U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

November 26, 2002

The Honorable Carl Levin
Chairman
Committee on the Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This letter responds to the letter you and Chairman Feingold sent to the Attorney General on September 5, 2002, posing questions about the designation of enemy combatants. We appreciate the opportunity your letter affords us to discuss this issue further. We have enclosed responses to your questions. We hope that you find this information helpful.

You also requested that we provide a complete, unredacted copy of the President's one-page order designating Mr. Padilla as an enemy combatant. We are happy to make a copy of that document available for inspection and we invite you to contact us to make the necessary arrangements.

Thank you for your interest in this important matter. We look forward to continuing to work with the Congress in the fight against terrorism. If we can be of further assistance on this or any other matter, please do not hesitate to contact us. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

Attachment

IDENTICAL LETTER SENT TO THE HONORABLE RUSS FEINGOLD, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION, COMMITTEE ON THE JUDICIARY

JUSTICE DEPARTMENT RESPONSES TO FEINGOLD AND LEVIN QUESTIONS REGARDING UNITED STATES CITIZENS AS ENEMY COMBATANTS

1. What is the operative definition of "enemy combatant" and what are the criteria used to determine whether a United States citizen will be designated an enemy combatant? If that definition is contained in a document, please provide a copy of that document and identify the source of the document as well as the agency or person responsible for maintaining the document. Please describe the basis for the definition and the process followed to arrive at the definition.

The term "enemy combatant" describes those persons who are part of or associated with enemy forces who may lawfully be held during an armed conflict under the laws of war. The term "prisoners of war," which in its historical usage accurately describes captured enemy combatants, has not been used by the Government to describe such persons in the current conflict because it also has acquired a technical meaning under the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, 6 U.S.T. 3316 ("GPW"), and might be understood to suggest a particular legal status under that convention to which the Taliban and al Qaida are not entitled, with certain attendant rights and privileges.

As we understand your inquiry here, it focuses particularly on the detention of United States citizens as enemy combatants. Therefore, most relevant to your inquiry are the legal standards established by the Supreme Court concerning the circumstances under which a United States citizen seized in the United States in an area where the courts are open and functioning may be held as an enemy combatant. In *Ex parte Quirin*, 317 U.S. 1 (1942), the Court made clear that, at a minimum, "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, and thus may be detained. *See also id.* at 45 (noting that those who are "a part of or associated with the armed forces of the enemy" may be held). The Court also explained that a person may be seized and held as an enemy combatant even if he has "not actually committed or attempted to commit any act of depredation or entered the theater or zone of active military operations." *Id.* at 38. The important factor is that the person has become a member of or associated himself with hostile enemy forces, thereby attaining the status of a belligerent.

The decision in *Quirin* clarified and limited the scope of the Civil War era decision in *Ex parte Milligan*, 71 U.S. 2 (1866), in which the Court had held that a United States citizen who never had been in enemy territory and who was a civilian and "in nowise connected with the military service" or with the forces of the enemy, *id.* at 122, could not be subjected to the laws of war. *Quirin* made clear that the Court's decision in *Milligan* must be understood "as having particular reference to the facts before it." *Quirin*, 317 U.S. at 45. A person like Milligan, "not being a part of or associated with the armed forces of the enemy," could not be held by the military because he did not have the status of a belligerent. *Id.*

2. What is the process for designating a person an "enemy combatant"? What agency or individual has the responsibility to make such a designation? Is the ultimate authority to designate a United States citizen as an enemy combatant reserved for the President? If not, who else holds that authority? What role does the Department of Justice play in this process? Please describe the process that was used to designate Jose Padilla and Yaser Esam Hamdi as enemy combatants.

The Department of Defense is responsible in the first instance for determining whether a particular individual is an enemy combatant over whom the armed forces should take custody and control. Of course, any such determination is subject to the President's ultimate decision as Commander in Chief of the armed forces, but there is no requirement imposed by the Constitution or laws of the United States that the President personally make a determination each time a United States citizen is taken into the control of the military as an enemy combatant. In addition, the Attorney General may provide legal advice in these matters, as in other matters, to the President and to members of his cabinet concerning the legality of proposed government action.

