

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSE PADILLA,

DONNA R. NEWMAN, As Next  
Friend of Jose Padilla

Petitioners,

-against-

GEORGE W. BUSH  
Ex officio Commander-in-Chief of US  
Armed Forces  
White House  
1600 Pennsylvania Avenue  
Washington, D.C.

DONALD RUMSFELD  
Secretary of Defense  
The Pentagon  
Arlington, Va.,

JOHN ASHCROFT  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

COMMANDER M. A. MARR  
Consolidated Naval Brig  
1050 Remount Road  
Charleston, South Carolina

Respondents,  
-----X

02 Civ. 4445 (MBM)

**AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

1. Jose Padilla, a citizen of the United States of America, is being held illegally, denied access to legal counsel, and denied access to any Court for the determination of the legality of his

detention in violation of his rights under the Constitution of the United States of America.

Donna R. Newman, Esq., on behalf of Mr. Padilla as his Next Friend, respectfully requests that this Court issue a Writ of Habeas Corpus.

2. A Petition for Writ of Habeas Corpus was previously filed with this Court. This amended Petition is submitted pursuant to 28 U.S.C. § 2242 and Rule 15 of the Federal Rules of Civil Procedure.

### PARTIES

3. Petitioner Jose Padilla is an American Citizen presently incarcerated and unlawfully held by Respondents at the Consolidated Naval Brig in Charleston, South Carolina.
4. Petitioner Donna R. Newman is an attorney duly admitted to practice law in the Southern District of New York. On or about May 15, 2002, Petitioner Donna R. Newman was assigned to represent Petitioner Jose Padilla by Order of the Honorable Chief Judge Michael B. Mukasey.
5. Petitioner Donna R. Newman, seeks relief as "Next Friend" pursuant to the requirements of Whitmore v. Arkansas, 495 U.S. 149 (1990) which requires a "next friend" to provide an adequate explanation why the real party in action cannot appear on his own behalf, to be truly dedicated to the best interests of the person on whose behalf she seeks to litigate and for the "next friend" to demonstrate some significant relationship with the real party in interest.
6. In the instant matter, Petitioner Jose Padilla cannot appear because he is detained in the Consolidated Naval Brig in Charleston, South Carolina. Petitioner Jose Padilla cannot sign and verify the Amended Petition as counsel has been denied access to him by the Respondents. Petitioner Jose Padilla is not permitted to send or receive mail. Respondents have not permitted Petitioner Jose Padilla to communicate with anyone else including

members of his family. Thus, Petitioner is without means or access to file a Petition on his own behalf.

7. Petitioner Donna R. Newman, as counsel to Jose Padilla has a significant relationship with the Petitioner Jose Padilla. After being assigned to represent, Jose Padilla on or about May 15, 2002, Petitioner Donna R. Newman filed and argued motions on his behalf and met with Mr. Padilla at the M.C.C. repeatedly and regularly as his attorney. Before Mr. Padilla was signed over to his current place of detention, Petitioner Donna R. Newman had established a attorney-client relationship with Jose Padilla. She has a professional obligation under the Code of Professional Ethics to zealously represent the best interests of her client. Attorneys have been permitted to act as "next friend." See Nash v. MacArthur, 184 F.2d 606 (D.C. Cir. 1950).
8. Respondent Bush is the President of the United States and Commander-in-Chief of the Armed Forces of the United States.
9. Respondent Rumsfeld is the United States Secretary of Defense and Respondent Marr's superior. He determines the conditions under which Petitioner Jose Padilla is held.
10. Respondent M.A. Marr is a Commander in the United States Navy and is in command of the Consolidated Naval Brig in Charleston, South Carolina. Respondent M.A. Marr receives orders with regard to Petitioner's custody from her superiors, including Respondents Bush and Rumsfeld. That Commander Marr could not obey an Order of this Court to release Petitioner Padilla without violating the order of a superior officer and thereby violating the Uniform Code of Military Justice. See 10 U.S.C § 892.
11. Respondent Ashcroft is the Attorney General of the United States and is the superior to the Agents of the Federal Bureau of Investigation who initially seized Mr. Padilla and who on

information and belief continue to interrogate Mr. Padilla in violation of his constitutional rights. Respondent Ashcroft is also the superior to the United States Attorney's Office for the Southern District of New York who, who on information and belief, assisted the Department of Defense in the seizure of Jose Padilla.

#### JURISDICTION

12. Petitioners bring this action under 28 U.S.C. §§ 2241 and 2242, and invoke this Court's jurisdiction under 28 U.S.C. §§ 1331, 1651, 2201 and 2202; as well as the under the Fourth, Fifth and Sixth Amendments to the United States Constitution.
13. This Court is empowered under 28 U.S.C. §§ 2241 to grant a Writ of Habeas Corpus and to entertain the Petition filed by Donna R. Newman, as Next Friend under 28 U.S.C. §§ 2242.

