



Written by [Michael Tennant](#) on February 19, 2011

## Dismissing a Lawsuit — and the Constitution

Padilla was arrested in Chicago in 2002 and publicly accused of planning to build and detonate a radioactive “dirty bomb” by then-Attorney General John Ashcroft. Designated an “enemy combatant” by President George W. Bush despite the fact that he is a U.S. citizen and was arrested on U.S. soil long before he could have carried out his alleged plot, Padilla was whisked off to a military brig in South Carolina, where he was held *incommunicado* for two years and given only limited access to an attorney for the remaining 19 months he was imprisoned there. [Padilla alleges](#), in great detail, that he was brutally tortured during his time in the brig: isolated from both other prisoners and the outside world, deprived of sleep and sunlight, put in stress positions for lengthy periods, forced to breathe noxious fumes, deceived and threatened by his interrogators, drugged, and generally treated in such a way as to destroy his physical and mental health.



Padilla was eventually permitted to seek relief in civilian courts, and his case made it all the way to the Supreme Court. The Bush administration, obviously fearing the court would rule in Padilla’s favor and throw out the whole policy of presidential “enemy combatant” designation, suddenly changed course. Having argued for the previous four years that it would be too dangerous to try Padilla in civilian courts, the administration decided it was time to do just that. He ended up being convicted not of the sensationalist charge of planning to detonate a dirty bomb but merely of “conspiracy to support Islamic terrorism overseas.” He was sentenced to 17 years in prison.

Now, seeking redress for the unconstitutional and inhumane treatment to which he was subjected, Padilla has been rebuffed by a federal judge who takes seriously the old jibe about the “just us” system.

*Salon’s* [Glenn Greenwald weighed in](#) on the ruling:

In dismissing Padilla’s lawsuit, the court’s opinion relied on the same now-depressingly-familiar weapons routinely used by our political class to immunize itself from judicial scrutiny: national security would be undermined by allowing Padilla to sue; “government officials could be distracted from their vital duties to attend depositions or respond to other discovery requests”; “a trial on the merits would be an international spectacle with Padilla, a convicted terrorist, summoning America’s present and former leaders to a federal courthouse to answer his charges”; the litigation would risk disclosure of vital state secrets; and “discovery procedures could be used by our enemies to obtain valuable intelligence.”



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In other words, our political officials are Too Important, and engaged in far Too Weighty Matters in Keeping Us Safe, to subject them to the annoyance of the rule of law. It's much more important to allow them to Fight The Terrorists without restraints than to bother them with claims that they broke the law and violated the rights guaranteed by the U.S. Constitution... Executive Branch officials and the federal judiciary have conspired to ensure that the former are shielded from judicial scrutiny even for the most blatant and horrifying crimes.

Indeed, there is a bipartisan consensus that government officials should be able to get away with “the most blatant and horrifying crimes.” Richard Nixon, for example, was not threatened with impeachment over his bombing of Cambodia but over a comparatively minor burglary and cover-up. Bill Clinton, similarly, was tried for lying about a sexual relationship with an intern rather than for unleashing destruction upon the former Yugoslavia. And when it comes to the Bush administration's policies of indefinite detention without charges, lack of due process of law, torture, and rendition to foreign countries for the purpose of torture, Bush's successor has done very little to reverse these policies, instead [defending them in court](#) and refusing to investigate the crimes of his predecessor. Judge Gergel, by the way, was appointed to the bench by none other than Barack Obama.

Writing for *National Review*, Charles “Cully” Stimson of the Heritage Foundation [hailed](#) Gergel's decision, calling it “a win for the United States” — by which he means the U.S. government, not the American people — “and a win for constitutional values.” Perhaps it is too much to ask of a man who took part in the Bush administration's lawlessness (Stimson was Deputy Assistant Secretary of Defense for Detainee Affairs from 2006 to 2007), but Stimson really ought to pick up one of those “pocket Constitutions” that Heritage is always giving away before opining again about “constitutional values”; and Heritage might want to reconsider the company it keeps.

One need not be a constitutional scholar — these days, in fact, it might be an impediment — to see that the treatment afforded Padilla was blatantly unconstitutional. Article I, Section 9, for example, guarantees the writ of *habeas corpus*, which is to say it prohibits imprisonment without charges. The Fifth Amendment requires an accused person to be given due process of law before being “deprived of life, liberty, or property.” The Sixth Amendment mandates “a speedy and public trial” by jury and “the assistance of counsel” for persons accused of crimes. The Eighth Amendment forbids “cruel and unusual punishments.” Every one of these provisions was openly violated by the government in regard to Padilla. Gergel's dismissal of Padilla's lawsuit is, therefore, a win for the U.S. government, but it is a huge loss for constitutional values and, by extension, not just American citizens but anyone who comes into contact with the U.S. government anywhere in the world.

Ben Wizner of the American Civil Liberties Union, one of the attorneys representing Padilla, [summed the situation up](#) well: “The court today held that Donald Rumsfeld is above the law and Jose Padilla is beneath it. But if the law does not protect Jose Padilla, it protects none of us, and the executive branch can simply label citizens enemies of the state and strip them of all rights — including the absolute right not to be tortured. If Jose Padilla is not allowed his day in court, nothing will prevent future administrations from engaging in similar abuses.”

*Photo of Jose Padilla: AP Images*



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