

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 04-60001-CR-COOKE(s)(s)(s)(s)(s)

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE PADILLA,

Defendant.

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Declaration of Andrew G. Patel

Pursuant to 28 U.S.C. § 1746, I, Andrew G. Patel, Esq., hereby declare that, to the best of my knowledge, information, and belief, and under penalty of perjury, the following is true and correct:

1. I am an attorney admitted to practice in the courts of New York State. I was admitted to practice before this court *pro hac vice* by order of United States District Judge Marcia Cooke on January 24, 2006. DE 177. I am also admitted to practice in the United States Supreme Court, the United States Courts of Appeals for the Second and Fourth Circuits, and the United States District Courts for the Southern and Eastern District of New York. My office is located at 111 Broadway, New York, NY 10006.
2. I have served on the Criminal Justice Act panel for the Southern District of New York for more than fifteen years.

3. On or about June 11, 2002, I was assigned to represent Jose Padilla with my co-counsel, Donna R. Newman, by Judge Michael B. Mukasey, then-Chief Judge of the United States District Court for the Southern District of New York.

4. On June 9, 2002, the President of the United States declared Mr. Padilla an enemy combatant and ordered the Secretary of Defense to take custody of Mr. Padilla. Mr. Padilla was transferred to the Naval Consolidated Brig at the Naval Weapons Station in Charleston, South Carolina (hereinafter "Brig").

5. After the decision by United States Supreme Court, my appointment as counsel for Mr. Padilla pursuant to the Criminal Justice Act was terminated. Nevertheless, I continued to represent Mr. Padilla, *pro bono*, in the United States District Court for the District of South Carolina as well as in all subsequent appeals.

6. After receiving the required security clearance, Ms. Newman and I were first permitted to visit Mr. Padilla on or about March 3, 2004 at the Brig.

7. After that initial visit, I met with Mr. Padilla at the Brig on approximately ten or eleven additional occasions. For all but approximately three of those visits, I met with Mr. Padilla individually in a room that I was informed was unmonitored. On the other visits, I was accompanied by co-counsel.

8. Since March 2004, I have had numerous conversations with members of the Brig staff, both military and civilian. I have also had conversations with officers of the Joint Forces Command Judge Advocate General (hereinafter "JFC/JAG").

9. I have also spoken with representatives of the International Committee for the Red Cross (hereinafter "ICRC"). I have been informed that Mr. Padilla was visited at the Brig by

representatives of the ICRC before I was permitted to visit him. It is my understanding that the representative of the ICRC requested that Mr. Padilla be provided with a clock to enable Mr. Padilla to be oriented to the time of day. Mr. Padilla was not provided with access to a clock while he was incarcerated in the Brig.

10. I have been informed that during the early period of Mr. Padilla's incarceration in the Brig he was regularly visited by a Muslim Chaplin or Imam. Subsequently, the visits from the Imam ceased.

11. Mr. Padilla was housed in the Brig in a unit with ten cells, five on each of two tiers. Mr. Padilla was the only person housed in that unit. I have been advised that his cell was electronically monitored and that Mr. Padilla had no contact with other human beings.

12. The cell had windows that were blocked so that no natural light could enter the cell. The cell did not have a mirror. Mr. Padilla was fed through a slot in the door. The cell had a steel platform, which served as a bed. Mr. Padilla had no control over the level of artificial light in the cell.

13. When Mr. Padilla first arrived at the, Brig his cell was equipped with bedding that included a foam mattress and a pillow. He was provided a copy of the Qu'ran.

14. I have learned that Mr. Padilla's Qu'ran was taken away as part of an interrogation plan approved by the Joint Forces Command. Under this interrogation plan, Mr. Padilla's mattress and pillow were also removed. Mr. Padilla was required to sleep on the steel platform. Mr. Padilla was sometimes given cold meals as part this interrogation plan.

15. After I was permitted to meet with Mr. Padilla, I was informed by officers of the JFC/JAG that Mr. Padilla's family could write to him at a specific address. Mr. Padilla informed

me that he received a facsimile of a letter that he was told had been written by his mother. Mr. Padilla said that he could not recognize the handwriting as his mother's and that he believed the letter to be a forgery.

16. I contacted Mr. Padilla's mother and asked her to write a letter to her son and to mail it to my office. I received a letter from Mr. Padilla's mother and showed it to him the next time we met at the Brig. Mr. Padilla was also dubious of the authenticity of that letter.

