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UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

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)  
) DEFENSE MOTION TO  
) DISMISS FOR LACK OF  
) PERSONAL JURISDICTION  
)  
) 1 October 2004

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1. Timeliness. This motion is submitted within the time frame established by the Presiding Officer's order during the initial session of Military Commissions on 24 August 2004.

2. Relief Sought. That the Military Commission find that the President's Military Order authorizing trial by Military Commission is in violation of the rules of personal jurisdiction and dismiss the charge against Mr. Hamdan.

3. Overview. The Military Commission does not have any personal jurisdiction over Mr. Hamdan and should therefore dismiss the charge against him.

4. Facts.

a. From 1996 until approximately October 2001 Salim Ahmed Hamdan worked in Afghanistan in a private capacity as a agricultural and as a personal driver for Usama Bin Laden.

b. At no relevant time did he join either Al Qaeda or the Taliban, participate in a belligerent act towards the United States or its allies, or have foreknowledge of any belligerent or criminal act directed by either of the above organizations against the United States or its allies.

c. On September 11, 2001, Mohammed Atta, Abdul Alomari, Wail al-Shehri, Waleed al-Shehri, and Satam al-Suqami hijacked American Airlines Flight 11, bound from Boston to Los Angeles, and crashed it into the North Tower of the World Trade Center in New York. Mohammed Atta piloted the plane after it was hijacked. Near-simultaneously, Marwan al-Shehhi, Fayeze Ahmed, a/k/a Banihammad Fayeze, Ahmed al-Ghamdi, Hamza al-Ghamdi, and Mohald al-Shehri hijacked United Airlines Flight 175, bound from Boston to Los Angeles, and crashed it into the South Tower of the World Trade Center in New York. Marwan al-Shehhi piloted the plane after it was hijacked. As a result of the crashes, the towers of the World Trade Center collapsed. Approximately 2,752 people, almost all of them civilians, were killed. At the time of the hijackings and attacks, the tenants of the World Trade Center were civilian in nature. The occupants consisted of approximately 430 tenants for business and commerce purposes only. Each of the named individuals are alleged to be members of Al Qaeda.

d. On September 11, 2001, Khalid al-Midhar, Nawaf al-Hazmi, Hani Hanjour, Salem al-Hamzi, and Majed Moqed hijacked American Airlines Flight 77, bound from

Washington D.C. to Los Angeles, and crashed it into the Pentagon in Arlington, Virginia. Hani Hanjour piloted the plane after it was hijacked. As a result of the crash, approximately 184 people including many civilians were killed in and around the Pentagon. Each of the named individuals are alleged to be members of Al Qaeda.

e. On September 11, 2002, Ziad Jarrah, Ahmed al-Haznawi, Saaed al-Ghamdi, and Ahmed al-Nami hijacked United Airlines Flight 93, bound from Newark to San Francisco, and crashed it into a field near Shanksville, Pennsylvania. Ziad Jarrah piloted the plane after it was hijacked. 44 civilians died in the crash. Each of the named individuals are alleged to be members of Al Qaeda.

f. The organization known as al Qaida, or "The Base," was founded in or around 1989 by Usama bin Laden, and others. Al Qaida is composed of private individuals and did not constitute the armed force of any recognized state.

g. In response to the events of September 11, 2001, on September 18, 2001, Congress passed a joint resolution authorizing the President to use all necessary and appropriate force . . . in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." Sept. 18, 2001 Joint Res.

h. On 7 October 2001, pursuant to Presidential Order the United States commenced armed hostilities in Afghanistan in support of the Northern Alliance.

i. At the time that the United States commenced armed hostilities the Northern Alliance consisted of ethnic Tajiks that opposed the Taliban regime by military force. The Northern Alliance controlled approximately 10% of Afghanistan. The remainder of Afghanistan was controlled by military force/government, commonly referred to as the Taliban.

j. The Taliban exercised political and military control over that portion of Afghanistan that it controlled. The Taliban had been recognized as the government of Afghanistan by Pakistan and Saudi Arabia. The United States, however, did not recognize the Taliban as government of Afghanistan.

