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TRANSCRIPT OF TELECONFERENCE WITH SENIOR OFFICIALS
REGARDING SUPREME COURT'S RULING IN THE HAMDAN CASE

WASHINGTON, DC

MR. ROEHRKASSE: Thank you very much. This is Brian Roehrkassee at the Department of Justice Public Affairs Office. Obviously, we had a very significant decision come down from the Supreme Court this morning, and we wanted to get this call together to be able to provide background information on this issue.

We're here primarily today to talk about the military and legal aspects of this decision. Clearly, there are large policy issues, some of which the President and Tony Snow addressed this morning.

So, again, we're here not necessarily to address the larger policy implications but more of the military and legal aspects of today's decision.

Joining us on the call are Senior Military Official from the Department of Defense, Senior Military Official from the Department of Defense, Senior Administration Official from the Associate Attorney General's Office, as well as Senior Administration Official from the Solicitor General's Office.

The rules for attribution on today's background call, for Senior Administration Official and Senior Administration Official and Senior Administration Official are Senior Administration Official, and for Senior Military Official, Senior Military Official. We have individuals here at the Department of Justice especially that work with the Court on a regular basis, so we are going to be conducting this on background under the rules of attribution that I just outlined.

So, without further ado, I'm going to turn it over to Senior Administration Official. The only other thing I would ask is before you ask your question is to provide your name and organization that you're calling in from. I'll turn it over to you.

SENIOR ADMINISTRATION OFFICIAL: Good afternoon.

The Supreme Court of the United States has spoken, and we are carefully reviewing that decision right now. Obviously, it came down not long ago.

Accordingly, while we're going to try and be as helpful as we can today, I hope you understand that our views are tentative and there's a lot of opinion to read and digest, and we are still in the process of doing that.

We respect the court's decision issued today and intend to work with Congress to establish procedures for trying enemy combatants that comply with the Supreme Court's ruling and that will allow us to proceed with trials as soon as possible.

It's important to outline what is not in the court's ruling today.

Nothing in the holding affects the authority of the president in wartime to detain enemy combatants through the duration of hostilities, an authority the court previously recognized in the Hamdi case.

Likewise, nothing in the holding affects the status of Guantanamo Bay or the continued detention of enemy combatants there one way or the other.

The holding pertains to the 40 or so detainees only who the military has designated for war crime trials because of their particularly heinous alleged conduct.

The holding does not reject the president's authority to try those accused war criminals by military commission; something done throughout our history.

Instead, the Supreme Court's holding indicates the military commissions, as currently constituted by DOD, while robust in affording enemy combatants more process than this or any other country has ever afforded enemy combatants, are not consistent with current congressional statutes, especially the UCMJ and treaty provisions, Common Article 3.

The court, however, emphasized that these problems can be cured, and invited the president and Congress to do just that. For example, Justice Breyer said, quote, Nothing prevents the president from returning to Congress to seek the authority he believes necessary, close quote.

The court did not find any constitutional impediment to the president and the Congress working together to institute military commissions.

We look forward to working with Congress to protect the American people and ensure that enemy combatants charged with war crimes can be brought to justice and that the American people are protected against their release, consistent with the Supreme Court's guidance.

MR. ROEHRKASSE: All right. With that, we'll open it up for question- and-answer.

QUESTION: You said you would work with Congress to establish procedures now.

I have two questions.

One is: Even if you do get additional authority from Congress to overcome the UCMJ problem, how does that overcome the Common Article 3 problem about regularly constituted trials?

And why work with Congress at all? Why not just use courts- martial?

SENIOR ADMINISTRATION OFFICIAL: Well, to address your question, a few responses.

First, the court identified Common Article 3 as one of the aspects of the law of war that Congress had recognized in Article 21 of the Uniform Code of Military Justice.

So Congress could, in response to the decision, look at Article 21 and see if revisions were appropriate to that article.

Secondly, what the court emphasized with respect to the obligations that it saw, through Common Article 3, was that a regularly constituted court generally would consist of the procedures available in a courts-martial, except as practicalities dictated otherwise.

So, under the court's decision, I think, certainly Congress and others could look at the procedures for courts-martial and determine that practicalities require different procedures for military commissions in the current conflict.

