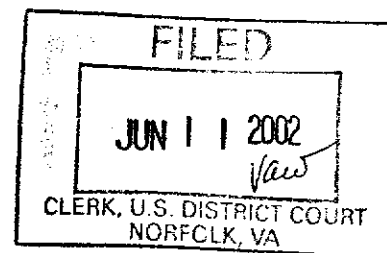


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION



YASER ESAM HAMDI,

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

Petitioners,

v.

DONALD RUMSFELD  
Secretary of Defense  
The Pentagon  
Arlington, Va.,

COMMANDER W.R. PAULETTE,  
Norfolk Naval Brig  
8251 Ingersoll St.  
Norfolk, Va. 23511-2699,

Respondents.

CASE NO.

2:02 cv 439

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner Yaser Esam Hamdi, a citizen of the United States of America, is being held illegally, denied access to legal counsel, and denied access to the Court in violation of his constitutionally protected rights. Esam Fouad Hamdi, on behalf of his son, Yaser Esam Hamdi as his Next Friend, requests that this Court issue a Writ of Habeas Corpus.

PARTIES

2. Petitioner Yaser Esam Hamdi is an American citizen presently incarcerated and unlawfully

held by Respondents at the Norfolk Naval Station in Norfolk, Virginia. Mr. Hamdi was born in Baton Rouge, Louisiana, on September 26, 1980. *See Exhibit A.*

3. Petitioner Esam Fouad Hamdi is the father of Yaser Esam Hamdi. Esam Fouad Hamdi has had no contact with his son since Respondents gained custody of Yaser Esam Hamdi in 2001.
4. Respondent Paulette is a Commander in charge of the Norfolk Naval Brig. He is the custodian immediately responsible for the detention of Mr. Hamdi.
5. Respondent Rumsfeld is the United States Secretary of Defense and Respondent Paulette's superior.

#### JURISDICTION

6. Petitioners bring this action under 28 U.S.C. §§ 2241 and 2242, and invoke this Court's jurisdiction under 28 U.S.C. §§ 1331, 1350, 1651, 2201, and 2202; as well as under the Fifth and Fourteenth Amendments to the United States Constitution.
7. This Court is empowered under 28 U.S.C. § 2241 to grant the Writ of Habeas Corpus, and to entertain the Petition filed by Esam Fouad Hamdi, as Next Friend under 28 U.S.C. § 2242.

#### VENUE

8. Venue is proper in the United States District Court for the Eastern District of Virginia because the Petitioner's custodian resides in this district and the Petitioner is being held unlawfully in this district. 28 U.S.C. §§1391(b); 1391(e).

#### STATEMENT OF FACTS

9. Yaser Esam Hamdi is a citizen of the United States of America. When seized by the United States Government, Mr. Hamdi resided in Afghanistan.

### Petitioner's Seizure By The United States

10. In the wake of September 11, 2001, the United States initiated military action against the Taliban Government in Afghanistan. On September 18, 2001, a Joint Resolution of Congress authorized the President to use force against the "nations, organizations, or persons" that "planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or [that] harbored such organizations or persons." Joint Resolution 23, Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (Sept. 18, 2001) ("the Resolution") (attached as Exhibit B). The Resolution does not authorize the indefinite detention of persons seized on the field of battle.
11. In the course of the military campaign, and as part of their effort to overthrow the Taliban, the United States provided military assistance to the Northern Alliance, a loosely-knit coalition of military groups opposed to the Taliban Government.
12. In the course of its assistance to the Northern Alliance, the United States obtained access to individuals held by various factions of the Northern Alliance. On information and belief, Mr. Hamdi was captured or transferred into the custody of the United States in the Fall of 2001. Mr. Hamdi has been held in United States custody since that time without access to legal counsel or notice of any charges pending against him.

### The Detention Order

13. On November 13, 2001, President George W. Bush issued a Military Order authorizing indefinite detention without due process of law. The Order authorizes Respondent Rumsfeld to detain "any individual who is *not a United States citizen*" that President George W. Bush has "reason to believe:"
  - i. is or was a member of the organization known as al Qaida;
  - ii. has engaged in, aided or abetted, or conspired to commit, acts of

international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or

iii. has knowingly harbored one or more individuals described in subparagraphs (i) and (ii).

See Military Order of November 13, 2001, 66 Fed. Reg. 57,833 (Nov. 16, 2001) (attached as Exhibit C). President George W. Bush must make this determination in writing.

