

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

IN RE: GUANTANAMO BAY DETAINEE LITIGATION

Doc. 655

Rahim ali-Nashir,

Petitioner,

v.

Robert M. Gates, et. al.

Respondents.

MOTION TO EXPAND TIME
Civil Docket Number 08-1085
Civil Docket Number 08-1207
Misc. No. 08-0442 (TFH)

PRELIMINARY STATEMENT

SCOTT L. FENSTERMAKER, ESQ. (hereinafter, "Movant") respectfully submits this motion for an Order of this Court expanding the time for Petitioner to file a response to the Court's October 3, 2008 Order to Show Cause from Friday, October 10, 2008 until Friday, October 17, 2008

On Friday, October 3, 2008, this Court issued an Order to Show Cause to the undersigned directing that he show cause why civil docket number 08-1085 should not be dismissed. For the following reasons, the undersigned, on behalf of Petitioner, seeks an expansion of time to respond from Friday, October 10, 2008 until Friday, October 17, 2008.

DISCUSSION

On Wednesday, October 1, 2008, Movant received a letter from Petitioner, dated May 27, 2008. *See* October 6, 2008 Declaration of Scott L. Fenstermaker, Esq. (the "Fenstermaker Declaration"). In this letter, Petitioner made clear his intent to terminate the authority of the Federal Defender for the District of Nevada (the "Federal Defender") and her attorney, Paul G. Turner, Esq. In this same letter, Petitioner also made clear that, by letter dated May 27, 2008, he had written Mr. Turner to inform him of the termination of his authority.

In light of this new development, Movant seeks an additional week in order to negotiate with the Federal Defender and Mr. Turner regarding the requests made in Petitioner's May 27, 2008 letter to Movant. If such negotiations bear fruit, the Court will likely no longer need to rule on which of Petitioner's *habeas* petitions should proceed, thus advancing the cause of judicial economy.

The additional week to respond is also needed in order to permit Movant a thorough response to the Court's Order. Such a response requires a detailed recitation of the facts surrounding the government's aggressive and repetitive obstruction of Movant's written communications with Petitioner. *See* Fenstermaker Declaration, ¶¶ 5 and 6. As the response will detail, the government's July 1, 2008 announcement that Movant can no longer send privileged communications to Petitioner (and other detained clients at Guantánamo Bay) and its refusal to act on Movant's security clearance application (*see* Fenstermaker Declaration, ¶ 8), are all relevant information necessary for this Court to render an informed decision.¹

Furthermore, in addition to filing a response to the Court's October 3, 2008 Order to Show Cause, Movant, as Petitioner's counsel in all matters, including the military commissions, will simultaneously file a motion for injunctive and declaratory relief, seeking to enjoin Respondent from suspending him from the Pool of Qualified Civilian Defense Counsel (the "Pool"). *See* Fenstermaker Declaration, ¶ 7. Respondent is aggressively seeking to eliminate Petitioner's ability to secure counsel of his choice before this war crimes tribunal. *See United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006). Movant's suspension from the Pool violates

¹ Normally, simply submitting Petitioner's three letters to Movant would be sufficient to satisfy the concerns underlying the Court's October 3 Order to Show Cause. Here, however, because of the government's interference with Movant's representation of Petitioner and its apparent attempts to aid the Federal Defender in her efforts to secure Petitioner as a client, the response will be more involved.


Petitioner's Sixth Amendment rights and without immediate court intervention, will irreparably harm Petitioner's legal interests and his defense of his military commissions' matter.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's request for an expansion of time to respond to this Court's October 3, 2008 Order to Show Cause until Friday, October 17, 2008.

Dated: New York, New York
October 6, 2008

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