

UNCLASSIFIED//FOR PUBLIC RELEASE  
MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA

<b>UNITED STATES OF AMERICA</b>  <b>v.</b>  <b>ABD AL HADI AL-IRAQI</b>	<b>AE 021B</b>  <b>INTERIM ORDER</b>  <b>Emergency Defense Motion For Appropriate Relief to Cease Physical Contact With Female Guards</b>  <b>7 November 2014</b>
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1. This is an interim order that is to take effect immediately, and remain in effect until such time as the Commission issues a final ruling on AE 021. This order applies only in the case of *United States v. Abd al Hadi al-Iraqi*.

2. The Defense in AE 021 “seeks an emergency order from the Military Commission to the staff of JTF-GTMO to the effect that no female guards should be used during transfers to and from attorney-client meetings and to/from Commission hearings when they would be in a position to need to physically touch Mr. Hadi al Iraqi.” (AE 021 at 1). The Defense asserts the Accused’s “Muslim faith requires him to avoid physical contact with any females to whom he is not married or related.” (AE 021 at 2). The Prosecution response (AE 021A) requests the Commission deny the Defense motion and argues, “the Commission should give substantial deference to existing JTF-GTMO policy, find that the policy meets those substantial [penological] interests, such interests including maintaining proper staffing to run the necessary functions of the facility as well as preventing gender discrimination among female military service members, and not intercede in this matter.” (AE 021A at 3). A reply has not been filed. Oral argument is set to take place during the hearing scheduled for 17-19 November 2014, at the U.S. Naval Station, Guantanamo Bay, Cuba.

3. The jurisdiction of this Commission is limited to criminal offenses as established by the Military Commissions Act of 2009.<sup>1</sup> As such it lacks authority to engage civil issues pertaining to matters

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<sup>1</sup> Military Commissions Act of 2009, 10 U.S.C. §§948a, *et seq.*, (M.C.A.).

such as the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb *et seq.* or other conditions of detention save as they impact on specific cases and issues properly before the Commission. In this instance the purportedly “new” policies pertaining to detainee movement are alleged to interfere with the ability of Defense Counsel to see and communicate with the Accused and thereby prepare for trial. The Commission is aware Defense Counsel are not permitted to see the Accused at the detention site, but rather at a facility specifically designated for client meetings, thus necessitating the movement of the Accused.

4. The Commission has before it the general issue of counsels’ access to their client, alleging a new impediment to effective communication between counsel and client. This Commission has the duty of being mindful of religious and cultural differences within the parameters of its authority and responsibilities, while at the same time respecting the need of the Detention Facility Commander to allocate resources and preserve security. In this instance, this requires maintaining the *status quo* until such time as this Commission can be provided evidence and hear argument on the need to use female guards to move the Accused.

5. Accordingly, a temporary order is **GRANTED**, enjoining the use of female guards in positions that require touching of the Accused during movements to and from attorney-client meetings and Commission hearings, until such time as the Commission makes a final ruling on AE 021.

So ORDERED this 7th day of November, 2014.

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