

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

IN RE:	:	MISC. NO. 08-0442 (TFH)
	:	
GUANTANAMO BAY DETAINEE LITIGATION	:	
	:	
SAMIR LAST NAME UNKNOWN, a/k/a MOHAMMED NOOR UTHMAN,	:	CIV. NO. 05-2386 (RBW)
	:	
PETITIONER,	:	
	:	
v.	:	
	:	
GEORGE W. BUSH, et al.,	:	
	:	
RESPONDENTS.	:	
	:	

DECLARATION OF JAMES A. NICKOVICH

I, James A. Nickovich, hereby declare under penalty of perjury, pursuant to 28 U.S.C., § 1746, that the following facts are true and accurate to the best of my knowledge and belief:

1. Howard Ross Cabot and I are attorneys with Perkins Coie LLP.
2. We began working with the Center for Constitutional Rights in the representation of individuals detained at Guantanamo Bay Naval Base, Cuba (“GTMO”) in January, 2008.
3. Petitioner Samir Last Name Unknown, a/k/a Mohammed Noor Uthman, ISN 707, (“Petitioner” or “Mr. Uthman”) is our client.

4. We have been authorized to represent Mr. Uthman by his Next Friend, Jamal al-Harith. A copy of the Next Friend authorization is attached as Exhibit 1.

5. We filed a Detainee Treatment Act (“DTA”) petition on behalf of Mr. Uthman in the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) on March 14, 2008.

6. We continue to represent Mr. Uthman before the D.C. Circuit.

7. Charges before the Military Commissions were sworn against Mr. Uthman on May 23, 2008.

8. We were accepted as Qualified Civilian Counsel to work with Chief Defense Counsel, Office of Military Commissions, United States Department of Defense and to represent Mr. Uthman before the Military Commissions in July, 2008.

9. We continue to have a close working relationship with Defense Counsel, Office of Military Commissions, United States Department of Defense in the representation of Mr. Uthman before the Military Commissions.

10. Though charges against Mr. Uthman were dismissed without prejudice on October 20, 2008, we understand from the prosecutors at the Office of Military Commissions that charges will likely be re-sworn against Mr. Uthman in the near future.

11. We filed a Status Report as attorneys of record for Mr. Uthman in this Court on July 18, 2008.

12. On August 20, 2008, we traveled to GTMO in an attempt to meet Mr. Uthman. Because Mr. Uthman is Sudanese and may not speak English, we were accompanied by a translator who is fluent in Arabic.

13. Upon our arrival, we were advised that in order to set up the meeting we first had to communicate with Mr. Uthman through a military official. After sending a message to him in this manner, we were told by the military official that our message was delivered to Mr. Uthman at the prison camp, but that he did not want to meet with us.

14. No one from our team was allowed to be present when the message was delivered, and we do not have firsthand knowledge of whether the fact of our presence or reason for being at GTMO were properly translated or presented to Mr. Uthman; nor do we have firsthand knowledge of the circumstances surrounding the delivery of our message and his response.

15. Having been informed by other defense counsel that it is not unusual for it to take several visits to GTMO before actually being successful in meeting with the detainee client in person, we scheduled another visit for October 14, 2008.

16. On October 14, 2008, our team was scheduled to leave Andrews Air Force Base with Major Amy Fitzgibbons (“Maj. Fitzgibbons”), our military co-counsel in the Commissions proceedings, on a military plane at 8:30am and scheduled a meeting with Mr. Uthman for 2pm.

17. Our flight out of Andrews Air Force base was delayed several hours.

18. As soon as we became aware of the delay, Maj. Fitzgibbons called the military official at GTMO with whom we had scheduled our meeting with Mr. Uthman and informed that official that we were delayed and would be unable to make our 2pm appointment with Mr. Uthman.

19. The following day, October 15, 2008, we arrived at the military office to check in with the military official assigned to facilitate our meeting with Mr. Uthman.

20. The military official told us that while Mr. Uthman had agreed to meet with us the preceding day, he was not willing to see us on this day, apparently disturbed that we did not make our meeting on October 14, 2008.

21. While we attempted to meet with Mr. Uthman on the next day, we were informed that once again he refused to be moved to the attorney client interview room.

22. We expect to visit Mr. Uthman again in connection with his arraignment before the Military Commissions, which we understand is imminent. At that time, we will undertake to obtain the specific authorization called for in this Court's October 31, 2008 Order.

Verification

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 13, 2008.

/s/ James A. Nickovich
James A. Nickovich