

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

UNITED STATES OF AMERICA v. ABD AL-RAHIM HUSSEIN MUHAMMED ABDU AL-NASHIRI	AE 389H Defense Brief Regarding the Proceedings of the Military Commissions in the Absence of Learned Counsel During the 30 October – 17 November 2017 Session 31 October 2017
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1. **Timeliness:** This motion is filed within the timeframe established by the Military Judge upon his order that Detailed Military Defense Counsel file this pleading by 1600 on 31 October 2017.
2. **Proposed Course of Proceedings:** Detailed Military Defense Counsel is not learned in the law of capital litigation and is therefore not qualified to proceed in the absence of learned counsel under the applicable rules.

The Defense renews its filing in AE 389: Defense Motion to Abate Proceedings. Detailed Military Defense Counsel believes that is all he can do as he is not learned counsel.

Rule for Military Commissions (“R.M.C.”) 506(b), promulgated by the Secretary of Defense, implements the statutory right to Mr. Al-Nashiri to be represented by a counsel learned in the law of capital litigation. The Secretary of Defense, when promulgating this rule, purposefully left out the phrase “to the extent practicable”, contained in 10 U.S.C. § 949a(b)(2)(C)(ii). This is not a conflict between the law and the rule, and is a permissible use of the authority of the Secretary of Defense to require that Mr. Al-Nashiri is represented by learned counsel at all stages of the proceedings. This change is evidence of the

Secretary's conclusion that it is never impracticable for learned counsel to represent a death penalty defendant.

Detailed Military Defense Counsel is not learned in the law of capital litigation. For the reasons stated above, he is not qualified to assist, advise, or represent Mr. Al-Nashiri in his capital trial. To proceed while not qualified would be a violation of Detailed Defense Counsel's ethical and moral mandate to provide competent representation to Mr. Al-Nashiri and would wrongly facilitate the denial of his statutory right as implemented by the Secretary of Defense. Detailed Defense Counsel will be present in the courtroom for all sessions of this case convened by the Military Judge. If and when he is ordered to participate in proceedings that could result in the conviction and execution of Mr. Al-Nashiri, Detailed Military Defense Counsel will not participate.

3. List of Attachments:

A. Certificate of Service, dated 31 October 2017

Respectfully submitted,

/s/ Alaric Piette
ALARIC PIETTE
LT, JAGC, USN
Detailed Defense Counsel

ATTACHMENT

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CERTIFICATE OF SERVICE

I certify that on the 31st day of October 2017, I filed the foregoing with the Office of Military Commissions Trial Judiciary and served a copy on all counsel of record.

/s/ Alaric Piette
ALARIC PIETTE
LT, JAGC, USN
Detailed Defense Counsel