

# Comparing Supreme Court Decisions

**Directions:** In the table below are excerpts from the majority and dissenting opinions in *Johnson v. Eisentrager* (1950). As you evaluate Supreme Court rulings related to the war on terror, decide whether each twenty-first century opinion listed aligns more closely with that of Justice Robert Jackson or that of Justice Hugo Black. Then write an excerpt of each Justice's opinion in either the Jackson column or the Black column. Finally, use a highlighter in the table to indicate which was the majority opinion in each case and answer the question at the bottom of the table.

What form of due process applies?	The privilege of the writ of <i>habeas corpus</i> does not apply in this situation; the policy determined by the president and Congress will be carried out.	The privilege of the writ of <i>habeas corpus</i> and/or other due process protections apply in this situation in order to prevent illegal imprisonment.
<i>Johnson v. Eisentrager</i> (1950)	<b>Justice Jackson:</b> "The writ, since it is held to be a matter of right, would be equally available to enemies during active hostilities as in the present twilight between war and peace. Such trials would hamper the war effort and bring aid and comfort to the enemy.... Executive power over enemy aliens, undelayed and unhampered by litigation, has been deemed, throughout our history, essential to war-time security...This statute was enacted or suffered to continue by men who helped found the Republic and formulate the Bill of Rights, and although it obviously denies enemy aliens the constitutional immunities of citizens, it seems not then to have been supposed that a nation's obligations to its foes could ever be put on a parity with those to its defenders."	<b>Justice Black:</b> "Our constitutional principles are such that their mandate of equal justice under law should be applied as well when we occupy lands across the sea as when our flag flew only over thirteen colonies...Our nation proclaims a belief in the dignity of human beings as such, no matter what their nationality or where they happen to live. <i>Habeas corpus</i> , as an instrument to protect against illegal imprisonment, is written into the Constitution. ... I would hold that our courts can exercise it whenever any United States official illegally imprisons any person in any land we govern. Courts should not for any reason abdicate this, the loftiest power with which the Constitution has endowed them."

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<p><b>Case #1:</b>  <i>Hamdi v. Rumsfeld</i>  (2004)</p> <p>Justice O'Connor;  Justice Thomas</p>		
<p><b>Case #2:</b>  <i>Rasul v. Bush</i>  (2004)</p> <p>Justice Stevens;  Justice Scalia</p>		

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<b>Case #3:</b> <i>Hamdan v. Rumsfeld</i> (2006)  Justice Stevens; Justice Scalia		
<b>Case #4:</b> <i>Boumediene v. Bush</i> (2008)  Justice Kennedy; Justice Scalia; Chief Justice Roberts		

## Critical Thinking Question

In his dissent in *Hamdi v. Rumsfeld* (2004), Justice Stevens wrote,

The Founders well understood the difficult tradeoff between safety and freedom. “Safety from external danger,” Hamilton declared [in *Federalist No. 8*] “is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war; the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty, to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they, at length, become willing to run the risk of being less free.” The Founders warned us about the risk, and equipped us with a Constitution designed to deal with it.

Justice Stevens quoted Hamilton’s warning about people’s willingness to trade freedom for security. Assess Hamilton’s warning. To what extent does this warning apply to twenty-first century America? To what extent do you believe fair trial decisions in the war on terror have protected both liberty and security?