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# Case # 3 *Hamdan v. Rumsfeld* (2006)

## Background, Facts, and Constitutional Questions

**Directions:** Using your background knowledge and the information provided about the case, answer the constitutional question as if you were a Supreme Court Justice. Explain your answer using specific constitutional principles and provisions.

### CONSTITUTIONAL QUESTIONS

1. May the rights protected by the Geneva Conventions be enforced in federal court through *habeas corpus* petitions?
2. Was authority to try Hamdan and others by military commission for alleged war crimes in the War on Terror authorized by the Congress or the inherent in the powers of the president?

According to Pentagon documents, Salim Ahmed Hamdan, a Yemeni citizen, first met Osama bin Laden, al Qaeda's leader, in 1996. The records detail that Hamdan received weapons training and became bin Laden's personal driver and bodyguard, serving in that capacity until Afghan militia forces captured him in Afghanistan after the September 11, 2001 al Qaeda attacks on the United States. He was turned over to the U.S. military and imprisoned at Guantanamo Bay without a trial.

Hamdan was accused of delivering weapons and other supplies to be used against American troops, and held for trial before a military commission. The U.S. government classified him an "unprivileged belligerent." This means that, because he was not a member of a nation's uniformed military, he did not have the right to engage in hostilities or offer aid to America's enemies on the battlefield.

In April 2004, Hamdan petitioned for a writ of *habeas corpus*, maintaining that his imprisonment violated the common law of war and that the

procedures used in his case violated the Uniform Code of Military Justice (UCMJ) and the Geneva Conventions. In *Hamdi v. Rumsfeld*, the Court had recently ruled that detainees at Guantanamo have the right to challenge their classification as enemy combatants and to challenge the government's factual assertions before a neutral decision-maker. But before the federal district court ruled on his April petition, Hamdan received a hearing from a military tribunal, which designated him an enemy combatant. Citing security concerns, the government excluded Hamdan from certain parts of his military tribunal hearing.

The government argued that Congress had authorized the use of military commissions to try offenders who violated the law of war through UCMJ Article of War 15, which stipulates that military commissions have jurisdiction to try offenders or offenses against the law of war in "appropriate cases." The government also argued that Article of War 21 gave the president additional authority

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to “invoke military commissions when he deems them necessary.”

According to UCMJ, the rules governing military commissions are generally the same as those that apply to courts martial. For example:

- Congress defines offenses.
- Parties know the procedures and regulations of the trial in advance.
- The commission uses normal rules of evidence.
- Presiding officers are existing military judges with expertise in the particular offenses involved in each case.
- The final verdict of the commission is subject to review by a specialized court of military justice composed of judges named by the President and confirmed by the Senate.

Military Commission Order No. 1, issued by President Bush on March 21, 2002, however, reflected some important differences from standard court martial rules:

- The commission can exclude the defendant and his civilian attorney from any part of the proceedings. Reasons for the presiding officer to do so include protection of classified information, safety of participants and witnesses, and other national security interests.
- Both the defendant and his attorney can be prevented from knowing what evidence was presented during the closed session.
- Although the defendant’s military attorney can access the information presented during closed sessions, the presiding officer can forbid the defendant’s military attorney from telling the defendant what took place.
- Unlike the rules of evidence in a civilian trial or in a court martial, admissible evidence can include hearsay, unsworn testimony, or information gathered through torture.