The particular case of Abdullah al Muhajir, also known as Jose Padilla, currently is in litigation. In the pleadings that have been filed in the court entertaining the habeas corpus petition brought on Mr. Padilla's behalf, the Department of Justice has described the basic process that was used in designating him as an enemy combatant. We have attached the declaration from Michael H. Mobbs, Special Advisor to the Undersecretary of Defense for Policy, that was filed in that litigation and which explains that information from various sources was presented to the President and that the President himself determined that Padilla should be held as an enemy combatant.

The case of Yaser Esam Hamdi presented a different scenario because Mr. Hamdi was seized while carrying arms in the field in Afghanistan with a Taliban unit. The President himself made no specific determination with respect to Mr. Hamdi. That matter also is in litigation and through a declaration filed with the district court in Norfolk, we also have described the process used by the military in determining to detain Mr. Hamdi. We have attached the declaration filed by Michael H. Mobbs in that case, which explains that military personnel screened Mr. Hamdi several times before he was sent to Guantanamo Bay, Cuba, for detention.

3. Do the criteria for determining enemy combatant status vary depending upon whether an individual is a citizen of the United States? Do the criteria vary if the person is taken into custody outside the United States? Do they vary if the person is taken into custody on the battlefield?

A United States citizen captured overseas with enemy forces is like any other person found with enemy forces and may be held regardless of his or her citizenship. As courts have held, "all persons who are active in opposing an army in war may be captured," and citizenship in the United States does not alter a detainee's status. *In re Territo*, 156 F.2d 142, 145 (9th Cir.

1956); *Colepaugh v. Looney*, 235 F.2d 429 (10th Cir. 1956); *see also Ex parte Quirin*, 317 U.S. at 37 ("Citizenship in the United States of an enemy belligerent does not relieve him from the consequences of a belligerency which is unlawful because in violation of the law of war.").

When a United States citizen is captured within the United States in an area that is not part of an area of active operations and where the courts are open and functioning, the Supreme Court's decision in *Ex parte Milligan*, 71 U.S. 2 (1866), has a bearing on detention of the individual as an enemy combatant. In *Ex parte Milligan*, Union forces seized and tried by military commission a United States citizen and resident of Indiana for various charges, including giving aid and comfort to the enemy, conspiring to seize weapons in Federal arsenals, and planning to liberate Confederate prisoners of war. However, Milligan never had been a resident of one of the Confederate states, nor had he crossed into enemy territory, nor had he been a member of the military of the United States or of the Confederacy. The Supreme Court held that Milligan could not constitutionally be subject to the laws of war and tried by a military commission. The Court found that the military could not apply the laws of war to a person, like Milligan, who was a "citizen in civil life, in nowise connected with the military service" and unconnected with armed forces of the enemy in a State in which no direct military threat exists and the courts are open. *Id.* at 121-22. However, *Milligan* left open the question of whether a citizen who was more directly associated with the forces of the enemy lawfully could be detained under the laws of war.

The Supreme Court subsequently clarified the reach of *Milligan* in *Ex parte Quirin,* 317 U.S. 1 (1942). In *Quirin*, the Court made clear that *Milligan* does not apply to citizens who have associated themselves with enemy forces so as to acquire the character of belligerents. The Court expressly distinguished the *Milligan* decision on the basis that Milligan had been a civilian with no established connection to enemy forces and thus "was not an enemy belligerent." *See* 317 U.S. at 45. The *Quirin* Court stressed that the *Milligan* decision must be understood "as having particular reference to the facts before it." *Id.* Specifically, Milligan never had resided in or entered enemy territory, nor had he been a member of the enemy military, nor was there any apparent link between Milligan and the enemy government or troops. He was not, as the *Quirin* Court explained, "a part of or associated with the armed forces of the enemy." 317 U.S. at 45. The Court explained that the facts in *Quirin* were quite different. In *Quirin*, the Court confronted saboteurs who had trained in Germany, who were members of the German Marine Infantry, and who had landed by submarine on the coast in uniform and carrying explosives to carry out acts of sabotage. Because the Nazi saboteurs were belligerents, the *Quirin* Court found that *Milligan* did not apply. The Court concluded, "[c]itizens 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 Hague Convention and the law of war." *Id.* at 37–38. Accordingly, "[c]itizenship in the United States of an enemy belligerent does not relieve him from the consequences of a belligerency which is unlawful because in violation of the law of war." *Id.* at 37.

