

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**ADEL HAMLILY,  
through SHAKER AAMER,  
as Next Friend of Adel Hamlily,**

**Petitioner,**

**v.**

**GEORGE W. BUSH, et al.,**

**Respondents.**

**Civil Action No. 05-0763 (JDB)**

**ORDER**

On October 3, 2005, the Court issued an order directing petitioner to show cause why the above-captioned petition, filed by Shaker Aamer acting as next friend to Adel Hamlily, the real party in interest, should not be dismissed for lack of proper next friend standing. Pending before the Court is petitioner's motion to permit filing ex parte under seal and accompanying ex parte response to the order to show cause.

As a threshold matter, the Court addresses whether petitioner's motion to permit filing ex parte should be granted. The basis for the ex parte submission is that the filing contains confidential, privileged communications between Hamlily and counsel. "The attorney-client privilege protects confidential communications made between clients and their attorneys when the communications are for the purpose of securing legal advice or services." In re Lindsey, 158 F.3d 1263, 1267 (D.C. Cir. 1998) (per curiam) (citing In re Sealed Case, 737 F.2d 94, 98-99 (D.C. Cir. 1984)). Applying this standard, the Court agrees that the portions of the filing quoting or describing Hamlily's statements to counsel are privileged and should remain under seal. As

stated in the affidavit of Clive Stafford Smith, Hamlily is now his client and the communications were made confidentially for the purpose of obtaining legal services.

However, significant portions of the filing do not reveal privileged communications and thus should be unsealed for filing in the public docket. The nonprivileged nature of most of the unsealed portions is self-explanatory -- for example, the descriptions of counsel's efforts to gain access to Hamlily and the attempts to locate a lawyer for him.

Others require a bit more explanation. First, counsel's representations that Hamlily has authorized him to act as his lawyer for the purpose of pursuing this habeas petition is not privileged because the existence of an attorney-client relationship is not itself privileged information. See United States v. Western Elec. Co., Inc., 132 F.R.D. 1, 2 n.1 (D.D.C. 1990) ("Attorney-client privilege . . . protects only communications and not the existence of an attorney-client relationship.") Second, counsel's legal argument as to why Aamer is qualified to act as Hamlily's next friend does not reveal privileged information with one exception -- that portion providing details about Hamlily's family relationships which Hamlily made known to counsel through a privileged communication. Accordingly, the motion to permit filing ex parte under seal is granted in part and denied in part. The redacted version of the response to the order to show cause that is to be made part of the public docket is attached to this Order.

The Court next proceeds to the merits of the issue of next friend standing. Petitioner's response to the Order states that the issue of next friend standing is moot because Hamlily has directly requested legal representation and authorized this petition. The Smith affidavit states that, subsequent to the filing of this petition by Aamer, Smith met directly with Hamlily who requested his legal services in this action. See Smith Aff. ¶¶ 8-11. Although counsel's filing fails to address several of the serious deficiencies in next friend standing raised in the Court's Order

dated October 3, 2005, the Court finds it unnecessary to resolve that issue in light of Hamlily's decision to pursue this matter on his own behalf through legal representation by Smith. The Court therefore agrees that the issue of next friend standing is moot. Accordingly, Aamer is dismissed as a "next friend" in this lawsuit.

For the foregoing reasons, it is hereby

**ORDERED** that the motion to permit filing ex parte is **GRANTED IN PART** and **DENIED IN PART**; it is hereby further

**ORDERED** that the Clerk of the Court shall file the redacted Ex Parte Response to Order to Show Cause and Affidavit of Counsel (attached to this Order) on the public docket forthwith; it is further

**ORDERED** that the Order Directing Petitioner to Show Cause is discharged; and it is further

**ORDERED** that Shaker Aamer is dismissed as a next friend in this action and Adel Hamlily is substituted as the sole petitioner.

**SO ORDERED.**

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/s/  
JOHN D. BATES  
United States District Judge

Dated: October 31, 2005

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