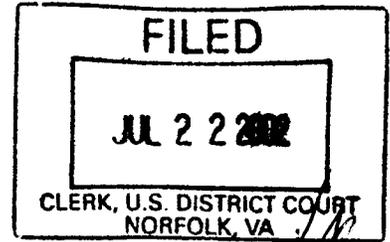


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION



YASER ESAM HAMDI,

ESAM FOUAD HAMDI, As Next
Friend of Yaser Esam Hamdi,

Petitioners,

v.

Civil Action No. 2:02cv439

DONALD RUMSFELD,
Secretary of Defense,

COMMANDER W.R. PAULETTE,
Norfolk Naval Brig,

Respondents.

RESPONDENTS' RULE 26 STATEMENT

Respondents Donald Rumsfeld and Commander W.R. Paulette respond to the Court's Order that they make their Initial Disclosures pursuant to Fed.R.Civ.P. 26(a)(1) as follows:

The Court's Order is without jurisdiction and, in any event, improper. Because the Fourth Circuit has yet to issue its mandate, jurisdiction over this matter remains in the Fourth Circuit, and respondents therefore continue to object to this Court's improper effort to exercise jurisdiction. See United States v. Montgomery, 262 F.3d 233, 239 (4th Cir.), cert. denied, 122 S. Ct. 526 (2001); see also Kusay v. United States, 62 F.3d 192 (7th Cir. 1995). The Fourth Circuit's July 12, 2002 decision in this case deals directly with the appropriate procedures to be followed in this case, especially with respect to any demands that may be placed on respondents before the filing of their response. See Hamdi v. Rumsfeld, 4th Cir. No. 02-6895, slip. op. 14-15.

Furthermore, even apart from the fact that the court of appeals' mandate has not yet issued,

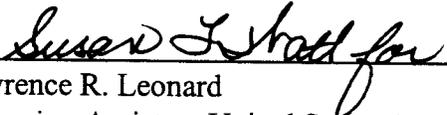
the Court's Order is plainly premature at this point in the proceedings. Respondents' answer to the petition is not due (under this Court's improper July 18 Order) until July 25, four days after the initial disclosure deadline set by the Court. Moreover, the Court has ordered initial disclosures even before it has considered respondents' objection to the appointment of counsel pursuant to 18 U.S.C. 3006A, in accordance with the clear direction of the Fourth Circuit's decision. See Hamdi, slip. op. at 14 n.2. The Court's Order to make initial disclosures in accordance with Rule 26 contradicts the Fourth Circuit's explicit direction to this Court to "consider the most cautious procedures first, conscious of the prospect that the least drastic procedures may promptly resolve Hamdi's case and make more intrusive measures unnecessary." Id. at 15.

In any event, Rule 26 specifically exempts from any initial disclosure requirement actions, such as this, involving "a petition for habeas corpus." Fed. R. Civ. P. 26(a)(1)(E)(ii). In addition, as respondents will explain in their return, the habeas petition in this case raises a purely legal question. Moreover, as respondents also will explain in their return, the proper focus of the Court's inquiry is the government's proffered basis for its decision. Because the analysis focuses on the government's stated basis for its decision, there is no occasion for discovery. The same basic principles apply in the Administrative Procedure Act context (when there is much less deferential judicial review than in this type of action), and for that reason Rule 26 does not apply in "an action for review on an administrative record." Fed. R. Civ. P. 26(a)(1)(E)(i). There is, in short, no "discoverable" information pertaining to the resolution of the habeas petition in this case.

Respectfully submitted,

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Dated: July 22, 2002

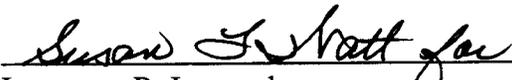
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Respondents' Rule 26 Statement was served, this 22nd

day of July, 2002, by fax and by hand delivery addressed to:

Larry W. Shelton
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Managing Assistant United States Attorney