

DIA FAILED TO PROTECT JOSE PADILLA'S WELFARE

On June 11, SCOTUS denied cert in Jose Padilla's suit against Donald Rumsfeld, former DIA Director Lowell Jacoby, and others at DOD for his denial of habeas corpus and abusive detention. On June 28, DOD responded to a FOIA Jeff Kaye submitted on September 8, 2010.

There's a lot in the IG Report Jeff received in response—on whether detainees at Gitmo or other non-SOCOM facilities were administered drugs as part of interrogation (the report concludes they were not)—of import that Jeff and Jason Leopold report on here.

In this post, though, I want to look at why DOD may have held off on responding to Jeff's FOIA until after SCOTUS rejected Padilla's suit.

As Jeff and Jason report, one of the more inflammatory things revealed in the unredacted parts of the report is that when "they" gave Padilla a flu shot on December 5, 2002 (the report doesn't say who administered the shot), he asked (following up on earlier comments made by an interrogator) whether they had given him truth serum.

What happened next is redacted—one of just about 5 redacted paragraphs in the entire report. DOD cited exemptions 1 (properly classified), 3 (protected by statute, including any function of the DIA), 6 (personal privacy) and 7c (law enforcement personal privacy) in withholding this information.

The following paragraph reads,

(U/FOUO) We concluded from the interrogation recordings and interviews with the interrogator and brig personnel present on December 5, 2002, that [redacted—Padilla] was not administered

a mind-altering drug during his confinement at the U.S. Naval Consolidated Brig, Charleston, South Carolina. We further concluded that **the [3-letter redaction] failed to follow legal review procedures established** by U.S. Joint Forces Command to **ensure that [redacted-Jose Padilla's] welfare was protected** in accordance with guidance issued by the President. [my emphasis]

Then, the subsequent two paragraphs—which provide “Client Comment” and DOD IG’s response—are redacted.

We can be almost certain that DIA (headed at the time of Padilla’s detention by Jacoby) was the redacted rebuked entity because their response to this report is the only other section of the report that is substantially redacted and no other respondents to the report had any complaints about it, meaning the redacted response in the Padilla section must be a discussion of DIA’s response. The unredacted section of their response, however, makes it clear their own IG investigated the problem (albeit at the same time as DOD IG was doing so).

The DIA Inspector General (IG) investigated the **information gap** cited in Appendix II. The DIA IG report was provided on 12 August 2009. [my emphasis]

Still, we don’t know what DIA did that drew a rebuke from DOD’s Inspector General. It may be no more than misleading Padilla into believing he had gotten a truth serum, without prior approval for doing so by lawyers. (The paragraphs in question are only classified Secret, so they can’t be that significant.)

Or, it may be that the conclusion served to protect the President and Rummy.

Nevertheless, it is fairly clear that DOD’s IG

found that DIA didn't do what they needed to do to protect Padilla's welfare. And it sure looks like DOD sat on that information until SCOTUS ensured that Padilla would never have legal recourse for the abuse done to him.