

Can Bush turn around detainee ruling?

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WASHINGTON -- The Supreme Court's Hamdan decision against the president's military commissions contains potentially sweeping implications, but it also faces a Bush administration that has shown a dedication to limiting the effects of adverse rulings, to protect executive authority.

The ruling is being hailed by some as a landmark -- for requiring broader protections for detainees in trials at Guantanamo Bay, for questioning the rationale behind anti-terrorism programs created solely by the executive branch and for applying provisions of the Geneva Conventions to the U.S. war on al-Qaida and terrorism.

But lawyers who have won other terrorism cases against President George W. Bush warn that the administration will try to limit the reach of the Hamdan ruling.

After the Supreme Court two years ago issued another highly touted ruling in the Rasul case that detainees held at Guantanamo Bay have a right to hearings, for example, the administration proceeded to methodically block or limit the decision at every step, lawyers for the still-imprisoned captives say.

"The question now is whether the government is going to do that massive stonewalling, or whether it's going to say, 'We were wrong, let's go forward,'" said attorney Tom Wilner, who represents six Kuwaitis held in Guantanamo Bay.

The 5-3 majority dealt a setback to Bush, saying that he had overreached in creating military commissions that did not comply with U.S. military law and the Geneva Conventions, both of which give those being tried more protections.

But the decision includes possible implications that go beyond the narrow ruling in favor of Salim Hamdan, accused as Osama bin Laden's driver and as an al-Qaida conspirator.

In finding that Common Article 3 of the Geneva Conventions applies to Hamdan, detainees and the war on al-Qaida, the court majority raised implications for U.S. interrogation policy -- and whether America would also have to comply with the international standard of humane treatment.

"The administration can argue that it was a very limited reference to Article 3, and whether it dictates a result, I think that's in question," said Elisa Massimino, Washington director of Human Rights First, which focuses on detainees as well as other issues. "But the court's easy embrace of the Conventions puts extra weight on the side of those in the administration who are advocating for adopting the Common Article 3 approach."

In ruling that the Authorization for the Use of Military Force passed by Congress after the 9/11 attacks did not support Bush's military commissions, the majority raised questions about whether the resolution also supports other controversial programs as the administration insists. One is the National Security Agency's warrantless-wiretapping program.

"The court said the is not a blank check," Massimino said. "Therein lies the possible ramifications for the NSA program and whatever else the administration might be doing. That piece of it is significant."

And in finding that the Detainee Treatment Act passed in December to strip courts of jurisdiction over habeas corpus cases of Gitmo detainees does not apply to those already filed, the majority opened the door to hundreds of petitions now stalled in the D.C. federal district courts.

Joseph Margulies, a lead litigator for the Gitmo detainees, said the ruling will effectively start the clock ticking on detainees being held without charges or trials, forcing the administration to act on them. "Evasion is getting more difficult," Margulies said.

Richard Samp, an attorney with the conservative **Washington Legal Foundation** who filed a brief backing Bush in the Hamdan case, said the importance of the ruling is likely to be more symbolic than practical.

Samp said the Article 3 implications, for example, are likely to be limited, because they are not enforceable by private lawsuits. And he said Congress could fix the other problems.

What is the administration going to do in response to the ruling? Samp said, "Probably in the short term, nothing."

Under the ruling, Bush can continue to hold the detainees at Gitmo for the duration of hostilities. And while the court invited him to work with Congress on the tribunals, the administration faces no deadline.

"Probably, they'll wait and see how much of a groundswell there is in Congress before they do anything," Samp said.

On Thursday, Bush said he would comply with the ruling and work with Congress.

But on Friday, White House spokeswoman Dana Perino said, "We are where we are, which is focused on making the right policy decision, consulting with Congress and reviewing a very complex Supreme Court decision."

And early indications from Justice Department and Pentagon officials in a briefing Thursday is that the administration will read the ruling narrowly.

"The court's decision is limited to the case before it, and this case was a case about the military commission that had been convened against Mr. Hamdan," a senior administration official said.

"As to the implications for the decision beyond that," the official said, "that's something that we are studying."

Staff writer John Riley contributed to this story.

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