



843-577-9890 phone  
843-577-9826 facsimile

ATTORNEY FOR THE PETITIONER

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

JOSE PADILLA	)	C/A No. 2:04-2221-26AJ
	)	
Petitioner,	)	<b>Affirmation of Michael P. O’Connell</b>
	)	<b>in support of Petitioner’s motion for</b>
vs.	)	<b>a Stay in these Proceedings</b>
	)	
COMMANDER C.T. HANFT, USN	)	
Commander, Consolidated Naval Brig	)	
	)	
Respondent,	)	

Michael P. O’Connell, Esq., an attorney duly admitted to practice law before this Court, affirms, under penalties of perjury, that:

1. I am one of the attorneys of record for Jose Padilla, the Petitioner herein, my office is located in Charleston, South Carolina, and I am fully familiar with the facts and circumstances herein.
2. On February 28, 2005, the Honorable Henry F. Floyd issued an Opinion and Order granting a writ of Habeas Corpus to the Petitioner who had been detained as an “enemy combatant” by the Respondent on the Order of the President of the United States.
3. The Government appealed that decision and on September 9, 2005, the Fourth Circuit Court of Appeals issued an opinion which reversed Judge Floyd’s opinion.
4. In light of the Fourth Circuit opinion, this Court issued a briefing schedule under which the parties were to file initial briefs regarding the procedures by which this Court should determine whether or not Mr. Padilla is in fact an “enemy combatant.” Initial briefs from both parties are currently due to be filed on November 29, 2005
5. On October 25, 2005, Mr. Padilla filed a Petition for a Writ of Certiorari in the Supreme Court of the United States seeking a review of the decision of the Fourth Circuit.

6. The Respondent's Reply to the Petition for a Writ of Certiorari was due on Monday, November 28, 2005. However, on November 23, 2005, following the unsealing of an indictment (see below), Respondent received an extension through December 16, 2005.
7. On Tuesday, November 22, 2005, the Government unsealed a superseding indictment in the Southern District of Florida charging Mr. Padilla with three criminal counts.
8. On November 20, 2005, President Bush signed a memorandum directing the Secretary of Defense to transfer Mr. Padilla to the custody of the Attorney General upon the Attorney General's request. The memorandum, publicly released on November 22, 2005, does not remove the designation of "enemy combatant" that the President placed upon Mr. Padilla in his order of June 9, 2002.
9. Upon information and belief, the Attorney General has not yet asked the Secretary of Defense to transfer Mr. Padilla to his custody, though the Department of Justice has asked the Fourth Circuit to allow such a transfer.
10. Given the fast-moving developments and the current uncertainty that surrounds them, I respectfully request that these proceedings be stayed until the Supreme Court either grants the Petition for a Writ of Certiorari and resolves it on the merits, or denies the petition.
11. It is respectfully submitted that granting such a stay would conserve judicial resources and attorney resources and would not unnecessarily delay a final resolution of this case.

November 28, 2005

Respectfully submitted,

S/Michael P. O'Connell