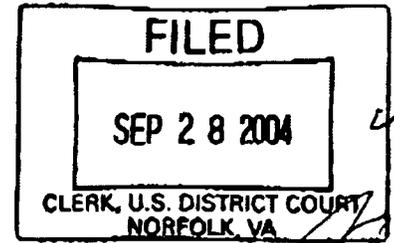


FILED: September 27, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7338
(CA-02-439-2)



YASER ESAM HAMDI; ESAM FOUAD HAMDI, as next friend of Yaser Esam Hamdi,

Petitioners - Appellees,

versus

DONALD RUMSFELD; W. R. PAULETTE, Commander,

Respondents - Appellants.

CENTER FOR CONSTITUTIONAL RIGHTS; RICHARD L. ABEL, Connell Professor of Law, University of California at Los Angeles; WILLIAM J. ACEVES, Professor of Law, California Western School of Law; BRUCE A. ACKERMAN, Sterling Professor of Law & Political Science, Yale University; LEE A. ALBERT, Professor of Law, University at Buffalo Law School, The State University of New York; BARBARA BADER ALDAVE, Loran L. Stewart Professor of Corporate Law, University of Oregon School of Law; ALICIA ALVAREZ, Clinical Associate Professor of Law, DePaul University School of Law; DIANE MARIE AMANN, Professor of Law, University of California, Davis, School of Law; MICHELLE J. ANDERSON, Associate Professor of Law, Villanova University School of Law; FRAN ANSLEY, Professor of Law, University of Tennessee College of Law; ELVIA R. ARRIOLA, Associate Professor of Law, Northern Illinois University College of Law; FRANK ASKIN, Professor of Law and Robert Knowlton Scholar, Rutgers School of Law at Newark; MILNER S. BALL, Caldwell Professor of Constitutional Law, University of Georgia School of Law; JON BAUER, Clinical Professor of Law and Director, Asylum & Human Rights Clinic, University of Connecticut School of Law; PAUL SCHIFF BERMAN, Associate Professor,

179

University of Connecticut School of Law; CYNTHIA BOWMAN, Professor of Law, Northwestern University School of Law; MARK S. BRODIN, Professor of Law, Boston College Law School; BARTRAM S. BROWN, Professor of Law, Chicago-Kent College of Law, Illinois Institute of Technology; SUE BRYANT, Director of Clinical Education and Associate Professor of Law, CUNY School of Law; BURTON CAINE, Professor of Law, Temple University School of Law; EMILY CALHOUN, Professor of Law, University of Colorado School of Law; ANUPAM CHANDER, Acting Professor of Law, University of California, Davis, School of Law; ERWIN CHEMERINSKY, Sydney M. Irmas Professor of Public Interest Law, Legal Ethics and Political Science, University of Southern California Law School; PAUL G. CHEVIGNY, Joel S. and Anne B. Ehrenkranz Professor of Law, New York University Law School; PAUL CHILL, Clinical Professor of Law, University of Connecticut School of Law; GABRIEL J. CHIN, Rufus King Professor of Law, University of Cincinnati College of Law; CAROL CHOMSKY, Associate Professor of Law, University of Minnesota Law School; MARGARET CHON, Associate Professor of Law, Seattle University School of Law; MARJORIE COHN, Associate Professor of Law, Thomas Jefferson School of Law, San Diego; ROBIN MORRIS COLLIN, Professor of Law, University of Oregon School of Law; DENNIS E. CURTIS, Clinical Professor of Law, Yale Law School; ERIN DALY, Associate Professor of Law, Widener University; MICHAEL H. DAVIS, Professor of Law, Cleveland State University; MICHAEL DEUTSCH, Adjunct Professor of Law, Northwestern University School of Law; LAURA DICKINSON, Associate Professor, University of Connecticut School of Law; ROBERT DINERSTEIN, Associate Dean and Professor of Law, American University, Washington College of Law; JANE DOLKART, Associate Professor of Law, Dedman School of Law, Southern Methodist University; SHARON DOLOVICH, Acting Professor of Law, University of California at Los Angeles; DOUGLAS L. DONOHO, Professor of Law, Nova Southeastern University, Shepard Broad Law Center; DOLORES DONOVAN, Professor of Law, University of San Francisco School of Law; MARY L. DUDZIAK, Judge Edward J. and Ruey L. Guirado Professor of Law and History,

