

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

UNITED STATES OF AMERICA

v.

ABD AL HADI AL-IRAQI

AE 044A

ORDER
(CORRECTED COPY)*

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

26 February 2016

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 044), 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 had two separate attachments: attachment B contained the underlying classified material; attachment C contained the proposed final substitutions and summary of the classified material intended to be turned over to the Defense.

*Corrected spelling error in paragraph 5 header.

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 national security the discovery of, or access to, the underlying classified information 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 HEREBY 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 and summaries instead of the underlying classified material.

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 14 May 2015, and its classified attachments (including any materials incorporated by reference), shall remain *ex parte* and *in camera* until further order of this Commission or another court of competent jurisdiction.

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 26th day of February, 2016.

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