

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re)	
UNITED STATES,)	
)	
<i>Petitioner</i>)	
)	ORDER
v.)	
)	Misc. Dkt. No. 2005-02
First Lieutenant)	
JOSEPH J. HARDING,)	Panel No. 3
USAF,)	
)	
and)	
)	
Colonel)	
DAVID F. BRASH,)	
Military Judge,)	
)	
<i>Respondents</i>)	

On 24 June 2005, the petitioner submitted a Petition for Extraordinary Relief in the Nature of a Stay of Court-Martial Proceedings and a motion for expedited review of this petition. The United States petitioned this Court for an emergency stay in the court-martial proceedings in the case of *United States v. Harding* contending the military judge “abused his discretion by severing charges and proceeding to trial on charges as to only one victim in this case.” In an Addendum to the petition, filed on 25 June 2005, the petitioner asserted that the United States opposed the military judge’s ruling to abate the proceedings as to Charge I because “the impact on the prosecution of Charge II may be irreparable.” The United States also put this Court on notice that they intend to appeal the military judge’s abatement decision under Article 62, UCMJ, 10 U.S.C. § 862.

On 25 June 2005, this Court ordered the respondents to show cause and file an answer pursuant to this Court’s rules of practice and procedure. Both respondents filed timely answers to this Court’s order to show cause. We conclude the reasons the military judge gave for severance are intertwined with the same matter the United States asserts as the basis for its appeal under Article 62, UCMJ. Consequently, any decision as to whether the military judge abused his discretion would be premature.

Upon review and consideration of the petitioner’s request, as well as the answers submitted by the respondents, we believe that the appropriate course of action is to continue the stay of the court-martial proceedings pending resolution of the petitioner’s Article 62, UCMJ, appeal.

Accordingly, it is by the Court, this 8th day of July 2005,

ORDERED:

(1) That respondent Harding's request to lift the stay of court-martial proceedings is DENIED; and

(2) That the court-martial proceedings are hereby stayed pending resolution of the petitioner's Article 62 appeal.

FOR THE COURT

OFFICIAL

JANE E. BOOMER, Major, USAF
Chief Commissioner