University of Southern California Law School; Visiting Research Scholar, Woodrow Wilson School of Public and International Affairs, Princeton University; PAMELA EDWARDS, Assistant Professor of Law, CUNY School of Law; NANCY EHRENREICH, Associate Professor of Law, University of Denver College of Law; ROSA EHRENREICH BROOKS, Associate Professor of Law, University of Virginia School of Law; J. SOFFIYAH ELIJAH, Clinical Instructor, Criminal Justice Institute, Harvard Law School; SUSAN J. FEATHERS, Esq., Director, Public Service Program, University of Pennsylvania Law School; MARVIN FEIN, Associate Professor, University of Pittsburgh School of Law; TODD D. FERNOW, Professor of Law, Director, Criminal Clinic, University of Connecticut School of Law; SALLY FRANK, Professor of Law, Drake University School of Law; KATHERINE FRANKE, Professor of Law, Columbia University; ERIC M. FREEDMAN, Professor of Law, Hofstra University School of Law; NIELS W. FRENZEN, Clinical Assistant Professor of Law, University of Southern California; CRAIG B. FUTTERMAN, Assistant Clinical Professor of Law, University of Chicago Law School; KRISTIN BOOTH GLEN, Dean and Professor of Law, CUNY School of Law; BRIAN GLICK, Associate Clinical Professor of Law, Fordham Law School; HOWARD A. GLICKSTEIN, Dean and Professor of Law, Touro Law School; PHYLLIS GOLDFARB, Professor of Law, Boston College Law School; BOB GOLTEN, Director, International Human Rights Advocacy Center, University of Denver; CARLOS E. GONZALEZ, Associate Professor of Law, Rutgers School of Law - Newark; Visiting Associate Professor of Law, Santa Clara University School of Law; KENNETH W. GRAHAM, JR., Professor of Law, University of California at Los Angeles; ARIELA GROSS, Professor of Law & History, The Law School, University of Southern California; LOUISE HALPER, Professor of Law, Washington & Lee University School of Law; JOEL F. HANDLER, Richard C. Maxwell Professor of Law and Professor of Policy Studies, School of Public Policy and Social Research, University of California at Los Angeles; SIDNEY L. HARRING, Professor of Law, CUNY Law School; VIRGINIA HENCH, Associate Professor of Criminal Law & Procedure & Civil Rights, University of Hawaii - Manoa; KATHY

HESSLER, Professor, Case Western Reserve University School of Law; JUDITH L. HOLMES, Assistant Professor of Legal Studies, University of Massachusetts - Amherst; WYTHE W. HOLT, JR., University Research Professor of Law, University of Alabama School of Law; JOAN HOWARTH, Professor of Law, University of Nevada, Las Vegas; MARSHA HUIE, Professor of Law, The University of Tulsa College of Law; ERIC S. JANUS, Professor of Law, William Mitchell College of Law; PAULA C. JOHNSON, Associate Professor of Law, Syracuse University College of Law; JOSE R. JUAREZ, JR., Professor of Law, St. Mary's University School of Law; DAVID KAIRYS, James E. Beasley Professor of Law, Beasley School of Law, Temple University; YALE KAMISAR, Clarence Darrow Distinguished University Professor of Law, University of Michigan; JERRY KANG, Professor of Law, University of California at Los Angeles; LEWIS R. KATZ, John C. Hutchins Professor of Law, Case Western Reserve University Law School; EILEEN KAUFMAN, Professor of Law, Touro Law School; MICHAEL J. KELLY, Assistant Professor, Creighton University School of Law; RANETA LAWSON MACK, Professor of Law, Creighton University School of Law; DAVID P. LEONARD, Professor of Law and William M. Rains Fellow, Loyola Law School, Los Angeles; JOHN LEUBSDORF, Professor of Law, Rutgers Law School-Newark; MARTIN L. LEVY, Professor, Thurgood Marshall School of Law, Texas Southern University; JULES LOBEL, Professor of Law, University of Pittsburgh Law School; DAVID LUBAN, Frederick Haas Professor of Law and Philosophy, Georgetown University Law Center; BETH LYON, Assistant Professor of Law, Villanova University School of Law; HOLLY MAGUIGAN, Professor of Clinical Law, New York University School of Law; SAMUEL A. MARCOSSON, Associate Professor, Louis D. Brandeis School of Law, University of Louisville; GARY M. MAVEAL, Associate Professor of Law, University of Detroit Mercy School of Law; ROBERT F. MEAGHER, Emeritus Professor, Fletcher School of Law and Diplomacy, Tufts University; CARLIN MEYER, Professor of Law, New York Law School; JONATHAN M. MILLER, Professor of Law, Southwestern University School of Law; MARGARET E. MONTOYA, Professor of Law,

