

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

UNITED STATES OF AMERICA

v.

ABD AL HADI AL-IRAQI

AE 023T

RULING

**Mr. al-Iraqi's Response to
Notice to the Defense of the
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**

1 April 2016

1. In AE 023K, the Government provided notice to the Defense of its “*ex parte, in camera*, motion for a protective order . . . request[ing] that the Military Commission authorize the Government to substitute classified summaries, pursuant to the M.C.A., and to provide those summaries to cleared Defense Counsel in satisfaction of the Government’s discovery obligations.” In AE 023M, the Defense objected to the Government’s motion and requested that the Commission “deny AE 023K and the Government’s proposed Protective Order of 3 March 2016.”¹ In the alternative, the Defense requested the Commission “order the United States to serve a copy of AE 023K, including all appendices, on counsel for the Accused,” or “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.” (AE 023M at 1–2). The Government reply requested “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).” (AE 023Q at 1).

¹ The Defense noted this is an “ongoing objection[.] . . .” (AE 023M at 1). The Defense previously objected to Government’s requests for protective orders. (See AEs 023H and 023L, Defense requests to deny protective orders; see also AEs 023O and 023P, Commission rulings on Defense requests to deny protective orders.).

2. The Defense requested oral argument. In accordance with Rule for Military Commissions 905(h) and Military Commissions Trial Judiciary Rule of Court 3.5.m (May 2014), the decision to grant oral argument is within the sole discretion of the Military Judge. In this instance, oral argument is not necessary for the Commission to decide the issue before it.

3. The Government's motion is consistent with Military Commission Rule of Evidence (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 the practice of the Federal courts under the Classified Information Procedures Act (18 U.S.C. App.)." M.C.R.E. 505(f)(2)(b).

There is no requirement that the Government provide the Defense a copy of their request under M.C.R.E. 505, the Military Commissions Act (M.C.A.),² federal case law, or the Classified Information Procedures Act, 18 U.S.C. App. (C.I.P.A.). There is no requirement that the Government provide the Defense with the topic area of their request under M.C.R.E. 505, the M.C.A., federal case law, or C.I.P.A. If the Military Judge approves the summaries or substitutions these are provided by the Government to the Defense in satisfaction of the Government's discovery obligations as to the documents considered. *See* M.C.R.E. 505(f)(2).

4. The Defense requested relief is **DENIED**. The Commission welcomes a Defense filing with its theory of the case on the merits or in sentencing via an *ex parte* notice pleading to assist the Commission in its evaluation of classified discovery. The Commission will not delay its consideration of the Government's filings awaiting such an optional filing by the Defense.

² *See* 10 U.S.C. §§ 949p-1 through 949p-7.

5. The Commission reserves its final ruling on the Government request for a Protective Order until it has completed its review of AE 023K.

So **ORDERED** this 1st day of April, 2016.

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