

District Judge Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NUR SHEIKH-ELMI,

Petitioner,

v.

NORTHWEST ICE PROCESSING
CENTER, *et al.*,

Respondents.

Case No. 2:25-cv-850-JNW

FEDERAL RESPONDENT'S
MOTION FOR RECONSIDERATION
OF THE TEMPORARY
RESTRAINING ORDER

Noting Date: May 12, 2025

I. INTRODUCTION

Federal Respondent asks this Court to reconsider its issuance of the Temporary Restraining Order ("TRO") enjoining U.S. Immigration and Customs Enforcement ("ICE") from removing Petitioner Nur Sheikh-Elmi from the United States and from transferring him to any other facility during the pendency of these proceedings. Dkt. No. 11, TRO, at 10. Halima Magan Warsame, filed a habeas petition, in conjunction with a TRO motion, as a *pro se* "Next Friend" requesting various forms of relief concerning her son, including staying his removal from the United States and his release from immigration detention. Dkt. No. 1-1, at 16. The TRO expires on May 23, 2025. ICE has a valid travel document from Somalia that expires at the end of May. Lambert Decl., ¶ 2. Besides the TRO, there are no legal barriers to Sheikh-Elmi's removal to Somalia. This

1 Court's finding that Sheikh-Elmi's mother may bring the habeas claims on behalf of her son
2 constitutes manifest error. TRO, at 5-7.

3 Accordingly, Federal Respondent asks that this Motion for Reconsideration be granted and
4 the TRO be vacated.

5 II. ARGUMENT

6 Federal Respondent seeks reconsideration of this Court's preliminary finding that Nur
7 Sheikh Elmi's mother may bring this litigation on behalf of her son. TRO, at 5-7. To prevail on
8 a motion for reconsideration, a party must demonstrate "manifest error in the prior ruling" or "a
9 showing of new facts or legal authority which could not have been brought to its attention earlier
10 with reasonable diligence." LCR 7(h)(1). "The term 'manifest error' is 'an error that is plain and
11 indisputable, and that amounts to a complete disregard of the controlling law or the credible
12 evidence in the record.'" *Assaf v. Progressive Direct Ins. Co.*, No. 3:19-cv-06209, 2023 WL
13 12073874, at *1 (W.D. Wash. Nov. 14, 2023) (quoting *Error*, Black's Law Dictionary (11th ed.
14 2019)). Here, the Court's finding that Nur Sheikh-Elmi's mother, a non-attorney, may proceed on
15 behalf of her son to bring this habeas litigation constitutes manifest error.
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17 First, it is well-settled that Sheikh Elmi's mother may not bring claims on behalf of her son
18 while proceeding *pro se*. An incapacitated person proceeding via a next friend "would have to be
19 represented by counsel." *Hinojosa v. Warden, SATF/SP*, No. 2:22-CV-1780, 2023 WL 2874169,
20 *2 (E.D. Cal. Apr. 10, 2023), *report and recommendation adopted*, 2023 WL 4711303 (E.D. Cal.
21 July 24, 2023). "This rule applies even when a non-lawyer seeks to represent a family member
22 who is a minor or incompetent." *Rosales v. Idaho Dep't of Health & Welfare*, No. 20-35668, 2022
23 WL 17749262, *1 (9th Cir. Dec. 19, 2022). The Ninth Circuit agrees with the reasoning "that it
24 is not in the interest of minors or incompetents that they be represented by non-attorneys." *Johns*
25

1 *v. Cnty. of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997) (quoting *Osei-Afriyie v. Medical College*,
2 937 F.2d 876, 882-83 (3d Cir.1991)).

3 The record clearly demonstrates that Warsame is proceeding *pro se* in this action. Dkt. No.
4 3, TRO Mot., at 1. “[I]n an action in which the sole plaintiff is incapacitated and cannot proceed
5 *pro se*, the plaintiff must be represented by competent counsel, or alternatively, the action must be
6 dismissed without prejudice.” *Complot v. JPMorgan Chase Bank*, No. 23-cv-02348, 2023 WL
7 8234271, at *3 (D. Ariz. Nov. 28, 2023). Therefore, even if Warsame were qualified to assert
8 Next Friend standing on behalf of her son, her *pro se* status impedes her ability to appear on
9 Sheikh-Elmi’s behalf. *Randolph v. Nevada ex rel. Nevada Dep’t of Corr.*, No. 3:13-cv-00148-
10 RJC, 2014 WL 3725853, at *3 (D. Nev. July 24, 2014) (stating that “a non-attorney has no
11 authority to appear on behalf of anyone but himself”).

12 Second, this Court’s finding that Warsame qualifies for Next Friend Standing is in clear
13 error. TRO, at 5-7. “Next friends” must show (1) that the person seeking relief is unable to litigate
14 his or her own cause due to mental incapacity, lack of access to court, or some other disability;
15 and (2) that the person claiming standing has a significant relationship with the person seeking
16 relief. *Coalition of Clergy, Lawyers, & Professors v. Bush*, 310 F.3d 1153, 1159-60 (9th Cir.
17 2002). Federal Respondent only seeks this Court’s reconsideration of its determination that
18 Warsame meets the first requirement. TRO, at 6.

19 In finding Next Friend standing, the TRO relies on Warsame’s assertion that “Sheikh-Elmi
20 cannot understand or participate meaningfully in legal proceedings.” TRO, at 6. But this ignores
21 the reality that Sheikh-Elmi is actively litigating a pending habeas case where he is represented by
22 counsel. *Sheikh-Elmi v. Garland et al.*, 2:24-cv-01048-TMC-TLF, (W.D. Wash. Jul. 15, 2024).
23 In that case, Sheikh-Elmi, through counsel, continues to challenge the constitutionality of his
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25

prolonged detention pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001). In doing so, Sheikh-Elmi has challenged ICE's authority to remove him to Kenya. Dkt. No. 10; 18; 23; *see also* Dkt. No. 15, Order (describing the parties' filings). Sheikh-Elmi, through counsel, has also raised his mental health status (Dkt. No. 27), sought access for a mental health provider to provide an assessment (Dkt. No. 31-34), and filed the medical professional's report with the Court. Dkt. Nos. 35-37 (sealed). Additionally, based on Sheikh-Elmi's counsel's argument, the Court sought supplemental briefing addressing whether Sheikh-Elmi is subject to removal while his TPS appeal is pending. Dkt. No. 28; *see also* Dkt. No. 29 (government's response). Furthermore, Sheikh-Elmi's counsel recently contacted undersigned counsel raising Sheikh-Elmi's concern about what country ICE will be removing him to. Lambert Decl., Ex. A (email from counsel Gregory Murphy, dated May 6, 2025 (highlighted)). Thus, Sheikh-Elmi has been participating meaningfully in his other pending habeas case through his counsel and could raise (or has raised) the issues brought here in that case. Therefore, Warsame is not qualified to bring claims on behalf of her son as a Next Friend and has no standing to do so.

Accordingly, this Court's finding that Warsame may proceed on Sheikh-Elmi's behalf even for the limited purposes of the TRO and the pending preliminary injunction motion constitutes manifest error. TRO, at 7.

DATED this 11th day of May, 2025.

Respectfully submitted,

TEAL LUTHY MILLER
Acting United States Attorney

s/ Michelle R. Lambert
MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
United States Attorney's Office
1201 Pacific Avenue, Suite 700

Tacoma, WA 98402
Phone: 253-428-3824
E-mail: michelle.lambert@usdoj.gov

Attorneys for Federal Respondents

I certify that this memorandum contains 1,006 words, in compliance with the Local Civil Rules.