University of New Mexico School of Law; BEVERLY MORAN, Professor of Law, Professor of Sociology, Vanderbilt University School of Law; DAVID A. MORAN, Assistant Professor of Law, Wayne State University Law School; MARY-BETH MOYLAN, Instructor of Law, University of the Pacific, McGeorge School of Law; MILLARD A. MURPHY, Esq., Clinical Instructor, Prison Law Clinic, University of California, Davis, School of Law; KENNETH B. NUNN, Professor of Law, Fredric G. Levin College of Law, University of Florida; JAMES P. OGILVY, Associate Professor of Law, Columbus School of Law, The Catholic University of America; NANCY K. OTA, Professor of Law, Albany Law School; MARC R. POIRIER, Professor of Law, Seton Hall Law School; JAMES POPE, Professor of Law and Sidney Reitman Scholar, Rutgers University School of Law; DEBORAH W. POST, Professor of Law, Touro Law School; WILLIAM QUIGLEY, Professor of Law and Director of the Loyola Law Clinic & the Gillis Long Poverty Law Center, Loyola Law School; MARGARET JANE RADIN, Wm. Benjamin Scott and Luna M. Scott Professor of Law, Stanford Law School; MARTHA RAYNER, Associate Clinical Professor of Law, Fordham University School of Law; JUDITH RESNICK, Arthur Liman Professor of Law, Yale Law School; PAULA R. RHODES, Associate Professor of Law, Director, LLM in American and Comparative Law Program, University of Denver College of Law; HENRY J. RICHARDSON, III, Peter J. Liacouras Professor of Law, Temple Law School; ANNELISE RILES, Professor of Law and Professor of Anthropology, Cornell University; TONI ROBINSON, Professor of Law, Quinnipiac School of Law; FLORENCE WAGMAN ROISMAN, Professor of Law and Paul Beam Fellow, Indiana University School of Law-Indianapolis; KERMIT ROOSEVELT, Assistant Professor, University of Pennsylvania Law School; TANINA ROSTAIN, Associate Professor, New York Law School; JED RUBENFELD, Robert R. Slaughter Professor of Law, Yale University; DAVID RUDOVSKY, Senior Fellow, University of Pennsylvania Law School; LEILA NADYA SADAT, Professor of Law, Washington University in St. Louis; NATSU TAYLOR SAITO, Professor of Law, Georgia State University College of Law; ROBERT F. SEIBEL, Professor of Law, CUNY Law School; FRANKLIN SIEGEL, City University of

New York School of Law; ROBERT A. SEDLER, Distinguished Professor of Law and Gibbs Chair in Civil Rights and Civil Liberties, Wayne State University; MARCI SEVILLE, Associate Professor of Law and Director, Women's Employment Rights Clinic, Golden Gate University School of Law; MARJORIE SILVER, Professor, Touro Law Center; EILEEN SILVERSTEIN, Zephaniah Swift Professor of Law, University of Connecticut; DAVID SLOSS, Assistant Professor of Law, Saint Louis University School of Law; RONALD C. SLYE, Associate Professor, Seattle University School of Law; LLOYD B. SNYDER, Professor of Law, Cleveland State University; ANDREJ THOMAS STARKIS, Assistant Professor of Law, Massachusetts School of Law; NORMAN STEIN, Douglas Arant Professor of Law, University of Alabama School of Law; JOAN STEINMAN, Distinguished Professor of Law, Chicago-Kent College of Law; ROBERT N. STRASSFELD, Professor of Law, Case Western Reserve University School of Law; ROBERT L. TSAI, Assistant Professor of Law, University of Oregon School of Law; BETH VAN SCHAACK, Assistant Professor, Santa Clara University School of Law; DEBORAH M. WEISSMAN, Associate Professor of Law and Director of Clinical Programs, University of North Carolina School of Law; CHARLES E. WILSON, Associate Professor of Law, The Ohio State University College of Law; RICHARD J. WILSON, Professor, Washington College of Law, American University; ADAM WINKLER, Acting Professor of Law, University of California at Los Angeles; STEPHEN WIZNER, William O. Douglas Clinical Professor of Law and Supervising Attorney, Yale Law School; MARK E. WOJCIK, Associate Professor of Law, The John Marshall Law School, Chicago; FRANK H. WU, Professor of Law, Howard University; CLIFF ZIMMERMAN, Clinical Associate Professor of Law, Northwestern University; NATIONAL LAWYERS' GUILD, Heidi Boghosian, Executive Director; NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD, Dan Kesselbrenner, Executive Director; NATIONAL LAWYERS GUILD NEW YORK CHAPTER, Dana Biberman, President; HUMAN RIGHTS WATCH, James Ross, Senior Legal Counsel; SOUTHERN POVERTY LAW CENTER, Rhonda Brownstein, Legal Director; UNITARIAN UNIVERSALIST SERVICE COMMITTEE, Denise

