

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

|                          |   |                        |
|--------------------------|---|------------------------|
| UNITED STATES,           | ) | Misc. Dkt. No. 2009-18 |
| Petitioner               | ) |                        |
|                          | ) |                        |
| v.                       | ) |                        |
|                          | ) |                        |
| Lieutenant Colonel (O-5) | ) |                        |
| VANCE H. SPATH,          | ) |                        |
| USAF,                    | ) | ORDER                  |
| Respondent               | ) |                        |
|                          | ) |                        |
| &                        | ) |                        |
|                          | ) |                        |
| Senior Airman (E-4)      | ) |                        |
| NICOLE A. ANDERSON,      | ) |                        |
| USAF,                    | ) |                        |
| Real Party In Interest   | ) | Special Panel          |

On 18 December 2009, counsel for the Petitioner filed a Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, requesting this Court order the military judge to withdraw the indefinite continuance and schedule the case for trial at the earliest possible date.

Additionally, on 18 December 2009, the United States filed a Motion to Submit Documents in connection with the above-referenced Petition for Extraordinary Relief.

Further, on 18 December 2009, the Real Party in Interest Senior Airman (SrA) Nicole A. Anderson, by and through her counsel, filed a Motion to Submit Documents in response to the above-referenced Petition for Extraordinary Relief.

Accordingly, it is by the Court on this 22nd day of January, 2010,

**ORDERED:**

That the Petitioner’s Motion to Submit Documents is hereby **GRANTED**.

That the Real Party in Interest SrA Anderson’s Motion to Submit Documents is hereby **GRANTED**.

**IT IS FURTHER ORDERED:**

That pursuant to Rule for Courts-Martial (R.C.M.) 906(b)(1), the military judge has the authority to grant a continuance and such a continuance may be for as long and as often as is just. Whether a request for a continuance should be granted is a matter within the discretion of the military judge. R.C.M. 906(b)(1), Discussion.

The military judge in the case at hand granted a continuance until such time as the Court of Appeals for the Armed Forces (C.A.A.F.) acts/decides whether to grant the petition for review of the decision issued by this Court. Pursuant to R.C.M. 908(c)(3), should C.A.A.F. grant such petition for review, that Court could order the proceedings stayed pending its decision on the petition for review. The military judge noted this rule in granting the continuance in the case at hand. We conclude the military judge did not abuse his discretion in granting such a continuance.

Additionally, we note R.C.M. 908(c)(3) provides: “Unless the case is reviewed by [C.A.A.F.], it shall be returned to the military judge.” Consistent with this rule, we conclude it was appropriate to continue such case until such time as C.A.A.F. decides whether to grant review.

Finally, we conclude the matter is not appropriate for issuance of a writ of mandamus pursuant to The All Writs Act, 28 U.S.C. Section 1651. Therefore the Petition for Extraordinary Relief in the Nature of a Writ of Mandamus is hereby **DENIED.**

FOR THE COURT

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over the seal and extends to the right.

STEVEN LUCAS, YA-02, DAF  
Clerk of the Court