QUESTION: Is that what you want to do now?

SENIOR ADMINISTRATION OFFICIAL: Certainly, there are all options on the table in working with Congress and accepting the court's invitation to do so.

QUESTION: I actually have a very similar question.

The court seems to direct you guys and the Congress to pay close attention to UCMJ when coming up with rules for commissions.

Did I understand you right to say that that's the direction you intend to go, is that you will try to adhere closely to what the UCMJ says in courts-martial when you come up with these rules that you're trying to do?

And also, in discussion of Common Article 3, it does, sort of, point out very pointedly that when they talk about a properly constituted court, they are talking about in general military court. They're not talking about tribunal.

Is that a limit to what you and Congress can do if you intend to go that direction?

SENIOR ADMINISTRATION OFFICIAL: Well, first of all, I mean, there's no particular direction that we're heading in right now except to review the decision and consider all options that would be available to us and Congress. So we're here today discussing the decision and the various options available, but certainly no particular direction -- we're pursuing no particular direction right now except to work with Congress on finding a fix.

Secondly, with respect to Common Article 3 -- and I think what the court said there -- and, again, you need to look at the decision carefully -- was it referred back to Article 21 in the Uniform Code of Military Justice. And what it said was that ordinarily the procedures that would be appropriate for a regulatory constituted court would be those available in a courts-martial except as practicalities dictated.

Now, the court also recognized in its decision that as a country we have a long history and tradition of using military tribunals in past conflicts. So certainly I think the court recognized that military commissions would be appropriate as long as the procedures were consistent with its decision.

QUESTION: I wanted to ask a question related to the court's holding that it had jurisdiction under the DTA.

In your interpretation of that, does this mean that all the other habeas petitions that people are currently in Guantanamo, even those who are not affected by the military commissions, those are now, in effect, still alive?

And, if so, does it also mean that this D.C. circuit case about that goes away? And do you have any numbers on exactly how many habeas cases are affected here?

SENIOR ADMINISTRATION OFFICIAL: Well, we're certainly still studying that aspect of the decision.

I mean, you're right to point out that there were two key components of the court's decision today: first, whether the court had jurisdiction to decide the case at all, and that was directed to the applicability of the Detainee Treatment Act; and then second, the merits issues we've been dealing with.

The only question before the court strictly was whether or not it had jurisdiction to consider

Hamdan's case, and that was the focus of the briefing and the arguments made by Hamdan in this case. And so many of the arguments were related specifically to divesting the Supreme Court of jurisdiction over this case.

As to how the decision applies to the other pending cases in the district courts -- and there are hundreds of those cases -- we're studying that.

QUESTION: The ruling seems to suggest -- or to state, actually -- that the authorization for the use of military force has been construed too broadly by the administration in this matter. But doesn't that have implications for your citing that authorization, that resolution, in other matters, including the warrantless wiretapping?

SENIOR ADMINISTRATION OFFICIAL: Well, I think you're right to point out that one of the bases for the authorization to proceed with the military commissions was the authorization for use of military force.

And what the court said with respect to that, was it recognized -- or at least assumed that it activated the president's war powers.

But then it went on to conclude, in the specific context here, that Congress had dealt with military commissions in a different way.

And that was the focus of its decision as to how -- I don't think the court had before it any other broader issues concerning the scope of the authorization for use of military force except it clearly did recognize that it activated the president's war powers.

QUESTION: Do you look at this ruling -- obviously, even Justice Breyer invited essentially the administration to go to Congress and seek authority to change and come up with a military commission way forward. But hasn't the Supreme Court now set essentially a bare minimum of standards for rights of any detainee that perhaps even congressional action cannot deal with?

SENIOR ADMINISTRATION OFFICIAL: Obviously, we're all still studying the ruling. But I think that would be inconsistent with the explicit invitation of the court to work with Congress in devising procedures for military commissions that would be appropriate.

SENIOR ADMINISTRATION OFFICIAL: Consistent with both the UCMJ statutory context and Article 3.

QUESTION: So you think working with Congress can deal with everything in this ruling as it stands now?

SENIOR ADMINISTRATION OFFICIAL: We hope so.

