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FILED WITH
COURT SECURITY OFFICER
11/27/05 [Signature]
DATE

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

ELHAM BATTAYAV,

Petitioner/Plaintiff,

v.

GEORGE W. BUSH,

President of the United States

et al.,

Respondents/Defendants.

Civil Action No. 1:05-cv-714 (RBW)

**SUPPLEMENTAL DECLARATION OF THOMAS R. JOHNSON IN SUPPORT OF
MOTION FOR RECONSIDERATION**

I, Thomas R. Johnson, Jr., declare that the following statements are true to the best of my knowledge, information, and belief:

1. I am a partner of Perkins Coie LLP, counsel for Petitioner in the above-captioned action.
2. In late April 2005, I submitted my application for security clearance with respect to my representation of Mr. Elham Battayav.
3. In late June 2005, I learned from the Department of Justice that I had been granted an interim secret security clearance with respect to my representation of Mr. Elham Battayav. On June 29, 2005, I participated in a security procedures briefing and submitted to the Court Security Office a signed Classified Information Nondisclosure Agreement. At this time, I also submitted the appropriate documents to this Court and the Department of Justice pursuant to the protective order.

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4. Following my receipt of security clearance, I made preparations to visit my client, Mr. Battayav, at the United States Naval Station, Guantanamo Bay, Cuba ("Guantanamo Bay"). After having to reschedule my trip on three occasions due to various issues, such as operational considerations at the base and the difficulty in securing airline tickets (there are limited flights offered to Guantanamo Bay), I finally scheduled a trip to Guantanamo Bay for late August. Thus, in late August 2005, after having to reschedule, I traveled to Guantanamo Bay. While at Guantanamo Bay, I met with my client for a period of two and one-half days.

5. During my visit to Guantanamo Bay, Mr. Battayav told me that he was greatly concerned about the prospect that he would be returned by the United States military to his home country of Kazakhstan for continued detention and mistreatment. Mr. Battayav said that, although he had never had any legal difficulties while living in Kazakhstan, he feared returning to that country because of the perception by Kazakhstan that he had somehow become involved in terrorism after leaving Kazakhstan for a business-related trip in early 2001. Mr. Battayav stated that, because the United States had now branded him a terrorist and an "enemy combatant", he was greatly concerned that Kazakhstan would either detain him on behalf of the United States and/or that he would be severely mistreated by Kazakhstani authorities upon his return to that country.

6. Mr. Battayav was brought from Afghanistan to Camp X-Ray at Guantanamo Bay in early 2002. Shortly after arriving in Cuba, representatives identifying themselves as coming from the countries of Russian, Tajikistan, and Kazakhstan visited Mr. Battayav at Guantanamo Bay. At this meeting, the representatives from these governments screamed at Mr. Battayav and forced him to put his thumb print on a blank sheet of paper. These men would not tell Mr. Battayav whether the paper would be used as a statement against him.

7. Approximately eight months later, Mr. Battayav was again visited at Guantanamo Bay by two men who identified themselves as being representatives from

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Kazakhstan. These two men interrogated Mr. Battayav for a period of two days. During their interrogation of Mr. Battayav, they told him to draft a letter to Kazakhstan's department of internal security stating that, among other things, he apologized for the illegal things he had done. Because Mr. Battayav believed that he had not done anything for which he needed to apologize, and because he had not broken any laws, he refused to write such a letter. Upon hearing Mr. Battayav's refusal to draft the requested letter, the representatives of Kazakhstan told him that they would return and, with the assistance of the United States, forcibly remove him from the prison at Guantanamo Bay and take him back to Kazakhstan. Based upon this threat, and the manner in which it was conveyed, Mr. Battayav feared that he would be harmed upon his return to Kazakhstan.

8. Approximately six or seven months later, Mr. Battayav received another visit from men who identified themselves as being representatives of Kazakhstan. They were accompanied by the interrogator who had been over the past year interrogating Mr. Battayav on behalf of the United States. At this meeting, the American interrogator, who always identified himself as "Bill", leaned forward and told Mr. Battayav that, if Mr. Battayav didn't tell him and the Kazakhstani officials "the truth", Mr. Battayav would be returned to Kazakhstan for imprisonment and that he would probably be "killed in prison."

