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Jose Padilla's America

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WHATEVER ELSE HE IS, Jose Padilla is an American citizen. That inescapable fact explains both the Bush administration's decision last week to charge him with a crime – and the importance of the Supreme Court's upcoming decision on whether to hear his case.

The first decision represents a change in course for an administration still struggling, more than four years after the attacks of 9/11, to find a legal strategy in the war against terrorism. But it is the second decision, due in almost three weeks, that could prove to be more significant to Americans and the rule of law. The Supreme Court needs to rein in the Bush administration's war on the Constitution.

Padilla, who has been in government custody for 3 1/2 years, was captured in May 2002 at a Chicago airport and accused of being a "dirty bomber," plotting to explode a small radioactive device in the United States. Shortly after being captured, he was declared an "enemy combatant" in the war against terrorism and sent to a military brig in South Carolina.

But Padilla challenged the government's right to hold him, a U.S. citizen arrested on U.S. soil, without ever proving charges in a court of law (as opposed to asserting them in a news conference). Facing an impending deadline to answer his petition before the Supreme Court – and no doubt mindful of an earlier decision requiring it to allow such enemy combatants captured on the battlefield to challenge their imprisonment – the Bush administration last week filed a criminal indictment against Padilla in federal district court.

It is the first time the administration has charged Padilla with a crime. In a telling omission, that sensational "dirty bomb" plot is not mentioned. The Justice Department's 31-page indictment charges Padilla with conspiracy to murder, kidnap and harm people overseas and with supporting terrorists. Yet it is a far cry from the government's original accusations.

The administration says that because it has now charged Padilla as a criminal and moved him from a military brig to a federal penitentiary, his pending case before the Supreme Court is now moot. Up against Monday's deadline to ask the court not to hear his case, it instead asked for an extension to file its petition, which the court granted.

The Supreme Court should still hear the case, not only for Padilla's sake but for the sake of every

American. The most recent lower-court decision on the case, from the U.S. 4th Circuit Court of Appeals, gives the administration the authority to detain enemy combatants such as Padilla indefinitely. That precedent cannot be allowed to stand.

The question presented in the Padilla case, to paraphrase his brief before the court, is this: Can the president of the United States arrest any U.S. citizen in America and hold him indefinitely without charge in the name of the war against terrorism?

As long as this war continues, it is a question that will remain relevant. And it is a question begging for a resounding “no” from the nation’s highest court.

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