k. The United States, however, prior to the commencement of the use of military force negotiated with the Taliban seeking that they capture and turn over Usama Bin Laden and other members of al Qaeda to the United States.

l. On 13 November 2001, President Bush issued a military order pursuant to the authority vested in him as President of the United States and Commander in Chief of the Armed Forces of the United States by the Constitution and laws of the United States vesting in the Secretary of Defense the authority to try by military commission those persons that the President determined were subject to the order.

m. Subsequent to the President's Military Order of 13 November 2001, Mr. Hamdan was taken XXXX in late November 2001, XXXX and has been detained by the United States government ever since.

n. At the time of his capture, Mr. Hamdan was traveling alone, was not part of a belligerent force, and was seeking to flee hostilities in Afghanistan.

o. Mr. Hamdan is not and has never been a member of Al Qaeda..

p. Mr. Hamdan has never taken up arms against the United States government or its nationals.

q. Mr. Hamdan had no advance knowledge of the September 11 attacks on the Pentagon and World Trade Center.

r. On 3 July 2003, the President of the United States determined that Mr. Hamdan was subject to his military order of 13 November 2001.

s. 13 July 2004, a charge of conspiracy to commit terrorism against Mr. Hamdan was referred to this Military Commission.

## 5. Law.

### a. The Military Commission Has No Personal Jurisdiction over Mr. Hamdan.

1. "Jurisdiction" refers to the power of a legal body to try an offense. If that body lacks jurisdiction, everything it does in proceeding with a trial is illegal and unlawful.

2. The Supreme Court of the United States has explained what jurisdiction is and what this body's duties are: "The requirement that jurisdiction be established as a **threshold** matter ... is **inflexible** and without exception . . . for [j]urisdiction is **power** to declare the law,, and **[w]ithout jurisdiction the court cannot proceed at all** in any cause." *Ruhrgas AG v. Marathon Oil Co.*, 119 S. Ct. 1563, 1567 (1999) (internal punctuation and citations omitted). That is why judges across our land, in both the military and civil systems, have said that before proceeding with trial, they must first satisfy themselves that jurisdiction exists. *See In re Grimley*, 137 U.S. 147, 150 (1890); *Carter v. McClaughry*, 183 U.S. 365, 401 (1902); *Hiatt v. Brown*, 339 U.S. 103, 111 (1950).

3. Jurisdiction has always been broken down into two separate concepts. *First*, is the offense something that can be tried by the legal body? This inquiry turns on the history and language of authorizing legislation for that legal body. *Second*, is the person being tried someone that is properly before the reach of the legal body? That question asks whether the Government has alleged facts sufficient to place the specified individual before the military commission. This motion concerns the second of these inquiries.

4. The Government introduces no evidence justifying this commission's personal jurisdiction over Mr. Hamdan. The slender reed they have is a cursory statement by the President from July 2003. In that statement, the President asserts that his authority for such a finding is in accordance with the Constitution and consistent with the laws of the United States,

including the Authorization for the Use of Force passed by Congress on September 18, 2001. This statement is not supported in either fact or law.

5. The President's statement claims that 1) Mr. Hamdan is or was a member of the organization known as al Qaida; 2) that he has engaged in, aided, abetted, or conspired to commit, acts international terrorism, or acts in preparation therefore, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or 3) that he has knowingly harbored one or more individuals described in the statements above.

6. These factual assertions are wrong. Mr. Hamdan has specifically denied that he is presently or was at any time a member of al Qaida. He performed the service of driver for monetary compensation and at no time joined or supported the political or alleged criminal activity attributed to Usama Bin Laden and his followers. *See Hamdan Affidavit*, attached. Hamdan denies having any foreknowledge of the activities of any specific criminal enterprise attributed to Bin Laden or his followers, and denies any knowing or willing participation in such activity. Finally, as an employee of Bin Laden, Hamdan can not be said to have "harbored" him within the meaning of the term under established law.

b. The Military Commission Has No Authority Because There Has Been No Declaration of War by Congress.