9. Finally, in approximately January of 2004, Mr. Battayav was visited a fourth time by men who identified themselves as being representatives from Kazakhstan. One of the persons with whom he visited was the same as the previous visit. (On each occasion, one of the Kazakhstani representatives was the same as from a previous visit.) When they came into the interrogation room, Mr. Battayav asked them why they had him placed in isolation the last time they visited. Upon hearing this, one of the Kazakhstanis asked Mr. Battayav, "What, you don't like it?" At that point, they got up and left the room. U.S. military guards appeared and put Mr. Battayav in solitary confinement again.

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10. During this period in isolation, he was placed in a small cell. In the ceiling, there was a small round space from which frigidly cold air was blown into the cell. He was left in this lighted cell for a period of three days.

11. On the third day, military guards came and took Mr. Battayav back into an interrogation room where the three Kazakhstanis and "Bill" (the American interrogator) were present. "Bill" told Mr. Battayav that the United States was sending Mr. Battayav back to Kazakhstan if he refused to sign a letter admitting that he was part of terrorist activities. In response, Mr. Battayav said that he would not sign such a letter and that he did not want to go back to Kazakhstan because "there are no human rights laws in Kazakhstan" and he would be harmed. One of the Kazakhstanis then told Mr. Battayav that, if he did not sign the letter, they would come back the next day, put a bag over his head, and drag him back to Kazakhstan "like a monkey." Despite these threats, Mr. Battayav refused to sign the letter because he would not admit to doing things about which he had no involvement.

12. Later during this meeting, "Bill" told Mr. Battayav that, whatever Mr. Battayav did, the United States was still going to send Mr. Battayav back to Kazakhstan for imprisonment there.

13. Classified documents regarding Petitioner and Respondents' actions are kept in a secure facility at Crystal City, Virginia. Because I had to obtain security clearance and had to travel from my office in Portland to view these documents, I was unable to visit the secure facility, and only for a short visit, until the second week of October 2005. In order to file this motion, another visit had to be made to the secure facility to incorporate material into these pleadings and to submit the pleadings to Respondents for review. This visit was made by Cody Weston of this office on November 22, 2005.

14. Attached as Exhibit A is what I believe to be a true and correct copy of a news bulletin, *Kazakh Guantanamo prisoners refuse to go home*, published by Interfax News Agency on July 11, 2003.

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15. Attached as Exhibit B is what I believe to be a true and correct copy of a news bulletin, *Kazakhstan seeks extradition of four citizens from U.S. base*, published by Interfax News Agency on September 10, 2003.

16. Attached as Exhibit C is what I believe to be a true and correct copy of a news report, *Kazakhstan Carries on US Talks on Guantanamo Prisoners*, published by Global News Wire, BBC Monitoring on December 15, 2004.

17. Attached as Exhibit D is what I believe to be a true and correct copy of a slip opinion dated August 22, 2005 in *Hatim v. Bush*, Case No. 05-1429 (RMU).

18. Attached as Exhibit E is what I believe to be a true and correct copy of a slip opinion dated June 16, 2005 in *Paracha v. Bush*, Case No. 04-2022 (PLF).

19. Attached as Exhibit F is what I believe to be a true and correct copy of a slip opinion dated June 14, 2005, in *Deghayes v. Bush*, Case No. 04-2215 (RMC).

20. Attached as Exhibit G is what I believe to be a true and correct copy of a slip opinion dated April 12, 2005, in *Kurnaz v. Bush*, Case No. 04-1135 (ESH).

21. Attached as Exhibit H is what I believe to be a true and correct copy of a slip opinion dated April 7, 2005, in *el-Mashad v. Bush*, Case No. 05-0270 (JR).

22. Attached as Exhibit I is what I believe to be a true and correct copy of a slip opinion dated March 29, 2005, in *Abdah v. Bush*, Case No. 04-1254 (HHK).

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23. Attached as Exhibit J is what I believe to be a true and correct copy of a motion dated October 17, 2005, and filed in *el-Mashad v. Bush*, Case No. 05-0270 (JR), titled Respondents' Motion for Partial Modification.

24. Pursuant to Local Rule 7(m), Petitioner's counsel has discussed the relief requested in this motion with counsel for the respondents, and has confirmed that the respondents will oppose the motion.

Executed this 22nd day of November, 2005 in Portland, Oregon.

/s/ Thomas R. Johnson
Thomas R. Johnson, Jr. (OSB # 01064)

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