

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

UNITED STATES OF AMERICA

v.

ABD AL-RAHIM HUSSEIN MUHAMMED  
ABDU AL-NASHIRI

AE 140

**DEFENSE MOTION TO UNSEAL THE  
R.M.C. 706 BOARD EVALUATION:**

**INQUIRY INTO THE MENTAL  
CAPACITY OF THE ACCUSED UNDER  
R.M.C. 706**

3 May 2013

1. **Timeliness:** This request is filed within the timeframe established by Rule for Military Commission (R.M.C.) 905.
2. **Relief Requested:** The defense requests that the Commission unseal AE 140J, the “short form” of the R.M.C. 706 Sanity Board Evaluation of Abd Al Rahim Hussayn Muhammad Al-Nashiri<sup>1</sup> (“R.M.C. 706 Board Evaluation”) pursuant to the Commission’s authority under the Military Commissions Act of 2009, 10 U.S.C. §948a, *et seq.*, the Rules for Military Commissions, and the Military Commission Rules of Evidence, and the general supervisory authority of the Commission.
3. **Overview:** On 19 April 2013, Appellate Exhibit 140J – was filed with this Commission, and sealed under court order AE 140K. The defense requests that AE 140J be unsealed. The prosecution does not object to this request.
4. **Burden of Proof and Persuasion:** The defense bears the burden of persuasion as the moving party on this motion and the standard is preponderance of the evidence, R.M.C. 905(c).

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<sup>1</sup> Memorandum for: BG Martins, Mr. Anthony Mattivi, and CDR Lockhart, Trial Counsel; SUBJECT: R.M.C. 706 Sanity Board Evaluation of Abd Al Rahim Hussayn Muhammad Al-Nashiri, ISN 10015 of 28 March 2013.

However, denial of this motion will violate the defendant's rights guaranteed by the Fifth, Sixth and Eighth amendments to the Constitution of the United States of America, the Military Commission Act of 2009, the Detainee Treatment Act of 2005, treaty obligations of the United States and fundamental fairness.

**5. Facts:** Per the request of the prosecution, this Commission order an R.M.C. 706 Evaluation to be conducted on Mr. Al-Nashiri. AE 140F. Per that order, the ultimate conclusions of the evaluation would be provided in a statement to trial counsel. AE 140F, ¶5.

The "short form" provided to the prosecution was filed in this Commission as Appellate Exhibit 140J. Per request by the prosecution, AE 140J was sealed by order of the military judge based on the conclusion that the report contains sensitive, personal, and private information of Mr. Al-Nashiri. *See* AE140K. However, AE 140K granted leave for the defense to challenge the placement of AE 140J under seal by way of appropriate motion. *Id.*

**6. Argument:** It is the defense position that the information contained within AE 140J should not be sealed. The mental status of Mr. Al-Nashiri and the damage done to him by the torture inflicted by the United States has been and matter of contention before charges were referred in this case and have been the subject of litigation in this trial since the first hearing. It is no secret that the defense believes that Mr. Al-Nashiri suffers from (at a minimum) functionally untreated Post-Traumatic Stress Disorder (PTSD) from his time in the CIA Rendition, Detention, and Interrogation (RDI) program. It is (and has been) the defense's position that the mental and emotional challenges Mr. Al-Nashiri now face have great impact on the findings stage of this capital litigation and in mitigation. There are numerous motions

surrounding Mr. Al-Nashiri's mental health and the effects prolonged torture and detention have had on him. In order to effectively litigate this capital case, it is the defense's position that any diagnoses or conclusion rendered in the R.M.C. 706 Board Evaluation must be unsealed. As such, the defense requests that AE 140J, the R.M.C. 706 Board Evaluation, be unsealed and publicly available in the interests of justice.

7. **Oral Argument:** The defense does not request oral argument on this motion.
8. **Witnesses:** None.
9. **Conference with Opposing Counsel:** The Defense has conferred with the prosecution, and the prosecution does not oppose this request.
10. **List of Attachments:** None.

/s/ Allison C. Danels  
ALLISON C. DANELS, Maj., USAF  
*Detailed Defense Counsel*

/s/ Richard Kammen  
RICHARD KAMMEN  
*DOD Appointed Learned Counsel*

**CERTIFICATE OF SERVICE**

I certify that on the day of filing I electronically filed the forgoing document with the Clerk of the Court and served the forgoing on all counsel of record on the date of filing.

/s/Richard Kammen  
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