1. Even if Mr. Hamdan conceded every fact set out in the Government's allegations against him, it would *still* not establish jurisdiction of the military commission in this case. It is well settled that a commission's jurisdiction is limited to a time of war. *See Reid v. Covert*, 354 U.S. 1, 21 (1957) (plurality). As explained above, the President's factual assertions fail to allege that Hamdan committed criminal conduct during a time of war. Conspicuously absent is any statement of when the supposed violation occurred. For a commission to have jurisdiction, it is not enough to say that a crime has been committed. Rather it must first be established that the crime was committed in conjunction with a war. Nor can the President rely on Congress's September 18, 2001 Resolution. That Resolution is limited to "force," and it looks only to the future: "That the President is authorized to use all necessary and appropriate force . . . **in order to prevent any future acts** of international terrorism against the United States by such nations, organizations or persons." Sept. 18, 2001 Joint Res. (emphasis added). Unlike detentions, which "prevent" "future acts" of terrorism, commissions are fully retrospective. Even if it might be thought that the AUMF gives the President the full war power to fight prospectively to keep the peace, Congress circumscribed the President's *retrospective* power to *punish*.

2. The President's sole allegation of a crime committed by Mr. Hamdan is international terrorism. But that is not a violation of the laws of war. Rather, it is a label of convenience, affixed to various acts. As the nation's second-highest court said 20 years ago, terrorism is a term as loosely deployed as it is powerfully charged. *See Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984). More recently, a federal appeals court decided that piracy, war crimes and crimes against humanity fall within universal principles of jurisdiction, but refused to accord terrorism the same status. *See U.S. v. Yousef*, 327 F.3d 56 (2nd Cir. 2003).

Implicit in this finding was that terrorism was not a war crime. Nor can it be said that mere membership in a group by itself confers jurisdiction. As such the President's findings of jurisdiction are without support in either fact or law in Hamdan's case.

3. At bottom, the prosecution is under a duty to prove that Mr. Hamdan committed an offense that makes him triable by this commission. They have not even come close to doing so. Neither the Presidential determination in July 2003 nor the charge preferred against Mr. Hamdan on 13 July 2004 accomplish this. Rather, they state the most vague and unsupported allegations. To give the government the power to haul someone before a military tribunal on the basis of literally no concrete evidence that states a violation of the laws of war is dangerous and wrong. If the government finds defendants who acted in ways that violated the laws of war, such as the Nazi Saboteurs, it would be one thing. But this case, alleging vague facts to support a vague offense, is as far from the Nazi saboteurs as one can possibly be. This commission is under a duty to exercise its power to dismiss the prosecution for want of personal jurisdiction.

6. Files Attached.

- a. CV, Witness/Expert
- b. Hamdan Affidavit

7. Oral Argument. Is required. The Presiding Officer has instructed the Commission members that he will provide the Commission members with his interpretation of the law as he sees it, but that the Commission members are free to arrive at their own conclusions. The Defense asserts its right to be heard following the Presiding Officer's pronouncement via oral argument in order for the remainder of the Commission members to be informed as to the reasons for the Defense's support or opposition to the Presiding Officer's position. Additionally, the Defense intends to call expert witnesses and to incorporate their testimony into this motion via oral argument.

8. List of Legal Authority Cited.

- a. *Carter v. McClaghry*, 183 U.S. 365 (1902)
- b. *Hiatt v. Brown*, 339 U.S. 103 (1950)
- c. *In re Grimley*, 137 U.S. 147 (1890)
- d. *Reid v. Covert*, 354 U.S. 1 (1957)
- e. *Ruhrgas AG v. Marathon Oil Co.*, 119 S. Ct. 1563 (1999)
- f. *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984)
- g. *United States v. Yousef*, 327 F.3d 56 (2nd Cir. 2003).

h. Authorization for the Use of Force, U.S. Congress, Sept. 18, 2001

9. Witnesses and/or Evidence Required. In the event that the government disputes the facts contained in Mr. Hamdan's affidavit, the Defense reserves the right to call Mr. Hamdan to testify solely for the limited purpose of Commission jurisdiction.

