IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

MARC HALL,

Petitioner,

v.

JOHN McHUGH, in his official capacity as SECRETARY OF THE ARMY and MAJOR GENERAL JEFFREY PHILLIPS, in his official capacity as SENIOR COMMANDER FORT STEWART

Respondents.

DECLARATION OF ANTHONY F. SCHIAVETTI
UNDER PENALTY OF PERJURY

Anthony F. Schiavetti states as follows:

1. My name is Anthony F. Schiavetti and I am a Captain in the United States Army in the Trial Defense Service (TDS) of the Judge Advocate General's (JAG) Corps at Fort Stewart, Georgia within the Southern District of Georgia. I have been a member of the Army JAG Corps since February 2008 and have been assigned to the TDS since August 2009. As a lawyer assigned to the TDS, I serve as defense counsel for members of the Army charged with criminal violations of the UCMJ and facing courts-martial.

2. Within the military justice system, every accused has the right to have a detailed military defense counsel appointed to represent him or her without expense. In addition, an accused may secure the services of a military lawyer of his or her own choosing, also without charge, if that person is reasonably available, or can be represented by civilian defense counsel at no cost to the government. An accused is always entitled to detailed defense counsel whether or not represented by civilian counsel of his or her own choosing.

3. I am the detailed military defense counsel for Specialist Marc Hall, who has been served with two charges of violation of Article 134, Uniform Code of Military Justice (UCMJ). Within the two charges are a total of eleven specifications. I was first assigned to represent SPC Hall on 16 December 2009. SPC Hall was taken into custody and confined in the Liberty County jail on 11 December 2009, and served with the first charge against him on 18 December 2009.

4. Article 134 is the general punitive article of the UCMJ which makes criminal in the military justice system "all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces," and other conduct not specifically listed under the UCMJ. The Manual for Courts Martial sets out a substantial number of specific offenses that can be charged under Article 134, including that of communicating a

threat, which comprises the allegations against SPC Hall.

5. The charges and specifications against SPC Hall are vague. Many do not specify a particular date or time that he was alleged to have made the alleged threats. Many of the specifications allege comments that do not appear to threaten any particular person or persons, but assert he made general comments about engaging in some kind of violent behavior if he were subjected to the Army's "stop loss" policy and not released from active duty as scheduled.

6. The allegations arise, at least in part, from a rap song he allegedly recorded and sent to the Pentagon in July 2009. The song protests the use of "stop loss," and does so in the strong language associated with much rap and hip-hop music.

7. The allegations also claim he made statements at divers times between 1 July 2009 and 11 December 2009 when he was taken into custody. Despite the fact people in SPC Hall's chain of command were aware of the alleged statements for several months and had heard the song months before, no action was taken against SPC Hall until December.

8. I have been advised that it is the Army's intent to transfer SPC Hall to Iraq or Kuwait for his court-martial, and have been told the current plan is to move him on Tuesday, 16 February 2010. To date, the case has not been referred to court-martial. Until this occurs, no military judge can be assigned the case, and

thus there is no one within the military to whom we can appeal or protest that decision, except through the same command that made the decision in the first place. I have been unable to persuade the command to change this decision. The only other conceivable route would be through a complaint under Article 138 of the UCMJ, asserting that the command is violating SPC Hall's rights by sending him to Iraq. However, that would be unavailing because, by the time the complaint would be processed, SPC Hall would have been moved. Article 138 complaints may be used effectively when one is trying to get a military command to do something and the status quo can be maintained until they are ruled upon. They are of no value when one is trying to prevent a military command from doing something it is contemplating doing immediately or imminently.

9. Since he was taken into custody, SPC Hall has sought discharge as a conscientious objector. The unit to which he was formerly assigned has since deployed to Iraq, and he is now technically assigned to a different, rear unit of the Third Infantry Division located at Fort Stewart. His former unit is now attached to the Multi-National Division – Baghdad, in Iraq.

10. It is my opinion that, should SPC Hall be tried by court-martial in Iraq or Kuwait, it will have a profound negative effect on his ability to defend himself properly.

11. In such circumstance, I will not be able to call all the defense

witnesses I would otherwise call. Iraq remains a war zone and witnesses would subject themselves to considerable danger if they were to travel there. It is to minimal avail that I might be able to compel their attendance. First, if a potential witness is advised that the court-martial will take place in Iraq or Kuwait, it is likely that he will not be able to testify in the same detail and with the same precision that would occur if the trial were in the United States. My experience is that, the more inconvenient it is for many witnesses to testify, the less willing they are to cooperate with defense counsel and provide meaningful testimony. Regardless, I could not in good conscience compel someone to travel to Iraq or Kuwait against his or her will.

12. By contrast, the prosecution would have little difficulty bringing its witnesses to Fort Stewart. They are members of the military and subject to Army jurisdiction and orders. Military flights between Iraq and the United States are common and frequent.

13. SPC Hall's case involves significant First Amendment issues. Because it arose from a song he recorded when he was off duty and out of uniform, the question of whether anything he said was to be taken seriously or reflected artistic license and the hyperbole often associated with art will be central to this case. This may require the engagement of expert witnesses who would have to be compensated for their time. Finding experts willing to travel around the world to a

war zone would be far more difficult than finding experts to testify at Fort Stewart.

14. In addition, SPC Hall's case has engendered substantial media coverage and publicity. As a consequence, he has garnered a great deal of support, not just from his family but from various individuals and organizations concerned with constitutional issues as well as Soldiers' and veterans' rights. I expect that his court-martial would be well-attended by his supporters and media if it were held at Fort Stewart. It would be effectively impossible for almost all those who would want to observe the court-martial to do so in Iraq or Kuwait.

15. Finally, SPC Hall and his supporters have been considering the hiring of civilian defense counsel. I have discussed his case with at least two civilian lawyers who have been consulted, Mr. James Klimaski and Mr. David Gespass. It would be practically impossible for civilian counsel to represent SPC Hall in Iraq or Kuwait. In order to properly prepare and try the case, a lawyer would likely have to spend an extended period there, and the distance would preclude traveling back and forth multiple times.

16. I make this declaration under penalty of perjury pursuant to 28 U.S.C. §1746.

Dated: 16 February 2010

Anthony F. Schiavetti