



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

JOSE PADILLA,
Petitioner,

vs.

COMMANDER C.T. HANFT,
USN Commander, Consolidated Naval Brig,
Respondent.

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CIVIL ACTION NO. 2:04-2221-26AJ

AMENDED ORDER GRANTING RESPONDENT'S MOTION TO STAY PENDING APPEAL

This is a 28 U.S.C. § 2241 *habeas corpus* action. The Court has jurisdiction over the matter pursuant to 28 U.S.C. § 1331.

Pending before the Court is Respondent's Motion for Stay Pending Appeal. In determining whether such a stay is appropriate, the Court is required to balance the following four factors: 1) whether the movant has made a strong showing that he is likely to prevail on the merits of the case, 2) whether the movant will be irreparably injured absent a stay, 3) whether issuance of the stay will substantially injure the non-movant, and 4) the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

Although this Court is of the firm opinion that Respondent will not ultimately succeed on the merits, it is, nevertheless, mindful that this case presents novel issues that need to be addressed by the appellate courts. Serious and complex issues of law are involved in the case. Moreover, the Court is aware that reasonable jurists who have been presented with similar issues as to the ones presented in the instant action have reached a different conclusion than did this Court. Therefore, as to this factor, Respondent is given the benefit of the doubt.

The Court is not convinced that either party will be irreparably, substantially, or significantly injured whether the stay is granted or denied. That is, since Petitioner will likely remain incarcerated in the short term, whether by the military or by civilian authorities, this Court cannot find that 1) Respondent will be irreparably injured if the Motion to Stay is denied or 2) Petitioner's continued incarceration in military custody, as opposed to civilian custody, will substantially injure Petitioner.¹ Accordingly, these factors fail to tip the scales in either party's favor.

As to the public interest factor, the Court is of the opinion that this factor does not shift the balance in either party's favor either. It is in the public interest that Petitioner, an United States citizen who was captured in the United States, not be illegally detained.² It is also true, however, that the President acts with the public interest in mind in matters such as these and matters of national security are in the public interest.

Accordingly, having carefully considered Respondent's Motion, Petitioner's Opposition, the record, and the applicable law, in light of the novel issues presented here, the Court is of the opinion that Respondent's Motion must be **GRANTED**.

IT IS SO ORDERED.

Signed this 11th day of April, 2005 in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

¹This finding is based on the Court's assumption that the case will proceed quickly through the appellate courts.

²In its Memorandum Opinion and Order, dated, February 28, 2005, this Court found that, *limited to the facts of this case*, Petitioner, an United States citizen who was captured in the United States, cannot be lawfully held as an enemy combatant.