

April 13, 2004

BY FACSIMILE AND FIRST CLASS MAIL

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Major General William K. Suter, USA (Ret.)
Clerk of the Court
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

Re: *Rumsfeld v. Padilla*, No. 03-1027

Dear General Suter:

Pursuant to Supreme Court Rule 32.3, Respondent Jose Padilla and Donna R. Newman, as next friend of Jose Padilla, respectfully request permission to lodge with the Clerk, for consideration by the Court, the Affidavit of FBI Agent Joe Ennis, dated May 8, 2002, in support of the issuance of the material witness warrant for the initial arrest of Mr. Padilla (hereafter "Ennis Affidavit"). In our merits brief filed with the Court, we made reference to the affidavit and indicated we would request under Rule 32.3 that it be lodged with the Clerk. *See* Brief of Respondent, No. 03-1027, at 2 n.2.

The Ennis Affidavit is a direct part of the events at issue in this case. As described in the Government's brief, "On May 8, 2002, Padilla flew to Chicago from Pakistan, with an intermediate stop in Switzerland. Upon his arrival in Chicago, *he was arrested pursuant to a material witness warrant* issued by the United States District Court for the Southern District of New York in connection with grand jury proceedings investigating the September 11 attacks." Brief for the Petitioner, No. 03-1027, at 4 (emphasis added). The Ennis Affidavit is the affidavit provided to the District Court to secure the material witness warrant referenced in the Government's brief.

The Ennis Affidavit is part of the record of the original grand jury proceeding involving Mr. Padilla. However, after Mr. Padilla had been arrested on the material witness warrant, he was seized by the military pursuant to an order of the President at issue in this case. Court-appointed counsel in the grand jury matter, Donna R. Newman, then filed a petition for habeas corpus challenging Mr. Padilla's seizure by the military. This petition was assigned a separate docket number by the District Court. Although, as stated above, the Ennis Affidavit *is* part of the record of the original grand jury proceeding, it apparently is not contained in the record of the habeas

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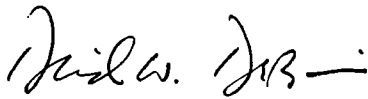
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corpus action. For that reason, we are utilizing the procedure of Rule 32.3 to ask that it be lodged with the Clerk. The Ennis Affidavit provides a more detailed description of matters addressed in the Declaration of Michael H. Mobbs, Special Advisor to the Under Secretary of Defense for Policy, which is part of the record in the habeas corpus proceeding and is cited by the United States in its brief. *See id.* at 4 (citing Pet. App. 167a-172a). Without discussing the contents of the Ennis Affidavit in this public letter, Respondent believes the Ennis Affidavit may aid the Court's understanding and consideration of this case. If you or the Court would like a further description of the contents of the Ennis Affidavit and why we seek to have it lodged, we will provide that further description under seal.

The Ennis Affidavit remains sealed as grand jury material (although a small portion of the Affidavit already has been unsealed, *see* Joint Appendix at 72). The Affidavit does *not* contain classified national security information, and the Affidavit was shown, during the pendency of the grand jury proceeding, to Ms. Newman and co-counsel Andrew G. Patel. Without indicating its position regarding the instant request, the Government has stated that, if the Court allows the Ennis Affidavit to be lodged, the Government will take the necessary steps to lodge the affidavit under seal as grand jury material.

Thank you for your consideration.

Sincerely,



David W. DeBruin
Counsel for Respondent Padilla in No. 03-1027

cc: The Honorable Theodore B. Olson
Solicitor General of the United States

U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

April 21, 2004

Honorable William K. Suter
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Donald H. Rumsfeld, Secretary of Defense v. Jose Padilla and Donna R.
Newman, Next Friend of Jose Padilla, S. Ct. No. 03-1027

Dear Mr. Suter:

On April 13, 2004, respondent in the above-captioned case proposed lodging with the Clerk the affidavit in support of the material witness warrant for Jose Padilla. Counsel explained in the letter that, if the Clerk requested the lodging, the government would make arrangements to have the affidavit lodged with the Court. In response to your request for the lodging, we are submitting ten copies of the affidavit with this letter. Because the affidavit was filed under seal and remains under seal as part of sealed grand jury proceedings in the Southern District of New York, we are submitting the affidavit under seal.

Sincerely,

Theodore B. Olson
Solicitor General

cc: See Attached Service List