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| UNITED STATES OF AMERICA | ) | |
| | ) | **DEFENSE NOTICE OF MOTION** |
| v. | ) | **(Unlawful participation of Assistant to the Presiding Officer)** |
| SALIM AHMED HAMDAN | ) | |
| | ) | 2 August 2004 |

The Defense in the case of the *Salim Ahmed Hamdan* provides the following notice of motion:

1. This Notice is filed in accordance with the Presiding Officer's Order of 19 July 2004.

2. Relief Requested: The Defense will seek preclusion of further substantive participation by the Assistant to the Presiding Officer in the case of *U.S. v. Hamdan*.

3. Synopsis of Legal Theory: Since appointment the Assistant to the Presiding Officer has performed duties akin to that of a Legal Advisor to an administrative board or Court of Inquiry. President's Military Order of 13 November 2001 and subsequent military orders and instructions do not provide for a position of a Legal Advisor the appointment of such an advisor is not in keeping with the President's directive that the Military Commission shall be the sole determiner of law and fact. Further on information and belief, the Defense contends that the advisor to the Presiding Officer has made ex-parte communications regarding procedures to be utilized in conducting Military Commission with the Appointing Authorities Legal Advisor, thereby creating the potential for actual or apparent of collusion and unlawful command influence.

4. Witnesses and Evidence: The Defense intends to enter evidence and call the Assistant to the Presiding Officer as a witness in support of this motion.

5. Oral Argument: Because the full facts will not be known until such time as a conclusion of evidentiary hearing, the Defense requests oral argument for this motion.

6. Request for an Extension of Time: The Defense will timely file this motion.

CHARLES D. SWIFT
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Detailed Defense Counsel