10. Additional Information. None.

CHARLES D. SWIFT  
Lieutenant Commander, JAGC, US Navy  
Detailed Military Defense Counsel  
Office of Military Commissions

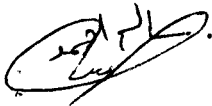
**AFFIDAVIT**

I, Salim Ahmed Salim Hamdan, having been duly sworn, states and deposes as follows:

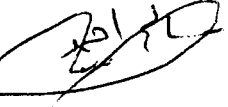
اسمي سالم احمد سالم حمدان وانا مواطن يمني وانا ايضا معروف باسم صقر. ولدت في قرية الخريبة في محافظة حضرموت في سنة 1969 تقريبا وفي سنة 1980 تقريبا انتقلت الى مدينة مالا حيث سكنت مع ناس اقارب وشغلت في عمل مؤقت حتى سنة 1990. انتقلت الى العاصمة صنعاء وعمرى 20 سنة تقريبا حيث استمررت في البحث عن عمل او وظيفة واشتغلت في اعمال مختلفة ولم انجح في البحث عن وظيفة وبقيت في اعمال مختلفة حتى سنة 1996. والتقيت شخص اسمه علي الياضي الذي يدور عن ناس ليساعد المسلمين الذين يقاومون الشيوعيين في تاجيكستان وبعد عدة لقاءات وافقت معه وافقت على الذهاب الى تاجيكستان ليساعد في المسلمين هناك في المقاومة. سافرت الى باكستان بالطائرة وبعدها الى افغانستان بالسيارة حيث التقيت مع مسلمين آخرين وهم في طريقهم الى تاجيكستان الا ان وصلنا الى بدخشان وبعدها كان برجل. ولكن قوات الشيوعيين الموجودة هناك منعونا من الاقتراب للحدود وايضا الطقس كان غير جيد. وبعدها رجعت الى جلال اباد والتقيت مع مهند وقلت له اسافر الى اليمن وهو سألني لماذا؟ وهو قال لي لا توجد لك وظيفة او عمل في اليمن ولكن تبقى هنا يوجد عمل هنا وهي ان تعمل سائق وهو ذهب بي الى عند اسامة بن لادن وهو اعطى لي العمل كسائق في مزرعة اخذ العمال الى القرية الى المزرعة ثم الى القرية وبعد 8 اشهر طلب مني اسامة ان اعلم عنده كسائق اخذه الى اماكن الذي يريده. خلال فترة عملي مع بن لادن رجعت الى اليمن مرتين. المرة الاولى كانت في سنة 1998 بهدف الزواج والثانية سافرت الى اليمن للحضور زواج اخو زوجتي وللهدف ذهابي الى الحج. في شهر فبراير 2001 رجعت الى افغانستان لعملي الوظيفة كسائق واستمررت في العمل الى ان بدء هجوم الحلف الشمالي على المدينة التي اسكن فيها. وخر مرة كنت مع بن لادن في كابل. سمعت ان التحالف الشمالي سوف يهجم على مدينة قندهار التي فيها زوجتي بنتي وبنتي فحفت على زوجتي وهي حامل وقررت ان ارجع اليهم وطلبت منه الذهاب الى قندهار ومهما كان جاوبه لي بالموافقة او الرفض ساذهب الى زوجتي. كنت قلق جدا على سلامتهم وقررت ان اوصلهم الى باكستان وقررت استئجار سيارة لآخذ عائلتي الى باكستان وبعد ان وصلت عائلتي الى باكستان حاولت الرجوع الى افغانستان بهدف عودة السيارة الى صاحبها واكي ابيع اشياء و اغراض البيت الشخصية وبعد ذلك ارجع الى زوجتي ونسافر الى اليمن. ولكن في طريقة عودتي مسكوني جنود من الملك السابق ظاهر شاه للافغانستان باحثين عن العرب لبيعوهم الى الامريكان. عندما مسكوني قد مسكوا عرب اخر قبلي واطلقوا النار عليه وقتلوه. حاولت ان اهرب من المكان ولكن لم انجح في الهرب ومسكوني ثانية وربطوا يدي ورجلي من خلف مثل حيوان بسلك كهرباي وشدوه علي بقوة حتى قطع جسمي واخذوني الى بيت عندهم. وفي اليوم الثاني اخذوني الى بيت اخر لفترة مدتها 7 ايام تقريبا، حيث حقق معي رجل بملايس عسكري وقال لي انه امريكي. الجنود الافغان قالوا لي ان الامريكان دفعوا لهم مبلغ 5000 دولار مقابلني لكي ياخذوني انا. واحد من الجنود الافغان اراد ان يرى الدولارات وفي هذه اللحظة انا رايت الدولارات.

