1. Kaushal Niroula 2. Defendant In Pro Per 3. Booking # 200910575 Indio Jail 4. P.O. Box 1748 INDIO, CA 92201 5. SUPERIOR COURT OF THE STATE OF CALIFORNIA 6. **COUNTY OF RIVERSIDE** (INDIO BRANCH) 7. PEOPLE OF THE STATE OF CALIFORNIA, ) **CASE NO: INF 064492** 8. **PLAINTIFF** 9. NOTICE OF MOTION, AND v. 10. MOTION FOR COURT ORDER, **AUTHORIZING MOVER'S** 11. **USE OF "BABBLE" TAPE DURING ATTORNEY/** 12. KAUSHAL NIROULA, ET AL PRIVILEGED VISITS **DEFENDANT** 13. Date: 2-24-12 Time: 8:30 am Dept. 1B 14. 15. TO: HONORABLE DAVID B DOWNING JUDGE PRESIDING/PAMELA J WALLS, COUNSEL FOR THE COUNTY OF RIVERSIDE ON BEHALF OF THE SHERIFF OF 16. THE COUNTY OF RIVERSIDE STANLEY J SNIFF JR.\ADDITIONAL NOTICE TO: PEOPLE OF THE STATE OF CALIFORNIA BY THEIR DISTRCIT ATTORNEY OF 17. THE COUNTY OF RIVERSIDE, PAUL E ZELLERBACH AND OR HIS REPRESENTATIVE. 18. **NOTICE IS HEREBY GIVEN** that on the 24 day of February in the year 2012 at 8:30 am, or 19. as soon thereafter that the matter may be heard at Dept. 1B of the aforementioned court. The defendant, Kaushal Niroula, A Propia Persona will move and hereby moves this court for an 20. order of this court compelling Stanley Sniff Sheriff of the County of Riverside and his subordinates and all incarceration facilities operated within his jurisdiction through his 21. designates to allow the use of the "Babble file" on his computer and a USB speaker during his 22. visits either with Court appointed assets or Investigators or attorneys while incarcerated in the Riverside County Jail in Indio or anywhere else. 23. Mr. Niroula's Motion will be based upon this notice of Motion, and motion/ attached exhibits, 24. any further supplemental evidence filed before the date of the hearing and further any evidentiary testimony offered at the hearing and any and all documents filed on this case and on this matter. 25. 26. 27.

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**DURING ATTORNEY VISITS** 

MAY IT PLEASE THIS HONORABLE COURT. Defendant, KAUSHAL NIROULA, (hereinafter referred to as "Mr. Niroula") respectfully requests this Honorable Court receive this Motion for authorization to use a "babble tape" during visits he has with his Court appointed assets and Attorneys which, in addition to allowing the use of the "babble tape" authorizes the use of a single speaker system capable to connection to Mover's Court authorized Apple MacBook Laptop Computer during his visits with his Court appointed assets and attorneys.

- 1. **In Support** of this Motion, Mover attaches hereto his Declaration, and the Declaration of Demi Tolbert Esq., and Martha Dixon, Mover's Court appointed Legal Runner, and S. Stephen Spring, II, Esq., and James M. Atkinson in globo attached and annexed hereto as EXHIBIT "A".
- 2. Mover relates that as reflected in the records of this Court proceeding, there is undisputed evidence that privileged telephone calls between Mover and various attorneys were recorded by third parties unknown and without the consent of this Mover or his attorneys. In addition, there exists evidence which suggests that there is present in the Indio Jail facility, a recording system which monitors, intercepts, and records for possible dissemination oral communications between Mover, his Court appointed assets, and attorneys who, from time to time, have visited your Mover and are providing legal advice and services for various other matters such as your Mover's Immigration status with the United States, inter alia.
- The required protocol mandated by the Riverside County Sheriff's Office requires 3. attorney visit personnel to check in at the front desk, provide identification, and then enter into one of two attorney booths. These booths are separated from Mover by a cement wall and clear glass panel. A pre existing slit in which documents could be passed has been closed and locked with a custom metal plate. As a result of this structure, the acoustical makeup of the structure, to

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prevent eavesdropping of privileged oral communications, requires the deployment of what is commonly called a "babble" tape coupled with the use of a speaker system.

- 4. This request has been predicated upon at least one occasion during which it became clear that the Riverside Sheriff's office has or had installed an eavesdropping system. As reflected in the Declaration of Martha Dixon, Court appointed Legal Runner to this Mover, prior to entering the attorney booth, she was asked how long she anticipated she would be visiting with Mr. Niroula. After relating that she anticipated being in interview for approximately at least an hour. Immediately after relating the answer, Ms. Dixon heard one deputy tell ostensibly another deputy, "Get two CD's". In addition, as reflected in the Declaration of Demi Tolbert, Esq., a member of the California Bar in good standing, the Sheriff's Department explicitly maintains an unconstitutional policy of intercepting all oral communications between attorneys and their clients at every jail facility in Riverside County, as related to her by Deputy Clark on Friday, February 3, 2012.
- 5. Premised upon this factual basis giving rise for concern, and after consultation with S. Stephen Spring, II, Esq., an attorney with a background in both technical intelligence and technical surveillance countermeasures, Mr. Spring, whose firm represents one of the most knowledgeable TSCM's assets in the world, requested the engineering, composing, and production of a "babble tape". In order to prevent acquisition of oral communications, acoustic noise maskers and babble tapes are commonly utilized by intelligence agencies, military services, and the military.
- In this particular case, the babble tape was produced in accordance with the specifications 6. requested for attorney visits between and among Mr. Niroula, his Court appointed assets and his attorney(s) for other matters including Stephen Spring. The babble tape consists of a digital

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computer file. The proper technical name for this file is that of a "Babble Tape" or "Masking File" created to assist in acoustic privacy against hidden microphones and eavesdropping devices capable of intercepting oral communications.

