

UNCLASSIFIED//FOR PUBLIC RELEASE
**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA v. ABD AL HADI AL-IRAQI	AE 132A Defense Motion Requesting Permission for Counsel Absence From Military Commission Hearing Session IAW RMC 805(c) 7 December 2018
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1. Timeliness.

This motion is timely filed pursuant to Military Commissions Trial Judiciary Rule of Court ("RC") 3.7.c.(1).

2. Relief Requested.

In accordance with Rule for Military Commission ("R.M.C.") 805(c), the Defense requests permission from this Commission to allow Maj Yolanda Miller to be absent from the 7-14 January 2019 session.¹

3. Overview.

R.C.M. 805(c) allows detailed counsel to be absent from court sessions, with the permission of the Military Judge, provided at least one qualified counsel is present. Mr. al-Tamir is currently represented by three counsel of record: Ms. Susan Hensler, Mr. Adam Thurschwell, and Maj Yolanda Miller. Additionally, LT Dahoud Askar and LT Charles Ball have been assigned to Mr. al-Tamir's case, have received their TS/SCI

¹ Maj Miller submitted a request to withdraw from the above captioned case on 9 November 2018. The client consented to Maj Miller's withdrawal/excusals on the record. Tr. at 2298. The Defense files this request for counsel's absence pending the Commission's ruling regarding the need for her immediate withdrawal/excusals from the case due to ongoing issues.

clearances and anticipate making an appearance on the record in January, pending additional special access clearance.

Maj Miller has a series of medical appointments to attend to during January 2019, all of which require her presence in the National Capital Region (NCR) and include coordination of travel for a family member. She is not scheduled to argue any motions during the January 2019 session and has completed case turnover with her replacement LT Ball² and other attorneys on the team. Accordingly, the Defense requests permission for Maj Miller to be absent from the January 2019 sessions.

4. Burden of Proof.

As the moving party, the Defense has the burden to demonstrate that the requested relief is warranted by a preponderance of the evidence.³

5. Facts.

a. The January session is scheduled for 7-14 January 2019.⁴ The current docketing order was published on 29 November 2018. Major Miller is scheduled for a series of medical appointments during the month of January (including during the scheduled hearing session), which require her presence in the NCR and prior coordination of travel of a family member to assist Maj Miller with her appointments.

b. Mr. al-Tamir waives the presence of Maj Miller and executed the attached written waiver.⁵

c. On 19 November 2018, Navy LT Charles Ball PCS'd to the Military Commissions Defense Organization and in-processed with Mr. al-Tamir's defense team. He

² LT Ball was detailed to Mr. al-Tamir's case, in part, to facilitate the excusal of Maj Miller.

³ R.M.C. 905(c).

⁴ AE 132, Docketing Order, dated 29 November 2018.

⁵ Attachment B.

was assigned to the case the next day.

d. On 29 November 2018, LT Ball received his TS/SCI read-on and has since submitted the required paperwork for his additional special access clearance. On 29 November 2018, Navy LT Dahoud Askar also received his TS/SCI security clearance and has a read-on scheduled for 7 December 2018.

e. LT Ball and LT Askar are scheduled to meet Mr. al-Tamir in person in December 2018 and appear before the commission in January 2019, assuming all clearances are finalized. Ms. Susan Hensler will also be present at the January 2019 session.

f. Major Miller is not scheduled to argue any motions currently docketed via AE 132. Major Miller completed case turnover and has provided all attorneys with preparation materials to assist with the January docket.

6. Law and Argument.

Rule for Military Commission 805(c) states that, “[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.” Rule of Court 4.3 provides that Defense counsel who has entered an appearance in a specific case should attend all sessions of the case before the Commission unless the Military Judge grants a Defense motion to be absent from a particular session with an on-the-record waiver of the presence of counsel.⁶

Mr. al-Tamir wishes to waive the appearance of Maj Miller at the January session. In the absence of Maj Miller, Mr. al-Tamir will be represented by at least one qualified counsel.

⁶ Rule for Court 4.3(b)(1).

Ms. Susan Hensler is now lead counsel and will be present at the January session. It is also anticipated that LT Ball and LT Askar will be present at the session. Being that Mr. al-Tamir will have at least one qualified counsel at the January session, the requirements of R.M.C. 805(c) will be met.

7. Conclusion.

In accordance with R.M.C. 805(c), the Defense respectfully requests this Commission permit Major Yolanda Miller's absence from the 7-14 January session.

8. Oral Argument.

The Defense does not request oral argument.

9. Witnesses and Evidence.

None.

10. Certificate of Conference.

The Defense has conferred with the Government concerning this motion. The Government objects to the relief sought to the extent counsel's absence may adversely impact the docket or scheduled hearing. Otherwise, the Government defers to the military judge.

11. Additional Information.

None.

12. List of Attachments.

- A. Certificate of Service, dated 7 December 2018.
- B. Mr. Nashwan al-Tamir's signed waiver, dated 4 December 2018.

Respectfully submitted,

//s//

SUSAN HENSLER
Detailed Defense Counsel

//s//

ADAM THURSCHELL
Detailed Defense Counsel

//s//

YOLANDA MILLER
Maj, USAF
Detailed Defense Counsel

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on **7 December 2018**, I caused **AE 132A Defense Motion** Requesting Permission for Counsel Absence From Military Commission Hearing Session IAW RMC 805(c) to be filed with the Office of the Military Commissions Trial Judiciary and I served a copy on Government counsel of record.

//s//

YOLANDA MILLER

Maj, USAF

Detailed Defense Counsel

ATTACHMENT B

Waiver of Counsel Appearance

I, Nashwan al-Tamir, inform the Commission that I waive the appearance of Maj Yolanda Miller during the amended 7-14 January 2019 hearings. I understand that I have the right to have Maj Miller appear and I voluntarily waive that right.

I will be represented by more than one qualified counsel during those sessions. I do not object to Maj Miller's absence and ask that the Military Judge authorize her absence from these sessions according to R.M.C. 805(c).



4 Dec 2018
Date