4. What rights does a United States citizen designated as an enemy combatant have to challenge that designation other than the right to habeas corpus review? What is the scope of the detainee's right to counsel if the detainee seeks to challenge the enemy combatant designation?

A United States citizen detained as an enemy combatant can challenge his detention solely by seeking a writ of habeas corpus in the appropriate Federal district court. An enemy combatant has no right to counsel under the Constitution. The rights the Constitution affords persons in the criminal justice system simply do not apply in the context of detention of enemy combatants. The Sixth Amendment does not provide a right to counsel to enemy combatants because it applies only after the formal initiation of criminal charges. *See Texas v. Cobb*, 532 U.S. 162, 167–68 (2001) (the Sixth Amendment right to counsel "does not attach until a prosecution is commenced, that is, at or after the initiation of adversary judicial criminal proceedings – whether by way of formal charge, preliminary hearing, indictment, information or arraignment") (internal quotation marks omitted); *cf. Ex parte Toscano*, 208 F. 938, 940 (S.D. Cal. 1913) (Sixth Amendment has no application to internment of belligerent forces because such detention "in no way relates to a criminal prosecution"). Similarly, the Fifth Amendment's Self-Incrimination Clause provides a trial right to criminal defendants and the right to counsel that the Supreme Court has inferred under that Clause is designed to protect a criminal defendant's rights at trial. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990) (violation of Self Incrimination Clause "occurs only at trial"). There is also no Due Process Clause right for enemy combatants to have access to counsel. Indeed, the United States military has captured and detained enemy combatants during the course of virtually every major conflict in the Nation's history and, as far as we are aware, it has never even been suggested that such prisoners have a right to access to counsel to challenge their detention. Counsel has been provided when those combatants have been prosecuted for war crimes or violating other military regulations.

An enemy combatant does not have a general right of access to counsel under the laws of war either. As you know, the President has determined that members of the Taliban and the *al Qaeda* terrorist network do not qualify for status as prisoners of war entitled to the rights and privileges of the GPW. *See United States v. Lindh*, 212 F. Supp.2d 541, 557-558 (E.D. Va. 2002) ("On February 7, 2002, the White House announced the President's decision, as Commander in Chief, that the Taliban militia were unlawful combatants pursuant to GPW and general principles of international law, and, therefore, they were not entitled to POW status under the Geneva Conventions."); White House Fact Sheet, Status of Detainees at Guantanamo, Feb. 7, 200 (www.whitehouse.gov/news/releases/2002 /02/20020207-13). Even if the protections of GPW did apply, the Geneva Convention clearly permits the detention of members of enemy forces *without* access to counsel. The Convention requires the detaining power to provide counsel only when a prisoner is *charged* with a war crime or violation of disciplinary regulations during his period of confinement. *See* GPW art. 105. It does not require a detaining power to provide access to counsel for any prisoner of war who is detained.

5. What are the time limits on the government's authority to detain United States citizens designated as enemy combatants? The government has argued that "the authority to detain enemy combatants in a time of war . . . is well established." Under the current circumstances, who determines when this time has expired and how will that determination be made?

It is well established that the United States can hold enemy combatants at least until the end of hostilities. The Supreme Court has held unanimously that "[l]awful combatants are subject to capture and detention as prisoners of war by opposing military forces," and that "[u]nlawful combatants are likewise subject to capture and detention." *Ex parte Quirin*, 317 U.S. at 31. The purpose of that military detention is not punitive. It is designed to prevent an enemy combatant from rejoining enemy forces and from engaging in further hostile acts against the United States. As courts have explained, "[t]he object of capture is to prevent the captured individual from serving the enemy." *In re Territo*, 156 F.2d at 145; *cf. Ex parte Toscano*, 208 F. 938, 941 (S.D. Cal. 1913) (detention "is not punishment for crime"). Accordingly, under the laws and customs of war, enemy combatants may be detained at least until the end of hostilities. *See, e.g., Territo*, 156 F.2d at 148 (noting that detention as prisoner of war continued to be lawful when "no treaty of peace has been negotiated with Italy"). *See also Case of Jefferson Davis*, 11 U.S. Op. Att'y Gen. 411, 411 (1866) (stating that Jefferson Davis and others "have been heretofore and are yet held as prisoners of war. Though active hostilities have ceased, a state of war still exists over the territory in rebellion. Until peace shall come in fact and in law, they can rightfully be held as prisoners of war.").

