

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

ABD AL HADI AL IRAQI

AE 102K

Defense Motion to Reconsider Order
Denying Mr. al-Tamir's Motion to Compel
Access to Counsel

25 September 2018

1. **Timeliness:**

This motion is timely filed pursuant to Military Commissions Trial Judiciary Rule of Court 3.7(c) and Rule of Military Commission (R.M.C.) 905(f).

2. **Relief Sought:**

Nashwan al-Tamir hereby respectfully requests that the Commission reconsider its ruling denying a motion to compel the Government to grant immediate access to counsel where he resides, or, in the alternative, abate all proceedings until the indefinite ban on access to defense counsel is lifted.

3. **Burden of Proof:**

As the moving party, the Defense has the burden of proof by a preponderance of the evidence.¹

4. **Facts:**

a) The Defense incorporates fully the facts in AE 102I as if set forth herein.

¹ R.M.C. 905(c)(1)-(2).

- b) On 12 July 2018, Mr. Al-Tamir, through Counsel, filed AE 102I requesting that this Military Commission reconsider its order denying Mr. al-Tamir's motion to compel access to counsel in his recovery facility.²
- c) Since that motion was filed, the Defense received a letter from Mr. al-Tamir on 21 September 2018 that describes accommodations made for non-governmental organizations as follows:

“The guards informed me yesterday to be moved for a meeting with ICRC delegates, but I declined and requested them to arrange a meeting with them in my room as was done last time. Eventually, they arranged for the meeting in the room and I met them this morning September 21. I met with ICRC doctor and their representative in GTMO.”

- d) On 24 September, this Commission heard testimony from the Senior Medical Officer (SMO) regarding Mr. al-Tamir's health. This testimony included the SMO's admission that Mr. al-Tamir's pain is still significant enough to merit the prescription of Valium and Percocet.³

5. **Law and Argument:**

Mr. al-Tamir incorporates by reference his arguments in AE 102I requesting that he granted immediate access to counsel in his recovery facility. Reconsideration of AE 102I is appropriate in this circumstance given the revelation that the ICRC representatives have been allowed access to Mr. al-Tamir in his recovery facility. “Generally, reconsideration should be limited to a change in facts or controlling law, to correct clear error, or prevent manifest injustice. Motions for

² AE 102I.

³ U.S. v. Abd Al Hadi Al Iraqi, unofficial transcript at 2109.

reconsideration are not appropriate to raise arguments that could have been, but were not, previously raised and arguments the Commission has previously rejected.”⁴

The importance of access to counsel cannot be overstated. Mr. al-Tamir’s medical status is clearly a matter of heated discussion before this commission, as has been made clear in a number of motions, the inability of Defense Counsel to meet with him to ascertain his medical status and discuss the myriad of legal matters this Commission would like to proceed with has severely hampered Counsel’s ability to ensure they adequately represent Mr. al-Tamir’s interest.⁵

It is now clear that the International Committee of the Red Cross is being allowed access to Mr. al-Tamir in his recovery facility. If accommodation can be made for individuals who are not his attorneys to visit with Mr. al-Tamir in his recovery facility, then it is imperative that the same accommodation be made for Mr. al-Tamir’s defense team. Failure to allow the members of the defense team, who have the appropriate security clearances and have been read into the relevant programs, to meet with Mr. al-Tamir in his recovery facility will only cause further, irreparable harm to these proceedings.⁶ It is now clear that there is no necessity or reasonable basis for denying Mr. al-Tamir the opportunity to consult with counsel in his recovery facility. Mr. al-Tamir respectfully requests that he be allowed to meet with his defense team in his recovery facility, a step that will facilitate his informed participation in these proceedings.

6. **Oral Argument:**

Oral argument is not requested.

7. **Witnesses and Evidence:**

If oral argument is granted, the Defense respectfully reserves the right to call witnesses and

⁴ AE 070KKK – RULING Defense Motion to Reconsider AE 070I Ruling Government Motion To Conduct an Oral Deposition Pursuant to Rule for Military Commission 702 at 1-2; R.M.C. 905(f).

⁵ See AE 124H Defense Motion to Continue September hearing.

⁶ See U.S. v. Abd Al Hadi Al Iraqi, unofficial transcript at 24 September; see also, AE 074C.

submit additional evidence in support of this motion.

8. **Conference with Opposing Party:**

The Defense has conferenced with the Government. The Government objects to the relief sought.

9. **Attachments**

A. Certificate of Service, dated 25 September 2018.

Respectfully Submitted,

//s//

ADAM THURSCHELL
Acting Lead Defense Counsel

ATTACHMENT A

Filed with TJ
25 September 2018

Appellate Exhibit 102K (al Hadi)
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CERTIFICATE OF SERVICE

I certify that on **25 September 2018**, I filed **AE 102K Defense Motion to Reconsider Order Denying Mr. al-Tamir's Motion to Compel Access to Counsel** with the Office of Military Commissions Trial Judiciary and it on Government counsel of record.

//s//

Adam Thurschwell
Acting Lead Defense Counsel