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Detainee says judge's order was violated

Alleges isolation at Guantanamo

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GUANTANAMO BAY, Cuba -- A former driver for Osama bin Laden whose lawsuit led to a judge's finding that the Bush administration violated the Geneva Convention told his lawyer this week that he was returned to "de facto isolation" here in defiance of a court order.

The general in charge of the Guantanamo prison called the charge "absolutely, unequivocally wrong."

The dispute centers on Salim Ahmed Hamdan, 34, a Yemeni who sued Defense Secretary Donald Rumsfeld last summer seeking to stop his trial before the first US military commission since World War II. The lawsuit was the first major test of a landmark Supreme Court ruling granting Guantanamo detainees access to federal civilian courtrooms.

On Nov. 9, District Judge James Robertson, a 1994 Clinton appointee, halted Hamdan's commission in the midst of a pretrial hearing, declaring that the military must apply Geneva Convention standards to Guantanamo detainees. The ruling infuriated the Bush administration, which launched an appeal.

In the same order, the judge also told the military it must house Hamdan in the prison's "general population." Hamdan's military defense lawyer had said his client suffered mental problems, including suicidal tendencies, from being held alone for 10 months last year, during which his only human contact was when guards brought food or took him out for exercise.

His lawyer, Navy Lieutenant Commander Charles Swift, visited Hamdan this week for the first time since November. In an interview with the Globe on the base afterward, Swift angrily said that Hamdan told him he had been held for the past two months in a cellblock with no other detainees nearby.

"He is being held apart from the others in a cell where he is not permitted to speak with other detainees and has had only solitary exercise," Swift said. "He is in de facto isolation. This is not in the spirit of the judge's order and is certainly debilitating to Mr. Hamdan. He has started to exhibit signs of paranoia again. He was placed on [a] 24-hour suicide watch."

Swift said Hamdan told him he was moved to a solitary block Nov. 17, a week after Robertson's order, according to a calendar Swift gave Hamdan to keep in his cell.

Army Brigadier General Jay Hood, commander of the Guantanamo operation, said Swift was wrong and insisted that the operation went "to extraordinary lengths to see that we have complied precisely with the instructions of any federal judge" about detainee treatment.

"We were instructed to place Hamdan back in the general population," Hood said. "In fact, he was [there] before that, but we moved him to make it even more clear that we were compliant with that order."

Hamdan, charged with conspiracy to commit war crimes, acknowledges being a driver for bin Laden at the Al Qaeda leader's Kandahar farm, but says he was a laborer, not a terrorist.

Swift said he would ask the government to correct the alleged situation and consider a new lawsuit if it did not move his client.

Swift's allegation adds a military voice to a chorus of complaints by civilian attorneys who say the Bush administration has resisted complying with the thrust of the Supreme Court decision last June, which provoked a flood of challenges to the continued detention of various so-called "enemy combatants" in federal court.

They say the military has dragged its feet on allowing them access to client prisoners; has delayed cases by repeating arguments that the Supreme Court has already rejected; and has tried to keep the matter out of the civilian court system by substituting an administrative review tribunal, which denies the detainee a defense lawyer and access to classified evidence against him.

Meanwhile, Swift sued Rumsfeld last summer, challenging the Pentagon's plan to try Hamdan before a military commission instead of a conventional court-martial. Court martial rules afford greater protections to defendants.

Under the Geneva Convention, prisoners of war are entitled to be tried under the same procedures that a military force uses to try its own soldiers. The treaty also says that all people captured in a battle zone are presumptive POWs unless a "competent tribunal" decides otherwise.

The Bush administration contends that the Geneva Convention does not apply to the Afghanistan war. Robertson ruled that the administration was wrong and halted Hamdan's trial.

Two weeks earlier, the government had told the judge that Hamdan was no longer held in isolation. Robertson noted the change but said the government was "capable of repeating" the treatment, adding Hamdan must be "returned to the general population of detainees, unless some other than the pending charges against him requires different treatment."

But, Swift said, Hamdan told him that a week after the ruling, the guards moved him to a different cellblock where he was unable to communicate with other detainees and he has been there for two months.

Swift said the reason for the alleged move was not clear. It did not seem to be for disciplinary reasons because Hamdan was wearing the beige jumpsuit given to cooperative detainees rather than the orange jumpsuit given to unruly detainees, Swift said.

Denying the allegation while sitting across a table from a Globe reporter, Hood said, "Hamdan is about as far away as you to me from the main contact of his cellblock security personnel."

When it was noted that being near a guard is different than being near fellow detainees who speak his language, Hood said, "I answered your question, and I told you about Swift and I told you he was wrong, and you can get competent authority to come check on it."