

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

_____))
IN RE:) Misc. No. 08-0442 (TFH)
GUANTANAMO BAY))
DETAINEE LITIGATION) Civil Action No. 04-1254 (HHK)
_____)

MOTION FOR LEAVE TO FILE OUT OF TIME

Respondents filed their Opposition to Petitioners' Motion for Discovery on December 4, 2008. In accordance with court rules, Petitioners' reply memorandum was due on December 11, 2008. However, due to an administrative oversight by counsel for Petitioners, Petitioners failed to file a reply by the prescribed deadline. Petitioners believe that the substance of their brief reply will be helpful to the Court in deciding the Motion for Discovery. Petitioners therefore request that the Court grant them leave to file their reply memorandum out of time. A copy of Petitioner's memorandum is attached as Exhibit A.

Counsel for Respondents has been consulted and states that Respondents do not oppose the instant motion.

December 16, 2008

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[PROPOSED] ORDER

Upon consideration of Petitioners' Motion For Leave to File Out of Time,

it is

ORDERED that Petitioners' Motion For Leave to File Out of Time is

granted.

SO ORDERED.

United States District Judge

Date: _____

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)

**REPLY MEMORANDUM
IN SUPPORT OF PETITIONERS' MOTION FOR ADDITIONAL DISCOVERY**

In its opposition to Petitioners' Motion for Additional Discovery, the Government argues that Petitioners' requests are overly broad, not "narrowly tailored," and not sufficiently specific. The argument should be rejected.

The requests seek copies and descriptions of all statements by third parties that relate to information in a petitioner's factual return, as well as documents and information pertaining to the circumstances under which the statements were made. These requests seek at a minimum to find out about all third party statements on which the Government relies to show that a petitioner was an "enemy combatant," and whether and to what extent the reliability and credibility of the statements are subject to challenge because of the circumstances under which the statements were obtained. At a minimum, the Government should be required to provide a detainee's counsel with such information for any individuals who have made accusations about the detainee. There would not seem to be any significant burden in providing such limited information about the accusations against a detainee, particularly with respect to any accusations made by other detainees.

In an ordinary case, Petitioners would have the opportunity to confront their accusers, and to determine through cross-examination whether the accusations lodged against Petitioners were coerced or otherwise lacking in credibility. The requested

discovery is not a fully adequate substitute for cross-examination, but it at least should provide Petitioners' counsel and the Court some information relevant to testing the case against the detainee, while causing no injury to the Government beyond what is likely to be a minor administrative task.

The requests also seek information concerning any bounties or other considerations paid to third parties for the apprehension and transfer of a detainee. This is narrowly targeted at the specific circumstances surrounding the Government's seizure of the detainee, and the request's relevance is undeniable. If a detainee was initially seized by a third party, (such as an arm of the Pakistan government,) and then transferred to an arm of the US Government for a fee, then the fact that the third party had a profit motive to engage in this transaction would place a serious cloud over any claim that the detainee really had been an enemy combatant. The requested discovery, moreover, is quite narrow, because it focuses on at most a single transaction for each detainee, and it is hard to take seriously any suggestion that there would be a significant burden on the government in obtaining this information for production in discovery.

Accordingly, for the reasons stated above, the Court should grant Petitioners' request for additional discovery.

December 16, 2008

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