

Week 10

# **THE CONSTITUTION DURING WAR TIME: HABEAS CORPUS**

Section B

(Mar 12, 2008)

# HABEAS CORPUS

- **Article 1, Sec 9 (2) of the Constitution: The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.**
- A writ of habeas corpus is a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody.
- The writ of habeas corpus is “the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.”

# HAMDI V. RUMSFELD

## No. 02-6696 (June 28, 2004)



# The Enemy Combatant



# FACTS

- Hamdi is an American citizen, was captured in Afghanistan for allegedly taking up arms with the Taliban.
- The Military Commission, relying on the Mobbs Declaration, classified as an “enemy combatant”
- Detained indefinitely at a naval brig in Charleston, S.C.
- His father filed a habeas petition on his behalf, claiming that he is detained in violation of the Due Process Clause.

- The Federal District Court found that the Mobbs Declaration, standing alone, did not support Hamdi's detention.
- The Fourth Circuit Court of Appeals reversed, holding that Hamdi's capture in a combat zone was an undisputed fact so no evidentiary inquiry is necessary under the law of war.

# QUESTION BEFORE THE UNITED STATES SUPREME COURT

- Whether Hamdi had received sufficient process to satisfy the Due Process Clause;
- In other words, what process is due to a citizen who disputes his enemy-combatant status;
- But first, whether the President has the authority to detain citizens who qualify as “enemy combatants.”

# OPINION OF THE COURT

- Justice O'Connor delivered the 6-3 majority opinion, holding that the Due Process Clause demands that a citizen held as an enemy combatant be given a meaningful opportunity to contest the factual basis for that detention before a neutral decision-maker (a civilian court).

# RATIONALE

- The Authorization for Use of Military Forces (AUMF): use all necessary and appropriate force against nations, organizations, or persons associated with the September 11, 2001, terrorist attacks.
- Detention is implied for the duration of the particular conflict.
- The war on terrorist attacks is an unconventional war (indefinite) so the detention can be for perpetuity.

- State interests:
  - the reason for indefinite detention is to prevent the enemy combatant to return to his belligerence against the state
  - Law of War, the Commander-in-Chief, and Military Courts (“Some Evidence” Standard)
- Individual interests:
  - Liberty interest, the most fundamental
  - Freedom from erroneous deprivation of this liberty

- Justice is a balancing act.
- Mathews v. Eldridge, 424 U.S. 319 (1976)
  - The severity of deprivation
  - The burden of the government for procedural due process
  - The risk of making an erroneous judgment
- The Court held that Mobbs Declaration (Michael Mobbs) is not undisputed because it is based on “some evidence” and hearsay.

- “A state of war is not a blank check for the President when it comes to the rights of the Nation’s citizens.” P. 537
- “Unless Congress acts to suspend it, the Great Writ of habeas corpus allows the Judicial Branch to play a necessary role in maintaining this delicate balance of governance as an important judicial check on the Executive’s discretion in the realm of detentions.” P. 537-8

# Next Class Meeting

- Q & A for the final