IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:	**Misc. No. 08-0442 (TFH)**
GUANTANAMO BAY DETAINEE LITIGATION	**Civ. No. 05-2386 (RBW)**

MOTION FOR LEAVE TO SUBMIT SUPPLEMENTAL DECLARATION FOR *IN CAMERA* REVIEW

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 26(c) and Civil Local Rule 5.1(j), counsel for Petitioner Samir Last Name Unknown, a/k/a Mohammed Noor Uthman, ISN 707, ("Petitioner" or "Mr. Uthman") makes this request for an order allowing leave to submit for *in camera* review a Supplemental Declaration in response to this Court's July 29, 2008 Order.

II. FACTUAL BACKGROUND

By Order dated July 29, 2008, this Court directed:

> All counsel in cases filed before May 19, 2008, in which the detainee is represented in the petition by a next friend, to file a signed authorization from the petitioner to pursue the action or a declaration by counsel that states that the petitioner directly authorized counsel to pursue the action and explains why counsel was unable to secure a signed authorization.

To ensure compliance, we respectfully submitted the Declaration of James A. Nickovich on September 26, 2008. That declaration verifies that we are Petitioner's counsel per authorization we received from his Next Friend, Jamal al-Harith, and outlines our representation of Mr. Uthman before this Court, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"), and the Military Commissions.

We also have been to the Guantanamo Bay Naval Base, Cuba ("GTMO") on behalf of our client. The facts surrounding that experience contain information protected by the attorney-client privilege.

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Those facts also relate to the information requested by this Court in the July 29, 2008 Order. Therefore, we are seeking leave to submit a short Supplemental Declaration *in camera*.

III. ARGUMENT

A. Good Cause Exists to Protect Petitioner's Attorney-Client Communications.

Upon a showing of good cause, a court may make any order that justice requires to protect a party. Fed. R. Civ. P. 26(c). Here, we ask this Court to protect the Petitioner from a potential violation of the attorney-client privilege. The attorney-client privilege protects confidential communications between a client and an attorney from disclosure. *See Clarke v. American Commerce Nat'l* Bank, 974 F.2d 127, 129 (9th Cir. 1992).

Good cause exists for this Court to grant the request. Petitioner seeks to submit *in camera* information that is confidential and protected by the attorney-client privilege. The one page Supplemental Declaration contains facts relating to the attorney-client relationship between counsel and Mr. Uthman and those facts are deserving of the protection sought. Absent such protection, counsel fears that Petitioner will be prejudiced in his pending matter before the Military Commissions.

B. The Request is Narrowly Tailored.

This request should be granted because it is narrowly tailored to cover only the specific facts that could jeopardize Petitioner's case before the Military Commissions. Indeed, counsel for Petitioner has publicly filed a lengthy declaration that does not contain confidential attorney-client information in response to the July 29, 2008 Order.

IV. CONCLUSION

For the reasons set forth above, counsel for Petitioner respectfully requests that this Court grant its request in the form of the [Proposed] Order filed herewith.

Dated: September 26, 2008
San Francisco, California

Respectfully submitted,

By: /s/ JAMES A. NICKOVICH

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