SENIOR ADMINISTRATION OFFICIAL: And I think it's fair to say that the court certainly seemed to assume that was the case.

SENIOR ADMINISTRATION OFFICIAL: It might be worth noting there that the court did not accept some arguments presented by petitioner that would have precluded the president from using military commissions at all.

Those arguments were not adopted by the court.

SENIOR ADMINISTRATION OFFICIAL: And the court didn't recognize -- one of the arguments that they had made was that there were constitutional limits on the construction of the commissions.

And the court did not accept those arguments and didn't recognize any constitutional limits on how the tribunals would be convened. But instead looked at the question solely as a matter of congressional intent.

QUESTION: You used a number that I hadn't heard before. You said 40 or so prisoners at Guantanamo are designated for war crimes trial.

The number that the Pentagon has used is 14 designated for war crimes trial. Where does the 40 or so come from?

SENIOR ADMINISTRATION OFFICIAL: Well, we would defer to the Department of Defense on the numbers.

QUESTION: Well, don't you have...

SENIOR ADMINISTRATION OFFICIAL: They're on the call.

SENIOR MILITARY OFFICIAL: Yes, I think you're correct. We've got 14 we've designated for trial. We've got 10 active cases.

We don't discuss the number of reason-to-believe determinations that are either in the interagency coordination process or have been forwarded, until such time as the individuals have actually been charged.

QUESTION: But is that...

SENIOR MILITARY OFFICIAL: Your number 14 is correct.

QUESTION: Is that 40 or so a valid number?

SENIOR ADMINISTRATION OFFICIAL: The number 14 is the number of cases that have already had a reason-to-believe determination entered in those cases. Those are the existing cases, 10 of which involve detainees that are currently at Guantanamo.

There is a large number of detainees for whom reason-to-believe determinations may be made in the future.

Forty is somewhere in the ballpark of possible future RTB cases.

QUESTION: Well, just to be more specific here, prosecutors have been quoted as saying they expect to bring charges against 75 others. So that's -- 40 is a fair way from 75. What's the best number to use here for people who are directly affected by this ruling.

SENIOR ADMINISTRATION OFFICIAL: There is no exact number...

QUESTION: I'm asking you for the best number.

SENIOR ADMINISTRATION OFFICIAL: Forty to 80 would be a reasonable range. But, again, that is not a -- we cannot say that with 100 percent degree of certainty at this time.

QUESTION: My question is, am I correct in assuming that this Supreme Court decision does not qualify as, sort of, a landmark decision limiting presidential power, but simply says that the commission process as designed now is defective and if it's corrected then the president would have the authority to conduct these kinds of proceedings?

SENIOR ADMINISTRATION OFFICIAL: I think it's fair to say that the opinion did not indicate any

constitutional impediment to the establishment of military commissions and invited the president and Congress to fix limited issues that are fixable by statute -- invited them to work together to do just that.

Nothing prevents the president and Congress from working together to remedy these issues.

QUESTION: And I guess the other thing I'm not clear on is, why does it require consultation with Congress? And I guess Pete asked this at the very beginning.

Why, if you establish procedures, for instance, that were similar to courts-martial, why would you need congressional authorization? If the procedures are fixable, why can't you just fix them without -- why does it require the input of Congress?

SENIOR ADMINISTRATION OFFICIAL: Well, I mean, that may be a fair point. I mean, it may be that there could be fixes the executive could take that would comply with the court's decision.

But, you know, I think that's something we'll have to look at after studying the decision more carefully.

But I think that the thrust of the decision is looking to the procedures that the president has developed. The way to reconvene those commissions is to work with Congress under the construct that the court laid out.

QUESTION: It seemed to me that the opinion lays out three different routes that the administration could go: that you could try some of these folks in civilian courts as you've started to do, at least, in one or more cases; you could go through a normal court- martial procedure or something that observed all the rules of courts- martial; or you can go off in this third way.

Am I correct in understanding that you feel you need to go off in the third way? And if so, why?

SENIOR ADMINISTRATION OFFICIAL: I think it's fair to say we're studying all of our options at this stage.

QUESTION: OK, what is -- but almost all the comments from the administration at all levels have been that there's a desire to go to Congress and seek permission for military commissions.