- 7. Within the created file are not less than thirty-two (32) people speaking at a time in English, plus eight (8) people speaking in foreign languages all stabilized at the same volume and range. Each speakers audio track is then compressed in time and frequency to create an additional four to five "voices" for each speaker, and to fill the frequency spectrum with suitable ranges of vocal ranges and frequencies. These various tracks or voices are then re-inserted slightly below that of the voices from which they originated. Slightly below the peaks of these numerous tracks or random mechanical oriented sounds that are outside of normal human vocal capability, but which are within the range of hearing, and within the range of any eavesdropping device or hidden microphone. Also contained in the files is a reoccurring supersonic burst at random intervals, which can not be heard by an adult person, but which may be heard by children and by sophisticated eavesdropping system. These supersonic bursts, engineered to interfere with the automatic gain control circuits in any eavesdropping device may be heard as a rhythmic ticking sound through the file.
- 8. The specifically constructed babble tape file for Mr. Niroula contains the voices of Mr. Niroula, Martha Dixon, and Stephen Spring, including other Court appointed assets' voices. Thus, an eavesdropper may hear a particular person's voice in fragments and any attempt to follow that voice will be frustrated. One listening to the babble tape file will note that periodically one of the speaker's voices raises in volume above the rest for a few seconds. This technique is designed to strain the resources of any eavesdropping. The specific babble tape file produced for Mr. Niroula's use is specifically engineered to defeat adaptive audio filtering,

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including the use of multiple microphones, phase filters, or related higher performance filtering methods. Also included are wide dynamic vocal ranges, reversals and phase shifts to further frustrate any intelligent reconstruction of any intercepted audio. After very careful tuning and editing of this specific Niroula babble tape, the results are well in excess of 144 tracks which was duplicated and shifted by 180 degrees of phase offset, such that the resulting 288 files were reversed and inserted in 50% volume levels to ensure that all gaps in frequency or time were filled in with additional sound. Thus, the babble tape created has a total of over 576 voices or sound tracks. These tracks were then mixed down into the dual track audio file being the Niroula final babble tape.

- 9. Mr. Niroula has been provided by Court order with an Apple Laptop computer. As a result it is imperative that a separate audio speaker system be provided to him for use in deploying the babble tape. The file SHOULD NOT BE PLAYED through Mr. Niroula's computer since the babble tape file will with a high degree of probability damage the computer's speakers after prolonged usage as the continued use over the computer's speaker membranes does not allow them time to rebound. This results not from volume, but from frequency of coverage and sound durations.
- 11. As a result, on Monday, January 23, 2012, Martha Dixon, Stephen Spring, James Butts, F B I Special Agent retired, and William Picard drove to the Staples Office Supply Store located in La Quinta, California. As reflected in their Declarations and a copy of the sales receipt, one (1) Cyber Acoustics Portable USB Powered Speaker, Model No. CA-2880, for use by Mr. Niroula's laptop computer on the prisoner side of the attorney visit booth for the East Wing of the Indio Jail where he is presently incarcerated. Since the purchase of this speaker which was NOT removed from its original packaging, it has been under the exclusive care, custody and

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control of Martha Dixon, Mr. Niroula's court appointed Legal Runner with the specific purpose of presenting same to the designated officer(s) of the Riverside County Sheriff's Office in open Court before the Honorable David B. Downing. In addition, as reflected in the Declarations above, two (2) SanDisk Cruzer Blade 4GB USB Flash Drives were purchased with the express purpose of providing a copy of the babble tape file to both this Honorable Court and the Riverside County Sheriff's Office.

12. Finally, it is submitted that with the playing of the babble tape on both Mr. Niroula's side of the attorney visit booth and the attorney side of the attorney visit booth, should any hidden microphone system or eavesdropping device designed to intercept oral communications be present, the privileged nature and contents of Mr. Niroula's oral communications with his Court appointed assets and individual attorneys who are entitled to legal privilege will be preserved in spite of any eavesdropping devices.

WHEREFORE, Mover, Mr. Kaushal Niroula, requests that this Honorable Court order the Sheriff of Riverside County to be the custodian of the Cyber Acoustics Portable USB Powered Speaker, Model No. CA-2880 provided to this Honorable Court and provide same to Mr. Niroula during his attorney visits with either his Court appointed assets, private investigators, or attorneys providing legal advice and/or legal services on his behalf. Also, to permit the audio file to be played at a level sufficient in volume while in the booth to provide proper masking so that not only do will covert microphones be subverted, but a person attempting to eavesdrop with the unaided ear will also not be able to understand the conversation taking place in the booth.

February 24<sup>th</sup> has been chosen since Deputy D.A. Lisa DiMaria is busy with two other murder cases as related to this Court on Friday, January 27, 2012.

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2.	Dated this February 9th, 2012, Riverside County, Ca. 92210.
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4.	Respectfully Submitted,
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8.	Kaushal Niroula
9.	Electronically Signed
10.	Kaushal Niroula
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28.	7 NOTICE OF MOTION AND MOTION FOR COURT ORDER AUTHORIZING MOVER'S USE OF "BABBLE TAPE DURING ATTORNEY VISITS

#### 1. 2. SUPERIOR COURT OF THE STATE OF CALIFORNIA 3. **COUNTY OF RIVERSIDE** (INDIO BRANCH) 4. PEOPLE OF THE STATE OF CALIFORNIA, **CASE NO: INF 064492** 5. **PLAINTIFF** 6. v. PROPOSED ORDER 7. **AUTHORIZING MOVER'S USE OF "BABBLE" TAPE** 8. **DURING ATTORNEY** 9. **VISITS** KAUSHAL NIROULA, ET AL **DEFENDANT** 10. 11. **ORDER** 12. THE COURT, after reviewing the pleadings, declarations, evidence, and being 13. otherwise fully aware in the premises pursuant to Defendant, KAUSHAL NIROULA's, Motion 14. 15. for Order ordering that the Sheriff of Riverside County at Indio, California, take custody of one 16. (1) Cyber Acoustics Portable USB Powered Speaker, Model No. CA-2880, to be provided to 17. Kaushal Niroula for purposes of playing a babble tape to prevent the interception of his 18. privileged oral communications with his Court appointed assets, private investigators, and 19. attorneys to be used with his Apple Laptop now housed in the Indio Jail for Mr. Niroula's use, 20. and being otherwise fully advised in the premises,

IT IS ORDERED ADJUDGED AND DECREED that the Sheriff of Riverside County and the Office of the District Attorney show cause, if any they can, on February 24, 2012, at 9am PST why the relief requested by Mr. Niroula should not be granted; said relief consisting of the provision to either the Sheriff of Riverside County or his designate to receive one (1) Cyber Acoustics Portable USB Powered Speaker, Model CA-2880 who shall be the custodian of said

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2.	speaker and provide same to Kaushal Niroula, upon Mr. Niroula's request, for his use to play the
3.	babble tape file made specifically for Mr. Niroula to prevent the interception of Mr. Niroula's
4.	privileged conversations with his Court appointed assets, private investigators, and attorneys
5.	present to provide either legal advice or legal services to Mr. Niroula, and that this speaker shall
6.	be housed with the Apple Laptop computer assigned to Mr. Niroula for his use, Pro Per, in his
7.	defense of the charges against him in the above named and numbered matter.
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9.	<b>ORDERED</b> thisday of February, 2012, at Indio, Riverside County, California.
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13.	Honorable David B. Downing Superior Court Judge- Indio
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28.	9 NOTICE OF MOTION AND MOTION FOR COURT ORDER AUTHORIZING MOVER'S USE OF "BABBLE TAPE DURING ATTORNEY VISITS

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PEOPLE OF THE STATE OF CALIFORNIA,	CASE NO: INF 064492
TLAINTIFF	)
V.	) NOTICE AND MOTION ) FOR COURT ORDER
	AUTHORIZING MOVER'S USE OF "BABBLE" TAPE
KAUCHAI MIDOHI A ET AI	DURING ATTORNEY VISITS
DEFENDANT	) VISITS
	) )
DECLARATION OF KAUSHAL NIROULA IN	SUPPORT OF HIS MOTION FOR USE
OF A SPEAKER AND BABBLE TAPE DURING	G HIS PRIVILEGED VISITS WHILE IN
THE INDIO	<u>JAIL</u>
I, KAUSHAL NIROULA, declare:	
1 0	art order Martha Dixon, my Court appointed
	the Riverside County Sheriff's Office a USB escribed in my Motion, so that I can play the
	created for me by James M. Atkinson of ekport, Massachusetts, during my privileged
visits without damaging the	Apple Laptop computer.
	tape because I have grave concerns that my eing monitored during my visits with my
	te investigators, and attorneys.
4. I am appearing Pro Per (a pr	ropria persona) in this matter which includes
	the merits commencing at 9am PST on May
25, 2012. 6. The deployment and use of the d	he babble tape file with the USB speaker on
my side of the attorney b	pooth should prevent the monitoring or
Stephen Spring, Esq., LBN	12347, who is my attorney in other matters.
<del>-</del>	E perjury under the laws of the State of is true and correct.
	KAUSHAL NIROULA, ET AL DEFENDANT  DECLARATION OF KAUSHAL NIROULA IN OF A SPEAKER AND BABBLE TAPE DURING THE INDIO  I, KAUSHAL NIROULA, declare:  1. I am requesting that the Coulegal Runner, to present to the speaker, more particularly declared babble tape file specifically Granite Island Group of Rock visits without damaging the August 2. I require the use of a babble oral communications are become a communication of the court appointed assets, privated 3. I submit the following reason 4. I am appearing Pro Per (a product of the court of the cou

