

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SALIM AHMED HAMDAN,

Petitioner,

v.

DONALD H. RUMSFELD, United States
Secretary of Defense, *et al.*

Respondents.

CIVIL ACTION NO. 04-CV-01519 (JR)

**PETITIONER'S UNOPPOSED MOTION FOR
ORDER THAT CASE NOT BE GOVERNED BY
PROTECTIVE ORDER ENTERED IN
CONSOLIDATED PROCEEDINGS**

Petitioner Salim Ahmed Hamdan respectfully requests an order from this Court establishing that any Protective Order entered in the consolidated proceedings relating to Guantanamo detainee petitions shall not govern Petitioner Hamdan's case before Judge Robertson. Such an order is justified in light of the significantly different posture of this case with respect to issues relevant to the Protective Order. These differences include the following:

(1) Petitioner in this action is one of only four individuals currently being held for trial before military commissions pursuant to the President's November 13, 2001 Military Order. This action primarily challenges the legality of the military commission established to try Petitioner, and the legality of the Military Order.

(2) Because this action raises primarily legal issues, and because sufficient factual discovery has already been made available to Petitioner's counsel in the context of the military commission process, unlike other petitioners in the consolidated proceedings,

Petitioner is not seeking additional discovery in this action.¹ Likewise, Petitioner's counsel does not require additional access to Petitioner beyond the access that has been provided in connection with the commission process.

(3) Petitioner's trial before the military commission is set for December 7, 2004, imparting an urgency to the issues raised in this action that is not present in the other cases. The Protective Order proposed by the Government in the consolidated proceeding contains combersome and time-consuming measures that are both unnecessary and potentially prejudicial to Petitioner in both this action and in his case before the military commission. They are unnecessary because Petitioner is being represented before the military commission by two of the same attorneys appearing for Petitioner in this case (Lt. Commander Charles Swift and Neal Katyal), and those attorneys are already bound by a protective order promulgated by the presiding officer of the military commission. Given the purely legal issues that predominate in Hamdan's judicial action, no such access has been deemed necessary.

(4) The Government's proposed Protective Order in the consolidated proceeding is potentially prejudicial to Petitioner because it will establish procedures that vary from, and are inconsistent with, the procedures set forth in the military commission's protective order, causing confusion and delay. Given the imminence of Petitioner's trial before the military commission, anything that interferes with the trial preparation of his counsel at this point is gravely prejudicial.

(5) Recognizing that the posture and issues in this case are significantly different from those in the consolidated proceeding, this Court, by order dated September 20, 2004, set a unique briefing schedule for the parties in this action. In that order, the Court directed that

¹ Indeed, in the order issued in this case on October 18 setting oral argument before Judge Robertson on Hamdan's petition for writ of mandamus and the government's cross-motion to dismiss for October 25, 2004, Judge Robertson specifically directs that "[n]o additional testimony with be heard or evidence adduced."

all briefing on substantive issues be submitted to Judge Robertson, who would then set a date for oral argument. In compliance with that order, by October 14 the parties completed the briefing on the Petition for Writ of Mandamus, or in the Alternative, Writ of Habeas Corpus, and on Respondents' Cross Motion to Dismiss. Judge Robertson has now set oral argument on the issues raised in this action for October 25, 2004. Petitioner's counsel does not anticipate a need for further discovery or for access to Petitioner beyond that already available pursuant to the military commission procedures. Should a need arise for the presentation of classified information in an evidentiary hearing in this case, or for the sharing of classified or protected information with Petitioner's counsel who currently do not have access to such information, Petitioner believes that such issues are best addressed by Judge Robertson in a manner tailored to the unique needs of this case.

Counsel for Petitioner has contacted counsel for the government concerning this motion. Counsel for the government has authorized Petitioner to state that the motion is unopposed.

For all the foregoing reasons, the Court should issue an order establishing that the Protective Order entered in the consolidated proceeding should not govern Petitioner Hamdan's case.

Respectfully submitted this 19th day of October, 2004.

NEAL KATYAL

By /s/ Neal Katyal
Neal Katyal, D.C. Bar #462071
600 New Jersey Avenue, NW
Washington, D.C. 20001
(202) 662-9000

**LIEUTENANT COMMANDER CHARLES
SWIFT**

By /s/ Lieutenant Commander Charles Swift
Lieutenant Commander Charles Swift
N.C. Bar #21084

PERKINS COIE LLP

By /s/ Benjamin S. Sharp
Benjamin S. Sharp (DC Bar No. 211623)
Kelly A. Cameron (DC Bar No. 458828)

Attorneys for Petitioner Salim Ahmed Hamdan

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2004, copies of the foregoing **Petitioner's Unopposed Motion for Order That Case Will Not Be Governed By Protective Order in Consolidated Cases**, together with supporting **Proposed Order** were served by electronic mail and facsimile, upon the following:

Jonathan L. Marcus
Appellate Section, Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 5636
Washington, D.C. 20530
(202) 514-8976
(202) 307-4613 (facsimile)
Jonathan.L.Marcus@usdoj.gov

Terry Henry
Thomas Swanton
Civil Division
Federal Programs Branch
U.S. Department of Justice
20 Massachusetts Avenue, NW, Room 7144
Washington, DC 20530
(202) 514-4107
(202) 616-8470 (facsimile)
Terry.Henry@usdoj.gov
Thomas.Swanton2@usdoj.gov

Brian C. Kipnis
John McKay
U.S. Attorney's Office
601 Union Street, Suite 5100
Seattle, WA 98101-3903
(206) 553-7970
(206) 553-0116 (facsimile)
Brian.Kipnis@usdoj.gov

Attorneys for Respondents

/s/ Jody A. Sullivan
Jody A. Sullivan

