

MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

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

AE619 (AAA)

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

11 February 2019

1. **Timeliness:** This motion is timely filed.
2. **Relief Sought:** Mr. al Baluchi respectfully requests the military commission permit the absence of Lt Col Sterling R. Thomas from the 18-29 March 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.¹
4. **Facts:**
 - a. Lt Col Thomas is responsible for several case-related tasks in overseas locations.
 - b. The conduct of these case-related tasks overlaps with the dates of the 18-29 March 2019 pretrial hearings and prevent him from being in attendance for those dates.

5. **Law and Argument:**

Defense counsel who have entered an appearance in a specific case should attend all sessions of that case before the military commission.² As long as at least one qualified counsel for each party is present, other counsel for each party may be absent from a military commission

¹ R.M.C. 905(c)(1).

² Rule of Court 4.3.

session with the permission of the military judge.³ The military judge may grant a defense counsel's motion to be absent from a particular session with advanced waiver or an on the record waiver by their client.⁴

Lt Col Thomas first entered an appearance on behalf of Mr. al Baluchi in May 2012. He has been present for 28 of 33 pretrial hearings since then, most recently in November 2018. Mr. al Baluchi has consented to waive Lt Col Thomas' presence during the 18-29 March 2019 pretrial hearings. Other qualified counsel, *to wit*, James G. Connell, III, Captain Mark Andreu, Alka Pradhan, and Benjamin R. Farley, will be present during the 18-29 March 2019 pretrial hearings.

6. **Request for Oral Argument:** The defense does not request oral argument.
7. **Conference with Opposing Counsel:** The government does not oppose this motion.

³ R.M.C. 805(c).

⁴ R.C. 4.3.

Attachments:

A. Certificate of Service.

Very respectfully,

//s//

JAMES G. CONNELL, III
Learned Counsel

//s//

STERLING R. THOMAS
Lt Col, USAF
Defense Counsel

//s//

ALKA PRADHAN
Defense Counsel

//s//

BENJAMIN R. FARLEY
Defense Counsel

//s//

MARK E. ANDREU
Capt, USAF
Defense Counsel

Counsel for Mr. al Baluchi

Attachment A

CERTIFICATE OF SERVICE

I certify that on the 11th day of February, 2019, I electronically filed the foregoing document with the Clerk of the Court and served the foregoing on all counsel of record by email.

//s//

JAMES G. CONNELL, III

Learned Counsel