

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

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI</p>	<p>AE 456C</p> <p>ORDER</p> <p>Defense Motion to Abate the Proceedings Pending Appointment of a Chief Prosecutor</p> <p>22 October 2021</p>
--	---

1. Procedural Background.

a. On 4 October 2021, the Defense filed AE 456, moving the Commission to abate the proceedings until such time as a judge advocate is appointed as Chief Prosecutor in accordance with 10 U.S.C. § 948k(a)(4) and Regulation for Trial by Military Commissions (R.T.M.C.), para. 8-2(b), following the retirement of the former Chief Prosecutor, Brigadier General (BG) Mark S. Martins, USA. The Defense argued that the civilian Deputy Chief Prosecutor lacks the requisite qualifications to perform the duties of Chief Prosecutor since he is not a judge advocate.

b. On 18 October 2021 in AE 456A, the Government responded in opposition to the motion. The Government attached to their pleading a document signed by BG Martins on 30 September 2021 designating Colonel (COL) George C. Kraehe, Judge Advocate, USA, as a Deputy Chief Prosecutor and Acting Chief Prosecutor in accordance with R.T.M.C., para. 8-3.

c. On 21 October 2021, the Defense replied in AE 456B, expanding the scope of the issue initially presented in AE 456. The Defense now argues that COL Kraehe is not qualified to serve as the Chief Prosecutor, citing the requirement contained in the 2014 National Defense

Authorization Act (NDAA)¹ that the Chief Prosecutor and Chief Defense Counsel “shall have the same grade.” The Defense draws the Commission’s attention to COL Kraehe’s inferior rank to the current Chief Defense Counsel, Brigadier General John Baker, USMC. The Defense also suggests that BG Martins was not empowered to designate an “Acting Chief Prosecutor.”

2. Order.

a. In light of the Defense’s assertion in their reply brief of an alternate theory supporting the motion to abate, the Commission finds it necessary to receive an additional pleading from the Government addressing the newly raised issues. The Government is hereby **ORDERED** to submit a responsive pleading addressing the additional arguments raised in the Defense’s reply brief. The Government should include in their response any available information related to the potential appointment of a permanent Chief Prosecutor or, if applicable, any intent by the Secretary of Defense to waive the “same grade” requirement contained in the 2014 NDAA.

b. The Prosecution’s additional pleading is due to the Commission **not later than 29 October 2021**, unless an extension of time is granted. The Defense may submit an additional reply brief **not later than 7 days** following receipt of the Government’s response.

So **ORDERED** this 22nd day of October, 2021.

//s//
LANNY J. ACOSTA, JR.
COL, JA, USA
Military Judge

¹ National Defense Authorization Act of 2014, Pub. L. No. 113-66, § 1037, 127 Stat. 854 (2013).