

**MILITARY COMMISSION TRIAL JUDICIARY  
GUANTANAMO BAY**

UNITED STATES OF AMERICA

v.

ABD AL HADI AL-IRAQI

**AE 023F**

**DEFENSE MOTION FOR LEAVE TO  
FILE RESPONSE OUT OF TIME**

**MR. AL-IRAQI'S RESPONSE TO THE  
GOVERNMENT'S EX PARTE AND IN  
CAMERA UNDER SEAL MOTION FOR  
A PROTECTIVE ORDER PURSUANT  
TO THE MILITARY COMMISSIONS  
ACT OF 2009, 10 U.S.C. 949p-4, AND  
MILITARY COMMISSIONS RULE OF  
EVIDENCE 505**

**1 February 2016**

- 1. Timeliness:** This request is filed within the timeframe established by Rule for Military Commission (R.M.C.) 905 and is timely pursuant to Military Commissions Trial Judiciary Rule of Court (R.C.) 3.7.c.
- 2. Relief Requested:** The Defense respectfully requests leave to file “Mr. al-Iraqi’s Response to the Government’s *Ex Parte* and In Camera Under Seal Motion for a Protective Order Pursuant to the Military Commissions Act of 2009, 10 U.S.C. 949p-4, and Military Commission Rule of Evidence 505,” out of time.
- 3. Burden of Proof and Persuasion:** The Defense bears the burden of persuasion by a preponderance of the evidence. R.M.C. 905(c)(2)(A). However, denial of this motion will violate the defendant’s rights as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States of America, the Military Commission

Act of 2009, the Detainee Treatment Act of 2005, treaty obligations of the United States, as well as norms of fundamental fairness.

**4. Statement of Facts:**

a. On 14 January 2016, the Government filed its “Notice to The Defense of the Government’s *Ex Parte* and In Camera Under Seal Motion for a Protective Order Pursuant to the Military Commissions Act of 2009, 10 U.S.C. 949p-4, and Military Commission Rule of Evidence 505.”

b. In accordance with R.C. 3.7.d.(2), normally a response is due within fourteen calendar days after a motion or supplement is filed.

c. From 21-28 January 2016, the Federal Government in the National Capital Region (NCR), including this Military Commission, was either closed or operating under limited conditions due to inclement winter weather affecting the region. Specifically, the Federal Government in the NCR was closed on 22 and 25 January 2016 and operated under limited personnel manning from 26-28 January 2016.

**5. Argument:** Mr. al-Iraqi, through Counsel, is requesting permission to file his response to “Notice to The Defense of the Government’s *Ex Parte* and In Camera Under Seal Motion for a Protective Order Pursuant to the Military Commissions Act of 2009, 10 U.S.C. 949p-4, and Military Commission Rule of Evidence 505” pursuant to R.C. 3.7.d.(3)(d). Due to weather conditions beyond Mr. al-Iraqi’s control, the Federal Government was not open for normal operations for eight days of his response period; accordingly, those eight days should be tolled and afford Mr. al-Iraqi until 5 February 2016. However, Mr. al-Iraqi only requires one day of the time to which he is entitled and has filed his Response concurrently with this Motion.

Furthermore, as referenced in AE 054A, the Defense remains woefully under-resourced for a

case as legally and factually complex as Mr. al-Iraqi's and continues to work with the Government in obtaining the appropriate security clearances to facilitate Mr. al-Iraqi's assertion of his right to civilian counsel.<sup>1</sup> Under such circumstances, denying Mr. al-Iraqi the right to respond to the insufficient notice provided in AE 023E would hold him accountable for weather conditions and Government bureaucratic processes that are well beyond his control.

Accordingly, the requested relief is merited as a matter of Due Process as well as fundamental fairness.

**6. Oral Argument:** None requested.

**7. Witnesses:** None.

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<sup>1</sup> As detailed in AE 054A, the Defense notes that the Government to date still has not approved all of the required security clearances for civilian counsel. As these security clearances are prerequisites to gaining access to all of the evidence against the Accused, the ongoing failure of the Government to expedite its own processes continues to preclude the Accused from mounting a defense against the charges against him.

8. **Conference with Opposing Counsel:** The Defense has conferred with the prosecution; the Government does not object to this Motion.

Respectfully Submitted,

*//s//*

BRENT RUSHFORTH  
Pro Bono Counsel

*//s//*

ROBERT T. KINCAID III, MAJ, USA  
Detailed Defense Counsel

*//s//*

WENDALL H. HALL, MAJ, USA  
Detailed Defense Counsel

*//s//*

KEITH B. LOFLAND,  
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Detailed Defense Counsel

**CERTIFICATE OF SERVICE**

I certify that on 1 February 2016, I filed AE 023F with the Office of Military Commissions Trial Judiciary and I served a copy on counsel of record.

*//s//*  
KEITH B. LOFLAND,  
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