IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

FILED
JUN 11 2002
CLERK, U.S. DISTRICT COURT
NORFOLK, VA

**YASER ESAM HAMDI, and**
**ESAM FOUAD HAMDI,**
**As Next Friend of Yaser Esam Hamdi,**

**Petitioners,**

**v.** **CIVIL ACTION NO. 2:02cv439**

**DONALD RUMSFELD, and**
**COMMANDER W.R. PAULETTE,**

**Respondents.**

## ORDER

Currently before the Court is the matter of a third petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, filed on behalf of the Petitioner, Yaser Esam Hamdi, who is currently being held incommunicado in the brig of the naval base in Norfolk, Virginia.

The instant petition has been filed by Hamdi's father, Esam Fouad Hamdi, as next friend. The Supreme Court in Whitmore v. Arkansas, 495 U.S. 149 (1990), established a two prong test for whether someone is a proper next friend for purposes of filing a habeas corpus petition on behalf of a person in custody. "First, a 'next friend' must provide an adequate explanation--such as inaccessibility, mental incompetence, or other disability--why the real party in interest cannot appear on his own behalf to prosecute the action." Id. at 163. The reason why the real party in interest cannot appear on his own behalf in this case is obvious – Yaser Esam Hamdi is being held incommunicado on a military installation within the Eastern District of Virginia. The second prong

requires that "the 'next friend' must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate the action" and that dedication is generally shown by the next friend having "some significant relationship with the real party in interest." Id. The Petitioner's father, who has attempted for some months to arrange for his son to meet with an attorney, clearly qualifies under this standard. Therefore, having found that the Petitioner's father, Esam Fouad Hamdi, is a proper next friend of the Petitioner, the Court hereby **ORDERS** the petition filed.

The instant petition is the third filed on behalf of Hamdi. The prior two cases (2:02cv348 and 2:02cv382) have been consolidated because they arise out of the exact same circumstance, Hamdi's confinement, and involve the same parties, Hamdi and the United States government. For the same reason, the Court hereby **ORDERS** that those cases be consolidated with the instant case. It further appearing to the Court that the matters involved in this case are currently on appeal before the United States Court of Appeals for the Fourth Circuit, the Court **ORDERS** that this case be consolidated with those cases subject to the United States Court of Appeals for the Fourth Circuit allowing such consolidation.

Furthermore, it is appropriate to appoint counsel in this case, specifically the Federal Public Defender's Office. The petition includes an affidavit by Esam Fouad Hamdi that his son is without funds to retain his own counsel, and that the father is also unable to pay for an attorney for his son. The Court hereby finds that this affidavit is sufficient evidence of financial eligibility to warrant the appointment of counsel under 28 U.S.C. § 3006A. As to the identity of counsel, Frank Dunham and/or Larry Shelton of the Federal Public Defenders Office have both been appointed counsel for Hamdi in the already pending consolidated case, and given their familiarity with this case and their eagerness to proceed as Hamdi's attorneys, this Court sees no reason to appoint another counsel.

Therefore, this Court **ORDERS** that the Federal Public Defenders Office, and/or Frank Dunham and/or Larry Shelton be appointed counsel for the Petitioner.

In its Order of May 29, 2002, this Court Ordered the Respondents to Show Cause why a writ of habeas corpus should not be granted in this case, and set a date for the Respondents' answer and for a hearing on the matter. Because this case is now consolidated with the previous case in which that Order was issued, and since that Order was stayed, it would be appropriate to set a time when an answer should be filed. Accordingly, it is **ORDERED** that the Respondents answer this Order to Show Cause by 12:00 noon on June 17, 2002. As previously scheduled, the hearing to discuss these matters will be before this Court on June 20, 2002, at 2:00 p.m.

Furthermore, for the same reasons articulated in the May 29, 2002 Order, this Court hereby **ORDERS** that the Respondents allow either Frank Dunham or Larry Shelton from the Federal Public Defender's Office, as long as they possess the appropriate governmental security clearance, the opportunity to meet with Yaser Esam Hamdi within seventy-two hours of the entry of this Order or immediately following the elimination of any stay of this Order. Because it is represented to the Court that an interpreter will be needed for the attorney to communicate with Hamdi, an interpreter with the appropriate governmental security clearance will be allowed to attend the meeting. Finally, this meeting is to be private between Hamdi, the attorney, and the interpreter, without military personnel present, and without any listening or recording devices of any kind being employed in any way.

Finally, the Court **ORDERS** that this Order is stayed until 5:00 p.m. on Friday, June 14, 2002 to allow the Respondents an opportunity to appeal this Order, or if the United States Court of

Appeals for the Fourth Circuit allows the consolidation of this matter with the other pending cases, until further Order of the Court of Appeals.

The Clerk of the Court is **DIRECTED** to forward copies of this Order, both by fax and by U.S. mail, to all counsel of record in the consolidated action, to Gregory Garre of the U.S. Department of Justice, to the United States Court of Appeals for the Fourth Circuit, and to Yaser Esam Hamdi.

The Clerk is further **DIRECTED** to forward a copy of this Order to the United States Marshal for service of this Order upon the Respondents. The United States Marshal's office is hereby **DIRECTED** to serve this Order upon the Respondents.

**IT IS SO ORDERED.**

/S/ Robert G. Doumar

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

June 11th, 2002



6/11/02 Copies mailed + faxed now