

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA v. ABD AL HADI AL-IRAQI	AE 023Q Government Reply To AE 023M, Mr. al-Iraqi's Response to the Government's <i>Ex Parte</i> and <i>In Camera</i> Under Seal Motion for Protective Order Pursuant to the Military Commissions Act of 2009, 10 U.S.C. § 949p-4, And Military Commission Rule of Evidence 505 22 March 2016
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1. Timeliness

This reply is timely filed pursuant to Military Commissions Trial Judiciary Rule of Court 3.7.e.(2).

2. Overview

As it did in AE 023H and 023L, the Defense requests that the Government's *Ex parte* and *In camera* Under Seal Motion for Protective Order Pursuant to the Military Commissions Act of 2009 ("M.C.A."), 10 U.S.C. § 949p-4, and Military Commission Rules of Evidence ("M.C.R.E.") 505 ("Motion for Protective Order") (AE 023K) be denied. Defense Response AE 023M is virtually identical to Defense Responses AE 023H and AE023L. The Government hereby re-asserts and incorporates by reference Section 2 ("Overview") of AE 023I and 023N (Government Replies to AE 023H and 023L) in their entirety, except to the extent that dates and references to previous motions in the AE023 series are updated herein. Further, the Government respectfully requests that the Commission adopt the rulings in AE 023O and AE 023P and hold that the Government has properly invoked the procedures of M.C.R.E. 505(f)(2)(B).

3. Facts

Pursuant to M.C.R.E. 505(f), the Government, on 03 March 2016, filed its *ex parte* Motion for Protective Order, together with its proposed relief for approval by the Commission

(AE 023K). Pursuant to M.C.R.E. 505(f)(1)(A), the Government attached to this motion a declaration—from a knowledgeable United States official possessing authority to classify information—invoking the national security privilege and setting forth the damage to national security that would result from the discovery of or access to such information. This submission was filed *ex parte* pursuant to M.C.R.E. 505(f)(2)(B).

The Defense filed its response to AE 023K on 15 March 2016. AE 023M. In its response, the Defense requested the Commission deny the Government’s *ex parte* Motion for Protective Order and the proposed Protective Order. *Id.* at 1. In the alternative, the Defense requested the Commission order the Government “to serve a copy of AE 023K on counsel for the Accused.” *Id.* As a second alternative, the Defense requested that the Commission “advise the defense of the topic area of the *ex parte* pleading and permit the defense to submit *ex parte* pleadings providing information to the military commission for use in evaluating AE 023K.” *Id.* at 1-2.

On 17 March 2016, the Commission issued two rulings, AE 023O and AE 023P, addressing respectively AE 023H and AE 023L, Defense responses to the Government’s motions for a protective order. In both rulings, the Commission denied the Defense request for oral argument and the relief requested. AE 023O at 2; AE 023P at 2.

4. Law and Argument

The Government hereby re-asserts and incorporates by reference Section 4 (“Law and Argument”) of AE 023I and 023N (Government Replies to AE 023H and 023L) in their entirety.¹ Additionally, the Commission has ruled on this very issue, stating that Government motions of this kind are consistent with M.C.R.E. 505(f)(2), “which allows the Government to make a request for summaries and substitutions of classified information ‘in the form of an *ex parte* presentation to the extent necessary to protect classified information, in accordance with

¹ In the event the Defense continues to file responses without additional argument to the Government’s filing of *ex parte* and *in camera* motions for a protective order pursuant to M.C.R.E. 505, the Government intends to incorporate by reference AE 023I and 023N.

ATTACHMENT A

Filed with TJ
22 March 2016

Appellate Exhibit 023Q (al Hadi)
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