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3.	Executed this 6 <sup>th</sup> day of February, 2012.
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5.	Respectfully submitted,
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7.	Vauchal Niroula
8.	<u>Kaushal Niroula</u> Electronically Signed
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28.	NOTICE OF MOTION AND MOTION FOR COURT ORDER AUTHORIZING MOVER'S USE OF "BABBLE TAPE DURING ATTORNEY VISITS

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3.	SUPERIOR COURT OF THE STA	
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<ul><li>5.</li><li>6.</li></ul>	PEOPLE OF THE STATE OF CALIFORNIA, ) PLAINTIFF )	CASE NO: INF 064492
7. 8. 9.	v. ) ) ) ) ) ) ) ) ) ) ) )	NOTICE AND MOTION FOR COURT ORDER AUTHORIZING MOVER'S USE OF "BABBLE" TAPE DURING ATTORNEY
10.	KAUSHAL NIROULA, ET AL  DEFENDANT )	VISITS
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13.	DECLARATION OF WILLIAM PICARD IN SUP SPEAKER AND BABBLE TAPE DURING HIS PR	
14.	<u>INDIO JAIL</u>	
	I, William Picard, declare:	
15.		d Paralegal and witnessed Martha Dixon
16.		Niroula's Babble Motion in order for her brand new, still in the package speaker
17. 18.	packaging to be provided to the Sheriff	ornia, on January 23, 2012, in its original 's designate for Riverside County, Indio,
19.	Martha Dixon, James Butts, Stephen Spr	
20.	Louisiana that the foregoing is true and	r the laws of the State of California and d correct. I have affixed my electronic
21.	signature to this Declaration in Louisiana	A.
22.	Executed this 5 <sup>th</sup> day of February, 2012, at Lafay	yette, Louisiana.
23.	D = === = = = = = = = = = = = = = = = =	:++ o d
24.	Respectfully submi	mea,
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26.	William Picard	l
		d
27.	12 NOTICE OF MOTION AND MOTION FOR COURT ORDER AU	THORIZING MOVER'S USE OF "BABBLE TAPE
28.	DURING ATTORNEY VISITS	

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2.	SUPERIOR COURT OF THE ST	TATE OF CALIFORNIA
3.	COUNTY OF RIV (INDIO BRAN	/ERSIDE
<ol> <li>4.</li> <li>5.</li> </ol>	PEOPLE OF THE STATE OF CALIFORNIA, ) PLAINTIFF )	CASE NO: INF 064492
<ul><li>6.</li><li>7.</li><li>8.</li><li>9.</li></ul>	v. ) v. ) KAUSHAL NIROULA, ET AL ) DEFENDANT )	NOTICE AND MOTION FOR COURT ORDER AUTHORIZING MOVER'S USE OF "BABBLE" TAPE DURING ATTORNEY VISITS
10. 11.		
12.	DECLARATION OF MARTHA DIXON IN SU	
13.	SPEAKER AND BABBLE TAPE DURING HIS INDIO JA	
14.	I, Martha Dixon, declare:	
15.	1. I am Kaushal Niroula's court appointed	I Legal Runner. I was present during the in La Quinta, California, on January 23,
16.	2012, in its original packaging to be provi	ided to the Sheriff's designate for Riverside Kaushal Niroula during his privileged visits
17.		s, Stephen Spring, private investigators, and
18.	2. I have had singular possession, care, cus	tody and control of the speaker since then es of Mr. Niroula's babble tape motion and
19.	will maintain same until presented in Oper 3. I have read the content of the Motion rela	n Court to Judge Downing.
20.	the Indio Jail Lobby, waiting to see Mr. I	Niroula, when I was asked by one of the jail
21.	heard the Indio jail deputy, comment to an	ž , č
<ul><li>22.</li><li>23.</li></ul>	4. I declare under penalty of perjury under foregoing is true and correct.	the laws of the State of California that the
24.	Executed this 5 <sup>th</sup> day of February, 2012.	
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2.	Respectfully Submitted,
3.	Martha Dixon
4.	 Martha Dixon
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27.	NOTICE OF MOTION AND MOTION FOR COURT ORDER AUTHORIZING MOVERIS HIS OF IDARRA PROFESSIONAL
28.	NOTICE OF MOTION AND MOTION FOR COURT ORDER AUTHORIZING MOVER'S USE OF "BABBLE TAPE DURING ATTORNEY VISITS