من خلال حبسي عند الامريكان انا ساعدتهم وتعاونت معهم بكل شيء وبرغم من ان تعاونت مه الامريكان اذاوني نفسيا وجسديا. وظهري في حالة سيئة بسبب العمل البنائي في اليمن. انا اخبرت للمحققين الامريكان عن حالي ولكن انتقلوني في وضع سبب لي الم شديد على ظهري ورجلي وكانت ملابسي خفيفة وكان الجو برد جدا، كان جليدا. اجبروني الجلوس بدون التحرك للايام كاملة. وفي التحقيقات عندما ليس لي علم بالموضوع التحقيق، ضربوني مع الرجل ومع ايديهم بعدما خرج المحقق واخذوني الى مكاني مع المسجونين الاخرين. واذا لم اخذهم الى مكان بن لادن هددوني بتعذيب وبقتل وبسجن عندما ليس لي علم عن موضوع الاسالة. وكان من اساليب التهديد وضع السلاح المسدس على الطاولة امامي ويرفع المسدس امامي ويقول لي انظر اليه المسدس ما رايك؟ وذهبت معهم الى الاماكن التي سكن فيها اسامة بن لادن والتي سافر اليها كذلك. وفي شهر مايو 2002 وصلوني الى جانتانامو وسجونوني في سجن كبير مع مسجونين اخرين كثيرين. حبسوني في زنزانة منفصلة من مجموع من 48 زنزانة. هذه الزنزانات كانت مفتوح للهواء وكنت اقدر اتكلم مع الناس هناك. واعطوني 15 دقيقة مرتين في الاسبوع لاعمل تمرين جسدي في حوش حجمه 8 امتار في 7 امتار تقريبا وكان ياتي الامام المسلم ويتكلم مع الناس الاخرين ومع اي شخص يريد ان يتكلم معه وكلمت انا معه ايضا وكان في قدرتي ان اسمع الى المؤذن للصلاة. وفي معسكر دلنا الذي اخبروني عنه المحققين كذلك حققوا معي مسؤولين كثيرين من المكتب التحقيقات الامريكية ومن الامن السياسي التابع للدول كثيرة وعرضوا علي صور كثيرة وسالوني عن هويتها. وقد سمحوني مرتين بان اتكلم مع زوجتي لكي اطمن عليها وانا لا اعرف اي شيء عنها بعد ان وصلتها الى باكستان ومسكوني بعدها وانا دائما في قلق وخوف عليهم. وجئني رجال من المكتب التحقيقات الامريكية و من المعسكر وكلهم قالوا لي انت لست مذنب ولم ترتكب اي جريمة. ولكن قالوا لي انهم يريدون مني ان اعطي الشهادة في محكمات ضد ناس اخرين. المحقق قال لي في حال انا موافق على ان اصبح شاهد في قدرتي الخروج من السجن وان اصبح مواطن امريكي. وكان مع المحقق اتفاق مكتوب وكان يريد مني ان اوقع عليه. وقررت ان لا اتفق على هذا الاتفاق لانه ليس عندي محامي يضمن لي هذا الاتفاق. وبعد ذلك حقق معي ناس كثير ومرات كثيرة جدا من جانب المكتب التحقيقات الامريكية وناس اخرين ومن ديسمبر 2003 اخذوني من معسكر دلنا انتقلوني الى معسكر ثاني في زنزانة صغيرة داخل بيت صغيرة ومن هذا الوقت لم يسمح لي فرصة لكي ارى الشمس او سماع ناس اخرين خارج البيت او اتحدث مع اشخاص اخرين. وانا الان منفصل لوحدي منذ مدة في البيت الصغير الا الحارس الموجود دائما في الغرفة. ومنحوني فرصة لاعمل تمرين جسدي 3 مرات في الاسبوع ولكن ذلك في الليل وليس في النهار واعطوني القران الكريم فقط ولم يعطوا لي الكتب الاخرة. وعندما سالت عن سبب انتقالني الى هذا المكان لم يجبروني احد الا بعد ان طلبت مترجم يتكلم اللغة العربية حيث لا اعرف اتكلم اللغة الانجليزية والحارس امامي لا يتكلم اللغة العربية. المترجم الذي ياتي في اسبوع مرتين ولكن لا يخضر الا بعد طلب شديد والحاح مني. وقال لي تذهب الى المحكمة العسكرية وسوف يوافق لي محامي وكنت اشتكي في امراض عندي في جسدي واطلب الطبيب لكي ياتي ويفحصني ولكن لا ياتي الطبيب. وعندي في جسدي الم في ظهري وفي رجلي وحكة في جسدي انتشرت بسبب عدم تعرضي الشمس. وقال لي العسكري ليجبر المحامي اذا جائك بانك طلبت الطبيب ولم يخضر. وقد طلبت بعض الكتب من المكتبة وقالوا لي ان المكتبة مغلقة وانا وحيد لا اتكلم مع اي اشخاص عندي من الزنزانة ولا يوجد سجين اخر اتكلم معه.




