

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

**IN RE:** )  
**GUANTÁNAMO BAY DETAINEE** ) **Misc. No. 08-442 (TFH)**  
**LITIGATION** )

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**BINYAM MOHAMED (AL HABASHI),** )  
) )  
**Petitioner,** ) )  
) )  
**v.** ) **Civil Action No. 05-0765 (EGS)**  
) )  
**BARACK OBAMA, et al.,** ) )  
) )  
**Respondents.** )

**MOTION TO DISCHARGE THE COURT’S ORDER TO SHOW CAUSE**

Ahmed Ghappour and Clive A. Stafford Smith, counsel for Petitioner Binyam Mohamed, by and through their counsel, Thomas P. Sullivan and Patricia A. Bronte of Jenner & Block LLP, respectfully submit this Motion to Discharge the Court’s Order to Show Cause. In support of their Motion, Petitioner’s counsel state as follows:

1. On February 26, 2009, the Privilege Team filed a Report (Dkt. 137, No. 05-cv-0765) concerning Petitioner’s counsel. In response to this report, on March 18, 2009, this Court instructed Messrs. Ghappour and Stafford Smith to “appear for a hearing [on May 11, 2009] for the purpose of showing cause why this Court should not hold them in contempt for violating the Protective Order.” (Dkt. 139, No. 05-cv-0765.)

2. On April 17, 2009, the Privilege Team filed a responsive pleading regarding the Order to Show Cause. (Dkt. 146, No. 05-cv-0765.) In that pleading, the Privilege Team stated that “the Privilege Team did not and does not contend that petitioner’s counsel ‘violated’ any provision of the Protective Order in connection with the incident that is the subject of the Privilege Team’s February 26, 2009 Report to the Court.” *Id.* at 2. The Privilege Team also

stated that it “did not seek any sanction against petitioner’s counsel on account of [their] conduct.” *Id.* at 7.

3. In accordance with LCvR 7(m), the undersigned counsel conferred extensively with counsel for the Privilege Team in an effort to resolve the issues in this motion. During these discussions, undersigned counsel conveyed to counsel for the Privilege Team the prior unawareness and present understanding of Petitioner’s counsel that: (i) under the guidance provided to it, the Privilege Team interprets the Court’s Protective Order as not authorizing the Privilege Team to process communications by counsel (as opposed to the client) to parties, including the President, who are outside the attorney-client relationship counsel has with the Guantánamo detainees they represent under any circumstances, and (ii) within its mandate, there is no process available to the Privilege Team to seek to declassify information that has been designated as classified by other entities of the United States Government. Undersigned counsel further conveyed to counsel for the Privilege Team the commitment of Petitioner’s counsel to bear these limitations on the Privilege Team’s operations in mind in the future. Finally, undersigned counsel conveyed to counsel for the Privilege Team the acknowledgment of Petitioner’s counsel - as previously set out in the response to the Report - that Petitioner’s counsel never blamed the Privilege Team nor intended that the Privilege Team take the blame for the President not receiving the material in question, and that the impression created by some news stories to this effect was erroneous. Counsel for the Privilege Team again conveyed to undersigned counsel that the Privilege Team neither seeks sanctions against Petitioner’s counsel nor believes that Petitioner’s counsel violated the Protective Order.

4. Counsel for the Privilege Team has authorized undersigned counsel to represent to the Court that the Privilege Team takes no position regarding the relief requested in this motion.

Accordingly, Messrs. Ghappour and Stafford Smith, by and through their counsel, respectfully request that the Court grant this Motion to Discharge the Court's Order to Show Cause.

Dated: April 23, 2009

Respectfully submitted,

/s/ Patricia A. Bronte

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*Attorneys for Ahmed Ghappour and  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion to Discharge the Court's Order to Show Cause was served upon the following counsel of record by the CM/ECF system on the 23rd day of April, 2009:

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