda explosives expert ("Explosives Expert) and another, still at large al Qaeda operative, El Shukri Jumah ("Jumah") aka Jaffar al-Tayyar. Padilla and Jumah trained with Explosives Expert at the Kandahar Airport on switches, circuits, and timers. Padilla recognized Jumah as someone he had met in the United States before departing for Egypt. Padilla and Jumah also spent time learning how to prepare and seal an apartment in order to obtain the highest explosive yield, and thereby obtain the highest number of casualties among apartment residents.

However, the mission was apparently abandoned after the training because Padilla and Jumah could not get along and Padilla told Atef he could not do the operation on his own.

12. Padilla admits that the apartment building plan was resurrected when he first met senior al Qaeda operational planner and 11 September 2001 mastermind Khalid Sheikh Mohammad ("KSM") in Karachi, Pakistan after Zubaydah sent Padilla and another accomplice, ("Accomplice"), an al-Qaeda operative, there in March 2002 to present the atomic bomb operation. Zubaydah gave Padilla money and wrote a reference letter to KSM about Padilla. Padilla was taken to a safehouse by al Qaeda facilitator and planner Ammar al-Baluchi ("al-Baluchi"). Al-Baluchi is also a nephew of KSM. Padilla presented the atomic bomb idea to KSM, who advised that the idea was a little too complicated. KSM wanted Padilla to revive the plan to kill apartment building residents originally discussed with Atef. KSM wanted Padilla to hit targets in New York City, although Florida and Washington, D.C. were discussed as well. Padilla had discretion in the selection of apartment buildings. KSM gave Padilla full authority to conduct the operation if Padilla and Accomplice were successful in entering the United States. Padilla admits that he accepted the mission. Al Qaeda operative and unindicted 9/11 co-conspirator Ramzi Bin al-Shibh ("al-Shibh") trained Padilla on telephone call security and e-mail protocol. KSM gave Padilla \$5,000 for the operation and al-Baluchi gave him \$10,000, travel documentation, a cell-phone, and an e-mail address to notify him when Padilla arrived in the United States. Al-Baluchi instructed Padilla to leave on the mission through Bangladesh. Al-Baluchi told Padilla to call him before entering the Karachi

airport. The night before his departure, Padilla and Accomplice attended a dinner with KSM, al-Baluchi, and al-Shibh.

Operational Deployment to the United States

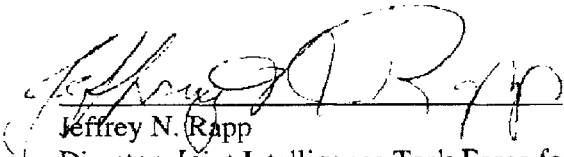
13. Padilla departed Pakistan on 5 April 2002, bound for the United States. After spending a month in Egypt, Padilla entered the United States at Chicago's O'Hare International Airport on 8 May 2002. Padilla was carrying \$10,526 in U.S. currency he had received from al Qaeda, but declared only approximately \$8,000. Padilla had in his possession the cell-phone provided to him by al-Baluchi, the names and telephone numbers of his recruiter and his sponsor, and e-mail addresses for al-Baluchi and Accomplice. At the time of his capture by the FBI at O'Hare International Airport, Padilla was an operative of the al Qaeda terrorist organization with which the United States is at war.

14. When interviewed by FBI agents upon his arrival in Chicago, Padilla falsely denied he had ever been to Afghanistan. Padilla also lied about the source of the money he was carrying and the purpose of his return to the United States. Padilla was arrested by the FBI on a material witness warrant. On 9 June 2002, Padilla was transferred to DoD custody after the President of the United States determined that Padilla is an enemy combatant.

Conclusion

15. As an al Qaeda operative, Padilla participated in numerous al Qaeda activities over a nearly two-year period, including military training and armed battlefield activities in Afghanistan, and plans to attack the United States for the purpose of killing large

numbers of American civilians. He admits to meeting with numerous key al-Qaeda leadership figures and senior operational planners, and to planning plots against the United States with them. Padilla proposed using an atomic bomb in the United States and explosives and natural gas to blow up apartment buildings in the United States.



Jeffrey N. Rapp
Director, Joint Intelligence Task Force for
Combating Terrorism

Executed on 27 August 2004 at the Pentagon,
Washington, D. C.