

BREYER, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 05–184

SALIM AHMED HAMDAN, PETITIONER *v.* DONALD
H. RUMSFELD, SECRETARY OF DEFENSE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June 29, 2006]

JUSTICE BREYER, with whom JUSTICE KENNEDY, JUSTICE SOUTER, and JUSTICE GINSBURG join, concurring.

The dissenters say that today’s decision would “sorely hamper the President’s ability to confront and defeat a new and deadly enemy.” *Post*, at 29 (opinion of THOMAS, J.). They suggest that it undermines our Nation’s ability to “preven[t] future attacks” of the grievous sort that we have already suffered. *Post*, at 48. That claim leads me to state briefly what I believe the majority sets forth both explicitly and implicitly at greater length. The Court’s conclusion ultimately rests upon a single ground: Congress has not issued the Executive a “blank check.” Cf. *Hamdi v. Rumsfeld*, 542 U. S. 507, 536 (2004) (plurality opinion). Indeed, Congress has denied the President the legislative authority to create military commissions of the kind at issue here. Nothing prevents the President from returning to Congress to seek the authority he believes necessary.

Where, as here, no emergency prevents consultation with Congress, judicial insistence upon that consultation does not weaken our Nation’s ability to deal with danger. To the contrary, that insistence strengthens the Nation’s ability to determine—through democratic means—how best to do so. The Constitution places its faith in those democratic means. Our Court today simply does the same.