The determination of when an armed conflict has ended is a matter for the political branches, not the courts. In particular, presidential proclamations concerning the start and end of hostilities are deemed conclusive. *See, e.g., Ludecke v. Watkins*, 335 U.S. 160, 170 (1948) (holding that whether a state of "war" exists is a "matte[r] of political judgment for which judges have neither technical competence nor official responsibility," and holding that the President's proclamation that a state of war with Germany continued in 1948 was dispositive, despite "the unconditional surrender of Germany and the disintegration of the Nazi Reich" three years earlier); *The Protector*, 79 U.S. (12 Wall.) 700, 702 (1871) (treating Executive proclamation as dispositive concerning starting and ending dates of the Civil War).

6. According to published reports, the Administration is considering establishing a committee to determine whether United States citizens should be designated as enemy combatants. What is the timetable for establishing such a committee? What is the membership of the committee expected to be? What is the legal authority and basis for the use of such a committee? What procedures are being established to guide this committee?

The Administration takes very seriously its responsibility to protect both the security and the civil liberties of all Americans, and any decision to seize and detain an American citizen in the United States as an enemy combatant is treated as a matter of grave importance. As

discussed earlier, the Department of Defense is responsible in the first instance for determining whether a particular individual is an enemy combatant over whom the armed forces should take control. The Administration has no plans to establish a committee to make such determinations. Nevertheless, due to the gravity of such determinations, the Administration is always seeking ways to foster accurate and timely communication and coordination in this area.

7. Are U.S. citizens other than Hamdi and Padilla being held as enemy combatants? If so, how many and who are they? In each case, please describe the process that was used to designate each person as an enemy combatant. What are the Administration's procedures for notifying Congress and the American people that someone has been designated an enemy combatant?

No other persons whom we have reason to believe are United States citizens are being held solely on the basis that they are enemy combatants. The Department of Justice and the Department of Defense have kept the Congress and the public appropriately informed with respect to the Padilla and Hamdi cases. In addition, the Federal court filings in the Padilla and Hamdi cases provide substantial amounts of publicly available information. The Executive branch will keep Congress appropriately informed concerning enemy combatants who are United States citizens, should more such cases arise.

Declaration of Michael H. Mobbs
Special Advisor to the Under Secretary of Defense for Policy

Filed in *Hamdi v. Rumsfeld*, No. 2:02CV439 (E.D. Va.)

Declaration of Michael H. Mobbs
Special Advisor to the Under Secretary of Defense for Policy

Pursuant to 28 U.S.C. § 1746, I, Michael H. Mobbs, Special Advisor to the Under Secretary of Defense for Policy, hereby declare that, to the best of my knowledge, information and belief, and under the penalty of perjury, the following is true and correct:

1. I am a Special Advisor to the Under Secretary of Defense for Policy. In this position, I have been substantially involved with matters related to the detention of enemy combatants in the current war against the al Qaeda terrorists and those who support and harbor them (including the Taliban). I have been involved with detainee operations since mid-February 2002 and currently head the Under Secretary of Defense for Policy's Detainee Policy Group.

2. I am familiar with Department of Defense, U.S. Central Command and U.S. land forces commander policies and procedures applicable to the detention, control and transfer of al Qaeda or Taliban personnel in Afghanistan during the relevant period. Based upon my review of relevant records and reports, I am also familiar with the facts and circumstances related to the capture of Yaser Esam Hamdi and his detention by U.S. military forces.

3. Yaser Esam Hamdi traveled to Afghanistan in approximately July or August of 2001. He affiliated with a Taliban military unit and received weapons training. Hamdi remained with his Taliban unit following the attacks of September 11 and after the United States began military operations against the al Qaeda and Taliban on October 7, 2001.

4. In late 2001, Northern Alliance forces were engaged in battle with the Taliban. During this time, Hamdi's Taliban unit surrendered to Northern Alliance forces and he was transported with his unit from Konduz, Afghanistan to the prison in Mazar-e-Sharif, Afghanistan which was under the control of the Northern Alliance forces. Hamdi was directed to surrender his Kalishnikov assault rifle to Northern Alliance forces en route to Mazar-e-Sharif and did so. After a prison uprising, the Northern Alliance transferred Hamdi to a prison at Sheberghan, Afghanistan, which was also under the control of Northern Alliance forces.