في يوم 30 يناير التقيت بالمحامي Charles Swift الذي قال لي انه عينوه للدفاع عني في محكمة عسكرية.  سألت المحامي عن التهم الموجهة ضدي وهو قال لي ان ليس هناك تهم موجهة ضدي لكن قال لي ان الحكومة الامريكية تفكر في ان توجه تهم مؤامرة لارتكاب هجوم ارهابية. سألت المحامي عن سبب عدم توجيه الحكومة تهم ضدي ومتى يكون تاريخ الجلسة الاولى للمحكمة. المحامي قال لي ان الحكومة تطلب مني قرار عن اتفاق يكون بيني وبينهم على ان اعترف بتهم ضدي مقابل اعقاب وحكم وقال لي المحامي كذلك انه باضافة ذلك من الاتفاق يكون لا بد ان اشهد على ناس واشخاص اخرين في محكمات اخرى ولا اعتقد اني اوافق على هذا الاتفاق لاني لم اقوم بارتكاب اي جريمة.

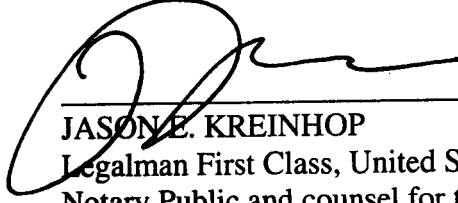
ان وضعي وحبسي في هذه الزنزانة الصغيرة وحيدا وطول المدة هذه لهو صعبا شديدا على نفسي واعصابي وهو اصعب من ظروف معسكر دلتا. هنا شهر واحد مثل سنة واحد. فكرت في الموافقة على الاتفاق ليخرج من هذه الزنزانة. وفي ~~استغاثي~~ <sup>لكتفي</sup> مدني ولست عسكري ولست عضو في منظمة القاعدة وانا لست اراهابي وفي اعتقادي عن في حقي المحكمة المدنية بدلا من محكمة عسكري ولكن اي محكمة كان احسن من حالتي الان. طلبت من المحامي Charles Swift ان يطلب محكمة في اسرع الوقت واعطي صلاحيات له ليمثل لي كصديق في المحكمة المدنية لاني ليس لي عائلة في الولايات المتحدة وافهم ان المحامي Neal Katyal ايضا سيمثل لي امام المحكمة.

