



U.S. Department of Justice

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June 22, 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:

In a letter dated June 8, 2004, we wrote to inform you that, with respect to ten documents filed under seal by plaintiff LCDR Charles Swift, the Department of Defense (DOD) had determined that three documents appeared to contain potentially classifiable or otherwise protectible information which warranted further review by the appropriate DOD component. These three documents are:

1. A six-page declaration of LCDR Charles Swift dated May 3, 2004, which 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.
2. A three-page affidavit of Salim Ahmed Salim Hamdan, subscribed and sworn on February 9, 2004, written almost entirely in a foreign language.
3. A document which purports to be an an English translation of the previously described affidavit of Salim Ahmed Salim Hamdan.

In our June 8th letter, we requested that DOD be afforded two weeks to conduct its review and report back to the Court.

A review of these three documents has been completed at Guantanamo and it has been determined that each of these three documents contains information which may require classification under Executive Order 12958, as amended. This is an initial determination that the documents in question should be classified, which is subject to review and final decision within the Office of the Secretary of Defense. It is anticipated that this additional level of review will take an additional two weeks.

Pending final review in the Secretary's Office, we believe it is necessary to treat these three documents as classified. As such, it will be necessary to collect any and all copies of these documents which have been filed with the Court, including any electronic copies, and hold them in a secure manner. To that end, I have taken the liberty of contacting the Security and Emergency Planning Staff of the Department of Justice. In cases subject to Classified Information Procedures Act, 18 U.S.C. App 3, ("CIPA"), Court Security Officers of the Security and Emergency Planning Staff are responsible for assisting the federal courts with the handling and safekeeping of secure documents. In addition, at the request of the Court, the Court Security Officers can assist in obtaining appropriate security clearances for Court staff who are determined by the Court to require access to this material. This case is not technically subject to CIPA because it is a civil case. Nevertheless, the legal obligation to hold the classified information in a safe and secure manner, and to allow access to this information on a "need to know" basis only to those who have been duly authorized, does apply. The Security and Emergency Planning Staff stands ready to assist the Court in this endeavor.

In addition, the undersigned contemplates communicating with opposing counsel in regard to this development to inform them of this initial decision and ensure that any copies of this material in LCDR Swift's custody, or under his control, are properly secured in accordance with the Defense Department's regulations. Although none are anticipated, any disputes in this regard will be brought to the attention of the Court by some appropriate mechanism.

Lastly, assuming that the Secretary's Office concurs that the documents listed above should be classified, we will endeavor to provide new copies of the documents to the Court and opposing counsel with classified material redacted therefrom. We do not anticipate that there will be any need to keep the redacted version of these documents under seal.

If the Court agrees with this proposal, and there is no objection by LCDR Swift, I will ask a Court Security Officer from the DOJ Security and Emergency Planning Staff to contact the Clerk's Office, or any member of the Court staff designated by the Court, to begin working with the Court to develop procedures for the safeguarding of this information.

We will await the response of the Court to this information. As always, we are available to discuss this or any other subject with the Court, at its deems necessary.

The Hon. Robert S. Lasnik, U.S. District Judge
June 22, 2004
Page 3

Thank you once again for your consideration of this matter.

Yours truly,

JOHN McKAY
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