

**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

**AE 619G (RBS)**

Mr. Bin al Shibh's Motion to Permit the  
Absence of Detailed Defense Counsel in  
Accordance with R.M.C. 805(c)

14 March 2019

**1. Timeliness:** This motion is timely filed.

**2. Relief Sought:** Mr. Bin al Shibh requests permission from the Commission for Ms. Alaina Wichner to be absent from the hearings scheduled from 25-29 March 2019.

**3. Burden of Proof:** The Defense bears the burden of persuasion; the standard of proof is a preponderance of the evidence.<sup>1</sup>

**4. Facts:**

a. The next Military Commission hearing is scheduled for 25-29 March 2019.<sup>2</sup>

b. Ms. Wichner mobilized from the United States Army Reserve Judge Advocate General's Corps to the Military Commissions Defense Organization in January 2014. She was detailed as an Assistant Detailed Defense Counsel on 10 March 2014, and on 5 February 2015 she was detailed as Defense Counsel and served as Mr. Bin al Shibh's lead military counsel. She demobilized in

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<sup>1</sup> R.M.C. 805(c)(1).

<sup>2</sup> See AE 578F (ORD).

October 2016, but continued to represent Mr. Bin al Shibh in her civilian capacity.

c. On 13 February 2019, Mr. Bin al Shibh consented to Ms. Wichner's excusal as his defense counsel from his case.

d. On 26 February 2019, Mr. James Harrington, Learned Counsel for Mr. Bin al Shibh, consented to Ms. Wichner's excusal conditioned on her, "fully assisting in the transition of [her] work product, files and information acquired in [her] services...to [her] remaining defense team." Mr. Harrington does not believe Ms. Wichner's excusal will prejudice Mr. Bin al Shibh or unreasonably delay the proceedings.

e. Chief Defense Counsel, BGen John Baker, intends to approve excusal of Ms. Wichner from Mr. Bin al Shibh's defense team upon completion of the agreed-upon administrative process. At a later date, a motion will be filed with the Commission related to her excusal.

f. Mr. Bin al Shibh does not request the deferment of any arguments due to Ms. Wichner's requested absence.

g. Mr. Bin al Shibh consents to Ms. Wichner's absence from the March 2019 hearings so that she may transition off the team.

## **5. Law and Argument:**

The Rules for Military Commission state "[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."<sup>3</sup> The Rules of Court provide that defense counsel who have entered an appearance in a specific case should attend all sessions of that case before the Commission;<sup>4</sup> however, the Military Judge is permitted to

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<sup>3</sup> R.M.C. 805(c)

<sup>4</sup> R.C. 4.3.

grant a defense counsel's motion to be absent from a particular session with an on-the-record waiver of the presence of counsel.<sup>5</sup>

Counsel for Mr. Bin al Shibh requests permission for Ms. Wichner's absence from the hearings scheduled on 25-29 March 2019 in accordance with her in-progress transition off the defense team and so that she may attend to administrative tasks related to that transition. Consistent with R.M.C. 805(c), Mr. Bin al Shibh will have his Learned Counsel, Mr. James P. Harrington, present for the duration of the hearing. Additionally, Mr. Wyatt Feeler, Detailed Civilian Defense Counsel, and CPT John M. Balouziyeh, United States Army Reserve, have filed Notices of Detailing and Appearance as Detailed Defense Counsel for the March 2019 hearing, and will be present at the hearings.

**6. Conference with Opposing Counsel:** To the extent Ms. Wichner's absence is with the consent of Mr. Bin al Shibh, the Prosecution does not oppose.

**7. Oral Argument:** The Defense does not request oral argument on this request.

**8. Attachments:**

A. Certificate of Service

Respectfully submitted,

//s//  
JAMES P. HARRINGTON  
Learned Counsel

//s//  
ALAINA M. WICHNER  
Defense Counsel

//s//  
MISHAEL A. DANIELSON, LT, USN  
Defense Counsel

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<sup>5</sup> R.C. 4.3(b)(1).

# **ATTACHMENT A**

**CERTIFICATE OF SERVICE**

I certify that on 14 March 2019, I electronically filed the forgoing motion with the Trial Judiciary and served it on all counsel of record by e-mail.

*//s//*

JAMES P. HARRINGTON  
Learned Counsel