Moorehead, Deputy Director of Program; PUERTO RICO LEGAL DEFENSE AND EDUCATION FUND, INCORPORATED, Foster Maer, Acting Legal Director; NATIONAL COALITION TO PROTECT POLITICAL FREEDOM, Kit Gage, President; FIRST AMENDMENT FOUNDATION, Kit Gage, Director; NATIONAL LAWYER'S GUILD/MAURICE & JANE SUGAR LAW CENTER FOR ECONOMIC & SOCIAL JUSTICE, Julie Hurwitz, Executive Director; CIVIL LIBERTIES MONITORING PROJECT, Jared Rossman, President; ASSOCIATION OF LEGAL AID ATTORNEYS, U.A.W. LOCAL 2325, Michael Letwin, Esq., President; PARTNERSHIP FOR CIVIL JUSTICE, Mara Verheyden-Hilliard, co-founder; TRIAL LAWYERS FOR PUBLIC JUSTICE, Rebecca Epstein, Staff Attorney; FREEDOM SOCIALIST PARTY, Val Carlson; JEWISH ALLIANCE FOR LAW AND SOCIAL ACTION, Andrew M. Fischer; THE INNOCENCE PROJECT AT THE BENJAMIN N. CARDOZO SCHOOL OF LAW, Nina Morrison, Esq., Executive Director; ELLA BAKER CENTER FOR HUMAN RIGHTS, Van Jones, National Executive Director; AMERICAN FRIENDS SERVICE COMMITTEE, Mary Ellen McNish, General Secretary; REBER BOULT, Esq., Albuquerque, New Mexico; HUNTER GRAY; JOHN MAGE, Esq., New York, New York; DOUGLAS N. MASTERS, Esq., Chicago, Illinois; LAURA BETH NIELSEN, Research Fellow, American Bar Foundation; LEONARD WEINGLASS, Esq., New York, New York; CAMILLE WHITWORTH, Esq., Austin, Texas; MITCHELL ZIMMERMAN, Esq., Co-Coordinator, Law Professors for the Rule of Law; NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS; AMERICAN CIVIL LIBERTIES UNION FOUNDATION; AMERICAN CIVIL LIBERTIES FOUNDATION OF VIRGINIA;

Amici Curiae in support
of Appellees,

RUTH WEDGWOOD, Professor of Law, Yale University Law School; SAMUEL ESTREICHER, Professor of Law, New York University School of Law; DOUGLAS W. KMIEC, Dean & St. Thomas More Professor of Law, Catholic University; RONALD ROTUNDA, George Mason University Foundation Professor of Law, George Mason University School of Law; DAVID B. RIVKIN, JR.; LEE A. CASEY; DARIN R. BARTRAM;

Amici Curiae in support
of Appellants.

O R D E R

The parties have filed a joint motion to stay the mandate until September 30, 2004.

The Court grants the joint motion to stay issuance of the mandate until September 30, 2004.

Entered at the direction of the panel composed of Chief Judge Wilkins, Judge Wilkinson, and Judge Traxler.

For the Court

/s/ Patricia S. Connor

Clerk