

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA v. ABD AL HADI AL IRAQI	AE 136C Defense Motion For Leave to File Out of Time to Defense Reply to AE 136A Government Response to Defense Motion to Compel Discovery Regarding CIA Rendition, Detention, and Interrogation Program 4 March 2019
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1. Timeliness.

This motion is filed timely under Trial Judiciary Rule of Court 3.7.c.(4).

2. Relief Sought.

The Defense respectfully requests this Commission grant the Defense leave to file out of time for Defense Reply to AE 136A Government Response to Defense Motion to Compel Discovery Regarding CIA Rendition, Detention, and Interrogation Program.

3. Overview.

The Defense seeks this Commissions leave, pursuant to Military Commissions Trial Judiciary Rule of Court 3.7.d.(3)(d), to file Defense Reply to AE 136A Government Response to Defense Motion to Compel Discovery Regarding CIA Rendition, Detention, and Interrogation Program.

4. Burden of Proof.

As the moving party, the Defense must demonstrate that the requested relief is warranted.

5. Facts.

a. In AE 110F, the Commission ordered, “Motions from either Party to compel discovery, witnesses, evidence, or other precursory motions necessary for the litigation of

anticipated evidentiary motions are due to the Commission and opposing counsel not later than 6 February 2019.”¹

b. On 8 February 2019, the defense filed AE 110L, Omnibus Defense Motion For Leave to File Out of Time Defense Motions AE 136, AE 138, AE 140, AE 141 with regards to AE 110F.

c. In AE 110M, on 12 February 2019, the Commission granted the defense’s request in AE 110L, setting a filing deadline of 13 February 2019 for AE 136 with the response to AE 136 due on 20 February 2019.

d. On 13 February 2019, the defense filed AE 136, Defense Motion to Compel Discovery Regarding CIA Rendition, Detention, and Interrogation Program.

e. The prosecution filed their response on 21 February 2019 (due to the OPM closure on 20 February 2019), in AE 136A.

f. On 28 February, the defense submitted AE 136C to the trial judiciary via a SIPR email.

g. On 28 February, a paralegal from the trial judiciary informed a paralegal on the defense team, via a phone call, that the unclassified notice on SIPR did not exactly match the unclassified notice that was submitted on NIPR.

h. On 28 February, the defense resubmitted AE 136C to the trial judiciary with the corrected unclassified notices.

i. On 1 March, a paralegal from the trial judiciary informed a paralegal on the defense team, via a phone call, that the certificate of service on the SIPR motion did not exactly match

¹ AE 110F Second Amended Litigation Schedule dated 18 January 2019 at 1.

the unclassified notices on SIPR and NIPR, and requested that we file a Motion for Leave to File Out of Time.

j. On 1 March, at 1418, a defense team member informed the prosecution that it would file a motion for leave to file out of time. At 1555, the prosecution informed the defense team that it did not object.

k. On 1 March, at 1434, a paralegal from the defense team, under the advice of a paralegal at the trial judiciary, withdrew AE 136C.

6. Law and Argument.

Pursuant to AE 110F, and AE 110M, Defense Motion to Compel Discovery Regarding CIA Rendition, Detention, and Interrogation Program was due on 13 February 2019, and the prosecution's response was due on 21 February (due to the OPM closure on 20 February 2019). In accordance with Trial Judiciary Rules of Court 3.7.e.(2), the reply was due on 28 February 2019. Although we attempted to file AE 136C on 28 February, it was rejected due to a technicality.

The prosecution suffers no prejudice if the Defense motion is accepted late because it was served on the date of original filing, and the certificate of service has no bearing on the underlying legal arguments which will remain the same. The Commission has discretion to allow a late filing; the Defense respectfully requests that it exercise that discretion and allow the filing out of time.

7. Conclusion.

Accordingly, the Defense requests this Commission grant leave to file out of time its Defense Reply to AE 136A Government Response to Defense Motion to Compel Discovery Regarding CIA Rendition, Detention, and Interrogation Program.

8. Oral Argument.

The Defense does not request oral argument.

9. Witness and Evidence.

The Defense does not have any evidence to present nor is the Defense requesting witnesses to testify on this matter.

10. Conference with Opposing Counsel.

The prosecution does not object.

11. Additional Information. None.

12. Attachments.

A. Certificate of Service, dated 4 March 2019.

Respectfully Submitted,

//s//
SUSAN HENSLER
Detailed Defense Counsel

//s//
DAHOUD ASKAR
LT, JAGC, USN
Detailed Defense Counsel

//s//
CHARLES BALL
LT, JAGC, USN
Detailed Defense Counsel

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on **4 March 2019**, I filed **AE 136C, Defense Motion For Leave to File Out of Time** to Defense Reply to AE 136A Government Response to Defense Motion to Compel Discovery Regarding CIA Rendition, Detention, and Interrogation Program with the Office of Military Commissions Trial Judiciary and I served a copy on Government counsel on record.

//s//

SUSAN HENSLER

Detailed Defense Counsel