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Court to Keview Guantanamo

complicated the debate. tribunals permit Bush jury. Congress has prosecutor, judge and to act as lawmaker, Challengers say military By David G. Savage

Bay, Cuba. take up a constitutional chal-lenge to President Bush's decitary tribunals at Guantanamo before specially arranged milision to try alleged war criminals the Supreme Court today will awaited test of executive power WASHINGTON - In a long

ald H. Rumsfeld, to act as lawdent's lawyers say is part maker, prosecutor, judge through Defense Secretary Donpermit unconstitutional because say the tribunals are unfair and rent and former military lawyers. The challengers, including curpower as commander in chief It is an authority the presithe president, acting of his they

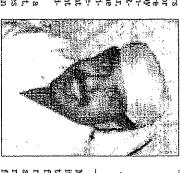
over the role of law during wartion by Congress sion, thanks to a late interven-.ime may well end in a non-deci-But this momentous dispute

> eral court sion in the bill saying that de-tainees at the Navy base at to have their claims heard in fed-Guantanamo Bay had no right same time, they inserted a provito a military spending bill. At the Ariz.), a former prisoner of war, sored by Sen. John McCain (Routlawing the use of torture against prisoners. They did so by heaped praise on themselves for adding an amendment spon-December. lawmakers

ture which to argue allegations of torwould no longer have a venue in lawyers long way toward voiding the first The second provision went a say, since detainees

miss the challenge to the military tribunals brought on behalf of the justices. for now, the administration told dictionally foreclosed," at least ped the court of the authority to time driver for Osama Salim Ahmed Hamdan, a onesays the high court should disdecide it. His legal claim "is juris-Laden, because Congress strip-The Bush administration

set back their cause congressional intervention has tanamo detainees concede that istration's handling of the Guanlegal showdown over the adminhave spent four years seeking a Human rights lawyers who



DETAINEE: Salim Ahmed Hamdan is suing the U.S.

fore the court tainee rights will be an imporant part of today's debate be-Now, the amendment on de-

a remedy." security program for Human Rights First. "It would mean we stein, director of the U.S. law and courts," said Deborah Pearlcore jurisdiction of the federal have established a right without It is "a direct assault on the

the Detainee Treatment Act of Kyl (R-Ariz.) and Carl Levin (D-Lindsey Graham (R-S.C.), 2005, was sponsored by Sens. The amendment, attached to

> captured a combatant, you have to give them a jury trial in your civil courts. Give me a break. It has never been the case that when you

Justice Antonin Scalla, in a speech in Switzerland

namo. Levin says the restriction filed by a prisoner at Guantait strips judges of the authority Mich). The two Republicans say fore the Supreme Court. not to the pending dispute beapplies only to newly filed claims to hear any writ of habeas corpus

of setbacks and delays for the gime in Afghanistan helped topple the Taliban four years after whom are still there, more than nundreds of men who have been neld at Guantanamo — 517 of It is the latest in a long series forces 7

to the protection of the Geneva captured by U.S. forces would be tried in military tribunals for Americans. aw the protections of U.S. criminal orce, nor were they entitled to not part of a recognized military Convention because they were these terrorists were not entitled Administration 'violations of the laws of war." that suspected foreign terrorists sued an executive order saying In November 2001, Bush isbecause they lawyers were not

But some experts in military law criticized the proposal, arguing that it allowed Pentagon aususpected they went along. They said that horties to make up the rules as terrorists

> criminals should be tried under the rules for courts-martial, as prescribed by the Geneva Con-

place under the United States out terrorist attacks against the with the Al Qaeda leader to carry tion accused him of conspiring Laden. However, the administramonth to work as a driver for Bin his lawyer he was hired for \$200 a Hamdan, a native of Yemen, told with a terrorism or war crime Only 12 men have been charged An actual trial has yet to take new system

judges who will act as jury. the prosecutor and pick nates, to define the crime, president, through his suborditional because they allow the tary tribunals are unconstitu-Rumsfeld, contends that milllawsuit, Hamdan t be

Hamdan.

But Bush's lawyers say the versity doctrine, said Georgetown Unistitution's separation of powers powers," a violation of the Conlegislative, executive and judicial Neal K. Katyal, who represents "Here, the president exercises Law Center professor

commander in chief has always and tried. Moreover, they how war criminals are treated played the lead role in deciding say

Congress has endorsed the December. in the Detaines Treatment Act in president's action, most recently Because he sat on the appel

no decision. could result in a 4-4 split recused himself. case last year, voting to uphold late court that heard Hamdan's Justice John G. Roberts Jr. has the legality of the tribunals, Chief His absence and

court. sented when the high court ruled ity of their detention in federal had a right to challenge the legalthat prisoners at Guantanamo doubt. Two years ago, he dispected to participate, although nis decision is not much Justice Antonin Scalia is ex-

students at the University of Fri-Smod that "enemy combatants" had a scomfully dismissed the notion In remarks two weeks ago to 5 Switzerland, Scalia

day by Newsweek. in comments first reported Suncourts. Give me a break," he said give them a jury trial in your civil tured a combatant, you have to been the case that when you capright to a court hearing.
"War is war, and it has never

called on Scalla to step aside. York, which represents some of Constitutional Rights in New On Monday, the Center for Guantanamo detainees,

cuse himself." lia to do the right thing and resky, a deputy legal director for the group. "I expect Justice Scaclusion," our arguments in court, a justice nas publicly announced his con-"Before we have even made said Barbara Olshan-