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## **Bomb Plot Suspect Must Be Charged or Freed**

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COLUMBIA, S.C -- In a stinging rebuke to the Bush administration, a federal judge ruled the case of "dirty bomb" suspect Jose Padilla is a matter for law enforcement -- not the military -- and ordered the government to charge him or let him go.

Padilla's more than 2 1/2 years in custody, most of it spent in a Navy brig, don't seem closer to an end, however, because Justice Department spokesman John Nowacki said the government will appeal the ruling.

U.S. District Judge Henry Floyd in Spartanburg, S.C., ruled Monday that the government can not hold Padilla indefinitely as an "enemy combatant," a designation President Bush gave him in 2002. The government views Padilla as a militant who planned attacks on the United States, including with a "dirty bomb" radiological device.

Floyd wrote in his 23-page opinion that to rule in favor of the government "would not only offend the rule of law and violate this country's constitutional tradition," it would be a "betrayal of this nation's commitment to the separation of powers that safeguards our democratic values and individual liberties."

Floyd, appointed by Bush in 2003, gave the administration 45 days to take action.

Padilla's attorney, Andy Patel, said his client is an American citizen who has the right to defend himself in court against charges or else be released.

"The real issue in this case is Mr. Padilla's right to have that jury," he said. "That's not just Mr. Padilla's right, that's every American citizen's right."

Michael Ratner, president of the Center for Constitutional Rights, called Floyd's order a significant blow to the administration. "It's a genuine limitation on the president's belief that he can do what he wants in the war on terror," said Ratner, whose group represents scores of detainees at the U.S. naval base at Guantanamo Bay, Cuba.

The administration has said Padilla, a former Chicago gang member, sought to blow up hotels and apartment buildings in the United States in addition to planning an attack with a radiological device.

Padilla was arrested at Chicago's O'Hare International Airport in 2002 after returning from Pakistan. The federal government has said he received weapons and explosives training from members of al-Qaida.

Deputy Attorney General James Comey last year used a news conference to detail claims against Padilla. Comey asserted that if Padilla had been handled by the usual criminal justice system, he could have stayed silent and "would likely have ended up a free man."

During court arguments last month, his attorneys challenged the government to prove its case or release Padilla.

"If everything you say about Jose Padilla is true, prove it," said Denyse Williams, executive director of the American Civil Liberties Union in South Carolina, which filed a brief in support of

Padilla's attorneys. ``Everybody says the war on terror could last a lifetime. If they can do it to him, they can do it to others."

David Salmons from the U.S. Solicitor General's Office countered at the time that the president has the right to detain any enemy combatant while the United States is fighting al-Qaida. But he added that there's no risk the president may round up citizens and detain them.

Padilla, a New York-born convert to Islam, is one of only two U.S. citizens designated as enemy combatants. The second, Louisiana native Yaser Hamdi, was released in October after the Justice Department said he no longer posed a threat to the United States and no longer had any intelligence value.

Hamdi, who was captured on the battlefield in Afghanistan in 2001, gave up his American citizenship and returned to his family in Saudi Arabia as a condition of his release.

Despite the legal win, Patel was not ready to celebrate yet.

``When my client can join the party, we can all celebrate," he said. ``And when I say join the party, that means whether he goes home to his family or when he gets his day in court, then we can all celebrate."