

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

AE624 (AAA)

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

10 April 2019

1. **Timeliness:** This motion is timely filed.
2. **Relief Sought:** Mr. al Baluchi respectfully requests the military commission permit the absence of Ms. Alka Pradhan, Mr. Benjamin Farley, and Capt Mark Andreu from the 29 April – 3 May 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. Ms. Pradhan is responsible for case-related tasks that require her presence in the National Capital Region during the 29 April – 3 May 2019 pretrial hearings.
 - b. Mr. Farley is responsible for case-related tasks that require his presence in the National Capital Region during the 29 April – 3 May 2019 pretrial hearings.
 - c. Capt Andreu is scheduled to attend Squadron Officer School, an in-residence educational program for U.S. Air Force captains, from 7 May – 21 June 2019. He has requested to take leave beginning on 1 May 2019.

¹ R.M.C. 905(c)(1).

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 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

Mr. al Baluchi has consented to waive the presence of Ms. Pradhan, Mr. Farley, and Capt Andreu during the 29 April – 3 May 2019 pretrial hearings. Other qualified counsel, *to wit*, James G. Connell, III and Lt Col Sterling Thomas, will be present during the 29 April – 3 May 2019 pretrial hearings.

6. Request for Oral Argument: The defense does not request oral argument.

7. Conference with Opposing Counsel: The government states its position as follows: “Providing the absence of counsel is with the consent of Mr. Ali, the Prosecution does not object.”

² Rule of Court 4.3.

³ R.M.C. 805(c).

⁴ R.C. 4.3.

8. 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 10th day of April, 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