14. On information and belief, President George W. Bush has never certified or determined in any manner, in writing or otherwise, that Yaser Esam Hamdi is subject to this detention order.
15. By its own terms, the Military Order does not authorize the detention of United States citizens. Accordingly, Yaser Esam Hamdi is not properly subject to this detention order.

#### Guantanamo Bay Naval Station

16. On or about January 11, 2002, the United States military began transporting prisoners captured in Afghanistan to Camp X-Ray at the United States Naval Base in Guantanamo Bay, Cuba. Approximately 7,000 military and civilian people reside in Guantanamo Bay under the complete jurisdiction and control of the United States.
17. On or about January 11, 2002, the precise date unknown to Petitioners but known to Respondents, the United States military transferred Yaser Esam Hamdi to Camp X-Ray, Guantanamo Bay, where he was held until April 2002.
18. While held in Guantanamo Bay, the United States military denied Yaser Esam Hamdi access to legal representation or notice of the charges against him.

#### Norfolk Naval Brig

19. On or about April 6, 2002, Mr. Hamdi was transferred to a military jail at the Norfolk Naval Station in Norfolk, Virginia.

20. To date, Yaser Esam Hamdi has not been charged with an offense, nor has he been notified of any pending or contemplated charges. Mr. Hamdi has made no appearance before either a military or civilian tribunal of any sort, nor has he been provided counsel or the means to contact counsel. On information and belief, Mr. Hamdi has not been informed of his rights under the United States Constitution. As a result, Mr. Hamdi is entirely unable to assert his constitutional rights to counsel or protection from unlawful detention.

## CLAIMS AS TO THE UNLAWFULNESS OF PETITIONER'S DETENTION

### FIRST CLAIM FOR RELIEF (DUE PROCESS - FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION)

21. Petitioners incorporate paragraphs 1-20 by reference.
22. As an American citizen, Yaser Esam Hamdi enjoys the full protections of the Constitution. *See Reid v. Covert*, 354 U.S. 1, 32-33 (1957) (“[The view that] constitutional safeguards do not shield a citizen abroad when the Government exercises its power over him . . . is erroneous. The mere fact that [the defendants] had gone overseas . . . should not reduce the protection the Constitution gives them.”); *see also Kinsella v. United States ex rel. Singleton*, 361 U.S. 234, 244-48 (1960) (refusing to permit military prosecution of citizen who was not a member of the United States armed forces).
23. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the Fifth and Fourteenth Amendments to the United States Constitution. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the [Due Process] Clause protects. . . . And this Court has said that government detention violates that Clause unless the detention is ordered in a *criminal* proceeding with adequate constitutional protections . . .”).

### SECOND CLAIM FOR RELIEF (SUSPENSION OF THE WRIT)

24. Petitioners incorporate paragraphs 1-23 by reference.
25. To the extent the order of November 13, 2001, disallows any challenge to the legality of the Mr. Hamdi's detention by way of habeas corpus, the Order and its enforcement constitute an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution.

### PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

1. Grant Petitioner Esam Fouad Hamdi Next Friend status, as Next Friend of Yaser Esam Hamdi;
2. Appoint counsel to represent Yaser Esam Hamdi because he is indigent and has no funds with which to retain counsel in the United States;<sup>1</sup>
3. Order Respondents to cease all interrogations of Yaser Esam Hamdi, direct or indirect, while this litigation is pending;
4. Order and declare that Yaser Esam Hamdi is being held in violation of the Fifth and Fourteenth Amendments to the United States Constitution;
5. To the extent Respondents contest any material factual allegations in this Petition, schedule an evidentiary hearing, at which Petitioners may adduce proof in support of their allegations;
6. Order that Petitioner Yaser Esam Hamdi be released from Respondents' unlawful custody;
7. Such other relief as the Court may deem necessary and appropriate to protect Petitioner Yaser Esam Hamdi's rights under the United States Constitution.

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<sup>1</sup> See Exhibit D.

Dated: June 8th, 2002

Respectfully submitted,

Yaser Esam Hamdi, and Esam Fouad Hamdi,  
as Next Friend of Yaser Esam Hamdi

A handwritten signature in black ink, appearing to read 'Esam', written over a horizontal line.

