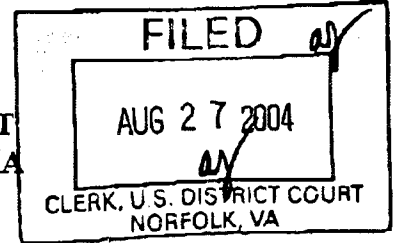


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION



YASER ESAM HAMD, I,

Petitioner,

v.

CIVIL ACTION NO. 2:02cv439

DONALD RUMSFELD
and
COMMANDER C.T. HANFT,

Respondents.

ORDER

Presently before the Court is Respondents' Motion to Stay Proceedings for seven (7) days, dated August 26, 2004. Petitioner Yaser Esam Hamdi joins in the Motion.

On August 19, 2004, this Court granted in part a joint Motion by the parties to stay the proceedings until August 30, 2004 in order to facilitate a settlement of the case. The parties report that they are close to a settlement and desire to devote their full attention in the days ahead to finalizing one. This Court will GRANT the Motion in part. This matter will be stayed until Tuesday, August 31, 2004 at 10:00 a.m., unless further continued, at which time this Court will hold a full hearing *on the merits* of Hamdi's habeas corpus petition.¹ The Respondents are

¹The Supreme Court remanded this matter on June 28, 2004. This Court has full jurisdiction to hear the merits of this case pursuant to the Fourth Circuit's remand to this Court on August 6, 2004. The Fourth Circuit's remand order constitutes the mandate pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. Generally, an appellate court must execute the directive of the Supreme Court and cannot hold a rehearing on the issue decided. See *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895). Furthermore, it is clear that the Supreme Court has previously decided that when a person is arrested he must have a preliminary hearing before a United States Magistrate Judge or other appropriate authority within a reasonable time not to exceed 48 hours. See *County of Riverside v. McLaughlin*, 500 U.S. 44, 56-8 (1991); see also *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).

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hereby **ORDERED** to produce the Petitioner at this hearing at 10:00 a.m. on Tuesday, August 31, 2004 unless the matter is continued or dismissed prior thereto.

However, this Court will modify this partial granting of the Respondents' Motion subject to the following conditions.

First, pursuant to the request contained in the Petitioner's Hearing Memorandum, dated August 26, 2004, and in order to facilitate a full and fair hearing on the merits of the petition, this Court **ORDERS** the Respondents to provide Hamdi's attorney, Federal Public Defender Frank Dunham, or his duly authorized associate attorneys, the following materials for their perusal only: (1) copies of any statements and copies of any reports of statements made by Petitioner Hamdi while in the custody of the United States or the Northern Alliance; (2) any documents the Respondents intend to rely upon in support of their case-in-chief; and, (3) any records or summary of any records of any compensation, if any, provided to the Northern Alliance for the transfer of Hamdi or, if none, any payments, if any, in general for the transfer of any prisoners of the Northern Alliance captured in Afghanistan, into custody of the United States. In a hearing with both parties via telephone conference on Friday, August 27, 2004, attorneys for the Respondents represented to this Court that they were ready for trial on August 30, 2004 and that these materials would have been proffered at the hearing on the merits originally set for Monday, August 30, 2004. Thus, these materials must be furnished to Federal Public Defender Dunham or his duly authorized associate attorneys by 3:00 p.m. on Monday, August 30, 2004 only for their perusal. The Federal Public Defender shall inform the Court whether the Respondents are in compliance with this order by 4:00 p.m on Monday, August 30, 2004.

Second, the Petitioner's Hearing Memorandum raises the issue of conditions of solitary confinement. Since Hamdi, a citizen of the United States of America, has been incarcerated in solitary confinement, incommunicado, since his transfer from Guantanamo Bay, Cuba to the

United States more than two years ago, this Court **ORDERS** the Respondents to submit to the Court a sworn statement or affirmation under penalty of perjury from the Commander of the Consolidated Naval Brig in Charleston, South Carolina, where Hamdi is presently detained, explaining the reasons for his solitary confinement apart from any other prisoners or actual or alleged enemy combatants.² Without question, the isolation of a prisoner from the general population for an indefinite period of time raises Eighth Amendment issues, Hutto v. Finney, 437 U.S. 678, 686-87 (1978), and due process concerns. Wolff v. McDonnell, 418 U.S. 539, 556-57 (1974). As “[t]he touchstone of due process is protection of the individual against arbitrary action of government,” Wolff, 418 U.S. at 558, this Court will not stand by and allow the Respondents to persist in the solitary detainment of Hamdi without a satisfactory explanation. This statement must be submitted to this Court, via facsimile, by 3:00 p.m. on Monday, August 30, 2004.

If the Respondents are in compliance with the requirements of this Order within the aforementioned times and dates, this Court will stay the hearing on the habeas corpus petition once again until Tuesday, September 7, 2004 at 10:00 a.m., at which time the Respondents must produce Hamdi. Under any and all circumstances, this matter will *not* be continued thereafter.

The Clerk of the Court is **DIRECTED** to transmit this Order via facsimile and U.S. mail to all counsel of record.

IT IS SO ORDERED.

²At a hearing via teleconference with both parties on Friday, August 27, 2004, attorneys for the Respondents represented to this Court that Hamdi is being incarcerated in solitary confinement because holding him in the naval brig’s general population poses a threat of substantial physical injury to Hamdi himself due to his actual or perceived cooperation with government interrogators. Attorneys for the Respondents also represented to this Court that Hamdi is detained in shackles during meetings with his own attorney because Hamdi poses a threat of physical injury to his own attorney.

/S/ Robert G. Doumar

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

August 27, 2004