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THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Lieutenant Commander CHARLES SWIFT, a
resident of the State of Washington, as next
friend for SALIM AHMED HAMDAN,
Military Commission Detainee,
Camp Echo,
Guantanamo Bay Naval Base,
Guantanamo Bay, Cuba,

Petitioner,

v.

DONALD H. RUMSFELD, United States
Secretary of Defense; JOHN D.
ALTENBURG, Jr., Appointing Authority for
Military Commissions, Department of Defense;
Brigadier General THOMAS L.
HEMINGWAY, Legal Advisor to the
Appointing Authority for Military
Commissions; Brigadier General JAY HOOD,
Commander Joint Task Force, Guantanamo,
Camp Echo, Guantanamo Bay, Cuba;
GEORGE W. BUSH, President of the United
States,

Respondents.

NO. CV04-0777L

**DECLARATION OF
LIEUTENANT COMMANDER
CHARLES SWIFT, JAGC, USN**

[FILED UNDER SEAL]

1 LIEUTENANT COMMANDER CHARLES SWIFT hereby declares and states as
2 follows:
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4 1. I am over the age of eighteen (18) years. The following is true and correct to
5 the best of my knowledge. I have personal knowledge of the matters stated herein and, if
6 called upon to testify, could competently testify thereto.
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9 2. On December 18, 2003, I was detailed to represent Salim Ahmed Hamdan
10 pursuant to a request by the prosecutor of Military Commission. I was detailed for the
11 purpose of determining Mr. Hamdan's amenability to negotiating a plea before a Military
12 Commission and was instructed that access to Mr. Hamdan was solely for that purpose. At
13 the time of detailing, I considered myself to be in a very difficult ethical position as my
14 client was not being offered the choice between negotiating a plea or facing more serious
15 charges or sentence, but rather, between pleading guilty or remaining indefinitely in solitary
16 confinement without trial and without access to counsel. I clearly saw the potential for a
17 coerced guilty plea under these circumstances, but without meeting with the client it was
18 impossible for me to determine if the client independently desired to plead guilty.
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21 3. Consequently, I requested that the government furnish me with a translator
22 and permission to travel to Naval Station Guantanamo Bay, Cuba. In order to travel to
23 Naval Station Guantanamo, I was required to seek "country clearance" authorizing travel to
24 Naval Station Guantanamo Bay through the Appointing Officer's office, Commander,
25 Southern Command, and Commanding Officer, Naval Station Guantanamo Bay. Once on
26 the Naval Station all visits with my client required the pre-approval of the Staff Judge
27 Advocate, Joint Task Force Guantanamo, acting at the direction of the Commander of the
28 Joint Task Force Guantanamo. During my first meeting with the Staff Judge Advocate,
29 Lieutenant Colonel Bowman, United States Army, indicated that my access to my client was
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1 solely for the purpose of military commissions and that any other unauthorized activity
2 would result in my being barred from returning to Naval Station Guantanamo.
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4 4. During my first meeting with Mr. Hamdan, he denied that he was a
5 combatant or that he had committed any crime and demanded a trial. He did not understand
6 why he was facing a military trial because he was not in his words, "a fighter." He also
7 expressed great anxiety over his conditions of confinement stating that Camp Echo was
8 worse than anything he had experienced in Afghanistan or Camp Delta and that he was
9 going crazy. He repeatedly asked what the conditions of his confinement would be if he
10 pleaded guilty. He asked whether he could work, if he would be with other Arabs and
11 whether he could serve his time in Yemen. He expressed little interest in the length of his
12 confinement saying only that the twenty-year sentence that the government offered was a
13 lifetime to him and that he believed that the US Government meant to keep him imprisoned
14 for life no matter what he did.
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16 5. During my first visit with Mr. Hamdan, I discussed the possibility of filing
17 suit in Federal District Court. I told him that he should sign a letter authorizing me to serve
18 as next friend, and that he should do it immediately because the Government had reserved
19 the right to cut off my access to him (Mr. Hamdan). Mr. Hamdan asked where I would file
20 on his behalf. I told him that I intended to file in the Federal District Court of the Western
21 District of Washington because that was my legal home. Mr. Hamdan then asked if I
22 thought the Western District would be fair and I affirmed that I expected the court to be fair.
23 Additionally, I told Mr. Hamdan that I had discussed the possibility of representation with
24 Professor Neal Katyal of the Georgetown University Law Center, who offered to assist me
25 in this effort at no cost to him or myself. Mr. Hamdan stated that neither he nor his family
26 could afford to pay an attorney. Mr. Hamdan also asked about the possibility of the Yemeni
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1 Government helping him. I indicated that I would seek Consular access on his behalf but
2 was unsure whether the military would grant access. The Appointing Authority denied a
3 subsequent request for a Consular Visit to advise and assist Mr. Hamdan in obtaining
4 civilian counsel. At the end of this visit, Mr. Hamdan signed a letter authorizing me to serve
5 as his next friend.
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10 6. Over the successive weekends, I briefed Mr. Hamdan on the Military
11 Commissions and possible theories of liability. This process was time consuming and
12 difficult given my position as a military officer, the need to work through a translator, his
13 low level of education, and the fact that he had been repeatedly told by interrogators that he
14 had no rights. I counseled Mr. Hamdan that he should only plead guilty if he in fact
15 believed that he was guilty of a crime. Mr. Hamdan repeatedly asked what would happen if
16 he did not plead guilty. I counseled Mr. Hamdan that if he did not wish to plead guilty I
17 would submit a demand for charges and a speedy trial on his behalf and that if our demand
18 was rejected I could try to seek his release from isolation in Camp Echo in Federal Court
19 acting on his behalf as his "next friend." I explained that I believed that "next friend" status
20 was necessary because my access to him could be denied if he indicated that he was not
21 interested in negotiating a settlement.
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34 7. After I had explained the situation to the best of my ability to Mr. Hamdan,
35 he indicated that he was not willing to negotiate a guilty plea under the government's terms.
36 Consequently, I filed a demand for charges and a speedy trial with the Appointing
37 Authority.
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42 8. In filing as "next friend," I was aware that the President's Military order of
43 November 13, 2001 prohibited seeking a remedy in Federal Court "directly or indirectly, or
44 to have any such remedy or proceeding sought on the individual's behalf." As a military
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1 attorney, unlike my civilian counterparts, this provision of the President's order did not
2 present a simple procedural prophylactic, but potentially subjected me to penal prosecution
3 under Article 92 of the Uniform Code of Military Justice violating a lawful order and
4 sanction under JAGINST 5803.1B, Rule 1.2 (Establishment and Scope of Representation)
5 for assisting a client beyond the scope of representation contemplated by the President's
6 Military Order and subsequent Orders and Rules for Commissions. After careful
7 consideration, I determined that I believed in good faith that to interpret the plain language
8 of the relevant portion of the President's Military Order to prohibit seeking relief in Federal
9 court would be unlawful.
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18 9. Although my principal reasons for filing as "next friend" were that I had no
19 guarantee of continued access to Mr. Hamdan and I feared that continued isolation would
20 degrade his ability to the point that he was unable to make informed and free decisions, I
21 consider the present action also as the means to vindicate my professional ability and
22 reputation as Detailed Military Counsel to Mr. Hamdan and to zealously represent my client
23 through all legal means notwithstanding military orders or instructions to that could be
24 interpreted by my military and civilian superiors to the contrary. The restrictions placed
25 upon me as defense counsel by and pursuant to President Bush's November 13, 2001 Order
26 are (as several organizations have stated) inconsistent with Anglo-American legal ethics. To
27 participate in such proceedings without challenge would damage my reputation as an
28 independent and zealous advocate for my clients. To refuse to participate in the proceedings
29 was clearly contrary to my obligations as detailed defense counsel. This lawsuit is necessary
30 to declare the President's Order, and its encumbrances on me as defense counsel, invalid,
31 and to vindicate my ability as detailed military counsel on an equal basis.
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10. Because of my domicile and residence in the State of Washington, and the fact that the great majority of my legal team (and all of my administrative team) is based in Seattle, it is far more convenient for me for this case to proceed in the Western District of Washington. A transfer to the District of Columbia would force several attorneys and staff to travel repeatedly to the District of Columbia, at considerable expense and difficulty.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 23rd day of July, 2004.



Lieutenant Commander Charles Swift

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this 23rd day of July, 2004, I caused to be served a true and correct copy of **Declaration of Lieutenant Commander Charles Swift, JAGC, USN** upon the following, at the addresses stated below, via the method of service indicated:

Mr. John McKay	<u> X </u>	Via hand delivery
Brian C. Kipnis	<u> </u>	Via Certified Mail, Return Receipt Requested
U.S. Attorney's Office	<u> </u>	Via Overnight Delivery
601 Union Street, Suite 5100	<u> </u>	Via Facsimile
Seattle, WA 98101	<u> X </u>	Via E-filing

Jonathan L. Marcus	<u> </u>	Via hand delivery
Appellate Section, Criminal Division	<u> </u>	Via Certified Mail, Return Receipt Requested
U.S. Department of Justice	<u> X </u>	Via Overnight Delivery
601 D Street, N.W., Suite 6206	<u> </u>	Via Facsimile
Washington, D.C. 20530	<u> </u>	Via E-filing

DATED at Seattle, Washington, this 23rd day of July, 2004.

PERKINS COIE LLP

By /s/ Harry H. Schneider, Jr.
Harry H. Schneider, Jr., WSBA #9404
Joseph M. McMillan, WSBA # 26527
David R. East, WSBA #31481
Charles C. Sipos, WSBA #32825
Attorneys for Petitioner