#### 1. SUPERIOR COURT OF CALIFORNIA 2. **COUNTY OF RIVERSIDE** 3. (INDIO BRANCH) 4. PEOPLE OF THE STATE OF CALIFORNIA, **CASE NO: INF 064492 PLAINTIFF** 5. NOTICE AND MOTION v. 6. FOR COURT ORDER **AUTHORIZING MOVER'S** 7. **USE OF "BABBLE" TAPE DURING ATTORNEY** 8. KAUSHAL NIROULA, ET AL VISITS 9. **DEFENDANT** 10. 11. DECLARATION OF STEPHEN SPRING IN SUPPORT OF MOTION FOR USE OF A SPEAKER AND BABBLE TAPE DURING HIS PRIVILEGED VISITS WHILE IN THE 12. **INDIO JAIL** 13. I, Stephen Spring, declare: 14. 1. I represent Kaushal Niroula as his attorney in various other matters. I am a member of the Louisiana State Bar Association, LBN: 12347, in good standing, and was present 15. during the purchase of the USB Speaker at Staples in La Quinta, California, on 16. January 23, 2012, in its original packaging to be provided to the Sheriff's designate for Riverside County, Indio, California, to be used by Kaushal Niroula during his 17. privileged visits with myself, William Picard, Enrique Tira, Martha Dixon, James Butts, private investigators, and attorneys. 18. 2. I have been present with William Picard and Martha Dixon since the purchase of the USB speaker which has remained in Martha Dixon's exclusive care, custody and 19. 3. At Mr. Niroula's request, I engaged the services of James M. Atkinson of Granite 20. Island Group, located in Rockport, Massachusetts, to provide Mr. Niroula with a babble tape to prevent the interception or monitoring of Mr. Niroula's privileged 21. visits. Mr. Atkinson is a world renowned expert in the field of TSCM (Technical 22. Surveillance Countermeasures) in both hardware and software applications which involve the use of various technical equipment. Mr. Atkinson normally charges a 23. minimum of \$2,500.00 for the production of any babble tape which is, in my opinion, far superior to acoustic noise generators available in the countermeasure market. I 24. received the babble tape file and coordinated the provision of elements of the specifically constructed babble tape file for Mr. Niroula. Mr. James M. Atkinson is a 25. client of the firm of Spring & Spring, LLC, and I have Mr. James Atkinson's express permission to disclose that he is a firm client. I will state that when Mr. Atkinson 26. learned of the policy and procedures of the Riverside County Sheriff's Office

1. invading the Attorney Client Privilege he volunteered to forego his normal fee and 2. volunteered to produce the "babble" file gratis as a result of his abhorrence of such a 3. policy imposed by the Sheriff of Riverside as the ultimate repository of policy, custom and conventional usages which he considers unconstitutional and a 4. deprivation and infringement of a pretrial detainee's civil rights (i.e. Mr. Niroula) and his Court appointed assets and attorneys. 5. 4. I declare under penalty of perjury under the laws of the State of California and that the foregoing is true and correct. This declaration is signed Louisiana 6. electronically in Louisiana having the same effect as my own original signature 7. Executed this 6<sup>th</sup> day of February, 2012, at Baton Rouge, Louisiana. 8. 9. Respectfully Submitted, 10. 11. Stephen Spring 12. **Stephen Spring** 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28.

SU	PERIOR COURT OF THE STA COUNTY OF RIV	
	(INDIO BRAN	(CH)
	STATE OF CALIFORNIA, ) NTIFF )	CASE NO: INF 064492
v. KAUSHAL NIROU	) ) ) ) (1) (2) (3) (4) (4) (5) (6) (7) (7) (7) (7) (7) (7) (7) (7) (7) (7	MOTION FOR COURT ORDER AUTHORIZING MOVER'S USE OF "BABBLE" TAPE DURING ATTORNEY VISITS
DEFE	ENDANT )	
	)	
I, James M. Atkinso	VISITS WHILE IN THE on, declare:	E INDIO JAIL
1.		Rockport, Essex County, Massachusetts.
2. 3.	I have never been convicted of	f any crime in any jurisdiction.  nized expert in electronic countermeasures
5.	and TSCM (Technical Surve	eillance Countermeasures) having, in the
		for the United States Congress in the lved the use by contractors of substandard
	"TEMPEST" cables and classi	fied electronics that were being paid for by
		classified military intelligence and data to ied in other matters to Congress, and other
	government agencies on relat	ed matters, and worked as a contractor to
4.		encies on this and related matters.  he Central Intelligence Agency, Federal
		. Department of State, U.S. Marshalls, and
5.	numerous other federal and sta I have attached hereto my curr	e
6.		Spring, LLC, Attorneys at Law, located buisiana, and on behalf of Kaushal Niroula
	residing in the Indio Jail, I put	
7.		, LLC consists of a retired member of the on and a younger member who is one of the
	most familiar attorneys i	n the United States with technical
	counterintelligence and technic	cal surveillance countermeasures.

