

# Press Release

Washington Legal Foundation  
Advocate for freedom and justice®  
2009 Massachusetts Ave., NW  
Washington, D.C. 20036  
202.588.0302

FOR IMMEDIATE RELEASE

March 25, 2004

## COURT URGED TO UPHOLD DETENTION OF "ENEMY COMBATANT" YASER HAMDI

*(Hamdi v. Rumsfeld, No. 03-6696)*

The Washington Legal Foundation (WLF) yesterday urged the U.S. Supreme Court to uphold the federal government's detention of Yaser Hamdi, the "Cajun Taliban," accused of serving as a Taliban soldier in Afghanistan.

In a brief filed in *Hamdi v. Rumsfeld*, WLF argued that the government is entitled to detain Hamdi without trial just as it is entitled to detain any enemy soldier captured in time of war. WLF argued that the government's right to detain Hamdi is not diminished simply because of his claim to citizenship -- he was born in Louisiana to Saudi parents and moved with his family to Saudi Arabia as an infant.

WLF filed its brief on behalf of itself, the Allied Educational Foundation, U.S. Representative Joe Barton, U.S. Rep. Walter Jones (N.C.), and U.S. Rep. Lamar Smith (Tex.). WLF's brief was drafted with the pro bono assistance of Thomas V. Loran and William T. DeVinney, attorneys with Pillsbury Winthrop LLP.

"When American military leaders determine that individuals should be detained as enemy combatants, the courts should be highly deferential to such decisions," WLF Chief Counsel Richard Samp said after filing WLF's brief. "The courts are ill-equipped to second-guess the President when, acting in his capacity as Commander in Chief, he makes decisions implicating sensitive matters of foreign policy, national security, or military affairs," Samp said.

Hamdi was turned over to the American military by Northern Alliance forces in December 2001. The military alleges that Hamdi went to Afghanistan in 2001 to train with and fight for the Taliban, and that he surrendered to Northern Alliance forces near Konduz, Afghanistan along with his entire Taliban unit. At the time of his surrender, Hamdi was carrying a Kalishnakov assault rifle. Initially sent to Guantanamo Bay, Cuba, Hamdi was later transferred to Virginia (and later to the Naval Brig in Charleston, South Carolina, where he remains) after American officials learned of his Louisiana birth.

Hamdi's father filed a habeas corpus petition on his behalf in June 2002, alleging that his detention without a hearing violated his constitutional rights. Until early February of this year, Hamdi was denied access to his attorney; the government claimed that such access would interfere with its efforts to interrogate Hamdi. The U.S. Court of Appeals for the Fourth Circuit dismissed Hamdi's habeas petition in January 2003, ruling that the Executive Branch is entitled to detain enemy combatants without hearing until the cessation of hostilities. The appeals court held that courts must be highly deferential to military determinations that someone is an enemy combatant. It held that further review of Hamdi's petition was inappropriate in light of: (1) a detailed affidavit from a senior Defense Department official, setting forth the military's factual bases for determining that Hamdi is an enemy combatant; and (2) Hamdi's admission that he was in the Afghanistan battle zone at the time that the U.S. and its allies were fighting the Taliban. The Supreme Court has agreed to review that decision.

In its brief, WLF supported the President's right to take military action -- including detaining enemy combatants -- without first obtaining permission from Congress. WLF also argued that Congress has, in fact, consented to such action, by adopting on September 18, 2001 a resolution authorizing use of military force against al Qaeda. WLF argued that the centuries-old laws of war and Supreme Court precedent both support the government's decision to hold enemy combatants such as Hamdi, regardless of their citizenship. WLF argued that the courts need to be vigilant to guard against government abuse of power but that there is no evidence of such abuse here. WLF argued that there is nothing to suggest that Hamdi is being held because of his racial background or in retaliation for any anti-government speech; rather, the evidence suggests that the only reason that Hamdi is being held is that the government really believes that he served as a Taliban soldier. WLF argued that so long as the government has acted in good faith, the courts should not second-guess such determinations.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a significant portion of its resources to promoting America's national security and to ensuring that the United States government is not deprived of the tools necessary to protect the country from those who would seek to destroy it and/or harm its citizens. WLF also filed a Supreme Court brief in the support of the government in the pending case involving al Qaeda and Taliban prisoners detained at Guantanamo Bay, Cuba, and filed a brief last week in another "enemy combatant" case, involving Jose Padilla (a U.S. citizen taken into custody in Chicago in 2002 and accused of plotting with al Qaeda to explode a "dirty bomb" in a major American city).

\* \* \*

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its website, [www.wlf.org](http://www.wlf.org).