

THE HONORABLE ROBERT S. LASNIK

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE
11
12
13
14

15 Lieutenant Commander CHARLES SWIFT, a
16 resident of the State of Washington, as next
17 friend for SALIM AHMED HAMDAN,
18 Military Commission Detainee,
19 Camp Echo,
20 Guantanamo Bay Naval Base,
21 Guantanamo Bay, Cuba,
22
23

24 Petitioner,
25
26

27 v.
28

29 DONALD H. RUMSFELD, United States
30 Secretary of Defense; JOHN D.
31 ALTENBURG, Jr., Appointing Authority for
32 Military Commissions, Department of Defense;
33 Brigadier General THOMAS L.
34 HEMINGWAY, Legal Advisor to the
35 Appointing Authority for Military Commissions;
36 Brigadier General JAY HOOD, Commander
37 Joint Task Force, Guantanamo, Camp Echo,
38 Guantanamo Bay, Cuba; GEORGE W. BUSH,
39 President of the United States,
40
41
42

43 Respondents.
44
45
46
47

NO. CV04-0777L

**DECLARATION OF
HARRY H. SCHNEIDER, JR.**

**[FILED UNDER SEAL
AS TO EXHIBIT A (PAGES 4 – 6)]**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

**Petitioner files this document under seal, in a manner consistent with the
Classified Information Procedures Act, 18 U.S.C. app. 3 § 1 *et seq.***



Harry H. Schneider, Jr.
PHONE: 206.359.8508
FAX: 206.359.9508
EMAIL: HSchneider@perkinscoie.com

1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
PHONE: 206.583.8888
FAX: 206.583.8500
www.perkinscoie.com

April 30, 2004

VIA FACSIMILE

Brian C. Kipnis
Assistant United States Attorney
U.S. Attorney's Office
601 Union Street, Suite 5100
Seattle, WA 98101

**Re: Swift v. Rumsfeld
United States District Court No. C04-0777L**

Dear Mr. Kipnis:

I mentioned in my letter of April 27 that Petitioner in the referenced case intends to oppose Respondents' recently filed Motion for Order Holding Petition in Abeyance ("Motion for Stay"). As I indicated, we view Mr. Hamdan's continued incarceration in solitary confinement, where he has been held for months without charge, as a matter of grave concern and uncommon urgency. If anything, my earlier letter understates our alarm about the situation, which is based in part on the widely recognized risk of serious psychological injury arising from solitary confinement. Indeed, as we noted in our Request for Early Status Conference, Mr. Hamdan is already exhibiting symptoms of psychological distress as a result of his confinement, including initiating a hunger strike earlier this month. Under these circumstances, our initial view was that we could not in good conscience agree to further delay.

However, in the interests of trying to accommodate the United States' request, and despite our assessment that from a legal standpoint, Respondents have failed to demonstrate that a stay is justified, we believe we could agree to a stay if the Government agrees to conditions designed to mitigate the damage that is certain to arise from delay.

EXHIBIT A

[43439-0001/SL041200.007]

The first and by far the most important of these conditions is that Respondents agree to release Mr. Hamdan from solitary confinement in Camp Echo, and return him to general detention at Camp Delta, until the Court rules on the Petition for Writ of Mandamus, or in the alternative, Writ of Habeas Corpus. This would include the entire period of time necessary for all appeals from the District Court decision to be fully resolved. We regard this release to general detention at Camp Delta as absolutely essential to prevent further deterioration in Mr. Hamdan's mental condition.

The second condition on which we would agree to the stay would be the approval by the Appointing Authority of the request made last week by Lt. Commander Swift that Dr. Daryl Matthews, M.D., Ph.D, be permitted to conduct a psychological evaluation of Mr. Hamdan at Guantanamo Bay. Dr. Matthews is, of course, a professional who has been employed by the U.S. Military in the past, and has the necessary security clearance to appear on the Base. Indeed, he has been to Guantanamo Bay at the request of U.S. Military authorities to serve as a consultant on mental health services. There can be no serious question about Dr. Matthews' professional qualifications or his loyalty as an American citizen, but of course, we understand that Respondents will need to evaluate those matters and are happy to assist in that evaluation in any way possible.

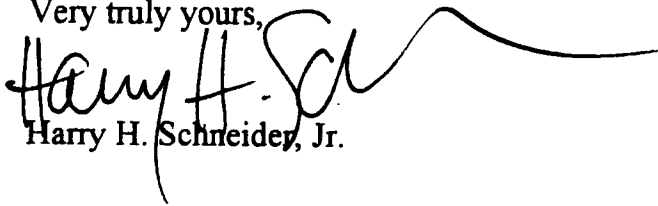
The final condition on which Petitioner would agree to stay the proceedings is for Respondents to agree to permit discovery to go forward. We believe some limited discovery is necessary in this case in order to make a factual showing at any evidentiary hearing that might be ordered by the District Court. We are happy to discuss with you the specific contours of that discovery at the appropriate time, and to allow Respondents the right to object and seek a protective order from the Court if they deem it necessary, but would require that Respondents agree not to take the position that discovery should be stayed simply because the District Court's consideration of the Petition is stayed.

We believe these conditions are reasonable and necessary to protect our client from the consequences of delay, and would welcome the opportunity discuss them with you. Please let me know whether Respondents would agree to the arrangement outlined above. Of course, we are fully prepared to consider any reasonable alternatives that Respondents might propose.

April 30, 2004
Page 3

I look forward to hearing from you on this issue.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harry H. Schneider, Jr.", with a long, sweeping horizontal flourish extending to the right.

HHS:rpj

cc: Jonathan L. Marcus