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2.	8.	Mr. Niroula's trial on the merits is set to commence at 9am PST on May 25, 2012.
3.	9.	It is, in my opinion, essential that he be able to communicate with his Court ordered assets without interception, monitoring, or illegal
4.		eavesdropping.
5.	10.	To that end, I engineered, composed, and constructed the custom "babble tape" which has been described in the Motion to which this Declaration
6.	11.	is to be attached.  The use of the babble tape by Mr. Niroula will in no way negatively
7.		impact any security measure in the jail where he resides. It will, however, insure that in the event that there are any hidden microphones
8.	12.	or listening devices being used, they will be nullified.
9.	12.	This file will be played by way of a computer through a small speaker, when confidential discussions will be held between Mr. Niroula and
10.		members of his legal team in order to mask the conversations in an effective manner, so long as the audio is played at a high enough volume
11.		to "fill the room" and to create reflections within the room of the audio, though the use of two small portable speakers into the client side of the
12.		room. Then a similar system being used on the attorney side of the glass to protect the other side of the conversation.
13.	13.	With this babble tape or audio file being played through Mr. Niroula's
14.		Apple MacBook attached to a set of USB speaker and a similar audio file being played on the attorney side of the attorney or member of his legal
15.		team visiting booth in Indio jail, a moderate level of proper oral privacy security and attorney-client confidentially can be achieved.
16.	14.	When I learned the conduct of the Riverside Sherriff's Office regarding attorney booths and visits, I volunteered to produce the "babble" file
17.		gratis as a result of my personal abhorrence of such a policy imposed by the Sheriff of Riverside as the ultimate repository of policy, custom and
18.		conventional useages which I consider unconstitutional and a deprivation and infringement of a pretrial detainee's civil rights (i.e. Mr. Niroula, Mr.
19.	15	Garcia, and others) and their Court appointed assets and attorneys.
20.	15.	I declare under penalty of perjury under the laws of the State of California and Massachusetts that the foregoing is true and correct
21.		although this is being executed in Massachusetts. This declaration is signed electronically in Massachusetts having the same effect as my own
22.		original signature
23.	Executed this 5	5 <sup>th</sup> day of February, 2012, at Rockport, Essex County, Massachusetts
24.		Respectfully submitted,
25. 26.		James M. Atkinson
		James M. Atkinson
27.	10 NOTICE OF MO	TION AND MOTION FOR COURT ORDER AUTHORIZING MOVER'S USE OF "BABBLE TAPE
28.	18 NOTICE OF MODURING ATTO	RNEY VISITS

SUPERIOR COURT OF THE COUNTY OF	
(INDIO B)	RANCH)
PEOPLE OF THE STATE OF CALIFORNIA PLAINTIFF	CASE NO: INF 064492
v. KAUSHAL NIROULA, ET AL DEFENDANT	) ) MOTION ) FOR COURT ORDER ) AUTHORIZING MOVER'S ) USE OF "BABBLE" TAPE ) DURING ATTORNEY ) VISITS )
	) )
DECLARATION OF DEMITRA HAIDOS	
NIROULA'S MOTION FOR USE OF A SPE PRIVILEGED VISITS WH	
I, Demi Tolbert, declare:	
	oula as his attorney in the above-entitled action. Association, CBN: 224981, in good standing,
2. On the morning of Friday, February 3 Justice Center on a death penalty case	, 2012, I appeared in Dept 302 at the Southwest e. My client is housed at Southwest also. I was to the jail after Court so we could talk, when
Deputy Clark of the Riverside Count could talk right there. I replied that	by Sheriff's Office interjected and said that we to Deputy Clark's presence did not make my since my client was seated inches from the
deputy.	•
never private because my client w	onversations with my client were privileged but was in custody. He also told me that ALL
	nonitored" throughout Riverside County: either e room to listen. Deputy Clark of the Riverside
County Sheriff's Office expressly to	old me that all conversations between persons ls with their attorneys or anyone else in the
attorney booths are monitored.	
unilaterally assigns to persons incarce	ending on the security risk the Sheriff's office rated (including pretrial detainees) the Sheriff's
- ·	ot allowed to testify as to the conversations, but
they are instructed and able to listen b some sort of security need.	based to these privileged conversations based on
some soft of security need.	

1.	
2.	C. I twied to visit may elient at the icil often Count but he had been pleased in icelation by
3.	6. I tried to visit my client at the jail after Court, but he had been placed in isolation by the Sheriff's Department. I was told there was no one to walk him to the attorney booths since visiting going on
4.	7. I declare under penalty of perjury under the laws of the State of California that the
5.	foregoing is true and correct. This declaration is signed electronically in California having the same effect as my own original signature
6.	Executed this 5 <sup>th</sup> day of February, 2012, at Cathedral City, Riverside County, California.
7.	Respectfully submitted,
8.	
9.	
10.	Demitra Haidos Tolbert
11.	Demitra Haidos Tolbert
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<i>_</i> ,,	NOTICE OF MOTION AND MOTION FOR COURT ORDER AUTHORIZING MOVER'S USE OF "BARBLE TAPE