5. While in the Northern Alliance prison at Sheberghan, Hamdi was interviewed by a U.S. interrogation team. He identified himself as a Saudi citizen who had been born in the United States and who entered Afghanistan the previous summer to train with and, if necessary, fight for the Taliban. Hamdi spoke English.

EXHIBIT
1

6. Al Qaeda and Taliban were and are hostile forces engaged in armed conflict with the armed forces of the United States and its Coalition partners. Accordingly, individuals associated with al Qaeda or Taliban were and continue to be enemy combatants. Based upon his interviews and in light of his association with the Taliban, Hamdi was considered by military forces to be an enemy combatant.

7. At the Sheberghan prison, Hamdi was determined by the U.S. military screening team to meet the criteria for enemy combatants over whom the United States was taking control. Based on an order of the U.S. land forces commander, a group of detainees, including Hamdi, was transferred from the Northern Alliance-controlled Sheberghan prison to the U.S. short-term detention facility in Kandahar. Hamdi was in-processed and screened by U.S. forces at the Kandahar facility.

8. In January 2002, a Detainee Review and Screening Team established by Commander, U.S. Central Command reviewed Hamdi's record and determined he met the criteria established by the Secretary of Defense for individuals over whom U.S. forces should take control and transfer to Guantanamo Bay.

9. A subsequent interview of Hamdi has confirmed the fact that he surrendered and gave his firearm to Northern Alliance forces which supports his classification as an enemy combatant.

MICHAEL H. MOBBS
Special Advisor to the
Under Secretary of Defense for Policy

Dated: 24 July 2002

Declaration of Michael H. Mobbs
Special Advisor to the Under Secretary of Defense for Policy

Filed in *Padilla v. Bush*, No. 02 Civ. 4445 (S.D.N.Y.)

Declaration of Michael H. Mobbs
Special Advisor to the Under Secretary of Defense for Policy

Pursuant to 28 U.S.C. § 1746, I, Michael H. Mobbs, Special Advisor to the Under Secretary of Defense for Policy, hereby declare that, to the best of my knowledge, information and belief, and under the penalty of perjury, the following is true and correct:

1. I am a government employee (GS-15) of the U.S. Department of Defense and serve as a Special Advisor to the Under Secretary of Defense for Policy. The Under Secretary of Defense for Policy is appointed by the President and confirmed by the Senate. He is the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense for all matters concerning the formulation of national security and defense policy and the integration and oversight of DoD policy and plans to achieve national security objectives. The Under Secretary of Defense for Policy has directed me to head his Detainee Policy Group. Since mid-February 2002, I have been substantially involved with matters related to the detention of enemy combatants in the current war against the Al Qaeda terrorists and those who support and harbor them (including the Taliban).
2. As part of my official duties, I have reviewed government records and reports about Jose Padilla (also known as "Abdullah al Muhajir" and "Ibrahim Padilla") relevant to the President's June 9, 2002 determination that Padilla is an

enemy combatant and the President's order that Padilla be detained by U.S. military forces as an enemy combatant.

3. The following information about Padilla's activities with the Al Qaeda terrorist network was provided to the President in connection with his June 9, 2002 determination. This information is derived from multiple intelligence sources, including reports of interviews with several confidential sources, two of whom were detained at locations outside of the United States.[1] The confidential sources have direct connections with the Al Qaeda terrorist network and claim to have knowledge of the events described. Certain aspects of these reports were also corroborated by other intelligence information when available.