What is it about traditional courts-martial that would be impracticable in these sorts of cases?

SENIOR ADMINISTRATION OFFICIAL: Well, I think the court itself recognized that this is a unique conflict against a unique enemy and a dangerous one and itself invited the president and Congress to consider what you're calling the third way.

So I think that's what the court itself saw and said. And so that's definitely an option that is on the table and one we're considering actively, along with the others.

SENIOR ADMINISTRATION OFFICIAL: And I think, if you look at Justice Kennedy's opinion, Justice Kennedy, of course, did not join all of the court's reasoning. And in particular, he didn't join the part of the court's decision that would have categorically held that rules excusing the accused during part of the proceedings because of unique evidentiary concerns about dealing with classified information -- he for one was not willing to put that off the table, recognizing some of the unique concerns present in the current conflict.

SENIOR ADMINISTRATION OFFICIAL: I think it may bear mention as well that the president said he will use all tools available in the war on terror. And that means all three of the options that you talked about are necessarily on the table and are being actively pursued.

And some have been used in certain cases, and others will be used in others.

QUESTION: I was wondering if we could look forward a second to what this means for not just the 40, but the 450 that are at the camp right now and whether this will serve as an impetus to try to even get them, the ones that can be, sent back to home countries faster -- putting impetus to that. And especially, I guess, Saudi Arabia, Yemen and Afghanistan, because those are the countries that have the most detainees, home countries.

SENIOR ADMINISTRATION OFFICIAL: (OFF-MIKE) case about military commissions and military commissions only. It's not a case about the future of Guantanamo.

QUESTION: OK.

SENIOR ADMINISTRATION OFFICIAL: And the court, in its decision, specifically emphasized that it wasn't calling into question the executive authority to detain these individuals at Guantanamo or anywhere else.

QUESTION: No, but obviously it does put some more political pressure on the question.

SENIOR ADMINISTRATION OFFICIAL: Well -- and I know many of you may have been on a call the other night with State Department when they were talking about their efforts on this front working their international partners.

QUESTION: I just wanted to restate an objection I made before the call started that on behalf of A.P. we object to the briefing being done on background.

That said, I wanted to ask a question, specifically as it relates to Hamdan: And doesn't this decision go beyond what you were saying, in spite of what Justice Breyer said, when in Section 5 Justice Stevens writes that what Hamdan is being charged with is not properly tried by a military commission in any event?

And how many other of those detainees might fall into similar circumstances?

MR. ROEHRKASSE: On your first point, on the objection, I will address that. As I stated before, the president had already provided remarks on the record this morning. As well as here at Department of Justice, we have individuals that have to work directly with the courts, and we respect our relationship with the courts.

And because of that, this call would be on background -- as well as some of the logistical issues associated with having four individuals in a couple different locations.

SENIOR ADMINISTRATION OFFICIAL: A majority of the court, as you know, didn't reach the specific conspiracy charges against Mr. Hamdan. And we're reviewing the various opinions of the court carefully on that particular score.

And I'm confident the Department of Defense will take them into account as it moves forward and in any future charging decisions that may be made in any future regime that might be implemented.

QUESTION: So do you believe it might be possible to try Hamdan himself before a military tribunal, in spite of today's ruling?

SENIOR ADMINISTRATION OFFICIAL: Well, I think, as we've indicated, that the court specifically invited the president and the Congress to come together to work on a regime for military tribunals, military commissions, to try individuals like Mr. Hamdan.

That may not be the way that the president ultimately goes. We've talked about a number of options that are on the table, all of which are under active consideration. But that is certainly one of them and one the court expressly identified.

QUESTION: There have been a number of legal commentators today who have pointed to the fact that the court seems to be saying that Common Article 3 applies not just to the specific instance of the military tribunals, but to the conflict with Al Qaida more generally.

I wonder if you think the court did say that and what kind of implications you think that might have for issues beyond the tribunal issue; for instance, treatment of detainees, interrogation techniques and things of that sort.

SENIOR ADMINISTRATION OFFICIAL: Well, certainly 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.

As to the implications for the decision beyond that, I mean, that's something that we are studying and will be studying.