هذا التقرير مكتوب بيدي وطبعه بالغة العربية المترجم تابع لفرقة الدفاع عني وهو Charles Schmitz  وقد راجعت النسخة المطبوعة ووافق على صحتها

Further your affiant sayeth not.

  
2004-2-9  
Salim Ahmed Salim Hamdan

Subscribed and sworn before  
Me this 9<sup>th</sup> day of February 2004

  
JASON E. KREINHOP  
Legalman First Class, United States Navy  
Notary Public and counsel for the United States  
10 U.S.C. 10 44a

# **Exhibit B**

UNITED STATES NAVAL STATION:  
GUANTANAMO BAY, CUBA:

AFFIDAVIT

I, Salim Ahmed Salim Hamdan, having been duly sworn, states and deposes as follows:

My name is Salem Ahmed Salem Hamdan and I am a Yemeni citizen. I have been known by the name Saqr. I was born in the village of Khoreiba in the governate of Hadhramout in approximately 1969. In 1980, I moved to Makula, where I lived with relatives and worked odd jobs in the city from age 10 until the age of about 20. From the age of 20 I moved to the capital of Yemen, Sa'ana, where I continued to work and seek better employment opportunities, I was unable to find permanent employment, but continued to work odd jobs. In 1996, I was approached by Ali Al-Yafi who was seeking men to aid Muslims struggling against the communists in Tajikistan. After several meetings I agreed to go with him to Tajikistan to aid my fellow Muslims in their struggle. I traveled to Pakistan and then to Afghanistan where I met with other Muslims who were going to Tajikistan. We traveled by plane then by car and then by foot until we got to Badashaw, the forces at Tajikistan wouldn't allow us to go further, and the weather in the mountains was bad, we turned around and left for Kabul. In Kabul, I told Muhannad, that I wanted to return to Yemen. He asked me why. He said there was no work in Yemen and I should stay here, because he has a job for me. He told me he knew of a job as a driver for me. He took me to a farm in Jalalabad, where I met Osama Bin Laden. Osama Bin Laden offered me a job as a driver on a farm he owned, bringing Afghanis workers from the local village to work and back again. After about seven (7) months Osama Bin Laden began to have me drive him to various places. During the period that I worked for Osama Bin Laden, I traveled back to Yemen twice, the first time in 1998 was to get married, then in August 2000, I went back to Yemen to attend my brother-in-laws wedding and to attend the pilgrimage to the Hajj. In February 2001, I returned to Afghanistan with my wife to continue work as a driver. I was still working as a driver in October 2001, when the Northern Alliance with American support began its offensive. The last time I was with Bin Laden was in Kabul. I heard that the Northern Alliance was attacking Kandahar where my wife and daughter were living and I feared for my wife. I decided to return to them and

I asked him [Bin Laden] if I could go to Kandahar but regardless of his response, affirmative or negative, I was going to my wife. I was worried about their safety and I decided to take them to Pakistan. I decided to borrow a car to drive my family to Pakistan. After I had taken my family to Pakistan, I tried to return to Afghanistan to return the car to its owner and to return to my house to sell my belongings to get money in order to return with my family to Yemen. But while trying to return, I was stopped by soldiers loyal to the former king Zahir Shah of Afghanistan, who were looking for Arabs to sell to American forces. When they stopped me they had already taken another Arab who they shot and killed. I tried to flee, but I failed and they captured me again. They tied my hands and feet behind me like an animal with electrical wire and they tied me so tight that the wire cut me. They took me to a house. After a day, I was taken to another house for seven (7) days where I was questioned by a man in a military uniform, who spoke Arabic and said he was an American. The Afghan soldiers told me they had gotten \$5,000.00 from the Americans for me, one of the guards who was at the house wanted to see dollars. When the guard showed the money, I saw it too.

