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COMMENTARY

A Dirty Bomb

The Connecticut Law Tribune
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Last Thursday, the federal government offered to allow the lawyers for suspected "dirty bomber" Jose Padilla to meet with their client for the first time since he was put in a military prison nearly two years ago. The move is a sharp about-face for the Bush administration, which until now has repeatedly claimed that national security would be compromised if Padilla, an American citizen, were allowed to see his lawyers.

"It's an important concession, but there's a dark lining to this silver cloud," said Jonathan Freiman, who represents a bipartisan coalition of organizations in the case.

Freiman is an attorney in the national appellate practice at Wiggin & Dana in New Haven and a senior fellow at the Schell Center for International Human Rights at Yale Law School. He has been at the center of the major cases challenging the administration's most aggressive tactics in the war on terror, representing prominent former American prisoners of war, organizations led by the Cato Institute and the Lawyers Committee for Human Rights, and an unprecedented coalition of religious, legal and human rights organizations in cases involving the Guantanamo Bay detainees.

Padilla has been held in a South Carolina naval brig for the past year and a half deprived of access to counsel, his family, or anyone but his captors. He has not been charged with a crime, but is suspected of having been involved in a plot to detonate a "dirty bomb" in the United States.

"There's a big difference between the government finally allowing Padilla to see his lawyers and acknowledging that Padilla has a right to see his lawyers during his imprisonment. Until the Supreme Court decides whether the president has the power to lock up American citizens in military prisons without charge and without any chance to talk to their lawyers, we'll never know what the government might do tomorrow."

The 2nd Circuit Court of Appeals released a groundbreaking decision in *Padilla v. Rumsfeld* several weeks ago, finding that the president had violated the Constitution by indefinitely detaining, without charge, an American citizen seized on American soil. The Supreme Court was scheduled to review the government's appeal of that decision last Friday, Feb. 13, and the decision to allow Padilla to meet with

his lawyers may have been calculated to mute the force of Padilla's arguments.

Whether it will is unclear. The administration made a similar attempt in *Hamdi v. Rumsfeld*, another so-called "enemy combatant" case. There, the government had won in the lower court, but it allowed Hamdi's lawyers to meet with him just days before the Supreme Court was scheduled to consider the government's request that it not hear Hamdi's appeal. The court rebuffed the request, adding the *Hamdi* case to a docket that is rapidly filling with cases arising from the war on terror.

While we are sympathetic to the notion of protecting national security, there is no system yet devised that can guarantee our freedom from terrorism. While the administration toughens up its stance on "enemy combatants," it also seems determined to undermine the very liberties that we are trying to protect. We only hope that the U.S. Supreme Court, like several federal district courts have done already, sees the problems inherent in the administration's actions and sets the U.S. Constitution right.

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