

Nevermind: Hamdi wasn't so bad after all.

By [Dahlia Lithwick](#) | Posted Thursday, Sept. 23, 2004, at 5:37 PM ET

Hamdi: Terror alert downgraded and deported

If you've followed the government's claims in the Yaser Esam Hamdi case, you would think the guy was some unstoppable, lethal killing machine, the Taliban's own Hannibal Lecter—a man so evil, he requires permanent warehousing down a bottomless hole.

So the [Bush administration's decision to release Hamdi](#) is stunning, given that only months ago he was so dangerous that the government insisted in front of the U.S. Supreme Court and the world that he could reasonably be locked up for all time, without a trial or criminal charges. At [oral argument before that court](#), Deputy Solicitor General Paul D. Clement insisted that "[n]o principle of the law or logic requires the United States to release an individual from detention so that he can rejoin the battle," especially, while we "still have 10,000 U.S. troops in Afghanistan."

A scant few months later Hamdi will be on a government jet, flying home to Saudi Arabia with an invisible "whoops" note pinned to his lapel. What does John Ashcroft think Hamdi will do back in Saudi Arabia? Open a Krispy Kreme franchise and give speeches about the wonders of American democracy? **The administration thinks it has solved the problem of his future menace with a clutch of mostly unenforceable restrictions: He is, according to the proposed agreement, barred from traveling to Afghanistan, Iraq, Israel, Pakistan, Syria, the West Bank, the Gaza Strip, and the United States. He must renounce his American citizenship and is barred from suing the United States for injuries sustained during his detentions.**

Did Hamdi spontaneously stop being dangerous? Or was he never really a danger in the first place?

Hamdi was just 20 when he was captured on the battlefield in Afghanistan, and despite several alleged battlefield screenings, it took the government a while to determine that he had been born in the United States and lived here for a few years, before his family returned to Saudi Arabia. Once it became known that he was a U.S. citizen, he was swiftly moved from Guantanamo to military brigs in Virginia and South Carolina, where he was held in solitary confinement for over two years, denied access to an attorney, and never charged. When the Supreme Court decided this summer in an 8-1 decision that even "enemy combatants" have the right to some kind of fair hearing before a neutral judge, administration officials had a chance to lay out the whole hideous litany of Hamdi's misdeeds.

Instead, they let him go. Because Hamdi was, of course, never really the Taliban's Dr. Evil, or even its Mini-Me. **He was slammed into solitary on some flimsy assertions contained in what's known as the two-page "Mobbs Declaration."** That document was authored by the adviser to the undersecretary of defense policy—a bureaucrat who wasn't actually *in* Afghanistan when Hamdi was captured, yet **felt confident swearing that Hamdi was an enemy combatant**, because, according to his captors from the Northern Alliance, he was "affiliated with a Taliban military unit."

Any other American suspect, including serial killers and Timothy McVeigh, would have been given an opportunity to dispute that bare claim; to tell his side of the story—which, according to Hamdi's father, was that Hamdi was in Afghanistan for humanitarian reasons. But we never heard that story and we never will. Yaser Esam Hamdi was evidently too dangerous even to set foot in a courtroom. He might have gaveled someone to death.

Hamdi wasn't just a national danger because he was an alleged Taliban warrior, however. The administration justified holding him for nearly three years without a hearing because he allegedly had vital intelligence information that would come gushing forth after months of relentless interrogation. Sometimes, when I can't sleep at night, I like to imagine what those months upon months of Hamdi interrogations sounded like:

Interrogator: "Mr. Hamdi. What did you see when you were fighting for the Taliban?"

Hamdi: "Um. Mountains?"

Interrogator: "Mr. Hamdi. Have you ever met Osama Bin Laden or any of his high-ranking confederates?"

Hamdi: "No."

Interrogator: "Mr. Hamdi. Can you definitively prove to us that you have never met Osama Bin Laden or any of his high-ranking confederates?"

Hamdi: "Um. No."

Even if Hamdi and his interrogators did this 4,000 times a day, every day, I'm willing to bet they had pretty much exhausted his total intelligence value at Day 3. So what were these endless months of interrogation really for?

[Hamdi's case](#), decided by the Supreme Court earlier this year, was supposed to represent a high-water mark for American freedoms during wartime. He had fought for and won his day in court, an opportunity to question his captors, and a chance at national vindication at the end of it all. Hamdi's name stood for the proposition that the Bush administration couldn't run roughshod over the courts and the law in its pursuit of the war on terror. It now stands for precisely the opposite: With a yawn and a shrug, the administration sidestepped the courts and the judicial process once again, abandoning this criminal prosecution altogether and erasing the episode from our national memory. Hamdi has been stripped of his citizenship and his freedom to travel, and sent packing to his family. The rights and processes guaranteed him by the Supreme Court have been yanked away one last time, by an executive branch that held him for years for no reason and smugly claims now that it was finished with him anyhow.