UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AHCENE ZEMIRI,

Petitioner,

v.

BARACK H. OBAMA, *et al.*,

Respondents.

Civil Action No. 04-2046 (CKK)

MEMORANDUM OPINION
(September 9, 2015)

Presently before the Court are Respondents' [236] *Consent Motion to Deem Protected Information Highlighted in the Accompanying Proposed Factual Finding Return for ISN 533*, and Respondents' [252] *Renewed Motion to Deem Protected the Designated Information in Respondents' Proposed Public Version of Petitioner's Traverse*. Respondents seek to have certain portions of the factual return, originally filed under seal on September 27, 2011,[1] and the Petitioner's Traverse, filed under seal on March 20, 2013, deemed protected. Petitioner consents in part and takes no position in part to Respondents' motions.

Respondents previously filed a motion requesting that certain information within the Petitioner's Traverse be deemed protected. With respect to that motion, the Court requested that Respondents answer three specific questions regarding the proposed protected material in the Traverse. Respondents provided responses to those questions in two pleadings, their Supplement

[1] Respondents filed a revised version of the proposed factual return in this matter alongside its *Ex Parte*, *In Camera* Supplement to Respondents' Consent Motion to Deem Protected Information in the Accompanying Proposed Public Factual Return for ISN 533, on March 20, 2013. *See* Notice of *Ex Parte*, *In Camera* Filing, ECF No. [251].

to Respondents' Consent Motion to Deem Protected the Designated Information in Respondents' Proposed Public Version of Petitioner's Traverse and their *Ex Parte, In Camera* Supplement to Respondents' Consent Motion to Deem Protected the Designated Information in Respondents' Proposed Public Version of Petitioner's Traverse. *See* Notice of Filings, ECF No. [249]. However, after reviewing these documents, the Court denied Respondents' motion without prejudice and indicated that it would consider both supplements when reaching its determination on Respondents' renewed motion which is currently pending. Moreover, Respondents also filed an *Ex Parte, In Camera* Supplement to Respondents' Consent Motion to Deem Protected Information in the Accompanying Proposed Public Factual Return for ISN 533, supplementing its motion to request that additional information in the Public Factual Return be deemed protected. *See* Notice of *Ex Parte, In Camera* Filing, ECF No. [251]. The Court has reviewed and considered both motions as well as the supplemental information provided by Respondents. Upon consideration of the pleadings, the relevant legal authorities, and the record as a whole, the Court shall grant both motions for the reasons set forth below.

DISCUSSION

Judge Thomas F. Hogan previously held that the six categories of protected information relied upon by Respondents in the present motions provide a valid basis for withholding sensitive but unclassified information from the public under the framework established by the United States Court of Appeals for the District of Columbia Circuit in *Parhat v. Gates*, 532 F.3d 834 (D.C. Cir. 2008). *In re Guantanamo Bay Detainee Litig.*, Misc. No. 08-442, ECF No. [1981] (D.D.C. May 12, 2011) ("Hogan Opin."). In addition to relying on these six categories, the Respondents propose categorizing certain types of medical information and certain information that describes force-protection measures taken by the Department of Defense at Guantanamo Bay as protected. Resps.'

Mot., Ex. 1 at ¶ 6, ECF No. [236-1]; Resps.' Renewed Mot., Ex. 2 at ¶ 7, ECF No. [252]. The Court finds that the Respondents have proffered a sufficiently tailored rationale for protecting these two general categories of information from public disclosure. Hogan Opin. at 14; *see generally Parhat*, 532 F.3d 834.

The Court shall first address Respondents' Motion to Deem Protected Information Highlighted in the Accompanying Proposed Factual Finding Return for ISN 533, to which Petitioner consents. Respondents also made additional requests for specified information to be deemed protected in its *Ex Parte*, *In Camera* Supplement to the Motion. Petitioner takes no position as to the requests in the Supplement. Upon review of the Proposed Public Factual Return, attached as Exhibit 3 to Respondents' Motion and the revised version attached to Respondents' *Ex Parte*, *In Camera* Supplement, the Court finds the information highlighted in green or gray in the Proposed Public Factual Return properly falls within the six categories of protected information previously found to establish a valid basis for withholding, or within the category of medical information proffered by Respondents, and is therefore protected pursuant to paragraphs 10 and 34 of the Protective Order governing this proceeding. Accordingly, the Court shall grant Respondents' Consent Motion to Deem Protected Information Highlighted in the Accompanying Proposed Factual Finding Return for ISN 533 as well as Respondents' additional request to deem protected certain information identified in the *Ex Parte, In Camera* Supplement to Respondents' Consent Motion.

The Court shall next address Respondents' Renewed Motion to Deem Protected the Designated Information in Respondents' Proposed Public Version of Petitioner's Traverse. Petitioner consents to the Court's designation of the majority of the information identified by Respondents as protected. However, Petitioner takes no position as to Respondents' request to

deem information in Paragraphs 11 through 16 of the Appendix to the Traverse as protected. Upon review of the Proposed Traverse, attached as Exhibit 1 to Respondents' Renewed Motion, the Court finds the information highlighted in the dash-line boxes in the Proposed Public Traverse properly falls within the six categories of protected information previously found to establish a valid basis for withholding, or within the category of medical information or information that describes force-protection measures proffered by Respondents, and is therefore protected pursuant to paragraphs 10 and 34 of the Protective Order governing this proceeding. Moreover, the Court has reviewed the information provided by Respondents in their supplements to the pending motions and is satisfied that the designated information falls within the purviews of protected information based on the explanations provided. As such, the Court shall also grant Respondents' Renewed Motion to Deem Protected the Designated Information in Respondents' Proposed Public Version of Petitioner's Traverse.

CONCLUSION

For the foregoing reasons, the Court GRANTS Respondents' [236] Consent Motion to Deem Protected Information Highlighted in the Accompanying Proposed Factual Finding Return for ISN 533, and GRANTS Respondents' [252] Renewed Motion to Deem Protected the Designated Information in Respondents' Proposed Public Version of Petitioner's Traverse. Accordingly, Respondents shall file on the electronic docket a public version of the factual return from which the information highlighted in green or gray in the Proposed Public Factual Return has been redacted, and a public version of the Traverse from which the information highlighted in the dash-line boxes has been redacted.

An appropriate Order accompanies this Memorandum Opinion.

/s/
COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE