

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---------------------------------------|---|---------------------|
| Lieutenant Commander CHARLES SWIFT, |) | |
| as next friend for SALIM AHMED HAMDAN |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 04-CV-1519 (JR) |
| |) | |
| DONALD H. RUMSFELD, et al., |) | |
| |) | |
| Respondents. |) | |

**MOTION OF AMICI CURIAE
INTERNATIONAL LAW PROFESSORS
FOR LEAVE TO FILE MEMORANDUM AS AMICI CURIAE
IN OPPOSITION TO RESPONDENT'S CROSS MOTION TO DISMISS**

The undersigned International Law Professors move the court to grant them leave to file the accompanying memorandum as amici curiae addressing respondent's motion to dismiss.

1. This is an action to prevent the trial of Petitioner Salid Ahmed Hamdan before an unlawful military commission in Guantanamo Bay, and requesting his release. Petitioner, through his next friend, claims he is entitled to a writ of mandamus or, in the alternative a writ of habeas corpus because the military commissions violate the law of the United States.

Respondents have filed a cross-motion to dismiss the case on the grounds that the case is premature until the trial of Hamdan before the military commission is complete.

2. Amici Curiae, the international law professors named below, include professors who have lectured and/or published widely on these and related matters. The views set forth the views of the professors on their own behalf and not as representatives of their respective schools.

3. The military commissions are illegally constituted, and violate the separation of powers doctrine. No further exhaustion of remedies is necessary before this issue is determined.

Military commissions qualify as “war courts” and, therefore, their jurisdiction is limited in terms of context and time to a circumstance of actual war, and in terms of place to a theater of war or a war-related occupied territory. Guantanamo, Cuba is neither in a theater of war nor war-related occupied territory and, thus, a military commission situated there does not have lawful jurisdiction. Further, some of the crimes that might be charged are not within the competence of a military commission. A violation of the separation of powers exists because the military commissions at Guantanamo do not comply with Article I, Section 8, clause 9 of the U.S. Constitution, which requires that tribunals be constituted as “inferior to the Supreme Court” and, thus, subject to its ultimate control.

CONCLUSION

The motion for leave to file as amici curiae should be granted.

Respectfully submitted,

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| |) | |
| Respondents. |) | |

ORDER

The motion of International Law Professors for leave to file a memorandum as amici curiae is granted.

Dated: _____, 2004

United State District Judge

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of September, 2004, I caused copies of the forgoing Motion For Leave To File as Amici Curiae, Proposed Order, and Proposed Memorandum of Amici Curiae to be served by express mail addressed to the following:

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David B. Salmons
Terry M. Henry
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I, Linda A. Malone, hereby certify that I am filing this motion and all other papers on behalf of an indigent pursuant to local rule 83.2(g) and my services are being provided without compensation. I am familiar with the Local Rules of this court.

Dated: _____

Linda A. Malone
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