#### Venue

14. Venue is proper in the United States District Court for the Southern District of New York ("United States Attorney's Office") because this Court has unique familiarity with the facts and circumstances of this case and the resolution of the case does not require Padilla's presence. See, Braden v. 30<sup>th</sup> Judicial Circuit Court of Kentucky, 410 U.S. 484, 493-94, 35 L.Ed 2d 433, 93 S. Ct. 1123 (1973)(Traditional venue considerations apply to habeas cases; those include (1) where the material events occurred; (2) where records and witnesses pertinent to the claim are likely to be found; (3) the convenience of the forum for respondent and petitioner; and (4) the familiarity of the court with the applicable laws.).

#### STATEMENT OF FACTS

15. On May 8, 2002, Jose Padilla, an American citizen, was arrested by agents of the Federal Bureau of Investigation ["FBI"] at O'Hare Airport in Chicago, Illinois, upon a material witness warrant signed by the Honorable Michael B. Mukasey, Chief Judge of the United

States District Court for the Southern District of New York.

16. The Court Order on which Mr. Padilla was arrested had been applied for by the United States Attorney's Office for the Southern District of New York.
17. On information and belief, Petitioner Jose Padilla was transported by agents of the FBI from Chicago to New York.
18. On or about May 15, 2002, Petitioner Jose Padilla appeared before the Honorable Michael B. Mukasey, who assigned Petitioner Donna R. Newman to represent Mr. Padilla pursuant to the Criminal Justice Act. 18 U.S.C. §3006A.
19. Petitioner Donna R. Newman met repeatedly and regularly with Mr. Padilla when he was being housed in the Metropolitan Correctional Center in New York, a prison operated by Department of Justice, Bureau of Prisons.
20. As an additional part of her representation of Mr. Padilla, Petitioner Donna R. Newman also appeared in court, filed and argued motions, and on his behalf consulted with both members of Mr. Padilla's family and representatives of the Government. She continues to consult with the Government and Mr. Padilla's family in her role as his attorney.
21. The motions filed sought Mr. Padilla's release, asserting his detention was illegal and contrary to his constitutional rights. The United States Attorney's Office for the Southern District of New York filed extensive papers in opposition to Padilla's motions. Judge Mukasey received all submissions and scheduled a hearing on Padilla's motion for June 11, 2002.
22. On information and belief, on or about June 9, 2002, after consulting with the Respondent Ashcroft and a representative of Respondent Rumsfeld, George W. Bush, the President of the United States, acting as Commander-in-Chief, signed an order declaring Jose Padilla to

be a "enemy combatant" and directing Respondent Rumsfeld to arrest Mr. Padilla and to detain him indefinitely for interrogation. See Exhibit A, transcript of Respondent Ashcroft's June 10, 2002 statement.

23. Despite requests to several government officials, the Government has refused to provide counsel for Respondent Padilla with a copy of the Order the President is reported to have signed. See Exhibit B, letters from Donna R. Newman requesting a copy of the Order on which Mr. Padilla was detained by military authorities.
24. On information and belief the term "enemy combatant" is not defined in either the United States Code or in the Uniformed Code of Military Justice.
25. On or about June 9, 2002, Petitioner Jose Padilla was transferred from the custody of the civilian authorities of the Department of Justice to the military authorities at the Consolidated Naval Brig at Charleston, South Carolina.
26. On information and belief, the Consolidated Naval Brig at Charleston, South Carolina is located on a United States Naval base where access is restricted to members of the military and other specifically designated individuals.
27. In the year 2002, the United States District Court for the Southern District of New York has been "opened for business" without interruption.
28. Petitioner Donna R. Newman was informed by representatives of the Department of Defense that she could not visit or speak with Jose Padilla.
29. On information and belief, from May 2002 through the time this Petition was filed a grand jury has been sitting in the Southern District of New York. No member of the United States Attorney's Office for the Southern District of New York has advised Petitioner Donna R. Newman that an indictment has been returned that charges Jose Padilla with any criminal

conduct. Nor, on information and belief, has any complaint been filed in the United States District Court for the Southern District of New York that charges Jose Padilla with any criminal conduct.

30. As of the date of this Petition, Mr. Padilla has not been charged with any offense. Nor, according to press reports, are any criminal charges contemplated.
31. Respondent Rumsfeld has stated publicly that it is the Government's intention to detain Mr. Padilla indefinitely to interrogate him.

