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Jose Padilla, the [American citizen](#) detained as an enemy combatant after he was arrested by the Bush administration in May 2002, was denied contact with his lawyer, his family or anyone else outside the military brig for almost two years and kept in detention for almost four. His jailers made death threats, shackled him for hours, forced him into painful stress positions, subjected him to noxious fumes that hurt his eyes and nose and deafening noises at all hours, denied him care for serious illness and more.

This treatment was indisputably cruel, inhumane and shocking, in breach of the minimum standard required for anyone in American custody, especially a citizen. Some of it was torture, though Mr. Padilla should not have had to prove that to show his treatment was unconstitutional.

Seeking money damages of \$1 — to make a point about accountability — Mr. Padilla sued [John Yoo](#), the draftsman of legal policies for the Bush war on terrorism. Mr. Padilla said Mr. Yoo violated the Constitution by helping to shape policies that led to the unlawful detention and interrogation of Mr. Padilla and then writing legal papers to justify that approach.

In 2009, a Federal District Court in California [ruled](#) that Mr. Yoo was not immune from the lawsuit: the violations of rights Mr. Padilla alleged were “clearly established at the time of the conduct” and any “reasonable” federal official would have understood that.

But this week, in a misguided and dangerous ruling, a three-judge panel of the United States Court of Appeals for the Ninth Circuit [decided](#) that Mr. Padilla’s lawsuit cannot go forward because Mr. Yoo is immune. The unanimous opinion contends it was not “beyond debate” that Mr. Padilla, a citizen declared an enemy combatant, was entitled to the same protections as any accused criminal or convicted prisoner — or that his alleged treatment was clearly established to be torture in the years he endured it.

Until a year ago, the law gave officials so-called qualified immunity to shield them when they

performed responsibly. In holding them accountable for exercising power irresponsibly, it [required](#) simply that a reasonable person would have known about the right he violated. Last May, however, the Supreme Court [ruled](#) that “existing precedent” must put any question about such a right “beyond debate.”

That is an unworkable standard and the Ninth Circuit decision shows why. The Bush administration manufactured both “debates” — about torture and enemy combatants. Any future government can rely on this precedent to pull the same stunt as cover for some other outrage.

By using the “enemy combatant” category, the Bush administration stirred debate that had not existed about whether rights of an American citizen in custody depend on how he is classified. By coming up with offensive rationalizations for torturing detainees, it dishonestly stirred debate about torture’s definition when what it engaged in plainly included torture.

The Ninth Circuit was wrong to swallow those deceits and to dwell on whether Mr. Padilla’s mistreatment was torture. Even if somehow it did not qualify, its cruel, inhumane and shocking nature badly violated his rights as a citizen — and international law on the treatment of detainees. Even at the time, the issue was beyond debate, and Mr. Yoo should have known that.