

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Lieutenant Commander CHARLES SWIFT, 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; and  
GEORGE W. BUSH, President of the United  
States,

*Respondents.*

CIVIL ACTION NO. 1:04-cv-01519-JR

**PETITIONER'S REQUEST FOR EARLY STATUS CONFERENCE**

Petitioner Lieutenant Commander Charles Swift respectfully requests an early status conference with the Court.

**I. Procedural Posture of the Case**

In late 2001, Salim Ahmed Hamdan, a Yemeni citizen, was seized by private militia forces while attempting to flee from Afghanistan. Mr. Hamdan was then sold for a bounty and taken into United States Military custody on November 24, 2001. In June 2002, he was transported to Guantanamo Bay Naval Base and placed in Camp Delta as part of the general

population of detainees. On July 3, 2003, the President of the United States designated Hamdan as a person eligible for trial by Military Commission pursuant to a Military Order he issued on November 13, 2001. The designation was based on a determination by the President that there is reason to believe that Hamdan was a member of al Qaeda or otherwise engaged in terrorism against the United States. Hamdan denies these allegations.

In December 2003, Mr. Hamdan was placed in solitary confinement (what the government refers to as "pre-commission segregation") in a separate section of the Guantanamo Naval Base known as Camp Echo. In that same month, Petitioner Lt. Commander Charles Swift was assigned to serve as military defense counsel for Hamdan before the Military Commission. At the time of his assignment, Lt. Commander Swift was informed by the government that he was being granted access to Hamdan for the limited purpose of negotiating a plea and that continued access was dependent on Hamdan's willingness to enter into a plea agreement. Lt. Commander Swift met with Mr. Hamdan on January 30, 2004 and promptly thereafter submitted a demand for charges and a speedy trial pursuant to the Uniform Code of Military Justice and the Geneva Conventions.

Months passed without charges being preferred against Hamdan or a Military Commission being established. Hamdan began to exhibit symptoms of psychological distress arising from his continuing solitary confinement. On April 6, 2004, Petitioner filed his Petition for Writ of Mandamus, or in the alternative, Writ of Habeas Corpus, in United States District Court for the Western District of Washington. Respondents moved for an abeyance pending a decision from the Supreme Court concerning the jurisdiction of federal courts to hear actions filed by or on behalf of Guantanamo detainees. At oral argument, in response to a question from the Court about Hamdan's prolonged detention during the abeyance, Respondents stated that "We're asking the Court to temporarily stay things until we have guidance from the Supreme Court, but then at that time the government would be willing to do whatever we can to brief the issues and to move the case forward." Trans., at 38.

On May 11, 2004, the Court granted the motion for an abeyance and stayed the case pending the Supreme Court's disposition of Rasul v. George w. Bush, \_\_\_ U.S. \_\_\_, 124 S. Ct. 2686 (2004) and Rumsfeld v. Padilla, \_\_\_ U.S. \_\_\_, 124 S. Ct. 2711 (2004). The Court stated that "Petitioner has presented significant evidence regarding the conditions of Hamdan's detention and has presented credible evidence of the risk of harm to Hamdan should his detention under these conditions continue." See Order (May 11, 2004) at 6. As a result, the Court set a briefing schedule by which Respondents Return was due 30 days after the decisions were handed down, Petitioner's Reply two weeks the Return, and Oral Argument on all of these issues on September 8, 2004. This was, as the Court put it, "not an indefinite stay, or a lengthy stay, but a measured one, that will keep us again on as fast a track as possible." See Transcript of Proceedings for : Hearing on Respondents' Motion for Abeyance (May 7, 2004) at 41. Following the Supreme Court ruling in Rasul that federal court jurisdiction extended to Guantanamo Bay, Respondents sought and were granted an extension of time in which to file a Return to the Petition. The District Court pushed back the deadlines for Respondents' Return and Petitioner's Reply to it by approximately one week, but explicitly left the date for oral argument (September 8, 2004) in place.