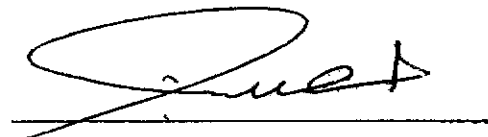
Esam Fouad Hamdi  
P.O. Box 240  
Jubail, Saudi Arabia 31951



VERIFICATION

KINGDOM OF SAUDI ARABIA  
DISTRICT OF THE CONSULAR  
SECTION OF THE CONSULATE  
GENERAL OF THE UNITED STATES  
OF AMERICA AT DHAHRAN } SS  
JUBAIL, SAUDI ARABIA

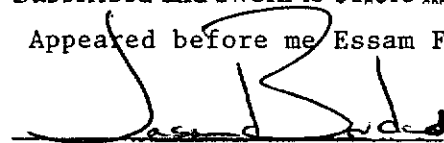
I, Esam Fouad Hamdi, next friend for Petitioner Yaser Esam Hamdi, being first duly sworn, state under pain and penalty of perjury that to the best of my knowledge and belief, the facts set forth in this Petition are true and correct.



Esam Fouad Hamdi

Subscribed and sworn to before me this 8th day of June, 2002

Appeared before me Essam Fouad Hamdi, only



**Jason E. Bruder**  
**Vice Consul**

American Consulate General  
Dhahran, Saudi Arabia

## EXHIBIT A

# CERTIFICATE OF LIVE BIRTH

L2048855

BIRTH NO. 117-1980-058-00393

1A CHILD'S LAST NAME  
HAMDI

1B FIRST NAME  
YASER

1C SECOND NAME  
ESAM

2A BIRTH DATE  
SEPTEMBER 26, 1980

2B TIME OF BIRTH  
4:05 PM

3 SEX  
MALE

4 NUMBER BORN  
SINGLE

5 BIRTH ORDER

6A PLACE OF BIRTH (CITY, TOWN, OR LOCATION)  
BATON ROUGE

6B PARISH OF BIRTH  
EAST BATON ROUGE

6C NAME OF HOSPITAL OR INSTITUTION  
WOMAN'S HOSPITAL

7A RESIDENCE OF MOTHER (CITY, TOWN, OR LOCATION)  
BATON ROUGE

7B PARISH  
EAST BATON ROUGE

7C STATE  
LOUISIANA

7D ZIP CODE  
70809

7E STREET ADDRESS OF RESIDENCE  
10448 JEFFERSON HIGHWAY APT E

8A FATHER'S LAST NAME  
HAMDI

8B FIRST NAME  
ESAM

8C SECOND NAME  
FOUAD

8D CITY AND STATE OF BIRTH (IF NOT U.S., NAME OF COUNTRY)  
MECCA, SAUDI ARABIA

8E AGE AT THIS BIRTH  
25

9A MOTHER'S MAIDEN NAME  
FAITAH

9B FIRST NAME  
NADIAH

9C SECOND NAME  
HUSSEN

9D CITY AND STATE OF BIRTH (IF NOT U.S., NAME OF COUNTRY)  
TAIF, SAUDI ARABIA

9E AGE AT THIS BIRTH  
21

FILE DATE  
OCTOBER 22, 1980

DATE ISSUED  
MAY 23, 2002

A REPRODUCTION OF THIS DOCUMENT IS VOID AND INVALID. DO NOT ACCEPT COPIES.

ISSUED BY: V. HEIMSTETTER



THE ABOVE IS A TRUE CERTIFICATION OF NAME AND BIRTH FACTS ON FILE IN THE VITAL RECORDS REGISTRY OF THE STATE OF LOUISIANA, PURSUANT TO LSA — R.S. 40:32, ET SEQ.

**EXHIBIT B**

LEXSEE 115 Stat. 224

UNITED STATES PUBLIC LAWS

107th Congress -- 1st Session

(c) 2001, LEXIS-NEXIS, A DIVISION OF REED ELSEVIER INC. AND REED ELSEVIER  
PROPERTIES INC.

PUBLIC LAW 107-40 [S.J. Res. 23]

SEPT. 18, 2001

107 P.L. 40; 115 Stat. 224; 2001 Enacted S.J. Res. 23; 107 Enacted S.J. Res. 23

BILL TRACKING REPORT: 107 Bill Tracking S.J. Res. 23  
FULL TEXT VERSION(S) OF BILL: 107 S.J. Res. 23

Joint Resolution

To authorize the use of United States Armed Forces against those responsible  
for the recent attacks launched against the United States.

Whereas, on September 11, 2001, acts of treacherous violence were committed  
against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United  
States exercise its rights to self-defense and to protect United States citizens  
both at home and abroad; and

Whereas, in light of the threat to the national security and foreign policy  
of the United States posed by these grave acts of violence; and

Whereas, such acts continue to pose an unusual and extraordinary threat to  
the national security and foreign policy of the United States; and

Whereas, the President has authority under the Constitution to take action to  
deter and prevent acts of international terrorism against the United States:  
Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of  
America in Congress assembled,

[\*1] SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Authorization for Use of Military  
Force".