1.	
2.	PROOF OF SERVICE
3.	<u>People vs. Niroula</u>
<ol> <li>4.</li> <li>5.</li> </ol>	I HEREBY DECLARE that I am over the age of 18 and not a party to the above entitled action. My Business address is: 74923 U S Hwy 111, # 155, Indian Wells, Ca 92210.
6.	On February 10, 2012, I served a true copy of:
7. 8.	NOTICE OF MOTION, MOTION FOR COURT ORDER AND MEMORANDUM OF POINTS AND AUTHORITIES AUTHORIZING USE OF BABBLE TAPE DURING ATTORNEY PRIVILEGED VISITS
9. 10.	as Follows by causing electronic service via email pursuant to the order of the Superior Court of California to the following parties:
11.	1, <b>Lisa DiMaria, Esq.,</b> 82-675 Highway 111, 4th Floor
12.	Indio, California 92201; and
<ul><li>13.</li><li>14.</li></ul>	2. Pamela J. Walls, Esq., and Anna W. Wang, Esq., County and Deputy Counsels for The County of Riverside & Sheriff's
15.	Department 3960 Orange St 5th Fl, Riverside, California 92501; and
<ul><li>16.</li><li>17.</li></ul>	3. Daniel Carlos Garcia in Pro Per via email to Investigator Jeff Reed BK# 200911640
18. 19.	P.O. Box 1748 Riverside County Indio Jail, Indio, California, 92202
20. 21.	additionally via Indio Jail legal mail for courtesy copy delivery to Mr. Daniel Carlos Garcia in Pro Per.
22.	Dated this 10th day of February, 2012, at Indio, California.
<ul><li>23.</li><li>24.</li></ul>	Martha Dixon
<ul><li>25.</li><li>26.</li></ul>	Martha Dixon, Legal Runner for Kaushal Niroula Electronically Signed
<ul><li>27.</li><li>28.</li></ul>	21 NOTICE OF MOTION AND MOTION FOR COURT ORDER AUTHORIZING MOVER'S USE OF "BABBLE TAPE DURING ATTORNEY VISITS
20.	_ · · · · · · · · · · · · · · · · · · ·

# SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF RIVERSIDE, INDIO BRANCH

Case No.: INF064492

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff

Vs.

KAUSHAL NIROULA, et. Al,

Defendants

MOTION FOR COURT ORDER AUTHORIZING MOVER'S USE OF "BABBLE" TAPE DURING ATTORNEY VISITS

15 June 2012

# MOVER'S EXHIBIT – TSCM INSPECTION REPORTS (2) WITH DECLARATIONS OF JAMES M. ATKINSON ONE (1) PHYSICAL EXHIBIT (NOT SEALED) IN GLOBO

PROVIDED BY JAMES M. ATKINSON



# SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF RIVERSIDE, INDIO BRANCH

THE PEOPLE OF THE STATE OF

CALIFORNIA,

Plaintiff

Vs.

KAUSHAL NIROULA, et. Al,

Defendants

Case No.: INF064492

DECLARATION OF JAMES M. ATKINSON REGARDING FIRST VISUAL TSCM INPSECTION.

15 June 2012

### I, JAMES M. ATKINSON, hereby declares:

- 1. Pursuant to the sealed order which I received from the Honorable David B. Downing, Superior Court Judge for Riverside County at Indio, ordering a visual TSCM inspection of the Indio Jail Attorney Booth(s), I arrived on June 12, 2012, at 12:46 AM.
- 2. I arrived at the Indio Jail to perform a visual TSCM Inspection of the "East" Attorney-Client visitation booth.
  - 3. During this visit, I tested and identified that the room was not soundproof.
- 4. I further determined with both visual and physical inspection, that two telephones in the attorney-client booth, reserved for privileged attorney communications, had been modified with a "Hook Switch Bypass". This modification turns telephones into eavesdropping devices.
- 5. There is no legitimate reason to modify a normal telephone by using a hook switch bypass.

- 6. The "Hook Switch Bypass" was witnesses by Jared Scheinuk, Court appointed Law Clerk, and Kaushal Niroula. Both witnessed the inspection, and confirmed the passage of audio signals where no audio signal should be present.
- 7. Also, this "Hook Switch Bypass" was subsequently confirmed by S. Stephen Spring, II, Pro Hac Vice advisory counsel for Kaushal Niroula. Mr. Spring has extensive training and experience in TSCM and myself during to additional visits on later dates. Mr. Spring is also a member of the Association of Former Intelligence Officers, whom I sponsored for membership premised upon his former association with INSCOM with published articles on the subject.
- 8. I also discovered a visitation intercom system that was configured in a way so as to permit eavesdropping of the conversations in the booth by an eavesdropper. I was able to conduct a visual trace of the wires for this system into the walls. Since the Court's order did not authorize a full, instrumented technical inspection, I was unable to trace the wires out of this booth to any listening post within the jail.
- 9. Upon departing the Indio jail, I observed a video surveillance system installed just above the door of this room. I observed the quad camera multiplexer video monitor in the guard booth for this camera. The camera is positioned in such a way that it creates an approximate 2 foot deep "blind spot". The blind spot is present at the door to this room which can enable an eavesdropper to simply stand just outside this door and eavesdrop with the naked ear. My inspection and testing established that it is possible to secure clear audio leaking out of this room without being captured on the jail's internal video surveillance camera.
- 10. Additionally, during this visit, I could hear, with my unaided and naked ear, people in the room behind the inmate side of the booth in an area described to be as a bathroom.
- 11. Though the wall on the inmates' side of the booth, and thence though the plexiglass window, and then to the attorney side of the booth, I was able to hear human generated noises to include coughing, flatulence, and clearing of someone's throat.
- 12. The sounds I clearly heard, did not appear to be conducted by pipes in the walls as the quality of the sound in different with pipe conducted sounds of the toilet lid being put down, the toilet being flushed, and related sounds.

