

**Replies and Comments:**

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**On the web**

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**Focus**

20.05.02: US District Ct, court of first instance, rules that Hamdi, a US citizen seized in Afghanistan and held as an enemy combatant, entitled to **immediate, unmonitored** meeting with public defender.

12.07.02: Ct of Appeals, 4th Circuit reversed and remanded: „Constitution’s commitment of conduct of war to political branches of [...] govt. requires ct’s respect.“ 296 F.3rd 278

14.08.02: District Ct again sided with Hamdi. „While it is clear that the Executive is entitled to deference regarding military designations of individuals, [...] the judiciary is entitled to (conduct) a meaningful judicial review [...]“ Ct unable to assess govt’s classification of Hamdi’s combatant status on evidence submitted. **Hamdi entitled to due process of law- 5th amendment.** – Quirin (1942) accused were afforded access to counsel.

08.01.03: On 3rd appeal, the CA 4th reversed and dismissed the matter, holding that the government had met its burden of proof. **Hamdi is constitutionally detained pursuant to war powers entrusted to executive.** 316 F3rd 450

Now what? Will the US Supreme Court hear the matter?

**Hamdi vs. US, vs. US, vs.US:**

**the Ping Pong Match of Repeated Review**

Hamdi is a very interesting case as it makes its way up, down, up, down, and undoubtedly up again, before it is finally decided by the US Supreme Court. Hamdi was captured in Afghanistan and removed to the US Naval facility in Guantanamo Bay, Cuba. The base is held by the US pursuant to a lease agreed to between the US and the Republic of Cuba in 1903, confirmed by a treaty in 1934. The lease is virtually a lease in perpetuity, until both parties agree to its termination.

It was discovered that Hamdi was a US citizen and he was removed from Guantanamo and is now incarcerated in a US Navy facility at Norfolk, Virginia, on the US mainland.

In May 2002, a public defender serving in the US District Court for the Eastern District of Virginia filed a request with the court for a writ of habeas corpus, to force the government to explain under what charges it was holding Hamdi. The US District Court is the court of first instance in the federal judicial system, the trial level. The magistrate ordered the government to allow the public defender **immediate, unmonitored access** to Hamdi. The government asked for a stay of the court’s order and appealed to the next level of the US federal judiciary, the US Court of Appeals for the 4th Circuit, the circuit in which Virginia lies.(This was actually the second appeal. The first was appeal was not of great consequence.) The 4th Circuit on 12.07.02 reversed the decision of the District Court and remanded (sent back) the case directing the lower court to evaluate the government’s argument in light of the seriousness of the military situation and in light of the constitution’s grant of control of war to the executive branch of government. **The judiciary is to maintain a proper place in the overall scheme of government, but the matter is not, as the government argues, beyond judicial review.** The District Court stated that though the executive is entitled to deference regarding military matters, a meaningful judicial review is appropriate. The court ruled that Hamdi is entitled to due process under the 5th Amendment to the US Constitution. The court reviewed the evidence that the government put forth to justify Hamdi’s detention. The court found it insufficient and ordered additional evidence to be submitted to justify the government’s action.

**The government again appealed to the 4th Circuit Court of Appeals. The court ruled in favor of the government,** that the district court had gone too far, that the government had met its burden of proof and dismissed the case. No further action was to be undertaken by the lower court. The only action remaining is a application to the US Supreme Court for a Writ of Certiorari. The granting of this writ is within the discretion of the Supreme Court. There is no appeal of the decision as a matter of right.

**Responsibility**

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