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The First (and Quite Bad) Legal Interpretation of the Military Commissions Act of 2006

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Breaking News



A federal district court in Washington, DC yesterday issued the first judicial interpretation of the Military Commissions Act of 2006 in the very same legal case that the Supreme Court ruled on in June.

The case is *Hamdan v. Rumsfeld*, in which one of the Guantánamo detainees challenged the President's November 13, 2001 executive order creating deeply unfair "military commissions" to try allegations of war crimes. The detainee, Hamdan, won in the Supreme Court.

The President's response, on September 6, was to urge Congress to enact a new statute that established anew military commissions and, oh, by the way, terminated detainees' rights to mount meaningful challenges to their detentions and trials by these new commissions. A pre-election Congress, cowed by the prospect of the kind of [attack-ads that dogged Max Cleland in 2002](#), representatives of both parties almost fell over themselves in the haste to curtail detainees ability to enter court and make the simple claim that they had been picked up by mistake.

Yesterday, on remand from the Supreme Court, Hamdan's claims are being booted out of court.

Yesterday's ruling will only be the first move in a complicated series of judicial opinions that explore the consequences of Congress's sweeping effort at jurisdiction-stripping: The courts will have to plunge into detailed debates about the origins and consequences of the Constitution's [Habeas Suspension Clause](#); they will have to decide complex issues of retroactivity; and they will have to make fine-grained distinctions about the nature and scope of the United States' international law obligations.

It's noteworthy the congressional sponsors of these jurisdiction-stripping efforts, such as Senator Lindsay Graham, argued that federal court review needed to be cut short because it imposed unnecessary costs and delay. Quite the opposite will be true: The legislation in fact forces courts into direct confrontation with some of the most intractable issues of constitutional law. The law will be in litigation for years to come, a [Jarndyce v. Jarndyce](#) for the post-9/11 era.

In Hamdan

yesterday, the district court held that Hamdan lacks a "substantial connection" with the United States. By way of explanation, Hamdan was captured in the course of U.S. military operations in Afghanistan--not, notably, on a battlefield; indeed, his detention is hard to justify in terms of the traditional laws of war.

The court recognized that "Hamdan's lengthy detention beyond American borders but within the jurisdictional authority of the United States is historically unique." Indeed, this is the first time in American history that the nation has established a global system of [no-process seizure and detention](#). And it is the first time we have swept up individuals not only off foreign battlefields, but also from countries that *neighbored* the battlefield, and claimed the authority to hold them without any process whatsoever--indeed without even bothering with the abbreviated battlefield hearings used since World War II to determine whether a person has been correctly picked up.

The role of the federal courts has historically been to apply the fundamental principles enshrined in the federal Constitution--*first* principles of equality and liberty--to shifting circumstances. Fidelity to the Constitution, that is, does not mean a slavish and mechanical devotion to tests and doctrines devised for other ages: It means asking what the deep-rooted principles and values that the nation holds dear, and that were embodied at the Founding.

Yesterday's ruling from the Washington district court does leave Hamdan with no redress, but it may well eliminate his opportunity to make a meaningful showing that he was wrongly picked up. As the rest of the world looks at Guantánamo and asks why it is the United States seems determined to keep holding literally hundreds of people who may well have absolutely no connection to terrorism, it is worth asking ourselves quite how the nation's first principles are being respected and advanced by today's ruling.

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