

**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 624G(WBA)

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

19 April 2019

1. Timeliness: This motion is timely filed.

2. Relief Sought:

Mr. bin ‘Atash requests that the Commission permit the absence of Major Matthew H. Seeger from the 29 April – May 3 2019 pretrial hearings.

3. Burden of Proof:

As the moving party, the defense bears the burden of persuasion; the standard of proof is a preponderance of the evidence. R.M.C. 905(c)(1).

4. Facts:

a. The next Military Commission hearing is scheduled for 29 April – 3 May 2019. *See* AE 578F (ORD).

b. MAJ Matthew H. Seeger, USA, is a detailed military defense counsel for Mr. bin ‘Atash and an attorney of record. MAJ Seeger is needed to remain in the Nation Capital Region to support case-related work crucial to Mr. bin ‘Atash’s case.

c. The role of Detailed Military Counsel will be filled by Captain Simon M. Caine, USAF. *See* AE 004II (Notice of Detailing and Appearance of Defense Counsel).

d. In addition to Capt Simon M. Caine, three detailed counsel for Mr. bin ‘Atash will be present at the April 2019 hearings: Learned Counsel Cheryl T. Bormann, Mr. Edwin A. Perry, and Mr. William R. Montross Jr.

e. Mr. bin ‘Atash consents to MAJ Seeger’s absence during the 29 April – 3 May pre-trial hearings.

5. Law and Argument:

All Defense Counsel who have entered an appearance in a specific case should attend all sessions of that case before the Military Commission. Rules of Court (RC) 4.3.a. As long as Learned Counsel is present, other military or civilian detailed counsel may be absent from a military commission session with the permission of the military judge. R.M.C. 805(c); RC 4.3.b. The military judge may thus grant a motion by Defense Counsel to permit the absence of a particular counsel from a specific session, with the acknowledged consent of the client. RC 4.3.b.(1).

MAJ Seeger has entered an appearance on behalf of Mr. bin ‘Atash. Because MAJ Seeger is supporting case-related work crucial to Mr. bin ‘Atash’s case, Defense Counsel move this Commission to permit the absence of MAJ Seeger during the April 29 – May 3 pretrial hearings. Learned Counsel Ms. Bormann, Mr. Perry, and Mr. Montross will be present. Capt Caine, a military attorney detailed to the defense team representing Mr. bin ‘Atash, will also be entering an appearance during the 29 April – 3 May pre-trial hearings.

Defense Counsel have conferred with Mr. bin ‘Atash and he consents to MAJ Seeger’s absence.

Finally, as Mr. bin 'Atash will be represented by Learned Counsel, one military counsel, and two detailed civilian counsel, this Commission should also grant the motion and permit the absence of MAJ Seeger.

6. Oral Argument: None.

7. Witnesses: None.

8. Conference with Opposing Counsel: “Based on your representation that Major Seeger's absence will be with the consent of Mr. [b]in 'Attash [sic], the Prosecution has no objection.”

9. Attachment:

Certificate of Service (1 page).

10. Signatures:

/s/
CHERYL T. BORMANN
Learned Counsel

/s/
EDWIN A. PERRY
Detailed Defense Counsel

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

/s/
WILLIAM R. MONTROSS JR.
Detailed Defense Counsel

Attachment A

CERTIFICATE OF SERVICE

I certify that on 19 April 2019, I filed via email with the Trial Judiciary, AE 624G (WBA), Mr. bin 'Atash's Motion to Permit the Absence of Detailed Military Defense Counsel Pursuant to R.M.C. 805(c).

/s/

CHERYL T. BORMANN
Learned Counsel