On July 16, 2004, Respondents filed a Motion to Dismiss or Transfer based on various other jurisdictional and venue issues. That motion was fully briefed by late July. On August 6, prior to the Court's ruling on Respondents' Motion to Dismiss or Transfer, Respondents filed a Consolidated Return to the Petition and Cross-Motion to Dismiss. On August 9, the Western District of Washington granted in part Respondents' Motion to Dismiss or Transfer, and ordered this case transferred to this Court. At the same time, the Court struck the briefing schedule for the date of Petitioner's Reply to the Return. Petitioner immediately informed the Court that he would not seek an appeal, and asked the Court to transfer the case files to the District Court for the District of Columbia as soon as practicable.

In the meantime, on July 13, 2004, the Appointing Authority for Military Commissions, Respondent John D. Altenburg, Jr., approved a charge to be filed against Hamdan, appointed a five member Military Commission, and referred the charge to the Military Commission for trial. The charge is "Conspiracy." On August 24, Hamdan was brought before the Military Commission. No trial date has been set. The preliminary commission proceedings have been continued until November 1, and once Petitioner's Reply is submitted, the issues involved in Respondents' Return and Cross-Motion for dismissal are ready for consideration and ultimate decision by this Court. See Ex Parte Quirin, 317 U.S. 1 (1942); Quirin Commission Transcript, at 5-6 (remarks of Attorney General Biddle), available at [http://www.soc.umn.edu/~samaha/nazi\\_saboteurs/nazi01.htm](http://www.soc.umn.edu/~samaha/nazi_saboteurs/nazi01.htm).

## **II. Issues for Consideration at Status Conference**

Petitioner believes the following issues should be addressed at an early status conference:

### **A. Completion of the Briefing and Setting of Date for Oral Argument on the Petition for Writ of Mandamus, or in the alternative, Writ of Habeas Corpus**

A date should be set for filing of Petitioner's Reply to Respondents' Consolidated Return and Cross-Motion to Dismiss. In addition, Petitioner requests an early date be set for oral argument on the issues raised by the Petition and Respondents' Cross-Motion.

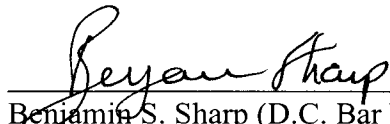
Avoiding further delay is critically important in this case, as illegal delay is one of the central claims advanced in the Petition. More significantly, the delay is gravely prejudicial to Mr. Hamdan's ability to defend himself. Mr. Hamdan's mental health continues to deteriorate in solitary confinement and he has recently launched hunger strikes. Hamdan has at various points during his solitary confinement also expressed a desire to harm himself. Without prompt intervention by this Court, Hamdan's condition and ability to defend himself may be irretrievably worsened. Expeditious determination of whether Hamdan is properly within the jurisdiction of the Military Commission and whether that commission is properly constituted

and appropriately authorized is required by Supreme Court precedent, serves the interest of justice in this case , and will mitigate further mental harm.

**B. Completion of Briefing on Petitioner's Motion for Order  
Authorizing Limited Discovery**

On July 7, 2004, Petitioner filed a Motion for Order Authorizing Limited Discovery. At a hearing on July 16, the Court stated that discovery motions should be held in abeyance pending resolution of Respondents' Motion to Dismiss or Transfer. Petitioner requests that the Court set a briefing schedule for an Opposition, if any, from Respondents, and Reply from Petitioner, on that motion. As noted in the motion, Petitioner believes that some discovery is needed to present facts relevant to Petitioner's claims at any evidentiary hearing the Court might order in connection with the Petition.

Respectfully submitted this 3rd day of September, 2004,



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*Petitioner, as Next Friend for Salim Ahmed Hamdan*

**CERTIFICATE OF SERVICE**

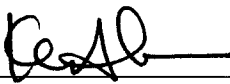
I hereby certify that on September 3, 2004, copies of the foregoing **Petitioner's Request for Early Status Conference** were served by electronic mail and first-class mail, postage prepaid, upon the following :

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