

to dismiss. In support of the motion, the proposed *amici curiae* state:

1. The proposed *amici curiae* are 11 retired officers in the U.S. armed forces, one former enlisted man, and several organizations with an interest in national security issues.

2. Lt. General Jack W. Klimp, U.S. Marine Corps (Ret.), began his career in 1968 as a rifle platoon commander and company commander in Vietnam. During the course of 33 years of service in the military, he participated in Operation Desert Shield/Desert Storm as the director of General Norman Schwarzkopf's joint operation center and was later commander of Task Force Mogadishu during operation Restore Hope in Somalia.

3. Major General John D. Altenburg, U.S. Army (Ret.), served two years as an enlisted man and 28 years as an Army lawyer. His Military Justice and Combat Operations and Peacekeeping Law experience included service or legal oversight in Vietnam, Special Operations, Operation Desert Storm-Kuwait/Iraq, Operation Restore Hope-Somalia, Operation Uphold Democracy-Haiti, Operation Joint Endeavor/Guard-Bosnia, and Joint Guardian-Kosovo, followed by four years as the Deputy Judge Advocate General (1997-2001). He served as the Appointing Authority for Military Commissions from 2004 to 2006.

4. Rear Admiral James J. Carey, U.S. Navy (Ret.), served 33 years in the U.S. Navy and Naval Reserve, including service in Vietnam. He is a former Chairman of the U.S. Federal Maritime Commission and current Chairman of the National Defense Committee (NDC), which is also joining in this brief. The NDC is a grass roots pro-military organization supporting a larger and stronger military and the election of more veterans to the U.S. Congress.

5. Rear Admiral Steven B. Kantrowitz, U.S. Navy (Ret.), served on active duty and in the Reserve of the U.S. Navy from 1974 through 2005. He retired as a Rear Admiral in the Judge

Advocate General's Corps. During active duty, he served as a judge advocate performing duties involving the full reach of military law practice. This includes service for three years as Special Assistant and Aide to the Judge Advocate General of the Navy. As a Flag officer, he served as the Assistant Deputy Advocate General of the Navy and Deputy Commander, Naval Legal Service Command.

6. Rear Admiral Norman T. Saunders, U.S. Coast Guard (Ret.), served on active duty for 35 years, including service in the Vietnam War. At the time of his retirement he was the Commander of the 7th Coast Guard District in Miami. He previously served as Commander of the Coast Guard Military Personnel Command.

7. Brigadier General Thomas L. Hemingway, U.S. Air Force (Ret.), served at the time of his retirement in May 2007 as the Legal Advisor to the Convening Authority in the Department of Defense Office of Military Commissions. He was commissioned as a second lieutenant in 1962 and entered active service in 1965 after obtaining a law degree. He has served as a staff judge advocate at the group, wing, numbered air force, major command, and unified command level. He was also an associate professor of law at the U.S. Air Force Academy and a senior judge on the Air Force Court of Military Review.

8. Colonel Alfred L. Michaud, U.S. Army (Ret.), served as an enlisted man in the 45th Infantry Division in Korea from 1950 to 1952. Thereafter, he was commissioned a Second Lieutenant and served in active and reserve status until his retirement from the Army in 1976. His various assignments included service as Battalion Executive Officer and Commander Officer of the 344th Field Artillery Battalion and as Training Officer for South Texas.

9. Captain William D. Pivarnik, U.S. Navy (Ret.), served in the Navy for 26-½ years

following graduation from the U.S. Naval Academy in 1958. His active duty assignments included service in Vietnam and the command of two ships. Since 1986 he has been an ordained Deacon in the Catholic Church.

10. Colonel Eric Rojo, U.S. Army (Ret.), served for 31 years in the U.S. Army, including service in Vietnam as a helicopter pilot. His military assignments included work as a counter-terrorism officer, including serving as first Reserve Advisor to the Commanding General of the Venezuelan Army.

11. Commander Peter J. Reynierse, U.S. Navy (Ret.), served in the U.S. Navy for more than 26 years as both an enlisted man and officer. He served on the staff of both the Chief of Naval Operations and the Under Secretary of the Navy and retired from active service in 1998.