QUESTION: Just to follow up on that point, could you speak a little bit more broadly as to how that affects interrogation techniques, such as water boarding, deprivation of sleep?

SENIOR ADMINISTRATION OFFICIAL: I mean, I think that falls into -- again, we're not going to speculate on the applicability of any part of the decision beyond the case before it. And I think your question would raise pure speculation.

SENIOR ADMINISTRATION OFFICIAL: Obviously, however, we're studying the import of the decision as we speak, and we'll continue to do so.

QUESTION: This question also is a follow-up to one that was asked earlier, specifically about the courts-martial.

And I understand the point that you make about classified information. Are there other drawbacks or problems that you find with courts-martial that would, sort of, impede a process of setting up another regime for military commissions that is enough like military courts-martial to satisfy the court?

SENIOR ADMINISTRATION OFFICIAL: Well, certainly in our history and traditionally we have convened military tribunals or military commissions to deal with the trial of captured enemy combatants in war.

And so in that respect, this would be the typical mode to deal with captured enemy combatants.

With respect to the particular differences between the modes and procedures, you know, I guess I would defer to the Department of Defense on that if they have points they'd like to add.

SENIOR MILITARY OFFICIAL: I think as far as the rules of procedure are concerned, you find that what we have in trials by courts-martial are almost identical to what you would find in an Article 3 court, and in many incidents the procedures that you would in a trial by court-martial are more protective of the accused than you would find in a federal district court.

So you would probably have the same challenges in a trial by court-martial that you would have in any federal district court, where some of the evidentiary issues that are presented in trials by military commission.

SENIOR ADMINISTRATION OFFICIAL: And I guess the only other thing I would add is that in

many respects, the procedures that are followed in courts-martial, which are often used to try American service men, are comparable to those followed in Article 3 proceedings. And so when you're dealing with people like captured enemy combatants and dealing with cases that have reliance on classified information, that raises unique practical concerns that have to be taken into account.

QUESTION: Could you address what you said earlier about amending Article 21 of UCMJ? Is that in the plan now? And would that obviate any of this Article 3 discussion in the Supreme Court's decision today?

SENIOR ADMINISTRATION OFFICIAL: Well, I mean, again, all options are on the table in terms of working for a legislative solution with Congress.

Obviously, the statutory focus of the court's decision today are in Article 21 and Article 36 of the Uniform Code of Military Justice. And it's the reference to the law of war in Article 21 that the court focused on in addressing Common Article 3 of the Geneva Convention.

And, importantly, the court specifically did not hold that the Geneva Convention was judicially enforceable as of its own right. Instead it focused on the reference to the law of war in Article 21.

QUESTION: Would you tell me a little bit more about Article 36; what the changes are that you might seek in that?

SENIOR ADMINISTRATION OFFICIAL: Again, I mean, the terms of changes that we would be seeking or legislation that we would be considering -- that's part of the process that we would be engaging in with Congress. And we are considering all our options in terms of responding to the court's decision and working with Congress.

QUESTION: I understand that this decision only affects those detainees who are facing war crimes commissions.

What happens to -- how does this affect the majority of detainees at Guantanamo?

And what is their status now?

SENIOR ADMINISTRATION OFFICIAL: Well, under the Hamdi decision of the Supreme Court and Justice O'Connor's framework there, the president of the United States, during wartime, consistent with the AUMF, has the authority to detain individuals who are enemy combatants during the extended hostilities.

And this decision doesn't address that aspect of the war on terror at all.

SENIOR ADMINISTRATION OFFICIAL: And, in fact, it recognizes that the court wasn't questioning at all the president's authority to detain Mr. Hamdan during a period of active hostilities.

QUESTION: And can we get, kind of, a clarification on how many detainees are facing war crimes tribunals? I've heard between 14 and 80.

And what exactly constitutes war crimes, if you could get into that?

SENIOR ADMINISTRATION OFFICIAL: Fourteen detainees have, up until this point in time, received a reason-to-believe determination. Ten of those detainees remain at Guantanamo.

The range of 40 to 80 was used earlier as a reasonable guess for the number of detainees who may receive a reason-to-believe determination either now or in the future. But that is just a rough

ball-park and should not be viewed as a definite range.

