

DAVID M. HICKS,

*Appellant,*

v.

UNITED STATES OF AMERICA,

*Appellee.*

) IN THE COURT OF MILITARY  
) COMMISSION REVIEW  
)  
) **OPPOSITION OF THE UNITED STATES**  
) **TO APPELLANT'S NOTICE IN FURTHER**  
) **RESPONSE TO THE COMMISSION'S**  
) **DECEMBER 13, 2013 ORDER REGARDING**  
) **JURISDICTION**  
)  
)  
) USCMCR Case No. 13-004  
)  
) Tried at Guantánamo Bay, Cuba  
) on 26 & 30 March 2007  
) before a Military Commission  
) convened by Hon. Susan J. Crawford  
)  
) Presiding Military Judge  
) Colonel Ralph H. Kohlmann, USMC

**TO THE HONORABLE, THE JUDGES OF THE COURT OF MILITARY  
COMMISSION REVIEW**

MARK S. MARTINS  
Brigadier General, U.S. Army  
*Chief Prosecutor*  
EDWARD S. WHITE  
Captain, JAGC, U.S. Navy  
*Appellate Counsel*  
MARC A. WALLENSTEIN  
*Appellate Counsel*  
DANIELLE S. TARIN  
*Appellate Counsel*

Office of the Chief Prosecutor  
Office of Military Commissions  
1610 Defense Pentagon  
Washington, D.C. 20301-1610  
marc.a.wallenstein.civ [REDACTED]

[REDACTED]  
*Counsel for the United States*

February 28, 2014

In March 2007, Appellant David M. Hicks pled guilty to providing material support for terrorism, in violation of 10 U.S.C. § 950v(b)(25) (2006), pursuant to the Pretrial Agreement at issue in this case. Nearly seven years later, on February 20, 2014, a different accused—Ahmed Mohammed Ahmed Haza al Darbi—pled guilty to different offenses relating to different conduct pursuant to a different pretrial agreement and waiver of appeal. Darbi’s guilty plea, pretrial agreement, and waiver of appeal have no effect whatsoever on either the validity of Hicks’ waiver or the legal questions before the Court. They are, therefore, wholly irrelevant to this case. That the United States may have used different language in Darbi’s pretrial agreement, in an effort to foreclose Darbi from making arguments similar to the ones Hicks has raised in this appeal, does not concede the merit of Hicks’ arguments; it merely attempts to prevent Darbi from raising them.

Accordingly, Hicks’ Notice should be disregarded. For all the reasons set forth in the United States’ prior submissions, this Court lacks jurisdiction over this case.

Dated: February 28, 2014

Respectfully submitted,

MARK S. MARTINS  
Brigadier General, U.S. Army  
Chief Prosecutor

EDWARD S. WHITE  
Captain, JAGC, U.S. Navy  
Appellate Counsel

MARC A. WALLENSTEIN

\_\_\_\_\_/s/\_\_\_\_\_  
Appellate Counsel

DANIELLE S. TARIN  
Appellate Counsel

Counsel for the United States

Office of the Chief Prosecutor  
Office of Military Commissions  
1610 Defense Pentagon  
Washington, D.C. 20301-1610  
marc.a.wallenstein.civ [REDACTED]  
[REDACTED]

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was sent by electronic mail to Baher Azmy, J. Wells Dixon, Shayana D. Kadidal, Susan Hu, and Joseph Margulies, civilian appellate defense counsel, and Samuel T. Morison and Capt Justin Swick, detailed appellate defense counsel, on February 28, 2014.

\_\_\_\_\_/s/\_\_\_\_\_  
MARC A. WALLENSTEIN  
Counsel for the United States

Office of Military Commissions  
1610 Defense Pentagon  
Washington, D.C. 20301-1610  
marc.a.wallenstein.civ [REDACTED]  
[REDACTED]