

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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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Lieutenant Commander CHARLES SWIFT,)
as next friend for SALIM AHMED HAMDAN)
)
Petitioner,)
)
v.)
)
DONALD H. RUMSFELD, et al.,)
)
Respondents.)

No. 04-CV-1519 (JR)

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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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: _____

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