

US Supreme Court Dismisses alleged Al-Qaeda sleeper agent's appeal

The decision in the Al-Marri case means the president still has the power to hold 'enemy combatants' indefinitely without charge.

By Warren Richey / Staff writer of The Christian Science Monitor
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It would have been the biggest case of the term resulting in a potential landmark decision, but on Friday the US Supreme Court decided to dismiss the appeal filed by Ali Saleh Al-Marri, the last man being held on US soil as an enemy combatant. In a one paragraph order, the high court dismissed the case and approved Mr. Al-Marri's transfer from his solitary confinement cell in the Navy brig in Charleston, South Carolina, to a federal lockup in Illinois.

The move means that the justices will not examine the president's power to order the indefinite military detention without charge of anyone he deems to be an enemy combatant. The high court had agreed to take up Al-Marri's case. Oral argument was expected in late April.

But last week, President Obama ordered Al-Marri released from military detention and placed within the criminal justice system. Al-Marri has been held in the brig for five years and eight months.

Government lawyers argued that Al-Marri's Supreme Court case was now moot.

Lawyers for Al-Marri urged the high court to move forward, hear the case, and decide it. They said their client might still be re-designated as an enemy combatant and returned to his old cell in the Navy brig. In addition, they said by moving Al-Marri into the criminal justice system the government might be attempting to dodge high court review and thus preserve a federal appeals court precedent that upheld the president's military detention power.

In dismissing the case, the justices also vacated the federal appeals court decision in the Al-Marri case. While the action eliminates any legal precedent with Al-Marri's name attached, it does not undercut other important precedents supporting the open-ended military detention of enemy combatants within the US.

One such precedent is a 2004 Supreme Court decision in a case called *Hamdi v. Rumsfeld*. The other is a Fourth US Circuit Court of Appeals decision handed down in 2005 involving the case of Jose Padilla.

"We would have preferred that they issue a ruling making clear that no president has this power, but we are pleased that the Supreme Court has vacated the lower court's ruling [in Al-Marri's case]," said Al-Marri's lawyer, Jonathan Hafetz of the American Civil Liberties Union.

He said Al-Marri is now focused on his criminal case. "He is pleased he is going to finally get his day in court," Mr. Hafetz said.

Al-Marri is a citizen of both Qatar and Saudi Arabia. He is charged in a two-count indictment with conspiring to provide material support to Al-Qaeda and with actually providing material support to the terror group by volunteering his own services. Government officials have said he came to the US with his wife and children on September 10, 2001 posing as a college student. They said he was an Al-Qaeda sleeper agent, pre-positioned to engage in future terror attacks.

Al-Marri's lawyers have denied that he had any involvement with Al-Qaeda.

Richard Samp, chief counsel at the Washington Legal Foundation praised the high court's action. In a statement, he said that with the dismissal of the Al-Marri case the tally of Bush-era court decisions amounts to "a ringing endorsement of the executive branch's authority to detain suspected enemy combatants outside the criminal justice system."

He added: "The Hamdi and Padilla decisions remain in place and are strong precedents supporting the authority of the president, with the consent of Congress, to detain enemy combatants – even if they are captured within the US and even if they are US citizens." No everyone agreed with this assessment.

"We applaud the Supreme Court for vacating a decision that accepted the extraordinary claim that the president has free-wheeling authority to detain indefinitely people living in the United States," Emily Berman of the Brennan Center for Justice at NYU School of Law said in a statement. "But we are still disappointed that the court did not take this opportunity to firmly clarify the limits of detention power. It's up to President Obama now to affirmatively renounce the domestic detention power claimed by his predecessor," she said.

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