

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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Hamdan Decision Again Demonstrates Why Federal Courts Better for Terrorism Trials, TCP Says

WASHINGTON, D.C. -- Virginia Sloan, president of The Constitution Project (TCP), offered the following comment on [today's decision](#) by the U.S. Court of Appeals for the D.C. Circuit that the military commissions lacked the authority to try Salim Hamdan because "material support for terrorism" was not recognized as a war crime at the time of his actions:

"The D.C. Circuit's decision demonstrates yet again that military commissions cannot stand up to the track record of our traditional federal courts, which have already handled over 400 terrorism prosecutions. In contrast with federal courts, basic jurisdictional and other fundamental questions remain unresolved in military commissions. Today's decision reaffirms The Constitution Project's longstanding position that, whenever possible, prosecutions in terrorism cases should be brought in our civilian justice system."

TCP's Liberty and Security Committee outlined the advantages of the federal court system for trying terrorism cases in its 2008 report, [A Critique of National Security Courts](#).

A three-judge panel of the U.S. Court of Appeals for the D.C. Circuit ruled that material support for terrorism is not a war crime under international law, and therefore is outside the jurisdiction of military commissions for crimes committed before 2006. It was not until the Military Commissions Act of 2006 that Congress enacted legislation stating that material support for terrorism could be tried in commissions as a war crime. The Justice Department could ask all the judges of the D.C. Circuit to hear the case, instead of just the limited panel, or appeal today's ruling directly to the U.S. Supreme Court.

Salim Hamdan was convicted of providing material support to Al Qaeda through his work as a driver for Osama bin Laden. Hamdan served his sentence and has since been returned to Yemen and released.

[About The Constitution Project](#)

Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project (TCP) brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time. TCP seeks to reform the nation's broken criminal justice system and to strengthen the rule of law through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.



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