

Bush to Ask Congress to OK Military Tribunals for Terror Suspects

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WASHINGTON – With the U.S. Supreme Court sharply rejecting President Bush’s authority to create his own military trials for Guantanamo Bay detainees, the president said Thursday that he will now ask Congress’ help in bringing terror suspects to justice.

Bush, who for nearly five years has insisted that his role as commander in chief gives him virtually unfettered power to conduct the war on terror without interference from the other two branches of government, said he respects the high court’s decision and will comply with it.

“We will work with the Congress. I want to find a way forward,” he said.

Announcing its 5-3 ruling during the last court session of the term, the high court said that whether the detainees are tried in a U.S. civilian court or in a regular military court, such as a court-martial, they must be afforded basic rights. Those include the right to be present at all proceedings, the right to view the evidence against them, to be represented by an attorney, to cross-examine witnesses and to appeal any verdict to a higher court.

The military commissions guarantee none of those rights, the justices said, which, they added, violates both U.S. military law and the Geneva Conventions. The conventions are international treaties signed by the United States that protect prisoners of war as well as innocent civilians swept up in military operations against torture and other inhumane treatment, unlimited detention without charges and unfair trials by the enemy.

The ruling, announced by Justice John Paul Stevens, was a strong rebuke of the administration’s actions in the war on terror and marked the second time the justices have reined in the administration’s policies on terror suspects.

Closure of camp?

The president said recently that he would like to close the U.S. prison camp at the military base in Cuba, where hundreds of men, as well as some children and teenagers, have been held since being rounded up in Afghanistan and elsewhere following the Sept. 11, 2001, attacks by al-Qaida on the East Coast.

The prison has drawn international criticism from legal scholars and human-rights groups amid allegations that detainees have been tortured and are being held indefinitely without charges. Earlier this month, military officials announced that three detainees had committed suicide at the prison.

Of about 450 prisoners remaining at the base, only 10 have been charged and slated for trial before Bush’s special military commissions.

On Thursday, the president ducked the question of whether he would close the prison. White House spokesman Tony Snow later said that Bush still wants to shutter the prison “as quickly as possible,” but he said it’s not the same as saying that the president wants to close it anytime soon.

Bush said that although some of the detainees should be returned to their home countries, others are dangerous war criminals who must be tried.

Late Thursday, Sen. Arlen Specter, R-Pa., filed legislation that would authorize the president to create military tribunals and would provide guidelines for the trials. The Senate Judiciary Committee, which Specter chairs, and the Senate Armed Services Committee plan hearings this summer.

In addition, Senate Majority Leader Bill Frist, R-Tenn., Armed Services Chairman John Warner, R-Va., and Sens. Lindsey Graham, R-S.C., and Jon Kyl, R-Ariz., all said they would introduce bills, too.

“We believe the problems cited by the court can and should be fixed,” Graham and Kyl said in a joint statement. “Working together, Congress and the (Bush) administration can draft a fair, suitable and constitutionally permissible tribunal statute.”

Far-reaching effects

Legal experts said the court ruling could have far-reaching implications for other anti-terror programs, including the National Security Agency’s warrantless eavesdropping program that is based on the same administration theory of executive power during wartime. Among the trials that will be blocked by Thursday’s decision is that of Salim Ahmed Hamdan, a 36-year-old Yemeni charged with one count of conspiracy for his role as Osama bin Laden’s bodyguard and driver.

Hamdan, who has been held at Guantanamo since his capture in November 2001, maintains his innocence, and claims he began working for bin Laden to support his family long before the 9/11 terror attacks.

In his 73-page majority opinion, Stevens said that none of the overt acts Hamdan is alleged to have committed violates the law of war.

The justice said the conspiracy charge’s shortcomings are “indicative of a broader inability on the executive’s part here to satisfy the most basic precondition – at least in the absence of specific congressional authorization – for the establishment of military commissions: military necessity.”

Stevens was joined by Justices Ruth Bader Ginsburg, David Souter and Stephen Breyer, and for the most part by Justice Anthony Kennedy.

Kennedy said the administration had failed to justify the need for the military commissions and noted that the commissions raise “separation-of-powers concerns of the highest order.”

Breyer wrote that the fix is obvious. “Congress has denied the president the legislative authority to create military commissions of the kind at issue here,” he said. “Nothing prevents the president from returning to Congress to seek the authority he believes necessary.”

Six separate opinions

Justices Antonin Scalia, Clarence Thomas and Samuel Alito dissented. Chief Justice John Roberts, who had sided with the president in the case while serving on a lower court, did not participate in Thursday’s decision.

Six justices wrote separate opinions, and Scalia and Thomas each took the unusual step of reading their dissents from the bench – the first time Thomas has done so in 15 terms on the court.

Scalia said he “vigorously” dissented, while Thomas opted for the traditional wording, saying he “respectfully” dissented.

But Thomas’ anger was clear. He accused his colleagues of second-guessing the president at a time when “our duty to defer to the executive’s military and foreign policy judgment is at its zenith.”

On the courthouse steps, one of Hamdan's attorneys, Lt. Cmdr. Charlie Swift, said the ruling was a victory not only for his client, but for the American people and the rule of law. The fact that Hamdan, a foreign terror suspect with a fourth-grade education, could take his case against the president of the United States to the highest court in the land and get a fair hearing, Swift said, "is our precious gift to the world."

"We are the land of justice," he said. The decision, he added, "means we can't be scared of (being) who we are. That is victory."

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