

UNCLASSIFIED//FOR PUBLIC RELEASE  
MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA

**UNITED STATES OF AMERICA**

v.

**KHALID SHAIKH MOHAMMAD,  
WALID MUHAMMAD SALIH  
MUBARAK BIN ATTASH,  
RAMZI BINALSHIBH,  
ALI ABDUL AZIZ ALI,  
MUSTAFA AHMED ADAM AL  
HAWSAWI**

**AE 031AAA**

**ORDER**

Use, Relevance, and Admissibility of Classified  
Evidence In Accordance With 10 U.S.C. § 949p-  
6(a) and Military Commission Rule of Evidence  
505(h)

**15 January 2016**

1. Counsel for Mr. Hawsawi notified<sup>1</sup> the Commission of the Defense intent to disclose classified information in AE 031WW (MAH Sup)<sup>2</sup> pursuant to Military Commission Rule of Evidence (M.C.R.E.) 505(g)(1).
2. Upon request of a party, the Commission is required to hold a hearing to make determinations concerning the use, relevance, or admissibility of the classified information that would otherwise be made during the trial or pretrial proceeding.<sup>3</sup> Classified information may be disclosed only if the Commission makes a written determination that the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence.<sup>4</sup>
3. The Commission held a hearing in camera<sup>5</sup> on 7 December 2015 with Counsel for all Accused present. During the hearing, Counsel for Mr. Hawsawi and Counsel for the Government presented oral argument before the Commission on the use, relevance, and admissibility of the classified information referenced in AE 031WW (MAH Sup).

<sup>1</sup> AE 031XX (MAH), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 10 November 2015.

<sup>2</sup> AE 031WW (MAH Sup), Mr. Hawsawi's Unclassified Notice of Classified Filing, filed 5 November 2015.

<sup>3</sup> 10 U.S.C. § 949p-6(a) and M.C.R.E. 505(h).

<sup>4</sup> M.C.R.E. 505(h)(1)(C) and (D).

<sup>5</sup> See M.C.R.E. 505(h)(1)(C).

4. Using relevance standards in M.C.R.E. 401 – 403 and *United States v. Smith*, 780 F.2d 1102 (4th Cir. Va. 1985), the classified information the Defense seeks to disclose as referenced in AE 031WW (MAH Sup), is not relevant or necessary to a fair determination of the issues raised in the AE 031. Accordingly, the request by Counsel for Mr. Hawsawi to disclose said evidence is **DENIED**.

So **ORDERED** this 15th day of January, 2016.

//s//  
JAMES L. POHL  
COL, JA, US Army  
Military Judge