12. Lt. Colonel Thomas A. Smith, U.S. Army (Ret.), served in the U.S. Marine Corps for seven years and in the U.S. Army for 25 years. Before his retirement in 2005, he served during military actions in Grenada, Haiti, Panama, and Iraq (Desert Storm).

13. Adrian Cronauer served in the U.S. Air Force beginning in 1962 and was honorably discharged at the rank of Sergeant E-4 in 1968. He co-authored the original script of *Good Morning Vietnam*, a movie loosely based on his service in Vietnam. He later received a law degree, and from 2001 to 2009 he worked under the Office of the Secretary of Defense as Special Assistant to the Director of the POW/MIA Office.

14. The Washington Legal Foundation (WLF) is a non-profit public interest law and policy center with supporters in all 50 states. WLF devotes a substantial portion of its resources to promoting America's national security. To that end, WLF has appeared in this and numerous other federal courts to ensure that the U.S. government is not deprived of the tools necessary to

protect this country from those who would seek to destroy it and/or harm its citizens. *See, e.g., Boumediene v. Bush*, 553 U.S. 723 (2008); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

15. The Allied Educational Foundation (AEF) is a non-profit charitable foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study, such as law and public policy, and has appeared on a number of occasions in cases raising national security issues.

16. Proposed *amici* are concerned that the ability of the American military to carry out its mission will be compromised if federal courts are placed in a position of second-guessing the operational decisions of military commanders.

17. *Amici* concur with Defendants that Nassar Al-Aulaqi may lack standing to file suit based on injuries allegedly incurred (or likely to be incurred) by his son. Proposed *amici* seek to filing separately in order to urge the Court to dismiss the case on grounds that have wider application – either that claims of this sort raise non-justiciable political questions or that the state secrets doctrine bars adjudication of the claims. Dismissing the case on standing grounds would do nothing to resolve the issues raised herein; it would simply cause Plaintiff’s attorneys to re-file similar claims on behalf of other plaintiffs with arguably stronger bases for asserting standing.

18. Moreover, proposed *amici* submit that the Court is not required to address standing first. Rather, even when a court may lack subject matter jurisdiction because the plaintiff’s standing is subject to question, a federal court is entitled to initially consider whether to dismiss the case on the basis of *any other* jurisdictional deficiency.

19. Proposed *amici* have no direct interest, financial or otherwise, in the outcome of the

case. Because of their lack of a direct interest, they believe that they can provide the Court with a perspective that is distinct from that of any party.

20. On October 4, 2010, counsel for proposed *amici* contacted both parties to request consent to their filing of this *amicus curiae* brief. Counsel for Plaintiff Nasser Al-Aulaqi consented to the filing. Counsel for Defendants was unable to obtain from his clients a response to the request prior to the scheduled filing of this motion.

WHEREFORE, Jack W. Klimp, *et al.*, respectfully request that the Court grant their motion for leave to file the attached brief.

Respectfully submitted,

/s/ Richard A. Samp
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Dated: October 4, 2010

Attorneys for Proposed *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2010, I deposited copies of the foregoing motion for leave to file the *amicus curiae* brief of Jack W. Klimp, *et al.*, in the U.S. Mail, addressed as follows:

Peter D. Leary
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I further certify that I sent copies of the brief to the above counsel by email.

/s/ Richard A. Samp
Richard A. Samp

LCvR 7.1
DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

Case No. 10-1469, *Nasser Al-Aulaqi v. Barack H. Obama*

This is the Certificate required by LCvR 7.1 of the Local Rules of the United States District Court for the District of Columbia. Three of the moving parties – the Washington Legal Foundation, the Allied Educational Foundation, and the National Defense Committee – are corporations.

I, the undersigned counsel of record for the Washington Legal Foundation (WLF), the Allied Educational Foundation (AEF), and the National Defense Committee (NDC), certify that to the best of my knowledge and belief, WLF, AEF, and NDC are non-profit corporations that do not have any publicly issued stock, and that there are no parent companies, subsidiaries or affiliates of WLF, AEF, and NDC that have any outstanding securities in the hands of the public.

These representations are made in order that judges of this court may determine the need for recusal.

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October 4, 2010

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