Guantanamo, *Boumediene* and Jurisdiction Stripping:  
The Imperial President Meets the Imperial Court  
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ABSTRACT

This essay argues that the Supreme Court’s recent decision in *Boumediene v. Bush*, its latest pronouncement on the detainees in Guantanamo Bay, should be understood as a jurisdiction-stripping case. Most of the commentators to address the case so far have seen it as a case about the war on terror, or about the reach of habeas corpus. I argue that this decision takes significant steps toward resolving a debate that has been raging among the giants of constitutional law for more than 50 years: Can Congress “strip” jurisdiction from the federal courts to prevent them from hearing certain important cases?

Although the Court has previously gone to great lengths to avoid answering this question, and although *Boumediene* could have done the same, the Court instead engaged the issue and engaged it forcefully. The Court’s decision rested upon broad and powerful separation of powers principles, strongly suggesting the indispensability of judicial review. This essay argues that these principles boldly suggest something that the Court has only hinted at before: that Congress cannot preclude federal courts from hearing constitutional claims; not just habeas claims, but all constitutional claims.

The essay also addresses the normative implications of *Boumediene*, arguing that the opinion represents a bold but appropriate response to what the Court perceives as an imperious President and an enabling Congress. As such, this case does not represent an imperious Court, so much as it represents a restoration of a healthier balance of power.