As for as the war crimes question, I will defer to my colleague.

SENIOR MILITARY OFFICIAL: Well, I think the instruction number two outlines potential charges that we were considering using in trials by military commission.

Obviously, we may have to review the conspiracy charges in some of the cases we have pending. But there are plenty of alternatives that we have available under the law.

SENIOR ADMINISTRATION OFFICIAL: Instruction two can be found on the DOD Web site, along with all the other operative documents covering the military commission's process.

QUESTION: And how many detainees are there total in Guantanamo right now?

SENIOR ADMINISTRATION OFFICIAL: There are less than 500 remaining right now.

QUESTION: So about 450?

SENIOR ADMINISTRATION OFFICIAL: I believe between 470 and 490, but I don't have an exact number for you.

QUESTION: I just wanted to clarify something about -- regarding the questions about Common Article 3.

Do I understand that you're taking the position that only Hamdan is protected by Common Article 3? And at this point, albeit six hours after the Supreme Court wrote, you're -- the Justice Department's is that Hamdan is covered by Common Article 3?

SENIOR ADMINISTRATION OFFICIAL: No, sir. I think that would be not anything anyone should take away.

What I think you can take away is six hours after the Supreme Court's ruling, we are studying the scope and meaning of the court's ruling with respect to Common Article 3.

QUESTION: Well, can you suggest what it is in the ruling that even causes you to question whether every detainee at Guantanamo is covered by Common Article 3?

I mean, I don't see why there would even be a question about that. Where do you find a question?

SENIOR ADMINISTRATION OFFICIAL: I don't believe my colleagues intended to suggest there is or isn't.

The question was whether it pertained beyond Guantanamo Bay to other issues. And with respect to that, and with all questions as to the scope of this decision, it's something that we're studying.

QUESTION: So you're saying you do accept now that all detainees at Guantanamo Bay are covered by Common Article 3.

SENIOR ADMINISTRATION OFFICIAL: I think what we're saying is that it's an issue that we're studying.

QUESTION: But you can't identify why you -- what it is that's -- where the complexity is on that question that you have to study.

SENIOR ADMINISTRATION OFFICIAL: It's 179 pages, I think, worth of opinion that we received today.

So we're doing our best to try and provide you with what we know as of this moment, but these are our tentative thoughts, and they reflect necessarily only that. And we are continuing to study the implications of this decision from Mr. Hamdan's case as to what it might mean to others in other areas.

And that's what you're asking us to extrapolate from a holding in a case today that we can explain on its terms as to what it might mean to others and in other areas, and that's something that any good lawyer will want to take a close and hard look at and not give you a rash, off-the-cuff judgment.

QUESTION: I just wondered, since you said you're going to be turning first to Congress, what exactly that process will entail, which committees you may turn to or how you'll come to some agreement on procedures.

And secondly, I'd like to know how long you think that process will take, since it's been four, four and a half years since some of these detainees have been at Guantanamo.

SENIOR ADMINISTRATION OFFICIAL: A lot of that's really, frankly, beyond the lawyers or even, I think, the military folks on the call and involve some policy decisions, both on the Hill and at the White House, that are above our pay grade as to which committee and how those processes will unfold.

QUESTION: Well, you must have some idea. I mean, you've been discussing turning to Congress. That must prompt some discussion about how to do that.

SENIOR ADMINISTRATION OFFICIAL: Just in trying to clarify what the opinion says, the opinion invites the president to do that. And that is one of the things that we are looking at and considering closely.

Which committee is an issue for our legislative affairs folks, among other people. I'm sorry, I'm not able to tell you which committee would have jurisdiction over this.

QUESTION: I wanted to direct this question to the military officials on the call.

I wonder what provision, if any, has been made for informing Mr. Hamdan himself of this result.

And if there has been -- given the group is still studying as to whether the pending habeas petitions will be affected by this decision, but if it turns out that that is the case, will the detainees with pending habeas petitions be informed of this result through their lawyers or how are you going to let them know?

