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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Lieutenant Commander CHARLES SWIFT,
as next friend for SALIM AHMED
HAMDAN, Military Commission Detainee,
Camp Echo, Guantanamo Bay Naval Base,
Guantanamo, 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. C04-0777RSL

**RESPONDENTS' OPPOSITION
TO MOTION BY AMICUS
ARTHUR R. MILLER FOR
ORDER GRANTING LEAVE TO
FILE A SURREPLY**

Professor Arthur R. Miller takes the highly irregular step, as an amicus, of seeking leave to file a "surreply" after the time for the briefing of this motion has closed. His surreply consists of nothing more than the Professor's musings about what the law should provide (wholly constructed to counter respondents' argument) rather than what the law is, as set forth in the Federal Rules of Civil Procedure and the decided cases. In particular,

1 Professor Miller seeks to persuade the Court that a lawsuit asserting the rights of a
2 Guantanamo detainee which has no connection of any kind to this District is, nevertheless,
3 appropriately filed here based upon the residence of the detainee's appointed attorney, a non-
4 party who, it so happens, actually lives in the Eastern District of Virginia. The argument
5 which the Professor would have this Court adopt disregards Supreme Court precedent
6 concerning habeas corpus jurisdiction and the legal status of "next friends," ignores
7 Rule 17(a) of the Federal Rules of Civil Procedure, and turns 28 U.S.C. § 1391(e) on its
8 head. Remarkably, the Professor makes this argument without so much as a learned treatise
9 or an Advisory Committee note upon which to hang his hat. In summary, Professor Miller's
10 surreply, like his previous memorandum, brings no new authority to bear upon the issues
11 before the Court.

12 Accordingly, respondents oppose the filing of this untimely surreply, but would be
13 pleased to file a specific response if the Court accepts the surreply for filing and requests such
14 a response.

15 DATED this 30th day of July, 2004.

16 Respectfully submitted,

17 JOHN McKAY
18 United States Attorney

19 DAVID P. SALMONS
20 JONATHAN L. MARCUS
21 Assistants to the Solicitor General

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Attorneys for Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Western District of Washington, and is a person of such age and discretion as to be competent to serve papers;

That, on July 30, 2004, she electronically filed the foregoing document(s) with the Clerk of Court, using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants.

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She further certifies that she has served said document(s) upon those individuals

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