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Justices May Hear Detainee's Appeal

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The Supreme Court refused yesterday to dismiss a case that challenges the legality of military trials for terrorism suspects, declining to immediately accept the Bush administration's argument that a new law has stripped the court of its ability to consider the matter.

The justices instead decided to consider whether they have the authority to hear an appeal by Salim Ahmed Hamdan, the alleged driver and bodyguard for Osama bin Laden, at the same time that they hear oral arguments about the constitutionality of the "military commission" trial that Hamdan is slated to face. Those arguments are scheduled for March 28.

Bush administration lawyers filed a brief last month asking the justices to throw out Hamdan's case after Congress passed legislation that strictly limits the access that detainees at Guantanamo Bay, Cuba, have to U.S. federal courts. The government argued that the measure, written by Sens. Lindsey O. Graham (R-S.C.) and Carl M. Levin (D-Mich.) and signed into law, immediately ended federal court jurisdiction over detainees' legal efforts, and the Justice Department quickly filed dismissal requests in cases involving hundreds of detainees who were challenging their detentions and the conditions under which they are held.

Graham and Levin disagreed on the meaning of the law after it was enacted. Graham said the courts should decide whether they could continue to hear previously filed complaints, but Levin said the law was meant to apply only to cases filed after it was enacted. The statute allows a detainee to appeal to federal courts only to challenge a determination that he is an "enemy combatant" or to appeal a military trial verdict.

Neal Katyal, a Georgetown University law professor who represents Hamdan, said he does not think the law applies to his client.

"We think Congress meant what it said in the act and exempted this very case, which challenges not conditions of his detention or access to DVDs, but challenges the most fundamental question of all: Is this tribunal legal?" Katyal said.