While in Afghanistan, I helped and cooperated with the Americans in every way. Despite the fact that I cooperated with the Americans, I was physically abused. I have a bad back from work in Yemen. I told my investigators of this condition but was transported in positions that caused me physical agony in my back. I was dressed in only bright blue overalls in sub-freezing temperatures and was very cold. I was made to sit motionless on benches with other prisoners for days. When I did not know the answers to the investigators questions, the soldiers would strike me with their fists and kick me with their feet, after the investigator left, before they took me back with the other prisoners. When I took them places I had driven Osama Bin Laden, they would threaten me with death, torture or prison when I did not know the answers to their questions. One of their methods to threaten was to put a pistol on the table in front of me and show me the gun and asked, "What do you think?" I went with them to places that Bin Laden lived and where he traveled.

In June 2002, I was flown to Guantanamo Bay, Cuba. In Guantanamo Bay, Cuba, I was put in a large prison with many other men. I was held in a single cell in a cellblock of

48 men. These cells were open to the air and I could talk to the other men. I was given 15 minutes a week of exercise in a 8 meter by 7 meter fenced in area. A Muslim cleric would come and talk to people and I talked with and I could hear the calls to prayer. At Camp Delta, I was questioned by many people from the FBI and Arab police forces. They showed me pictures and asked me to identify the people. On two (2) occasions they allowed me to call my wife on a portable telephone and speak with her and to calm her. I had not heard from her since I left her in Pakistan and I was worried about her. Men from the FBI and investigators from the camp told me that he did not think I had committed any crime and that I am not guilty, but that he wanted me to be a witness against others. He said that if I was willing to be a witness, I could leave Guantanamo Bay and become an American citizen. He let me call my wife again to discuss it. The FBI agent had a written agreement he wanted me to sign. I decided not to because I did not have a lawyer to guarantee that the agreement would be honored. After that I was questioned many times by the FBI and other people.

In December 2003, I was moved from Camp Delta, and put in a new cell, this cell was enclosed in a house, and from that time I have not been permitted to see the sun or hear other people outside the house or talk with other people. I am alone except for the guard in the house. They allow me to exercise three times per week but only at night and not in the day. They gave me the Quran only but not other books. When I asked why I had been moved to this place no one told me anything until I asked for a translator because I do not speak English and the guard does not speak Arabic. The translator is supposed to come twice a week but the translator did not come except when I demanded urgently. He told me that I will have a military trial and will be given a lawyer and I complained that I have medical problems and I asked for a doctor to come check me but he did not come. I have pains in my back and leg and I itch from lack of sunshine. The soldier told me to inform my lawyer when he comes that you asked for a doctor and he did not come. I asked for books from the library, but was told it was closed. I am alone and I do not talk with anyone in my cell because there is no one else to talk to.

On January 30<sup>th</sup>, I met LCDR Charles Swift, who told me that he had been assigned to defend me before a military commission. I asked my lawyer what the charges against me

were. LCDR Swift told me that no charges against me, but the government sent him a letter that the charges contemplated were conspiracy to commit terrorism. I asked my lawyer why the government had not prepared the charges and when my trial would be.

LCDR Swift told me that the government letter demanded to know whether I would plead guilty to unspecified charges in exchange for a guaranteed sentence. LCDR Swift also told me that in addition to pleading guilty, that I would have to be a witness for the United States as part of the agreement. I do not believe I should plea guilty, because I do not believe I have committed any crime.

Being held in the cell where I am now is very hard, much harder than Camp Delta. One month is like a year here, and I have considered pleading guilty in order to get out of here. I believe that I am a civilian, I have never been a member of Al-Qaeda and I am not a terrorist and I believe I should have a civilian trial, but any trial is better than what I have now. I have asked LCDR Swift to seek a trial as fast as possible and authorized him to act as my next friend in the civilian court, because I have no relatives in the United States. I understand that Professor Neal Kytal will also represent me. My translator, Mr. Charles Schmitz, prepared this statement in Arabic, which I have read and understand to be the truth. My translator, Mr. Schmitz has prepared an English version of my Arabic hand-written statement and based on his review, I have signed and swear to its authenticity.

Further your affiant sayeth not.

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Salim Ahmed Salim Hamdan

Subscribed and sworn before  
Me this 9<sup>th</sup> day of February 2004

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JASON E. KREINHOP  
Legalman First Class, United States Navy  
Notary Public and counsel for the United States  
10 U.S.C. 10 44a