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Lawyers for Saudi Prisoner Ask Court to Throw Out Roberts Ruling

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WASHINGTON -- Lawyers for a Saudi prisoner asked the federal appeals court here to throw out a ruling denying Geneva Conventions protection to Guantanamo Bay detainees because Judge John Roberts voted on the case while privately pursuing a Supreme Court nomination with the White House.

In the July 15 ruling, a three-judge panel of the appeals court said that military proceedings against detainees at the naval base in Cuba could proceed. Judge Roberts, a 2003 Bush appointee to the appeals court, joined two other judges in reversing a lower court. The next week President Bush announced his nomination to succeed Justice Sandra Day O'Connor.

Since Judge Roberts disclosed this month in a Senate questionnaire that he had been interviewing for the Supreme Court vacancy while hearing the case, legal ethicists have sparred over whether he should have disqualified himself or told the parties of his private discussions.

It is unclear how the move will affect the confirmation hearings for Judge Roberts that are scheduled to begin next week. After meeting yesterday with Judge Roberts, Sen. Patrick Leahy of Vermont, the Judiciary Committee's ranking Democrat, said that he considered the recusal question "significant" and that he had discussed it with the nominee. Mr. Leahy said two other committee Democrats who have questioned Judge Roberts's participation in the Guantanamo case, Russell Feingold of Wisconsin and Charles Schumer of New York, were likely to "raise it at some length" at the hearings.

The White House strongly backed its nominee. "There was no conflict of interest in this unanimous appeals-court ruling," spokeswoman Dana Perino said.

Lawyers for the prisoner who lost before Judge Roberts's panel, Salim Hamdan, have since filed an appeal with the Supreme Court. The opinion, which found that the Geneva Conventions couldn't be enforced in U.S. courts, by implication spells doom for cases brought by dozens of other Guantanamo prisoners who are challenging their detention.

Lawyers for one of those prisoners, Rami bin Saad al-Oteibi of Saudi Arabia, filed their motion under seal on Friday. A court security officer cleared it for public release yesterday. The motion seeks to intervene in the Hamdan case and asks for a new hearing before a panel without Judge Roberts.

Separately, a federal judge in New York ordered the Defense Department to ask Guantanamo prisoners whether they object to their identities being made public. Citing privacy grounds, the Pentagon had deleted their names from detention-hearing transcripts provided to the Associated Press under the Freedom of Information Act.

U.S. District Judge Jed Rakoff noted that the government had made no national security claim, and that he needed to know the detainees' views on whether they wanted their privacy protected.