

**STATEMENT OF 450 PROFESSORS OF LAW ON *HAMDAN v.*
RUMSFELD
OCTOBER 26, 2005**

In 2001, hundreds of law professors joined together to urge the Congress of the United States to reject the President's creation of military commissions to try individuals that the President designates as suspected "unlawful combatants." We expressed our belief that this Presidential action "undermines the tradition of the Separation of Powers," "does not comport with either constitutional or international standards of due process," and "violate[s] the United States' binding treaty obligations." See Letter from Over 600 Law Professors to Senator Patrick Leahy, Chair, Senate Judiciary Committee, December 5, 2001, 147 Cong Rec S13276 (Dec. 14, 2001).

The Supreme Court of the United States is now considering *Hamdan v. Rumsfeld*, a case that involves these issues. Of the many legal issues facing the country, we see the problems presented by this case as having special relevance for law professors. At their core, the central issues require addressing the relationship between the President's constitutional powers as Commander-in-Chief and the existing constitutional, statutory, and international rules and tribunals that govern the conduct of war.

In 2001, we explained that the creation of military commissions to which the President can appoint individuals to sit as "judges" and to which the President can send individuals to be "judged" violates central American constitutional commitments. In 2004, in cases involving "enemy combatants," the Supreme Court required that detention of individuals captured in the Afghani conflict with the United States must comport with due process, backed by judicial review. Those opinions do not address whether the President can create ad hoc tribunals that he empowers to assess guilt or innocence and to mete out such criminal penalties as life imprisonment and the death penalty. Further, the Court did not address presidential powers in the context of the conflict against al Qaeda. Indeed, since the Court ruled, public disclosures of misuse of executive power related to the detention of individuals have continued.

We, the undersigned law professors at many law schools, urge that lawyers, jurists, and the public take every opportunity to reassert the rule of law, to reiterate America's constitutional commitments, and to insist on humane treatment that gives each person a fair opportunity to be heard before impartial tribunals, not ones controlled by the executive. We hope that the United States Supreme Court will now grant review of *Hamdan v. Rumsfeld* to address these very foundational questions.