

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

UNITED STATES OF AMERICA

v.

ABD AL RAHIM HUSSAYN
MUHAMMAD AL NASHIRI

AE 120M

Government RequestFor Determination Of Use, Relevance, And
Admissibility Pursuant to M.C.R.E. 505(h)

22 May 2014

1. Timeliness

The government timely files this request under Military Commissions Trial Judiciary Rule of Court 3.7.c(1).

2. Relief Sought

The government requests that the Commission conduct an *in camera* hearing before any oral argument on government motion AE 120D, and any related filing where the government or the defense seeks to disclose classified information. The government requests that the Commission conduct an *in camera* hearing and find the government-noticed classified information useful, relevant, and admissible for oral argument on AE 120D and any related filing. *See* M.C.R.E. 505(h)(1)(A). The government also requests that the Commission set forth in writing the basis for his determination that the classified information is relevant and admissible. M.C.R.E. 505(h)(1)(D).

3. Burden of Proof

The military judge shall conduct an *in camera* hearing and issue a ruling concerning the use, relevance, and admissibility of classified information prior to conducting any proceedings where classified information may be disclosed. *See* M.C.R.E. 505(h)(1)(B).

4. Facts

Abd Al Rahim Hussayn Muhammad Al Nashiri (“the accused”) is charged with multiple offenses under the M.C.A. relating to his participation in the attack on USS COLE (DDG 67) on 12 October 2000, and MV *Limburg* on 6 October 2002, and in the attempted attack on USS THE SULLIVANS (DDG 68) on 3 January 2000. The attacks on USS COLE (DDG 67) and MV *Limburg* resulted in the deaths of 18 people, injury to dozens of others, and significant property damage.

On 23 April 2014, the government filed its Motion for Reconsideration In Part. AE 120D. The government also filed classified briefs relating to its motion. AE 120F; AE 120G.

On 14 May 2014, the defense filed its response to the government’s motion. AE 120E. The defense also filed a classified brief relating to its response. AE 120H.

On 21 May 2014, the government filed its reply to the defense response. AE 120I. The government filed a classified brief relating to its reply. AE 120J.

On 22 May 2014, contemporaneous with this filing, the government provided the defense with notice of the classified information it seeks to use during oral argument. AE 120L.

5. Law and Argument

Both the government and the defense filed briefs relating to AE 120D containing classified information. AE 120D-J. The government provided the defense with notice of the specific classified information it seeks to use during oral argument relating to the government’s Motion for Reconsideration In Part. AE 120L. The government requests that the Commission conduct an *in camera* hearing and find the government-noticed classified information useful, relevant, and admissible for oral argument on AE 120D and any related filing. *See* M.C.R.E.

505(h)(1)(A). The Commission should conduct that *in camera* hearing before any argument on AE 120D and any related filing.

The Commission “shall conduct such a hearing and shall rule prior to conducting any further proceedings.” M.C.R.E. 505(h)(1)(B). “As to each item of classified information, the military judge shall set forth in writing the basis for the determination.” M.C.R.E. 505(h)(1)(D).

6. Conclusion

The government respectfully moves for an *in camera* hearing where the Commission can find the classified information noticed by the government to be useful, relevant, and admissible. *See* M.C.R.E. 505(h). The *in camera* hearing would help protect national-security information and assist the Commission in minimizing the amount of closure that may be necessary. *See* R.M.C. 806. “As to each item of classified information, the military judge shall set forth in writing the basis for the determination.” M.C.R.E. 505(h)(1)(D).

7. Oral Argument

The government respectfully requests an *in camera* hearing pursuant to M.C.R.E. 505(h).

8. Witnesses and Evidence

The government does not anticipate relying on any witnesses or evidence in support of this request, except for the attached declaration and the filings referenced in this request.

9. Certificate of Conference

The government conferred with the defense before filing this request. The defense does not object to the government’s requested relief.

10. Additional Information

The government has no additional information.

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 22nd day of May 2014, I filed **AE 120M, Government Request** For Determination Of Use, Relevance, And Admissibility Pursuant to M.C.R.E. 505(h), with the Office of Military Commissions Trial Judiciary and served a copy on counsel of record. Attachment B was sent via SIPR to the Trial Judiciary only.

//s//

Mark Martins
Chief Prosecutor
Military Commissions

ATTACHMENT B

United States v. Abd Al-Rahim Hussayn Muhammad Al-Nashiri
ISN: 010015

APPELLATE EXHIBIT
120M
Attachment B
(Pages 8-9)

CONFIDENTIAL

Prosecution Exhibit

**APPELLATE EXHIBIT 120M is located in the
Classified annex of the original record of trial.**

**POC: Chief, Office of Court Administration
Office of Military Commissions**