

UNCLASSIFIED//FOR PUBLIC RELEASE

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

UNITED STATES OF AMERICA v. ABD AL HADI AL IRAQI	AE 132C Defense Motion Requesting Permission for Counsel Absence From Military Commission Hearing Session IAW RMC 805(c) 14 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 the Commission permit Adam Thurschwell to be absent from the 7 January through 14 January 2019 session.

3. Overview:

R.M.C. 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. In accordance with this rule the Defense requests the Commission permit Adam Thurschwell to be absent from the 7 – 14 January 2019 session. In Mr. Thurschwell’s absence, Mr. al-Tamir expects to be represented by three counsel at the hearing. Mr. al-Tamir has consented to Mr. Thurschwell’s absence.

4. Burden of Proof:

As the moving party, the Defense has the burden to demonstrate by a preponderance of

the evidence that the requested relief is warranted.¹

5. Facts:

- a. The January session is scheduled for 7-14 January 2019.²
- b. Mr. al-Tamir has waived the presence of Mr. Thurschwell. His signed waiver form is attached as Attachment B.
- c. On 19 November 2018, Navy LT Charles Ball joined the Military Commissions Defense Organization and was assigned to Mr. al-Tamir's defense team the next day.
- d. On 29 November 2018, LT Ball received his TS/SCI read-on and has 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 also submitted papers for his special access read-on.
- 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. Ms. Susan Hensler will also be present at the January 2019 session. They will be read on to the special access programs prior to meeting with Mr. al-Tamir.
- f. Mr. Thurschwell has completed his turnover of all team-related duties to Ms. Hensler, including preparation for motions he was previously scheduled to argue. Mr. Thurschwell is not scheduled to argue any motions at the January hearing.

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

¹ R.M.C. 905(c)

² AE 132, Docketing Order, dated 29 November 2018.

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.³

Mr. al-Tamir is currently represented by three counsel of record: Ms. Susan Hensler, Mr. Adam Thurschwell, and Maj Yolanda Miller. Major Miller has been granted permission to be absent from the January hearing. However, LT Dahoud Askar and LT Charles Ball have been assigned to Mr. al-Tamir’s case and have received their TS/SCI clearances. They are scheduled to meet with the client during the week of December 17 and anticipate being read on to the required Special Access Programs before meeting him. They are also scheduled to appear and argue motions on the record in January. If this request is granted, Mr. al-Tamir thus anticipates being represented by Ms. Hensler, LT Ball and LT Askar at the hearing.

Mr. Thurschwell has completed the turnover of all leadership, litigation and other team duties to Ms. Hensler. He will not be arguing any motions at the January hearing. He makes this request based on the issues set out in AE 007Z Defense Notice and Request For Approval of Excusal of Defense Counsel, Attachment B, ¶¶ 7 – 15 (*ex parte*). The issues described in paragraphs 7 – 14 have become more pressing since AE 007Z was filed, and the result of the test discussed in paragraph 15 was positive.

Finally, Mr. al-Tamir has consented to Mr. Thurschwell’s absence. *See* Attachment B.

Conclusion

In accordance with RMC 805(c), the Defense respectfully requests this Commission permit Mr. Thurschwell’s absence from the January 2019 session.

³ RC 4.3(b)(1).

7. Oral Argument:

The Defense does not request oral argument.

8. Witnesses and Evidence:

None.

9. Certificate of Conference:

The Defense has conferred with the Government concerning this motion and the Government states: "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."

10. Additional Information:

None.

11. List of Attachments:

- A. Certificate of Service, dated 14 December 2018.
- B. Signed Waiver of Counsel Appearance form, dated 3 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

Filed with TJ
14 December 2018

Appellate Exhibit 132C (al Hadi)
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CERTIFICATE OF SERVICE

I certify that on **14 December 2018**, I caused **AE 132C 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//

SUSAN HENSLER

Detailed Defense Counsel

ATTACHMENT B

Filed with TJ
14 December 2018

Appellate Exhibit 132C (al Hadi)
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Waiver of Counsel Appearance

I, Nashwan al-Tamir, inform the court that I waive the appearance of Adam Thurschwell during the hearings from 7 through 18 January 2019. I understand that I have the right to have Mr. Thurschwell's 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 Mr. Thurschwell's absence and ask that the Military Judge authorize his absence from these sessions according to R.M.C. 805(c).



Date: 3 Dec. 2018

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LAWYER-CLIENT PRIVILEGE