

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

UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD,
WALID MUHAMMAD SALIH MUBARAK
BIN 'ATTASH, RAMZI BIN AL SHIBH,
ALI ABDUL-AZIZ ALI, MUSTAFA
AHMED ADAM AL HAWSAWI

AE 611H(WBA)

Mr. bin 'Atash's Motion
to Permit the Absence of Detailed Defense
Counsel Pursuant to R.M.C. 805(c)

2 January 2019

1. **Timeliness:** This motion is timely filed.
2. **Relief Requested:** Mr. bin 'Atash respectfully requests that the Military Commission permit the absence of Mr. Edwin A. Perry, Detailed Defense Counsel, from the 25 January – 1 February 2019 pretrial hearings.
3. **Burden of Proof:** The defense bears the burden of persuasion on the motion; the standard of proof is a preponderance of the evidence. R.M.C. 905(c)(1).
4. **Facts:**
 - a. A pretrial hearing is scheduled for 28 January to 1 February 2019. (AE 611(DO Sup)).
 - b. Mr. Perry is responsible for case-related tasks in overseas locations and the conduct of these case-related tasks overlaps with the dates of the 28 January to 1 February 2019 pretrial hearings and prevents him from being in attendance for those dates.
 - c. Mr. Perry is one of four detailed defense counsel representing Mr. bin 'Atash. Major Matthew Seeger, Mr. bin 'Atash's detailed military counsel, will be present for the January-February 2019 pretrial hearings. Ms. Cheryl T. Bormann, Mr. bin 'Atash's Learned Counsel, and Mr. William R. Montross, Jr., Detailed Defense Counsel, will be present for the January-February 2019 pretrial hearings.
 - d. Mr. bin 'Atash does not request deferment of any arguments during the hearing due to Mr.

Perry's requested absence.

e. Counsel have consulted with Mr. bin 'Atash regarding the instant motion to permit the absence of Mr. Perry; Mr. bin 'Atash has no objection.

5. Law and Argument:

Rule for Military Commission 805(c) states "[a]s long as at least one qualified counsel for each party is present, other counsel for each party may be absent from a military commission session with the permission of the military judge." Rule of Court 4.3 provides that defense counsel who have entered an appearance in a specific case should attend all sessions of that case before the Commission; however, Rule of Court 4.3(b)(1) permits the Military Judge to grant a defense counsel's motion to be absent from a particular session.

Counsel for Mr. bin 'Atash request permission for Mr. Perry to be absent from the January-February 2019 pretrial hearings because Mr. Perry will be out of the country attending case-related tasks during that timeframe. Mr. bin 'Atash is not requesting to defer any oral arguments and Mr. bin 'Atash will have present Learned Counsel (Ms. Bormann), Military Counsel (MAJ Seeger), and other Detailed Defense Counsel (Mr. Montross). Mr. bin 'Atash does not object to Mr. Perry's absence.

6. Conference with Opposing Counsel: The Prosecution has no objection.

7. Oral Argument: None.

8. Attachments:

A. Certificate of Service

9. Signatures:

/s/
CHERYL T. BORMANN
Learned Counsel

/s/
EDWIN A. PERRY
Detailed Defense Counsel

/s/
MATTHEW H. SEEGER
Major, USA
Detailed Military Counsel

/s/
WILLIAM R. MONTROSS, Jr.
Detailed Defense Counsel

Attachment A

CERTIFICATE OF SERVICE

I certify that on 2 January 2019, I electronically filed by email with the Trial Judiciary, AE 611H(WBA), Mr. bin 'Atash's Motion to Permit the Absence of Detailed Defense Counsel Pursuant to R.M.C. 805(c), and served a copy of the attached motion with on all counsel of record.

/s/

CHERYL T. BORMANN

Learned Counsel