

IN THE SUPREME COURT OF THE UNITED STATES

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No. 03-1027

DONALD RUMSFELD,

*Petitioner*

v.

JOSE PADILLA AND DONNA R. NEWMAN,

AS NEXT FRIEND OF JOSE PADILLA,

*Respondent*

---

ON APPEAL FROM  
THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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MOTION OF RESPONDENT FOR DIVIDED ARGUMENT

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Respondent Jose Padilla and Donna R. Newman, as next friend of Jose Padilla, respectfully move this Court to permit divided argument pursuant to Supreme Court Rule 28(4). Petitioner Secretary of Defense Donald Rumsfeld does not object to this motion.

1. On February 20, 2004, this Court granted certiorari, setting an expedited briefing schedule that will conclude on Wednesday, April 21, 2004. On March 2, 2004, this Court set argument for seven days after the completion of the expedited briefing schedule, on Wednesday, April 28, 2004.

2. The petition for certiorari presents two questions, the first of which is “[w]hether the President has authority as Commander in Chief and in light of Congress's Authorization for Use of Military Force, Pub. L. No.107-40, 115 Stat. 224, to seize and detain a United States citizen in the United States based on a determination by the President that he is an enemy combatant who is

closely associated with al Qaeda and has engaged in hostile and war-like acts, or whether 18 U.S.C. 4001(a) precludes that exercise of Presidential authority.”

3. The first question presented involves technical and rarely considered doctrines of the law of war, including aspects of the customary international law of war and treaty-based positive international law. Indeed, at least nine of the briefs *amicus curiae* filed on behalf of Mr. Padilla and Ms. Newman directly concern international, foreign and military law.

4. Donna R. Newman is the attorney initially appointed by the trial court pursuant to the Criminal Justice Act of 1964, 18 U.S.C. § 3006A(d)(6) (“CJA”). Ms. Newman has represented Mr. Padilla for nearly two years, beginning with his arrest on the material witness warrant and continuing through the litigation of his habeas petition at both the district court and the court of appeals. She is the only attorney that met with Mr. Padilla prior to his seizure and detention by the military, when traditional attorney-client communications were still permitted by the government, and is one of only two attorneys who has met with him since his seizure by the military (albeit under conditions making attorney-client communications impossible). In sum, she is the attorney most familiar with Mr. Padilla and the facts and brings a unique perspective to the case. She will argue the case.

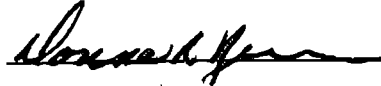
5. Because this case involves technical issues related to the law of war and military jurisdiction, Mr. Padilla and Ms. Newman move this Court to permit Ms. Newman to divide oral argument with Jenny S. Martinez. Ms. Martinez is a professor at Stanford Law School who teaches classes that encompass the law of war. A former law clerk to a judge of the International Criminal Tribunal for the Former Yugoslavia and a member of the Bar of this Court, Prof. Martinez is an established academic expert in the law of war who can provide a different and necessary perspective to this Court.<sup>1</sup>

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<sup>1</sup> Prof. Martinez also teaches civil procedure, including jurisdiction.

6. For the foregoing reasons, Mr. Padilla and Ms. Newman respectfully move this Court to permit Ms. Newman and Prof. Martinez to divide equally their argument time, with each arguing for fifteen minutes.

Respectfully submitted.



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April 2004

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CERTIFICATE OF SERVICE FOR  
MOTION OF RESPONDENT FOR DIVIDED ARGUMENT

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This is to certify that on this 14th day of April 2004 a copy of the foregoing has been sent by  
fax to:

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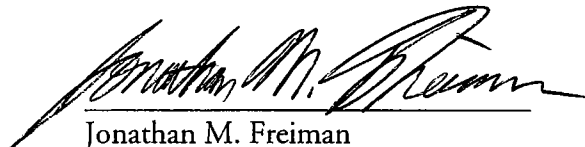
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