

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
)	Civil Action Nos.
)	02-CV-0299 (CKK), 02-CV-0828 (CKK)
)	02-CV-1130 (CKK), 04-CV-1135 (ESH),
<i>In re</i> Guantanamo Detainee Cases)	04-CV-1136 (JDB), 04-CV-1137 (RMC),
)	04-CV-1144 (RWR),
)	04-CV-1164 (RBW),
)	04-CV-1194 (HHK), 04-CV-1227 (RBW),
)	04-CV-1254 (HHK)
)	

**RESPONDENTS' OPPOSITION TO BRIEF OF AMICUS CURIAE
CHARLES B. GITTINGS, JR. AND
CROSS MOTION FOR SUMMARY JUDGMENT IN SUPPORT OF PETITIONERS**

COME NOW, Respondents and file this Opposition to the Brief of Amicus Curiae Charles B. Gittings and Cross Motion for Summary Judgment in Support of Petitioners. In his *amicus curiae* brief, Mr. Gittings asks the Court to:

- a. enjoin Respondents to immediately cease and desist from all unlawful treatment of these and all other detainees, and to comply fully with the Geneva Convention in all circumstances and all places;
- b. order the Department of Justice to appoint an independent counsel to investigate and prosecute the Respondents for war crimes pursuant to 18 USC § 2241, etc.;
- c. dismiss Respondents' pending motions to dismiss with prejudice;
- d. issue a finding of summary judgment in favor of petitioners and grant them all appropriate relief.

For the reasons explained below, Mr. Gittings motion should be denied to the extent he seeks relief in his own right or other than that sought by Petitioners.

It is well settled that an *amicus curia* is not a party to litigation. Newark Branch, NAACP v. Town of Harrison, NJ, 940 F.2d 792, 808 (3rd Cir. 1991) (citing Alexander v. Hall 64 F.R.D.

152, 155 (D.S.C. 1974)(citations omitted); Miller-Wohl Co. Inc. v. Comm. of Labor, 694 F.2d 203, 204 (9th Cir. 1982) (citing Clark v. Sandusky, 205 F.2d 915, 917 (7th Cir. 1953). As such, an *amicus* may only support relief that is claimed by a party to the proceeding. University of Texas at Austin v. Vratil, 96 F.3d 1337, 1341 (10th Cir. 1996); see Newark Branch NAACP, 940 F.2d at 808 (refusing to consider *amici's* request for substantive individual relief.); United States v. Louisiana, 718 F. Supp. 525, 528 (E.D. La. 1989) (court is not bound to afford relief to *amicus* apart from relief appropriate for those who are actual parties). Lack of standing to seek relief or raise arguments not presented by the parties is another consequence of not being a party to the litigation. See Berry v. Doles, 438 U.S. 190 (1978) (Rehnquist, J., dissenting) (*amicus curiae* has no standing to request relief not requested by the parties); see also Morten v. Bricklayers, Masons and Plasterers, 543 F.2d 224, 227 (D.C. Cir. 1976) (*amicus* has no standing to appeal lower court order); and Common Cause v. Bolger, 512 F.Supp. 26, 35 (D.D.C. 1980) (it is a “dubious assumption that *amicus curiae* has standing to raise arguments not pressed by the parties.”) (citing, e.g. Knetsch v. United States, 364 U.S. 361, 370 (1960) and Alexander v. Hall, 64 F.R.D. 152, 155 (D.S.C.1974)). Finally, Federal Rule of Civil Procedure 56 only permits a “party” (which, as discussed above, *amicus* is not) to file for summary judgment. Fed.R.Civ.P. 56.

Therefore, since Petitioners have not sought the relief *amicus* seeks in sections (a), (b) and (d) of his prayer for relief, those requests must be denied. As for section (c) - essentially asking the Court to deny Respondents’ motion to dismiss - issues pertaining to the motion to dismiss have been fully briefed by the parties, and Respondents hereby incorporate all previous arguments made in support of Respondents’ Motion to Dismiss.

CONCLUSION

For the reasons stated above, the relief sought in Brief of Amicus Curiae Charles B. Gittings and Cross Motion for Summary Judgment in Support of Petitioners should be denied.

Dated: December 16, 2004

Respectfully submitted,

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