17. Prior to March 2004, when I was permitted to meet with Mr. Padilla, he was not permitted to receive or send correspondence to or from anyone. He was permitted to send a brief note to his mother through the ICRC. After I was able to meet with Mr. Padilla, he was permitted to receive mail from his counsel but not from any other source. When I went to the Brig, the staff would give me mail that had been sent to Mr. Padilla that they had not delivered to him. This mail included copies of notices and orders from the United States District Court for the District of South Carolina.

18. Mr. Padilla has informed me that on at least on one occasion while he was incarcerated in the Brig, he felt that he was having a heart attack and that during the attack he could neither breathe nor move.

19. On another occasion, Mr. Padilla informed me that there was a terrible odor in his cell. Mr. Padilla informed me that he believed that this stench was caused by the guards pumping a noxious gas into his cell. Mr. Padilla informed me and co-counsel that while he was detained in the Brig there were extended periods of time when he was deprived of sleep or kept in darkness. Mr. Padilla also informed us that he was given a "truth serum" which made him feel like he had been drugged.

20. Mr. Padilla has informed me that, on at least one occasion, he coughed up blood while he was incarcerated in the Brig.

21. On one of my visits to Mr. Padilla, I observed an open wound on the back of one of his hands. During our meeting Mr. Padilla was scratching the wound without appearing to be aware of what he was doing. I advised both the Brig staff and the JFC/JAG of my concern about this wound and I was assured that Mr. Padilla would receive prompt medical attention.

22. On my next visit, the wound appeared to have been treated. On a subsequent visit to Mr. Padilla, the wound was healed, however Mr. Padilla again appeared to be unconsciously scratching the back of his hand, from time to time, during our meeting.

23. While at the Brig, Mr. Padilla has repeatedly mentioned a civilian who came to see him and who asked him questions. He eventually described that civilian as the person I believe to be Mr. Sandy Seymour.

24. I have spoken with Mr. Seymour on several occasions. Mr. Seymour informed me that he was the Technical Director of the Brig and that he had over 25 years of experience in the operation of prisons. Mr. Seymour informed me of his concerns about the effects of isolation on Mr. Padilla and the limits of his authority to address those concerns.

25. Specifically, I was told by members to the Brig staff that Mr. Padilla's temperament was so docile and inactive that his behavior was like that of "a piece of furniture."

26. I was also told that the Brig staff was concerned about the damage that could occur from the extended isolation that Mr. Padilla experienced in the Brig. To address this concern, a member of the Brig staff requested authorization for Mr. Padilla to have meals with another detainee. I was informed that this request by the Brig staff to ameliorate the effect of long-term

isolation was denied.

27. During one of my meetings with Mr. Padilla at the Brig, I asked him a question concerning a simple fact based on an event that had happened prior to his arrest. In observing Mr. Padilla's physical reaction to this question, I noted that his posture changed from relaxed to bolt upright in his chair. He began to blink his eyes and he appeared to have goose bumps on his arms and his neck. Mr. Padilla's reaction to my innocuous question was the same reaction that I would have expected if he had been stuck by a cattle prod.

28. Mr. Padilla was unable to answer that question then, and he has continued to be unable to answer similar questions today.


29. Mr. Padilla's inability to answer questions about what happened to him prior to his arrest does not appear to be based on a refusal to cooperate with counsel. Mr. Padilla will identify a document or a photograph but he is unable to engage in a discussion about the physical object and will, alternatively, repeat that this matter has already been established or that his counsel are repeating questions that he has already answered during his previous detention. During this questioning he often exhibits facial tics, unusual eye movements, and contortions of his body. The contortions are particularly poignant since he is usually manacled and bound by a belly chain when he has meetings with counsel.

30. Mr. Padilla retains the belief that he will be returned to the Brig if he discusses events that occurred there.

31. I have represented Mr. Padilla for over four years. I have spent many hours with him since we first met in March 2004. He has been provided with copies of numerous legal documents, naming myself as his counsel, filed in seven different federal courts. Mr. Padilla has

reviewed numerous transcripts of arguments that I made on his behalf in many of those courts. More recently, Mr. Padilla has had the opportunity to observe co-counsel and myself argue on his behalf before this Court. Additionally, Mr. Padilla has spoken with his mother about the work his attorneys have done on his behalf. Nevertheless, as of the date of this affirmation, Mr. Padilla remains unsure if I and the other attorneys working on his case are actually his attorney or another component of the government's interrogation scheme.

Dated: Miami, Florida
December 1, 2006

A handwritten signature in black ink, appearing to read 'Andrew G. Patel', with a long horizontal flourish extending to the right.

Andrew G. Patel, Esq.