4. Padilla was born in New York. He was convicted of murder in Chicago in approximately 1983 and incarcerated until his eighteenth birthday. In Florida in 1991, he was convicted of a handgun charge and sent to prison. After his release from prison, Padilla began referring to himself as Ibrahim Padilla.[2] In

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[1] Based on the information developed by U.S. intelligence and law enforcement agencies, it is believed that the two detained confidential sources have been involved with the Al Qaeda terrorist network. One of the sources has been involved with Al Qaeda for several years and is believed to have been involved in the terrorist activities of Al Qaeda. The other source is also believed to have been involved in planning and preparing for terrorist activities of Al Qaeda. It is believed that these confidential sources have not been completely candid about their association with Al Qaeda and their terrorist activities. Much of the information from these sources has, however, been corroborated and proven accurate and reliable. Some information provided by the sources remains uncorroborated and may be part of an effort to mislead or confuse U.S. officials. One of the sources, for example, in a subsequent interview with a U.S. law enforcement official recanted some of the information that he had provided, but most of this information has been independently corroborated by other sources. In addition, at the time of being interviewed by U.S. officials, one of the sources was being treated with various types of drugs to treat medical conditions.

[2] Padilla's use of the name "Ibrahim Padilla" was not included in the information provided to the President on June 9, 2002.

1998, he moved to Egypt and was subsequently known as Abdullah Al Muhajir. In 1999 or 2000 Padilla traveled to Pakistan. He also traveled to Saudi Arabia and Afghanistan.

5. During his time in the Middle East and Southwest Asia, Padilla has been closely associated with known members and leaders of the Al Qaeda terrorist network.

6. While in Afghanistan in 2001, Padilla met with senior Usama Bin Laden lieutenant Abu Zubaydah. Padilla and an associate approached Zubaydah with their proposal to conduct terrorist operations within the United States. Zubaydah directed Padilla and his associate to travel to Pakistan for training from Al Qaeda operatives in wiring explosives.

7. Padilla and his associate conducted research in the construction of a "uranium-enhanced" explosive device. In particular, they engaged in research on this topic at one of the Al Qaeda safehouses in Lahore, Pakistan.

8. Padilla's discussions with Zubaydah specifically included the plan of Padilla and his associate to build and detonate a "radiological dispersal device" (also known as a "dirty bomb") within the United States, possibly in Washington, DC. The plan included stealing radioactive material for the bomb within the United States. The "dirty bomb" plan of Padilla and his associate allegedly was still in the initial planning stages, and there was no specific time set for the operation to occur.

9. In 2002, at Zubaydah's direction, Padilla traveled to Karachi, Pakistan to meet with senior Al Qaeda operatives to discuss Padilla's involvement and participation in terrorist operations targeting the United States. These discussions included the noted "dirty bomb" plan and other operations including the detonation of explosives in hotel rooms and gas stations.[3] The Al Qaeda officials held several meetings with Padilla. It is believed that Al Qaeda members directed Padilla to return to the United States to conduct reconnaissance and/or other attacks on behalf of Al Qaeda.

10. Although one confidential source stated that he did not believe that Padilla was a "member" of Al Qaeda, Padilla has had significant and extended contacts with senior Al Qaeda members and operatives. As noted, he acted under the direction of Zubaydah and other senior Al Qaeda operatives, received training from Al Qaeda operatives in furtherance of terrorist activities, and was sent to the United States to conduct reconnaissance and/or other attacks on their behalf.

11. Padilla traveled from Pakistan to Chicago via Switzerland and was apprehended by federal officials on May 8, 2002, upon arrival in the United States. Pursuant to court order, Padilla was held by the U.S. Marshals Service as a material witness in a grand jury investigation.

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[3] These attacks were to involve multiple, simultaneous attacks on such targets, and also included train stations. The additional facts in this footnote were not included in the information provided to the President on June 9, 2002.

12. On June 9, 2002, George W. Bush, as President of the United States and Commander in Chief of the U.S. armed forces, determined that Jose Padilla is, and was at the time he entered the United States in May 2002, an enemy combatant in the ongoing war against international terrorism, including the Al Qaeda international terrorist organization. A redacted version of the President's determination is attached at Tab 1.

13. The President specifically determined that 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.

14. The President further determined that Padilla posed a continuing, present and grave danger to the national security of the United States, and that detention of Padilla as an enemy combatant was 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.

15. On June 9, 2002, the President directed the Secretary of Defense to detain Padilla as an enemy combatant.

16. On June 9, 2002, acting on the President's direction, the Secretary of Defense ordered the U.S. armed forces to take control of Padilla as an enemy combatant and to hold him at the Naval Consolidated Brig, Charleston, South Carolina.

MICHAEL H. MOBBS
Special Advisor to the
Under Secretary of Defense for Policy

Dated: 27 August 2002

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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