- 13. It is my impression that these are either cracks in the wall, or holes present allowing human voices present in the inmate side of this booth to travel to the bathroom or other rooms on the other side of the wall.
- 14. During this visit I took 111 digital photographs which are presented under Court ordered seal.
- Immediately after departing the Jail at 2:25 AM, at 2:48 PM on the same date, I backed up these images to a secure server in Belgium (the country) to preserve the images against loss, should the sealed filing be lost or destroyed.
- 16. Due to the covert method of photography used, only about half of these images are in focus and legible. However, none of these images include matters affecting jail physical security (ie: no door locks, hinge positions, locks, security devices, rivets, or other methods of jail security were taken) in my opinion.

Further Affiant Sayeth Naught.

JAMES M. ATKINSON

SWORN TO AND SUBSCRIBED, before me, Notary Public, in and for Riverside

County, California, after due reading of the whole.

Notary Public-State of California Notary Name: 1717 Jimes

Notary ID No. \84885

My Commission Expires: May 12,2013

## SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF RIVERSIDE, INDIO BRANCH

Case No.: INF064492

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff

Vs.

KAUSHAL NIROULA, et. Al,

Defendants

DECLARATION OF JAMES M. ATKINSON RECARDING SECOND VISUAL INSPECTION

15 June 2012

### I, JAMES M. ATKINSON, hereby declares:

- 1. While engaged in a visit to the Indio Jail with S. Stephen Spring, II, Pro Hac Vice Advisory Counsel for Kaushal Niroula; and Jared Scheinuk, Law Clerk, I performed a visual reinspection of the Attorney-Client booths at Indio Jail.
- 2. However, during this second inspection no photographs were taken (per the order of this court), nor were any of the electronic systems inspected, and merely the naked eye and naked ear was used.
  - 3. During this visual (naked eye and naked ear) inspection, the hook switch bypass was found to still be active in two phones.
  - 4. Further, physical trace evidence was found with suggests that between the visitation

by the Court mid-day (post testimony by JMA), and the late night visitation (from 9:20 PM and 10:10 PM on 6/12/2012) by myself, Steve, and Jared. This trace evidence was not present in the booth the night before, nor was this trace evidence present in the booth when the booth was visited by the court. Thus trace evidence was created or arrived in the booth AFTER the unannounced visit by the court, yet before the late night visit by myself, Stephen Spring, and Jared Scheinuk.

- 5. This trace evidence consists of two pieces of plastic insulation (most likely poly(vinyl chloride)) thermoplastic insulation for conducting wires, and one segment of what appears to be solid copper wire.
- 6. One piece of insulation is RED in color, the second piece of insulation is BLUE in color, the wire is the color of bare copper.
- 7. The RED and BLUE insulation is of a different length, suggesting a poorly trained eavesdropper.
- 8. The BLUE wire is also torn on the side where it was hastily torn from the copper wire it protected, again suggesting a poorly skilled eavesdropper.
- 9. The copper wire that was found is roughly the length of the RED insulation segment, suggesting that the RED wire was cut with tools (improperly used), but with the BLUE wire the insulation was merely ripped loose.
- 10. The gauge of the wire suggests that it is in fact TELEPHONE wire, and the color further suggest that this is TELEPHONE wire.
- 11. The BLUE piece was found near the back wall. The RED piece and copper wire was found directly below the wall mounted telephone, suggesting that this wire can then the phone wiring inside the wall. As the BULUE and RED insulation pieces appear to be of the same

gauges, and would normally be found in telephone wiring color codes. This thus links the RED and BLUE insulation segments with the copper wire, and thus to the wall mounted telephone.

- 12. The cutting of these wires after the court visit, yet before my reinspection suggests that there was a hasty removal of an eavesdropping device, likely a hot wired microphone.
- 13. Also, markings on the phone suggest that it had either been replaced or modified prior to 9:20 PM, but after 12 noon on 6/12/2012.
- 14. It is my professional opinion that employees hastily removed an illicit eavesdropping device from the wall mounted phone or wiring going to the phone, and that the persons who removed this device/modification used the improper tools, and dropped these three pieces of evidence.
- 15. The discoverer of these three items was witness by Stephen Spring and Jared Scheinuk.

Further Affiant Sayeth Naught.

JAMES M. ATKINSON

**SWORN TO AND SUBSCRIBED**, before me, Notary Public, in and for Riverside County, California, after due reading of the whole.

Notary Public State of California

Notary Name: (1784)

Notary ID No. 184885

My Commission Expires: May 12,2013

# SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF RIVERSIDE, INDIO BRANCH

THE PEOPLE OF THE STATE OF

CALIFORNIA,
Plaintiff

Vs.

KAUSHAL NIROULA, et. Al,

Defendants

Case No.: INF064492

MOTION FOR COURT ORDER AUTHORIZING MOVER'S USE OF "BABBLE" TAPE DURING ATTORNEY VISITS

15 June 2012

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PROVIDED BY JAMES M. ATKINSON