And I ask you that question in the context of the fact that there have been hunger strikes and other forms of what the military has described as asymmetric warfare-type protests going on at Guantanamo, and that some of those protests have been directed specifically at objecting to the detention without trial that some of the detainees and their counsel have claimed is unjust.

And so this decision would obviously potentially be of some considerable interest to Mr. Hamdan and to the others.

SENIOR ADMINISTRATION OFFICIAL: This is a senior administration official at Defense speaking. I can answer the first question.

I believe that the commander's staff at Guantanamo is allowing Mr. Hamdan's attorneys to speak to Mr. Hamdan today or to somehow communicate with Mr. Hamdan today about the results of today's decision.

As far as your second question, which goes to detainees other than Hamdan, communications between habeas counsel and detainees at Guantanamo are covered by protective orders that have been entered in all the pending habeas cases.

And I am not prepared at this time to give you my belief as to whether or not communications related to the Hamdan decision would be allowed under those protective orders.

QUESTION: In other words, you wouldn't be able to say as to whether the other detainees would be informed of this matter or not?

SENIOR ADMINISTRATION OFFICIAL: That's correct.

QUESTION: Pretty much following up on that question, I was going to ask whether David Hicks, the Australian detainee at Guantanamo, would be informed of events today. But it sounds like you won't be able to answer that one.

I was also going to ask, again, on the timing of this: The Australian government has made known that it's concerned about the long delays. And I just wonder whether or not that will perhaps force the release of David Hicks. We haven't heard from the government yet, obviously, there.

SENIOR ADMINISTRATION OFFICIAL: That's correct. Today's decision does not in any way affect the ability of the president as commander in chief to detain enemy combatants. It goes only to the question of trial by military commission.

And so the result in today's opinion will have no direct impact on Mr. Hicks' detention or Mr. Hamdan's detention or any other detainee's detention.

MR. ROEHRKASSE: We're going to take two more questions, please.

SENIOR ADMINISTRATION OFFICIAL: OK, in the meantime, (inaudible) is on the line and I believe he had an update as far as the detainees that are at Guantanamo Bay.

So, sir, how many were there at this time?

SENIOR ADMINISTRATION OFFICIAL: Roughly 450. I just wanted to correct the record, thank you.

QUESTION: Is there any reason why Congress, if they were so inclined, could not amend the UCMJ to allow the military commissions to proceed exactly as it existed before today's decision?

SENIOR ADMINISTRATION OFFICIAL: I think some of my colleagues might have views on that, but there's nothing in the opinion that seems to preclude that. But that is not something I think we can definitively answer at this moment.

QUESTION: Would there be any constitutional obstacles?

SENIOR ADMINISTRATION OFFICIAL: The court did not adopt petitioner's constitutional claims that the president's inhibited from establishing military commissions. It instead rested its opinion entirely on statutory and treaty grounds, both of which it acknowledged that Congress was able to address.

MR. ROEHRKASSE: One more question, please.

QUESTION: Most of my questions have been asked already; I've been waiting awhile. But I'll give it a shot.

Would everything the Supreme Court said also apply if, say, we wanted to put Khalid Sheik Mohammed or Osama bin Laden on trial?

SENIOR ADMINISTRATION OFFICIAL: I think we can only say again that this is an opinion that we're trying to explain that's come down in a particular case. And its implications for others and other arenas is something that we, on six hours, can't fully competently do.

So I think we're going to have to leave it there.

QUESTION: Is it your position that the court's decision is limited to the case before it? I mean, one of you said that. Does it have no impact on Al Odah and the pending case before the D.C. circuit?

SENIOR ADMINISTRATION OFFICIAL: No, sir, we're not suggesting that it has no impact on others or other cases or other areas.

We're just saying that immediately after the decision, on the same day as the decision, we can't tell you definitely, with any certainty, what the impact will be.

It will certainly have an impact beyond the individual who was the petitioner in this case. Every case that the Supreme Court decides does have impact in ways that are often far-reaching and sometimes unanticipated.

But what we're saying is we can't tell you, sitting here right now, what those likely impacts are with any confidence.

MR. ROEHRKASSE: OK. Thank you very much. We'll work as quickly as possible to get our transcript available. And if you have any further questions, please feel free to call DOJ or DOD public affairs.

Thank you.

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06-411