[\*2] SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) In General.--That the President is authorized to use all necessary and  
appropriate force against those nations, organizations, or persons he determines  
planned, authorized, committed, or aided the terrorist attacks that occurred on  
September 11, 2001, or harbored such organizations or persons, in order to  
prevent any future acts of international terrorism against the United States by  
such nations, organizations or persons.

(b) War Powers Resolution Requirements.--

(1) Specific statutory authorization.-- Consistent with section 8(a)(1) of  
the War Powers Resolution, the Congress declares that this section is intended

to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) Applicability of other requirements.-- Nothing in this resolution supercedes any requirement of the War Powers Resolution.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

## EXHIBIT C

LEXSEE 66 fed. reg. 57833

FEDERAL REGISTER

Vol. 66, No. 222

Presidential Documents

PRESIDENT OF THE UNITED STATES

Military Order of November 13, 2001

Title 3 -

The President

Detention, Treatment, and Trial of Certain Non-Citizens in the War Against  
Terrorism

Part IV

66 FR 57833

DATE: Friday, November 16, 2001

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To view the next page, type .np\* TRANSMIT.

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[\*57833]

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force Joint Resolution (Public Law 107-40, 115 Stat. 224) and sections 821 and 836 of title 10, United States Code, it is hereby ordered as follows:

Section 1. Findings.

(a) International terrorists, including members of al Qaida, have carried out attacks on United States diplomatic and military personnel and facilities abroad and on citizens and property within the United States on a scale that has created a state of armed conflict that requires the use of the United States Armed Forces.

(b) In light of grave acts of terrorism and threats of terrorism, including the terrorist attacks on September 11, 2001, on the headquarters of the United States Department of Defense in the national capital region, on the World Trade Center in New York, and on civilian aircraft such as in Pennsylvania, I proclaimed a national emergency on September 14, 2001 (Proc. 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks).

(c) Individuals acting alone and in concert involved in international terrorism possess both the capability and the intention to undertake further terrorist attacks against the United States that, if not detected and prevented,



will cause mass deaths, mass injuries, and massive destruction of property, and may place at risk the continuity of the operations of the United States Government.

(d) The ability of the United States to protect the United States and its citizens, and to help its allies and other cooperating nations protect their nations and their citizens, from such further terrorist attacks depends in significant part upon using the United States Armed Forces to identify terrorists and those who support them, to disrupt their activities, and to eliminate their ability to conduct or support such attacks.

(e) To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals.

(f) Given the danger to the safety of the United States and the nature of international terrorism, and to the extent provided by and under this order, I find consistent with section 836 of title 10, United States Code, that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.

(g) Having fully considered the magnitude of the potential deaths, injuries, and property destruction that would result from potential acts of terrorism against the United States, and the probability that such acts will occur, I have determined that an extraordinary emergency exists for national defense [\*57834] purposes, that this emergency constitutes an urgent and compelling government interest, and that issuance of this order is necessary to meet the emergency.

## Sec. 2. Definition and Policy.

(a) The term "individual subject to this order" shall mean any individual who is not a United States citizen with respect to whom I determine from time to time in writing that:

(1) there is reason to believe that such individual, at the relevant times,

(i) is or was a member of the organization known as al Qaida;

(ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or

(iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order; and

(2) it is in the interest of the United States that such individual be subject to this order.

(b) It is the policy of the United States that the Secretary of Defense shall take all necessary measures to ensure that any individual subject to this order is detained in accordance with section 3, and, if the individual is to be tried, that such individual is tried only in accordance with section 4.

(c) It is further the policy of the United States that any individual subject to this order who is not already under the control of the Secretary of Defense but who is under the control of any other officer or agent of the United States or any State shall, upon delivery of a copy of such written determination to such officer or agent, forthwith be placed under the control of the Secretary of Defense.

Sec. 3. Detention Authority of the Secretary of Defense. Any individual subject to this order shall be -

(a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States;

(b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;

(c) afforded adequate food, drinking water, shelter, clothing, and medical treatment;

(d) allowed the free exercise of religion consistent with the requirements of such detention; and

(e) detained in accordance with such other conditions as the Secretary of Defense may prescribe.

Sec. 4. Authority of the Secretary of Defense Regarding Trials of Individuals Subject to this Order.

(a) Any individual subject to this order shall, when tried, be tried by military commission for any and all offenses triable by military commission that such individual is alleged to have committed, and may be punished in accordance with the penalties provided under applicable law, including life imprisonment or death.

