



Written by [Joe Wolverton, II, J.D.](#) on June 12, 2012

## Supreme Court Denies Appeals to Seven Gitmo Detainees and Jose Padilla

On Monday the U.S. Supreme Court [rejected appeals of cases against the U.S. government](#) filed by seven different detainees at the Guantanamo Bay prison.

By refusing to hear the cases, the decisions of the lower courts are upheld. In one of these rulings, the U.S. Court of Appeals for the District of Columbia Circuit held that information provided by the government should be afforded a “presumption of accuracy” unless the defendant can establish otherwise.



This somewhat strange application of the legal doctrine of the burden of proof was part of the decision in the case of [Latif v. Obama](#).

Adnan Farhan Abdul Latif is a Yemeni national currently imprisoned in the Guantanamo Bay detention facility. In a Summary of Evidence memo prepared by the government, Latif is accused of first, being “an al Qaida fighter”; and second, of having engaged in hostilities against Americans in Afghanistan.

According to the [majority opinion issued by the D.C. Court](#) in the *Latif* case, the lower court failed to apply the presumption of regularity to the evidence presented by the government. The evidence in question was intelligence reports compiled by the government of the United States and its agents.

Judge Janice Rogers Brown, a George W. Bush appointee, writing for the majority, explicitly endorses the affording of the presumption in favor of all evidence presented by the government in its question to deny habeas corpus rights to the prisoners at Guantanamo Bay. Writes Judge Brown: “[T]he district court has operated under a case management order that specifically authorized reliance on evidentiary presumptions....”

Further, in chronicling the lower courts’ inconsistent application of the order mandating the presumption, Judge Brown writes:

The confusion stems from the fact that intelligence reports involve two distinct actors — the non-government source and the government official who summarizes (or transcribes) the source’s statement. The presumption of regularity pertains only to the second: it presumes the government official accurately identified the source and accurately summarized his statement, but it implies nothing about the truth of the underlying non-government source’s statement. There are many conceivable reasons why a government document might accurately record a statement that is itself incredible. A source may be shown to have lied, for example, or he may prove his statement was coerced. The presumption of regularity — to the extent it is not rebutted — requires a court to treat the Government’s record as accurate; it does not compel a determination that the record establishes what it is offered to prove.

Sadly, this is likely a final nail in the coffin of Latif who, although previously granted a release order,



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has to date spent nearly 10 years in the Guantanamo Bay Detention Facility.

The other six cases brought by Guantanamo inmates whose appeals were denied certiorari by the Supreme Court are: *Al-Madhwani v. Obama*, *Al-Alwi v. Obama*, *Al-Bihani v. Obama*, *Uthman v. Obama*, *Almerfedi v. Obama*, and *Al-Kandari v. Obama*.

Also on Monday the Supreme Court denied certiorari in another high-profile case of the denial of due process. Now, the case of Jose Padilla, an American citizen convicted of terrorism, will not be given any further review.

Earlier this year, the U.S. Court of Appeals for the Fourth Circuit in Richmond, Virginia, upheld a lower court's dismissal of the complaint.

In his suit, Padilla claimed that, as a U.S. citizen captured within the United States, he was unconstitutionally designated as an "enemy combatant," and alleged a range of constitutional violations arising from his detention at a military prison in South Carolina.

Additionally, Padilla said that he was denied access to legal counsel in contravention of his civil rights as guaranteed by the First, Fifth, and Sixth Amendments to the U.S. Constitution.

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

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

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

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

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

If the appeals court's ruling is allowed to stand, government officials will have a blank check to commit any abuse in the name of national security, even the brutal torture of an American citizen in an American prison. It is precisely the role of the courts to ensure that allegations of grave misconduct by Executive Branch officials receive fair adjudication. That vital role does not evaporate simply because those officials insist that their actions are too sensitive for judicial review.

Born in Brooklyn and raised in Chicago, Padilla is accused by the government of the United States of being a member of al-Qaeda. It is asserted that he has actively participated in that organization since



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the late 1990s. He has been convicted of conspiring to further al-Qaeda's "global campaign of terror." The government says that in late 2000, Padilla travelled to Afghanistan in order to receive training at the al-Farooq camp run by members of al-Qaeda.

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

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

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

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

In its order list issued on Monday, the Supreme Court seems content to permit the other branches of the federal government to continue their quest to contravene the Constitution and to deny due process and our other most timeless cherished civil liberties to those they deem "belligerents."

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