

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

UNITED STATES OF AMERICA v. ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI	AE 216H RULING DEFENSE EMERGENCY MOTION TO REVIEW BG MARTINS' REPRESENTATION OF THE GOVERNMENT IN THIS CASE 13 MAY 2015
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1. On 10 February 2014, the Defense requested the Commission to disqualify Brigadier General (BG) Martins as Chief Prosecutor to achieve the parity requirement enacted by Congress in the 2014 National Defense Authorization Act. (AE 216 at 1). The parity requirement requires the Chief Defense Counsel to be the same grade as the Chief Prosecutor. The Government submitted three temporary waivers of the parity requirement. (AEs 216A, 216D, 216E). The most recent extension indicated “a joint selection board [was convened] on March 4, 2015, to identify a well-qualified candidate to serve as the Chief Defense Counsel.” (AE 216E).

2. The Commission ordered the Government to confer with the Defense to determine if the issues raised by the Defense in AE 216 and AE 216C were moot in light of the joint selection board. (AE 216F). On 1 May 2015, the Government provided an updated status. (AE 216G). The Government informed the Commission that the “Joint Selection Board” had convened and selected a nominee. The Government indicated the nomination is being reviewed by the Chairman of the Joints Chiefs of Staff. If the Chairman concurs, he will forward the nomination to the Secretary of Defense, who, if he concurs, will forward the nomination to the President. If the President approves of the nomination, he will forward it to the United States Senate for confirmation. The new Chief Defense Counsel is expected to assume his or her duties in August 2015.

3. With the submission of third temporary waiver, the selection of a nominee by the Joint Selection Board, and the prospect that a Chief Defense Counsel of an equal grade to the Chief Prosecutor will be in place before the end of the current temporary waiver, the Commission finds AE 216 and AE 216C are **MOOT**.

So **ORDERED** this 13th day of May, 2015.

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VANCE H. SPATH, Colonel, USAF
Military Judge
Military Commissions Trial Judiciary