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Bush's Plans for Trying Guantanamo Prisoners Seem to Bother Justices

High court hears appeal of man who had been driver for bin Laden

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Associated Press
March 29, 2006

WASHINGTON -- Supreme Court justices appeared troubled Tuesday by President George W. Bush's plans to hold war crimes trials for foreigners held at Guantanamo Bay, Cuba.

And several seemed outraged by the government's claim that a new law had stripped the high court of authority to hear a case brought by Salim Ahmed Hamdan, a Yemeni who once worked as a driver for Osama bin Laden.

Hamdan has spent nearly four years in the U.S. prison at Guantanamo. The Supreme Court has been asked to decide whether he can be tried with fewer legal protections before a type of military tribunal last used in the World War II era.

The appeal could set the stage for a landmark ruling, and the courtroom atmosphere was tense.

"The use of military commissions to try enemy combatants has been part and parcel of the war power for 200 years," Solicitor General Paul Clement told justices.

Two years ago, the Supreme Court ruled that "a state of war is not a blank check for the president when it comes to the rights of the nation's citizens."

Hamdan's lawyer, Neal Katyal, told justices that the Bush administration acts as if it has a "blank check" to do what it wants with foreigners held at Guantanamo Bay.

The U.S. prison has been a flash point for international criticism because hundreds of people suspected of ties to al-Qaida and the Taliban have been swept up by the U.S. military and secretly shipped there since 2002.

At first, the Bush administration wouldn't let the detainees see lawyers or notify relatives where they were, and interrogators used aggressive strategies to extract information.

Justice Stephen Breyer said that lawyers for Hamdan, who faces a single conspiracy count, argue there is no emergency to justify the special trial.

"If the president can do this, well then he can set up commissions to go to Toledo, and in Toledo pick up an alien and not have any trial at all except before that special commission," Breyer said.

Without Chief Justice John Roberts, a conservative Bush nominated last year, the argument seemed lopsided against the government. Roberts supported the Bush administration as a lower court judge and had to withdraw from participating.

Justices Antonin Scalia and Samuel Alito gave hints that they support the administration, both suggesting that the high court should delay a decision until after the trial is over -- much like courts do with regular criminal defendants.

Roberts was on a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit that signed off on the military trial for Hamdan.

The outcome of the case probably will turn on moderate Justice Anthony Kennedy, who questioned Clement several times about the legal safeguards for the trials.

It was unclear whether Clement resolved Kennedy's concerns. Clement brought up the 2001 terrorist attacks and said that presidents going back to George Washington used military trials.

The Bush administration has tried to scuttle the case on grounds that the new law stripped the justices' authority to consider it. The law passed late last year bars Guantanamo prisoners from filing petitions to fight their detentions, and the administration claims this law retroactively voided hundreds of lawsuits.

Justice David Souter said it would be "stupendously significant" for Congress to retroactively close courts to constitutional challenges.

Justice Ruth Bader Ginsburg said "it's an extraordinary act, I think, to withdraw jurisdiction from this court in a pending case."