MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA **v.** **ABD AL HADI AL-IRAQI**	**AE 023B** **ORDER** **Government's Ex Parte and In Camera Under Seal Motion For A Protective Order Pursuant To The Military Commissions Act Of 2009, 10 U.S.C. § 949p-4, And Military Commission Rule Of Evidence 505** **27 March 2015**

1. The Commission issues this order pursuant to the Military Commissions Act of 2009 (M.C.A), 10 U.S.C. §§ 949p-3 and 949p-4, Rule for Military Commission (R.M.C.) 701(f), and Military Commission Rules of Evidence (M.C.R.E.) 505(e) and (f).

2. I examined the Prosecution's *ex parte, in camera* motion for a protective order (AE 023), and its attachments, including the declarations incorporated by reference, requesting the Commission authorize the Prosecution to produce substitutions and summaries to the Defense instead of the underlying classified information that, if disclosed, reasonably could be expected to damage the national security of the United States.

3. I examined the underlying classified information and the Prosecution's proposed substitutions and summaries of that information. The Prosecution provided the Commission with a disc containing the proposed substitutions and summaries, together with underlying classified information. The motion with its attachments was divided by tabs with each tab having individual documents separated by a colored sheet of paper. Behind each tab, the first document is the underlying classified document, the second document is a redlined or highlighted version of the underlying document, which allowed the Commission to review the modifications proposed by the Prosecution, and the third document is the final proposed summary.

4. Having considered the Prosecution's motion, proposed substitutions and summaries, and any materials incorporated by reference or otherwise attached, I find:

a. The Prosecution submitted a declaration invoking the classified-information privilege and setting forth the damage to the national security discovery of, or access to, the underlying classified documents reasonably could be expected to cause. *See* 10 U.S.C. § 949p-4(a)(1).

b. The declaration was signed by a knowledgeable United States official possessing authority to classify information.

c. The Prosecution's proposed substitutions and summaries are an adequate alternative to discovery of the underlying classified information. The proposed substitutions and summaries will provide the Accused with substantially the same ability to make a defense as would discovery of, or access to, the underlying classified information. *See* 10 U.S.C. § 949p-4(b)(3).

5. **IT IS HEREY BY ORDERED**:

a. The Prosecution's proposed substitutions and summaries are an adequate alternative to discovery of the underlying classified information. I authorize the Prosecution to produce to the Defense its proposed substitutions.

b. This order does not abrogate the Prosecution's continuing obligation to produce classified information that is noncumulative, relevant, and necessary to the Defense preparation of their case; helpful to a legally cognizable defense; rebuttal of the Prosecution's case; or to sentencing.

c. The Prosecution's *ex parte, in camera* motion, filed 7 November 2014, and its classified attachments (including any materials incorporated by reference), shall remain *ex parte* and *in camera* until further order of this Commission.

d. This Commission seals and preserves the Prosecution's entire *ex parte*, *in camera* presentation (including the Prosecution's motion, the underlying classified information, the proposed substitutions and summaries, and any other attachments, including any attachments incorporated by reference) in the records of this Commission to be made available to an appellate court in the event of an appeal.

So **ORDERED** this 27th day of March, 2015.

//s//
J. K. WAITS
CAPT, JAGC, USN
Military Judge