



Written by [Thomas R. Eddlem](#) on March 9, 2009

Supreme Court Almost Vindicates Trial Rights

Al-Marri was declared an “enemy combatant” by President Bush in 2003, and then transferred to a naval brig in South Carolina. President Barack Obama decided last month to charge al-Marri in criminal court with conspiracy, and ruled that he be transferred to civilian custody and tried in Peoria, Illinois, where he was apprehended.S



The Fourth Circuit Court of Appeals had ruled earlier that the president has the power to detain legal U.S. residents indefinitely, and the fact that the Supreme Court vacated the appellate court decision means that future courts are not supposed to draw precedent from the appellate decision. What it means is that — more than seven years after al-Marri and others were detained without charges — U.S. courts have officially yet to rule either way about whether the president has the power to detain people indefinitely without charging them.

Al-Marri’s attorney Jonathan Hafetz was partially satisfied by the ruling. “The fact that the government did not defend its previously claimed detention power and that the Supreme Court wiped out the legally bankrupt lower-court ruling,” Hafetz [told the New York Times](#), “should make clear that in the United States no president can imprison legal residents or American citizens without charges or trial by calling them ‘enemy combatants.’ ”

But apparently, that message is not clear to many in the press. *USA Today* reported the following lead on its blog on the same decision: “The president has the authority to detain people without charge, the Supreme Court decided today.”

USA Today’s blog was wrong, maybe.

If men can sit in prison cells and be tortured for seven years without even being charged with a crime, and at the end of those seven-plus years not get a single court decision in their favor, then maybe that is the reality of freedom in America today. If the courts can’t even bring themselves to render a decision on such a basic freedom as the right to trial and due process after seven years, then indecision for such a length of time *becomes* a type of decision.

Ali al-Marri may be a villain, or he may be among the [many other innocents](#) detained and tortured without due process under the Bush administration. We’ll only know when the trial ends.

Meanwhile, the Obama administration seems intent upon preserving these same denials of basic human



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rights to men in detention. Obama has indicated that he will close down Guantanamo, but that was never the site of the worst forms of abuse of inalienable rights. The *Washington Post* printed a [worthwhile editorial](#) March 7 about the injustices and lack of due process for those held at Bagram Air Force base in Afghanistan. More editorials about the Obama administration's continued attacks on basic human and constitutional rights may shake the consciences of some involved in the abuses and provoke them to respect constitutional restraints on due process.

Or freedom-loving Americans should at least hope so.



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