

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

UNITED STATES OF AMERICA

v.

ABD AL RAHIM HUSSAYN
MUHAMMAD AL NASHIRI

AE 120UUUU

**ORDER
(PROTECTIVE ORDER)**

Prosecutions First Supplement To The
Government Motion (AE 120VV) To
Request Substitutions And Other Relief
From Ordered Discovery Of Classified
Information So As To Comply With
Paragraphs 13.i. and j. Of AE 120AA

16 November 2015

1. The Accused is charged with multiple offenses in violation of the Military Commissions Act of 2009 (M.C.A.), 10 U.S.C. §§ 948 *et seq.*, Pub. L. 111-84, 123 Stat. 2574 (Oct. 28, 2009). He was arraigned on 9 November 2011. The Commission issues this order pursuant to the M.C.A., 10 U.S.C. §§ 949p-3 and 949p-4, Rule for Military Commission (R.M.C.) 701(f), and Military Commission Rule 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 120FFF, its attachments, and the declarations incorporated by reference. AE 120FFF requests the Commission to 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 binders containing the proposed substitutions and summaries, together with the underlying classified information. The binders have tabs. Each tab has documents separated by a colored sheet of paper: the first document is the underlying classified document, the second document is a redlined or highlighted version of the underlying document, and the third document is the

proposed substitution or summary. The redlined or highlighted version of the underlying classified document allows the Commission to compare the original document and the proposed substitution or summary by taking the original document and lining-through words to be deleted and inserting the proposed substitution or summary.

4. Having considered the Prosecution's motion, proposed substitutions and summaries, and all 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 that 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 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 in lieu of the underlying classified information. By producing the substitutions and summaries, the Prosecution is considered to have met its discovery obligations with regard to those documents.

b. Under the Commission's Trial Conduct Order, dated 17 December 2014 (AE 330 (Corrected Copy)), the Prosecution was required to update, as necessary, the classification markings of all filings, both acted upon and pending before the Commission, with certain exceptions not relevant here. AE 330 (Corrected Copy) ¶ 5. The Prosecution's proposed substitutions and summaries in AE 120FFF are subject to AE 330 (Corrected Copy) ¶ 5., and the Prosecution has represented that the substitutions are summaries have been reviewed and updated as required by that order. The Prosecution need not produce a second set of substitutions and summaries.

c. This order does not abrogate the Prosecution's continuing obligation to produce classified information that is non-cumulative, relevant, and helpful to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing.

d. The Prosecution's *ex parte, in camera* motion, filed on 23 December 2014, and its classified attachments (including any materials that may be incorporated by reference), shall remain *ex parte* and *in camera* until further order of this Commission or another court of competent jurisdiction.

e. This Commission orders the Prosecution's entire *ex parte, in camera* presentation (including the Prosecution's motion, the underlying classified information, the proposed substitutions and summaries, the redlined versions, and any other attachments, including any attachments that may be incorporated by reference) be sealed and preserved in the records of this Commission. The presentation will be made available to an appellate court in the event of an appeal.

6. Accordingly, the Government's motion, AE 120FFF, is **GRANTED**.

So **ORDERED** this 16th day of November, 2015.

//s//

VANCE H. SPATH, Colonel, USAF
Military Judge
Military Commissions Trial Judiciary