

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,
Petitioner

PETITIONER'S REPLY BRIEF

v.

Case No. ARMY MISC. 20250182

Lieutenant Colonel (O-5)
JONES, PAMELA L.,
Military Judge,
Respondent

Sergeant First Class (E-6)
STARR, BRYAN D.,
U.S. Army
Real Party in Interest

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

COMES NOW the United States, by and through undersigned appellate government counsel, pursuant to the Joint Rules of Appellate Procedure for the Courts of Criminal Appeals [J.R.A.P. R.], (1 Jan. 2019) 19(f)(1), and seeks consideration of petitioner's reply to the real party in interest's answer.

Relevant Facts and History of the Case

The government adopts the relevant facts from its original brief.

Statement of the Issue

The government adopts the statement of the issue from its original brief.

Jurisdictional Basis for Relief Sought

The government adopts its jurisdictional basis from its original brief.

Specific Relief Requested

The government adopts its requested relief from its original brief.

Reasons for Granting the Requested Relief

1. This is not an internal dispute between government entities, it is a question of statutory interpretation and congressional intent.

Respondent seeks to reframe the issue before the court as an internal dispute that does not require this court's intervention. The government respectfully disagrees. Although respondent is correct that the United States or the government could fairly include different entities, such as a magistrate, military judge, or a convening authority, the issue is not as simple as an internal dispute to be worked out amongst the separate entities. Rather, it is one of statutory interpretation.

Here, the military judge could have asserted her own authority to determine that the Article 32, preliminary hearing, was required to be reopened because it failed to substantially comply with the rules. Rules for Courts-Martial [R.C.M.] 905(b)(2). Had she done so, perhaps there would be no issue before this court. However, she did not. Instead, she relied on her interpretation of the R.C.M. to determine that a convening authority had the discretion to unilaterally reopen the Article 32 preliminary hearing—regardless of his rationale. This interpretation redistributed authority that seemingly rested with the special trial counsel referral

authority. R.C.M. 405(c)(2) (“If a special trial counsel determines a previous preliminary hearing is required to be reopened, the convening authority shall direct the preliminary hearing to be reopened.”). It is “in aid of” this court’s jurisdiction to provide its interpretation of this statute, to ensure a uniform interpretation across trial court, and to give due weight to congressional intent.

2. Congress’s intent is clear—it sought to empower independent investigators through the Office of the Special Trial Counsel [OSTC].

Respondent points to the lack of legislative history in the government’s original brief. (Respondent’s Br. 13). The government maintains that the plain language of the statute and promulgated rules is clear and unambiguous. However, to the extent that this court relies on congressional intent, that also supports the government’s position.

In reference to the creation of the OSTC, Senator Kirsten Gillibrand stated:

The change we must make--the change that survivors and veterans have asked for--is to remove all serious nonmilitary crimes from the chain of command. Commanders are not lawyers or judges, and they don’t have training or expertise necessary to make those complex legal decisions.
...

Anyone who looks at the system sees a system where the commander is still in charge, where their influence cannot be overlooked. There is no way for the prosecutors to be or to be seen to be independent under that system. There will be no improvement in trust or, necessarily, in the results.

167 Cong. Rec. S 9104 (13 Dec. 2021) (statement of Sen. Gillibrand).

Senator Jack Reed from Rhode Island, echoed those sentiments:

Our bill removes all meaningful prosecutorial authority from the military chain of command for the series of sexual assault offenses under the UCMJ, as well as for other offenses, including the wrongful distribution of intimate visual images, domestic violence, stalking, retaliation, murder, manslaughter, kidnapping, and child pornography.

Our bill creates special trial counsel, who are highly specialized, independent prosecutors outside the chain of command of the victims and the accused. They will have exclusive, binding, and final decision-making authority over whether to prosecute these crimes.

Under our bill, no commander will be able to overrule the binding decision of a special trial counsel to prosecute or not prosecute a case. Similarly, our bill ensures that the special trial counsel have the exclusive authority to withdraw or dismiss charges or specifications, removing that power from commanders.

167 Cong. Rec. S 9104 (13 Dec. 2021) (statement of Sen. Reed).

Representative Adriano Espaillat, New York, had this to say:

For the first time, the NDAA establishes the Office of the Special Trial Counsel which empowers and requires independent investigators to investigate allegations. That means for the first time, the NDAA takes the authority to prosecute sexual assault and harassment away from the military and gives it to independent military prosecutors. . . . With the passage of this year's NDAA, survivors of sexual assault will finally be guaranteed an independent military attorney to decide whether to prosecute and make other key, binding decisions in these cases--also ensuring that domestic violence, stalking, murder, manslaughter, kidnapping, and other special victim offenses are taken out of the chain of command.

167 Cong. Rec. E 1390 (23 Dec. 2021) (statement of Rep. Espaillat).

Although a writ for extraordinary relief is a “drastic instrument which should be invoked only in truly extraordinary situations[.]” *United States v. Howell*, 75 M.J. 386, 390 (C.A.A.F. 2016), a military judge’s inadvertent divergence from

congressional intent is such a situation. Regardless of the outcome, this court should address this important issue to ensure uniformity and clarity with regard to newly created authorities in our military justice system.

Conclusion

WHEREFORE, the United States respectfully asks this honorable court grant the petition.




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RICHARD E. GORINI
COL, JA
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CERTIFICATE OF SERVICE, U.S. v. STARR (Misc 20250182)

I certify that a copy of the foregoing was sent via electronic submission to the Defense Appellate Division at *usarmy.pentagon.hqda-otjag.mbx.dad-accaservice@mail.mil* on the 28th day of April, 2025.



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