

## A Note on *Hamdi v. Rumsfeld* (2004)

Yaser Esam Hamdi, a U.S. citizen of Saudi descent, was captured by the Northern Alliance in Afghanistan in 2001 while they fought the Taliban. He was declared an “enemy combatant” by the U.S. and detained at Guantanamo Bay until his American citizenship was discovered in April 2002. He was then transferred to U.S. naval brigs in Virginia and South Carolina, where he was held incommunicado. His father, as a next friend, brought a habeas corpus petition in a Virginia district court, alleging that his son’s detention violated the Fifth and Fourteenth Amendments.

The district court appointed a federal public defender as counsel, and ordered that counsel be granted access to Hamdi. The Fourth Circuit Court of Appeals held that the district court had given insufficient weight to the government’s security and intelligence interests, and that deference should be given to the political branches in times of war. On remand, the government submitted a memorandum by a low-level Defense Department official (the ‘Mobbs Declaration’) asserting the government’s claims against Hamdi. The district court, concerned about the hearsay nature of this memorandum, issued an order for the production of supporting materials for an *in camera* review. The government challenged the order, and the Fourth Circuit held that a factual inquiry or evidentiary hearing was not necessary, because Hamdi was captured in a foreign zone of active combat, and because “any inquiry must be circumscribed to avoid encroachment into the military affairs entrusted to the executive branch.” The Circuit Court also held that Hamdi’s detention was valid even under the Non-Detention Act, had in any case been authorized by Congress’ post 9/11 Use of Force authorization, and was not covered by Article 5 of the Geneva Conventions.

The U.S. Supreme Court vacated the Fourth Circuit judgment. As a threshold issue, Justice O’Connor wrote that Congress had authorized the detention of enemy combatants through the AUMF. However, the government cannot hold a U.S. citizen (even one captured overseas and declared an enemy combatant) indefinitely without providing certain due process rights granted to other citizens. In short, the valid government interest must be weighed against Hamdi’s liberty interest. In particular, the Court held that Hamdi had the right to receive notice of the factual basis for his detention, “and a fair opportunity to rebut the government’s factual assertions before a neutral decisionmaker.” However, these proceedings may be structured so as not to place a heavy burden on the political branches during a time of ongoing military conflict. Additionally, the burden of proof required of the government for such detentions is considerably lower than that usually required by due process.

Justice Souter, joined by Justice Ginsburg, dissented as to the holding that Hamdi’s detention was authorized by Congress. They concurred in the judgment that Hamdi should have the opportunity to challenge the government’s ‘enemy combatant’ classification and his detention.

Justice Scalia, joined by Justice Stevens (an unusual match), dissented, arguing that the Executive’s military power did not include the power to detain an individual without charging him with a crime.

Justice Thomas dissented, arguing that Justice O’Connor’s balancing approach effectively allowed courts to second-guess government decisions, and concluding that Hamdi’s habeas challenge should fail simply because his detention was authorized under the government’s war powers.