Thank you so much for joining us today.

I want to start out by thanking the members of our Armed

Forces, those who sacrifice much in order to place themselves in

harm’s way to stand up for American national security. I appreciate

them.

The issue we are discussing today does implicate a number of

questions that are important to American national security especially

when we consider the fact that there are lots of places in the

world where our national security is in one way or another placed

in jeopardy by some of the things that people are doing and things

that people are saying. So I think it is appropriate that we have

this discussion because we want to make sure that when we deploy

these people, these brave young men and women who serve us and

serve us so well, that we are doing so in a way that maximizes

their utility to protecting Americans at home.

The first question I would like to ask you relates to the definition

of the term ‘‘hostilities’’ as used in section 1541 and elsewhere in

the War Powers Resolution. How do you define the term ‘‘hostilities’’

as used in the War Powers Resolution?

Where is that from, Mr. Koh?

And I do not disagree with the broader definition,

but like so many definitions, that one has been severely undermined

and here, I believe arguably, vitiated by the exceptions to

it. Does it not strike you as something that is a little bit dangerous

to say? Even when we have our own armed services or armed personnel

firing upon the military establishment, the radar systems,

and other components of a foreign nation’s defense system on their

foreign soil, regardless of whether we have got boots on the ground,

it seems to me to be hard to say that that does not involve

hostilities.

Given the limitations on our time, though, I would love to take

a step in a different direction and then come back to this, if we

have got time afterward.

In your opinion, is this question, the question of the constitutionality

of the War Powers Resolution, one that logically could or

ever would be resolved in any Article III court proceeding in light

of, A, the nonjusticiable political question doctrine and, B, immunity

that might be enjoyed by one or more parties to any suit that

might be brought?

Actually, I know you have got a final point that you

want to make. I do have a final question that I really want to ask.

Let us assume for purposes of the discussion here

that we are dealing with hostilities. If we were dealing with hostilities,

if you agreed with me that we were dealing with hostilities,

under section 41, would the President not have to justify, in addition

to the 60-day requirement, the other timing-related requirements,

the reporting requirements, consultation and so forth—

wouldn’t the President also have to articulate a military justification

for our involvement in those hostilities based on the language

of section 1541, meaning that they are justified either by some

form of statutory authorization from Congress, by declaration of

war, or by a national emergency, not just any national emergency

but one created by an attack on the United States, on its territories

or possessions or on its armed forces? Wouldn’t that be the President’s

duty?

Yes, sir, but I’m not talking about the reporting obligations.

I am talking about the 1540, the requirement in section

1541 that recognizes that the constitutional power of the President,

the Article 2 Commander in Chief power of the President as Commander

in Chief to introduce the United States Armed Forces into

hostilities, are exercised only pursuant to a declaration of war,

statutory authorization, or just national security emergency created

by an attack. That’s what I’m talking about.