

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

UNITED STATES OF AMERICA v. ABD AL HADI AL-IRAQI	AE 020B RULING Defense Motion to Dismiss for Lack of Subject Matter Jurisdiction and to Compel a Status Determination pursuant to Article 5 of the Geneva Conventions 19 November 2014
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1. On 16 October 2014, the Defense filed AE 020, Defense Motion to Dismiss for Lack of Subject Matter Jurisdiction and to Compel a Status Determination pursuant to Article 5 of the Geneva Conventions. In its motion, the Defense asked the Commission to dismiss the referred charges for failure of the government to conduct a hearing pursuant to Article 5 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War and to order a proper authority to convene a competent tribunal to conduct such a hearing to determine the accused's status. The Prosecution responded (AE 020A) on 30 October 2014, requesting the Commission deny the Defense's requests on the basis that the Accused received all of the pre-referral process to which he was entitled. Oral argument was heard on 17 November 2014¹.

2. Findings:

a. The Defense has not met its burden for the relief requested under the current state of the law regarding Military Commissions.

b. The Defense, through AE 020, has raised the issue of the Commission's *in personam* jurisdiction over the accused.

¹ See Unauthenticated Transcript, *US v. Abd al Hadi al Iraqi*, 18 November 2014 Military Commissions Hearing, pages 67-85.

c. Under *United States v. Khadr*², cited by the parties, this Commission is a competent tribunal to determine whether the government has proven by a preponderance of the evidence the Commission does have personal jurisdiction over the accused.

3. Accordingly, the Defense motion to dismiss is **DENIED**. The Prosecution will be given an opportunity to prove the Commission's personal jurisdiction over the accused at a future hearing date determined by the Commission. Following that hearing the Commission will issue a comprehensive ruling on all aspects of the defense motion (AE 020) along with its findings on the question of the Commission's personal jurisdiction over the accused.

So **ORDERED** this 19th day of November, 2014.

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J.K. WAITS
CAPT, JAGC, USN
Military Judge

² *United States v. Khadr*, 717 F. Supp. 2d 1215, 1235 (USCMCR 2007).