

Handout D: The War on Terror and Separation of Powers Answer Key

1. Main idea of each of these decisions:

- *Hamdi v. Rumsfeld* (2004)—affirmed the authority of the government to detain enemy combatants, but ruled that detainees who are U.S. citizens must have the rights of due process, including the right to challenge their enemy combatant status before an impartial authority.
- *Hamdan v. Rumsfeld* (2006)—Detainees had the right to appeal their detentions in federal court; invalidated military commissions established by President Bush because they were inconsistent with the Uniform Code of Military Justice and with the four Geneva Conventions governing such questions.
- *Boumediene v. Bush* (2008)—Enemy combatant detainees at Guantanamo Bay were entitled to the Fifth Amendment’s protection of due process. Congress lacked the power to divest the federal courts of jurisdiction to entertain *habeas* petitions from noncitizens detained at Guantanamo Bay.

The Supreme Court had ruled for the first time that Guantánamo detainees were entitled to submit *habeas corpus* petitions directly to federal judges in Washington to determine whether the U.S. government had enough evidence to justify their continued open-ended detention without charge.

2. Accept reasoned responses; students may suggest that while Congress makes the laws and the president is responsible for executing them, the judicial branch also has an important role as court rulings interpret and apply constitutional principles to wartime controversies. Also, the separation of powers doctrine is a vital principle in the constitutional operation of the United States government. In these cases the Supreme Court’s interpretations of the constitutional responsibilities of the other two branches help maintain the division of power that the Framers intended to prevent tyranny.

“The test for determining the scope of this provision must not be subject to manipulation by those whose power it is designed to restrain.”

—*Boumediene v. Bush* (2008)