

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

UNITED STATES OF AMERICA	AE 346C
v.	RULING
ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI	DEFENSE MOTION TO PRECLUDE THE UNITED STATES AIR FORCE FROM TRANSFERRING LT COL ██████████ FROM THE OFFICE OF THE CHIEF DEFENSE COUNSEL TO ANOTHER, UNRELATED ASSIGNMENT
	16 JULY 2015

1. The Accused is charged with multiple offenses in violation of the Military Commissions Act of 2009, 10 U.S.C. §§ 948 *et seq.*, Pub. L. 111-84, 123 Stat. 2574 (Oct. 28, 2009). He was arraigned on 9 November 2011.

2. On 12 June 2015, the Defense filed AE 346¹ requesting this Commission issue an Order to the United States Air Force precluding the Air Force from reassigning Lieutenant Colonel (Lt Col) ██████████ from The Office of The Chief Defense Counsel until Lt Col ██████████ work on this case is concluded. *AE 346* at 1. The Defense avers that Lt Col ██████████ is a capable and experienced investigator and her departure from the defense team will have a big impact. The Government filed AE 346A² on 26 June 2015, requesting this Commission deny the Defense request. *AE 346A* at 1. The Government is not opposed to Lt Col ██████████ remaining on the defense team, but the Government opposes the requested relief. The Government urges the Commission to require the Defense to follow the Regulation for Trial by Military Commission to secure necessary resources. The Government recites the substantial resources provided to the Defense over the last five years and notes that Lt Col ██████████ departure was predictable, and,

¹ Defense Motion to Preclude the United States Air Force From Transferring Lt Col ██████████ From the Office of the Chief Defense Counsel to Another, Unrelated Assignment, filed June 12, 2015.

² Government Response to Defense Motion to Preclude the United States Air Force From Transferring Lt Col ██████████ From the Office of the Chief Defense Counsel to Another, Unrelated Assignment, filed June 26, 2015.

with proper planning, the impact of her departure could have been mitigated. On 2 July 2015, the Defense replied in AE 346B,³ providing some additional facts and claiming the Government simply does not understand the burdens on a Defense team in a capital case. Specifically, the Defense avers, the United States Air Force has denied Lt Col [REDACTED] oral request to rescind her reassignment orders, and the Convening Authority has not granted additional hours to another long-serving Defense investigator, Mr. Robert Lessemun.⁴ *See AE 346B* at 1. From the pleadings on this issue, it is clear to the Commission that the Defense has not requested the Chief Defense Counsel or the Convening Authority to intervene with the appropriate Air Force officials to rescind Lt Col [REDACTED] orders.

3. The Commission has no authority to intrude in the Air Force's management of its personnel. If the Defense would like to keep Lt Col [REDACTED] as a member of the Defense team or get a replacement, the Defense should coordinate with the Chief Defense Counsel⁵ and the Convening Authority.⁶ Accordingly, AE 346 is **DENIED**.

So **ORDERED** this 16th day of July, 2015.

//s//

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

³ Defense Reply to Government Response to Defense Motion to Preclude the United States Air Force From Transferring Lt Col [REDACTED] From the Office of the Chief Defense Counsel to Another, Unrelated Assignment, filed July 2, 2015.

⁴ The Defense has submitted additional information to the Convening Authority on the necessity to employ Mr. Lessemun and asked the Convening Authority to reconsider his decision. *See AE 346* at n. 1.

⁵ *See Regulation for Trial by Military Commission (R.T.M.C.)*, section 9-4 (2011 ed.)

⁶ *See R.T.M.C.*, section 2-3.a.10.