#### CLAIMS AS TO THE UNLAWFULNESS OF PETITIONER'S DETENTION

##### FIRST CLAIM FOR RELIEF (DUE PROCESS - FOURTH, FIFTH AND SIXTH AMENDMENTS TO THE UNITED STATES CONSTITUTION)

32. Petitioner incorporate paragraphs 1-28 by reference.
33. It is a violation of the Due Process Clause of the Fifth Amendment to the United States Constitution to hold an American citizen without giving notice of the basis for his detention.
34. By the action described above, Respondents, acting under color of law, have violated and continue to violate the Fourth, Fifth and Sixth Amendments to the United States Constitution. See, e.g., Zadvydas v. Davis, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of the liberty that the [Due Process] Clause protects.... And this Court has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate constitutional protections...") Also see Ex Parte Milligan, 71 U.S. 2, 123 (1866) ("[C]itizens of states where the courts are open, if charged with a crime, are guaranteed the inestimable privilege of trial by jury. This privilege is a vital principle, underlying the whole administration of criminal justice; it is not held by

sufferance, and cannot be frittered away on pleas of state or political necessity.")

35. There is no authority to detain an American citizen without a finding of probable cause. See, e.g. United States Ex Rel. Toth v. Quarles, 350 U.S. 11, 14 (1955) an "assertion of military authority over civilians cannot rest on the President's power as commander-in-chief, or on any theory of martial law."

SECOND CLAIM FOR RELIEF  
(SUSPENSION OF THE WRIT)

36. Petitioner incorporate paragraphs 1-28 by reference.
37. To the extent the Presidential Order on which Mr. Padilla is held as an "enemy combatant" disallows any challenge to the legality of Mr. Padilla's detention by way of habeas corpus, the Order and its enforcement constitutes an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution.

THIRD CLAIM FOR RELIEF  
(VIOLATION OF POSSE COMITATUS)

38. Petitioner incorporate paragraphs 1-28 by reference.
39. The Posse Comitatus Act, 18 U.S.C. § 1385 prohibits Army and Air Force personnel from participating in civilian law enforcement activities. Members of the Army, Navy, Air Force and Marine Corps are prohibited from participation in civilian law enforcement activities by 10 U.S.C. § 375 and as a matter of Department of Defense policy, see Department of Defense Directive 5525.5(C).
40. As the Courts of the United States are opened and no state of martial law exists, it is unlawful for an Jose Padilla, an American citizen to be held by the military at the Consolidated Naval Brig in Charleston, South Carolina.



**PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray for the relief as follows:


1. Grant Petitioner Donna R. Newman, Next Friend status, as Next Friend of Jose Padilla;
2. Order Respondents to permit counsel to meet and confer with Jose Padilla;
3. Order Respondents to permit Jose Padilla to receive a copy of this Petition;
4. Order Respondents to cease all interrogations of Mr. Padilla, direct or indirect, while this litigation is pending;
5. Order and declare that Mr. Padilla is being held in violation of the Fourth, Fifth and Sixth Amendments to the United States Constitution.
6. To the extent Respondents contest any material factual allegation in this Petition, schedule an evidentiary hearing, at which Petitioners may adduce proof in support of their allegations;
7. Order that Petitioner Jose Padilla be released from Respondents' unlawful custody;
8. In the event that it is determined that venue does not properly lie in the Southern District of New York, that this matter be transferred to the appropriate United States District Court.
9. Such other relief as the Court may deem necessary and appropriate.


Dated: June 19, 2002

Respectfully submitted,

Jose Padilla, and Donna R. Newman, as Next Friend

By:

  
Donna R. Newman, Esq. [6299]  
121 West 27<sup>th</sup> Street, Suite 1103  
New York, New York 10001  
212-229-1516

  
Andrew G. Patel, Esq. [4361]  
111 Broadway, 13<sup>th</sup> Floor  
New York, New York 10006  
212-349-0230

## VERIFICATION

STATE OF NEW YORK                     )  
 COUNTY OF NEW YORK                )  
 SOUTHERN DISTRICT OF NEW YORK    ) ss.:

DONNA R. NEWMAN being duly sworn depose and say:

1. I am Donna R. Newman, Next Friend for Petitioner Jose Padilla, state under pain and penalty of perjury that to the best of my knowledge and belief, the facts set forth in this Petition are true and correct.

Dated: New York, New York  
 June 19, 2002

Respectfully submitted,

  
 Donna R. Newman, Esq.

Sworn to before me this  
 19th day of June 2002

  
 NOTARY PUBLIC

ANDREW PATEL  
 Notary Public, State of New York  
 No. 4828468  
 Qualified in Westchester County  
 Commission Expires August 31, 2005