

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	<b>Misc. Dkt. No. 2011-06</b>
<b>Respondent</b>	)	
	)	
v.	)	
	)	<b>ORDER</b>
<b>Staff Sergeant (E-5)</b>	)	
<b>NICHOLAS R. CRON,</b>	)	
<b>USAF,</b>	)	
<b>Petitioner</b>	)	<b>Panel No. 1</b>

On 24 March 2011, the petitioner’s squadron commander preferred charges alleging premeditated murder, conspiracy to commit premeditated murder, and obstruction of justice in violation of Articles 81, 118, and 134, UCMJ, 10 U.S.C. §§ 881, 918, and 934. The Article 32, UCMJ, hearing is scheduled for 30 August 2011. The petitioner requested appointment of a confidential expert consultant to provide assistance in translating statements of potential government witnesses from Portuguese to English. On 11 May 2011, the special court-martial convening authority denied the request based on lack of sufficient justification but invited submission of additional matters that might support the request. On 23 June 2011, the petitioner petitioned this Court for extraordinary relief in the nature of a writ of mandamus or, alternatively, a writ of prohibition abating the proceedings until appointment of the requested expert assistance. The government opposes the requested relief in its response to an order to show cause filed on 29 July 2011. The petitioner submitted additional matters in support of his petition on 2 August, and the government submitted additional matters on 5 and 8 August 2011.

The All Writs Act authorizes “all courts established by Act of Congress [to] issue all writs necessary or appropriate in aid of their respective jurisdictions.” 28 U.S.C. § 1651(a). The Act requires two separate determinations: (1) whether the requested writ is in aid of its existing statutory jurisdiction; and (2) whether the requested writ is necessary or appropriate. See *Denedo v. United States*, 66 M.J. 114, 120 (C.A.A.F. 2008) (citing *Loving v. United States*, 62 M.J. 235, 245-246 (C.A.A.F. 2005); *Clinton v. Goldsmith*, 526 U.S. 529, 534 (1999)), *aff’d*, 129 S. Ct. 2213 (2009). “Because the All Writs Act serves as a residual authority, a writ is not ‘necessary or appropriate’ under the statute if another adequate legal remedy is available.” *Denedo v. United States*, 66 M.J. at 121.

The petitioner here seeks extraordinary relief primarily in the nature of a writ of mandamus to compel appointment of an expert consultant for assistance at an Article 32 investigation. In *Graves v. United States*, NMCCA No. 200501108, 2005 WL 2105406 (N-M. Ct. Crim. App. 26 Aug 2005), our Navy colleagues addressed a similar request for an order compelling appointment of an expert for assistance at an Article 32, UCMJ, investigation. In denying the request the court noted that “that the petitioner has not yet appeared before the Article 32, UCMJ, investigating officer, who may note the appellant's concerns for the record. Additionally, if the charges are referred to a court-martial, the petitioner can move to reopen the Article 32 investigation, if she feels she has not been afforded a full and fair investigation or has been denied the effective assistance of counsel.” Such is the case here.

We find that we have jurisdiction but that extraordinary relief is not appropriate at this point in the proceedings regarding the petitioner. As the government states in the reply to the order to show cause, the convening authority has not referred charges, a court has not been convened, and no military judge has had the opportunity to rule on any motions related to the pretrial investigation or the appointment of expert consultants. For example, Rule for Courts-Martial 905(b)(1) provides Petitioner with the authority to challenge the pretrial investigation as inadequate and fundamentally unfair without a Portuguese translator, and Rule for Courts-Martial 906 provides for appropriate relief by suppressing the admission of any verbatim testimony from the pretrial hearing if Petitioner can establish an inability to previously cross-examine the witness. These issues are for a military judge to determine if they arise at trial. In short, extraordinary relief at this point is premature.

Having considered the matters submitted, the petitioner has failed to demonstrate that extraordinary relief is warranted.

Accordingly, it is by the Court on this 18th day of August, 2011,

**ORDERED:**

That the petition for extraordinary relief and motion to stay proceedings is hereby **DENIED.**

FOR THE COURT

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a horizontal line.

STEVEN LUCAS  
Clerk of the Court