(b) As a military function and in light of the findings in section 1, including subsection (f) thereof, the Secretary of Defense shall issue such orders and regulations, including orders for the appointment of one or more military commissions, as may be necessary to carry out subsection (a) of this section.

(c) Orders and regulations issued under subsection (b) of this section shall include, but not be limited to, rules for the conduct of the proceedings of military commissions, including pretrial, trial, and post-trial procedures, modes of proof, issuance of process, and qualifications of attorneys, which shall at a minimum provide for- [\*57835]

(1) military commissions to sit at any time and any place, consistent with such guidance regarding time and place as the Secretary of Defense may provide;

(2) a full and fair trial, with the military commission sitting as the triers of both fact and law;

(3) admission of such evidence as would, in the opinion of the presiding officer of the military commission (or instead, if any other member of the commission so requests at the time the presiding officer renders that opinion, the opinion of the commission rendered at that time by a majority of the commission), have probative value to a reasonable person;

(4) in a manner consistent with the protection of information classified or classifiable under Executive Order 12958 of April 17, 1995, as amended, or any successor Executive Order, protected by statute or rule from unauthorized disclosure, or otherwise protected by law, (A) the handling of, admission into evidence of, and access to materials and information, and (B) the conduct, closure of, and access to proceedings;

(5) conduct of the prosecution by one or more attorneys designated by the Secretary of Defense and conduct of the defense by attorneys for the individual subject to this order;

(6) conviction only upon the concurrence of two-thirds of the members of the commission present at the time of the vote, a majority being present;

(7) sentencing only upon the concurrence of two-thirds of the members of the commission present at the time of the vote, a majority being present; and

(8) submission of the record of the trial, including any conviction or sentence, for review and final decision by me or by the Secretary of Defense if so designated by me for that purpose.

#### Sec. 5. Obligation of Other Agencies to Assist the Secretary of Defense.

Departments, agencies, entities, and officers of the United States shall, to the maximum extent permitted by law, provide to the Secretary of Defense such assistance as he may request to implement this order.

#### Sec. 6. Additional Authorities of the Secretary of Defense.

(a) As a military function and in light of the findings in section 1, the Secretary of Defense shall issue such orders and regulations as may be necessary to carry out any of the provisions of this order.

(b) The Secretary of Defense may perform any of his functions or duties, and may exercise any of the powers provided to him under this order (other than under section 4(c)(8) hereof) in accordance with section 113(d) of title 10, United States Code.

#### Sec. 7. Relationship to Other Law and Forums.

(a) Nothing in this order shall be construed to-

(1) authorize the disclosure of state secrets to any person not otherwise authorized to have access to them;

(2) limit the authority of the President as Commander in Chief of the Armed Forces or the power of the President to grant reprieves and pardons; or

(3) limit the lawful authority of the Secretary of Defense, any military commander, or any other officer or agent of the United States or of any State to detain or try any person who is not an individual subject to this order.

(b) With respect to any individual subject to this order-

(1) military tribunals shall have exclusive jurisdiction with respect to offenses by the individual; and

(2) the individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or [\*57836] proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal.

(c) This order is not intended to and does not create any right, benefit, or privilege, substantive or procedural, enforceable at law or equity by any party, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

(d) For purposes of this order, the term "State" includes any State, district, territory, or possession of the United States.

(e) I reserve the authority to direct the Secretary of Defense, at any time hereafter, to transfer to a governmental authority control of any individual subject to this order. Nothing in this order shall be construed to limit the authority of any such governmental authority to prosecute any individual for whom control is transferred.

#### Sec. 8. Publication.

This order shall be published in the Federal Register.

S George W. Bush

THE WHITE HOUSE,

November 13, 2001.

[FR Doc. 01-28904 Filed 11-15-01; 8:56 am]

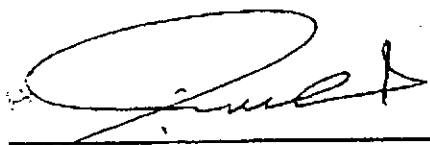
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## EXHIBIT D

**AFFIDAVIT**

Saturday, May 11, 2002

I, Esam Faoud Amin Hamdi, Saudi National and holder of passport number C025243, of P.O. Box 240, Jubail 31951, Saudi Arabia make oath and say as follows: My son Yaser Esam Hamdi, who is in a prison in the United States of America, has no assets whatsoever, with which he will be able to retain the services of a lawyer and also that I personally will be unable to provide funds for the legal services which my son will require.



Signature: (Esam Faoud Amin Hamdi)



ALI A. ALYAMI PASSPORT NO. C 248734

Witness