

Even in Wartime, Rights Are Needful — Comments on *Hamdi* and *Hamdan*

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Abstract

This essay, through an analysis of two judgments, *Hamdi* and *Hamdan*, explores rights under conditions of armed conflicts. It agrees with the conclusions of these two judgments, but offers different arguments. This essay argues that in *Hamdi* it is better for the Supreme Court to say, since the Congress neither authorized administrative detention nor suspended the writ of habeas corpus, personal liberty should be guaranteed. It also argues that in *Hamdan*, the war between the US and Afghanistan should be regarded as an international armed conflict. *Hamdan*, according to the Third Geneva Convention, should be therefore treated as a prisoner of war and tried by a military or civil court. This essay considers that due to the insistence of several judges, and reference to the Geneva Convention, rights were protected.

Key Words: writ of habeas corpus, Due Process Clause, Military Commission, Geneva Convention, war on terror