



U.S. Department of Justice

*United States Attorney
Western District of Washington*

*Please reply to:
Brian C. Kipnis
Assistant United States Attorney
Chief, Civil Division
Direct Line: (206) 553-4426*

*601 Union Street, Suite 5100 Tel: (206) 553-7970
Seattle, Washington 98101-3903 Fax: (206) 553-0116
www.usdoj.gov/usao/waw*

June 8, 2004

The Honorable Robert S. Lasnik
United States District Judge
Western District of Washington
United States Courthouse
1010 Fifth Avenue
Seattle, WA 98104

Re: Lieutenant Commander Charles Swift, etc. v. Donald H. Rumsfeld, etc., et al.
No. C04-0777L, USDC, W.D. Washington

Dear Judge Lasnik:

As you may recall, on April 6, 2004, with the filing of the petition in this case, and on May 3, 2004, with the filing of petitioner's opposition to respondents' motion to stay the case, petitioner filed a number of documents under seal. We understand that there has been at least one request from the media for the unsealing of these documents. This letter itemizes these documents and communicates the current position of the Department of Defense ("DOD") on the unsealing of each document.

At the outset it should be noted that none of the documents contains any information that has, to date, been officially classified. Nevertheless, as indicated below, upon initial review by DOD, it appears that three of the documents contain information that may be classifiable or otherwise protectible. Accordingly, DOD requests that the Court maintain these three documents under seal until such time as the appropriate component of DOD has had an opportunity to assess these documents under the relevant standards. It is anticipated that this review will take two weeks to complete.

With that introduction, DOD agrees that the following documents may be unsealed immediately:

1. "Exhibit A" to the LCDR Swift Declaration. This is a copy of a letter from LCDR Swift to the Office of the Appointing Authority (4/26/04) requesting appointment of a psychiatric expert to the defense team and a mental health exam.
2. Declaration of Daryl Matthews, M.D. PhD (3/31/04). This contains Dr. Matthews' opinions as to the potential psychological effect of the conditions of Hamdan's confinement.

3. Supplemental statement of Dr. Matthews (dated 4/26/04). This statement contains Dr. Matthews opinions, based on additional information, as to the potential psychological effect of the conditions of Hamdan's confinement. It also opines on the likely suitability of the psychiatric service available to Hamdan at Guantanamo and offers to perform an evaluation jointly with Dr. Hanan Hassanin.
4. Dr. Matthew's 13 page curriculum vitae.
5. Dr. Hassanin's 15 page curriculum vitae.
6. A copy of a letter dated 4/30/04 from Harry Schneider to the Department of Justice. This letter proposes terms of settlement for the stay motion in this case.¹
7. Exhibit J to the Declaration of LCDR Swift. This is a copy of a memorandum dated 12/15/03 from the Chief Prosecutor, Office of Military Commissions, to the Acting Chief Defense Counsel, authorizing the detail of military defense counsel to assist Hamdan.

DOD respectfully requests that the following documents remain sealed until they have been reviewed by the appropriate DOD component for classifiable or other protectible information.

1. A six-page declaration of LCDR Charles Swift (5/3/2004). This contains, among other things, a detailed physical description of the place where Salim Ahmed Salim Hamdan is confined, and information concerning the daily routine of Hamdan and those guarding him. In light of these details, dissemination of this material could threaten the safety of the detention facility and personnel, and indeed the detainees themselves.
2. A three-page affidavit of Salim Ahmed Salim Hamdan, subscribed and sworn before Jason E. Kreinhop, Legalman First Class, USN, on 2/9/04, which was attached as an exhibit to the declaration of Charles P. Schmitz, Ph.D. The text of the affidavit is almost entirely written in a foreign language (presumably Arabic).
3. Exhibit B to the declaration of Charles P. Schmitz, Ph.D, which is purported to be an English translation of the previously described affidavit of Salim Ahmed Salim Hamdan. The affidavit describes, among other things, destinations to which Hamdan traveled with Usama Bin Laden, along with factual allegations concerning Hamdan's apprehension, detention, and interrogation. In light of potentially sensitive information contained in this affidavit, the publication of which may affect U.S. national security, this document (and the Arabic version described above) are

¹ Although we do not ask that this document remain sealed, we are concerned that the filing of this exhibit contravened the spirit, if not the letter, of CR 39.1(a)(6) of the Local Rules.

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undergoing further review to determine if they will be subject to classification or other protected status.

As noted above, DOD expects to complete its review within two weeks. If the Court agrees to maintain the status quo as to these three documents, I will be pleased to contact the Court and opposing counsel immediately after the DOD review is completed and offer our recommendation for the handling of each of the these documents in light of DOD's determination.

I will be pleased to discuss this subject further with the Court at its convenience, as well as any other issues of concern.

Thank you for your consideration of this matter.

Yours truly,

JOHN McKAY
United States Attorney

s/ Brian C. Kipnis
BRIAN C. KIPNIS
Assistant United States Attorney
Chief, Civil Division

cc: Mr. Charles Davidson Swift, LCDR, USN
Office of the Chief Defense Counsel for Military Commissions
1931 Jefferson Davis Hwy, Ste 103
Arlington, VA 22202

Mr. Harry H. Schneider, Jr.
Mr. Charles Christian Sipos
Mr. David Roy East
Mr. Joseph M McMillan
Perkins Coie
1201 3rd Ave, Ste 4800
Seattle, WA 98101-3099

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Mr. Neal Katyal
Georgetown University Law Center
600 New Jersey Ave.
Washington, DC 20001