

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

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>ABD AL HADI AL IRAQI</p>	<p>AE 228K</p> <p>Unopposed Defense Motion For Leave to File Out of Time A Motion to Continue the February 2023 Hearing</p> <p>2 February 2023</p>
--	---

1. Timeliness.

This unopposed motion is filed timely under Trial Judiciary Rule of Court 3.7.c.(4).

2. Relief Sought.

Nashwan al-Tamir respectfully asks the military commission to grant leave to file out of time a request to continue the February 2023 session of the military commission.

3. Overview.

The Defense asks this commission to file a motion to continue the February 2023 session of the military commission. Good cause exists to grant this motion and allow the defense the opportunity to argue that the February hearing should not proceed. JTF unexpectedly canceled all of Mr. al-Tamir's meetings with his counsel preceding the commission's due date for motions to continue the hearing due to a COVID 19 outbreak at Camp 5. Defense counsel was not in a position to make this request until meeting with Mr. al-Tamir in person over the past few days, his first attorney-client visits since surgery and the outbreak of illness in the camp.

4. Burden of Proof.

As the moving party, the Defense has the burden of persuasion.

5. Facts.

On 17 January 2023, this commission issued the docketing order for the February hearings beginning 13 February 2023.¹ That order established a deadline of 23 January 2023 for motions to cancel the hearing.

Also on 17 January 2023, lead defense counsel arrived in Guantanamo Bay for approved client visits from 18-20 January 2023. The scheduled visits were to be the first attorney-client visits with Mr. al-Tamir since his fifth spinal surgery on 12 November 2022.

On 18 January 2023, all approved attorney-client visits were abruptly cancelled due to an outbreak of Covid-19 in Camp 5. Visits for 19-20 January 2023 were also subsequently cancelled. JTF declined to provide specific information about the extent of the outbreak. Defense counsel learned from other defense teams that numerous other client visits were also cancelled. Counsel had little to no direct information about the extent of the outbreak and for how long JTF would prohibit client visits.

On 28 January 2023, another noticed counsel arrived in Guantanamo Bay for attorney-client visits. That attorney met with Mr. al-Tamir for much of the day on 29 January 2023, several hours on 30 January 2023, and several hours on 1 February 2023.

6. Law and Argument.

Good cause exists to permit the defense to file a motion to continue the hearing out of time. The basis for filing the motion did not arise until after the deadline had passed.

On the same date that the commission alerted the parties to the deadline for filing motions to continue the hearing, lead counsel was traveling to Guantanamo Bay to meet with Mr.

¹ See AE 228.

al-Tamir and prepare for the hearings. But, as counsel was preparing for their first meeting, JTF abruptly canceled the meeting without explanation. Counsel later learned that there was a Covid-19 outbreak in Camp 5. Counsel was unable to meet with Mr. al-Tamir until 29 January 2023, to either professionally assess Mr. al-Tamir's ability to concentrate and engage in complex discussions or discuss strategic issues relating to the hearing.

7. Conclusion.

Mr. al-Tamir asks the commission to permit him to file out of time a motion to cancel and/or continue the February 2023 session of the military commission.

8. Oral Argument.

The Defense does not request oral argument.

9. Conference with Opposing Counsel.

The prosecution does not object to the relief requested in this motion. The government has also informed defense counsel that it does not believe this motion is barred by the pretrial agreement.

10. Attachments.

- A. Certificate of Service, dated 2 February 2023.
- B. Proposed Order.

Respectfully Submitted,

//s//
SUSAN HENSLER
Lead Defense Counsel

//s//
MORGAN N. ENGLING
MAJ, USAF
Detailed Defense Counsel

//s//
KARIN KISSIAH
Detailed Defense Counsel

//s//
JESSICA CASCIOLA
CPT, USA
Detailed Defense Counsel

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on **2 February 2023**, I filed **AE 228K, Unopposed Defense Motion** for Leave to File Out of Time A Motion to Continue the February 2023 Hearing with the Office of Military Commissions Trial Judiciary and I served a copy on Government counsel on record.

//s//
JESSICA CASCIOLA
CPT, USA
Detailed Defense Counsel

ATTACHMENT B

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

<p>UNITED STATES</p> <p>v.</p> <p>ABD AL HADI AL IRAQI</p>	<p>AE 228_</p> <p>RULING</p> <p>Unopposed Defense Motion For Leave to File Out of Time A Motion to Continue the February 2023 Hearing</p> <p>[Date]</p>
---	---

1. The Unopposed Defense Motion For Leave to File Out of Time A Motion to Continue the February 2023 Hearing, AE 228K, is **GRANTED**.

2. Defense counsel is permitted to file its motion no later than 3 February 2023.

3. Defense counsel should use the following AE number: _____.

So **ORDERED** this ____ day of February 2023.

MARK F. ROSENOW, Lt Col, USAF
Military Judge
Military Commissions Trial Judiciary