MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA v. ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI	**AE 206S** **Government Response** To Defense Motion To Compel Discovery Of Information In The Possession Of All Documents Cited In The SSCI Report Relating To The Arrest, Detention, And Interrogation Of Mr. Al-Nashiri 13 March 2015

1. Timeliness

The government timely files this response in accordance with Military Commissions Trial Judiciary Rule of Court 3.7.d.(1).

2. Relief Sought

The government respectfully requests that the Commission deny the defense motion to compel the production of classified information cited by the Senate Select Committee on Intelligence in its "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program." The defense seeks the underlying classified documents and "not [the] MIL COMM R EVID 505 summaries" expressly allowed by statute, and the defense asks for the production of information withheld from discovery—with the Commission's approval to do so—relating to the names of covert individuals and the locations of covert operations, the disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

3. Overview

The government has been working to comply with the Commission's 24 June 2014 Order relating to the production of classified information concerning the Central Intelligence Agency's

("CIA") former Rendition, Detention, and Interrogation Program ("RDI Program"). To that end, the government produced Commission-approved substitutions, including tables, narratives, and indices, in lieu of the underlying classified information. *See*, *e.g.*, AE 120U (chronological index of classified discovery produced to the defense); AE 120ZZ (approving AE 120JJ relating to paragraphs 13.a., 13.b., and 13.c. of the Order); and AE 120YY (approving AE 120LL relating to paragraphs 13.d., 13.f., and 13.g. of the Order). The government also sought and received access to the Senate Select Committee on Intelligence to review the "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program" for discoverable information. *See*, *e.g.*, AE 120RRR. And the government notified the defense that it may display and discuss with the accused the declassified portions of the Executive Summary to the Study. *See* AE 206M (providing classification guidance relating to the CIA's former RDI Program). The government understands its discovery obligations and will continue complying with those obligations by producing the noncumulative, relevant, and helpful classified information in a manner consistent with the Military Commissions Act of 2009 ("M.C.A."). *See* 10 U.S.C. §§ 949p-1 through 949p-7.

Despite receiving detailed classified discovery reviewed and approved by the Commission for production in this case, the defense now seeks to compel the production of classified information identified in the Executive Summary to the Study—including the identities of covert personnel and the locations of covert operations—in a manner that directly conflicts with the plain language of the statute and the Commission's prior orders. Indeed, the defense asks the Commission to order the production of the underlying classified documents and "not [the] MIL COMM R EVID 505 summaries" required by statute when the necessary conditions have been met. AE 206R at 1. The defense offers no legal authority for its untenable position, where

it wants the Commission to ignore the statute and the attendant costs to national security. The defense also makes no mention of the previous, extensive litigation in this case concerning the statutory process for producing discoverable classified information. *See*, *e.g.*, AE 024 (defense motion objecting to the *ex parte* nature of government motions relating to the discovery of classified information); AE 035 (defense motion seeking to compel the government to identify the subjects and types of documents at issue in the *ex parte* government motions relating to the discovery of classified information); AE 043 (defense motion objecting to the M.C.A.'s prohibition on the accused seeking reconsideration of the Commission's orders relating to the discovery of classified information).

With no mention or regard for the previous litigation in this case, and the clear statutory process that governs the production of classified discovery, the defense once again challenges the statutory process—a process that is nearly identical to that used in federal civilian courts—and seeks reconsideration of the Commission's prior orders approving government-proposed tables, narratives, indices, and other substitutions relating to the accused's involvement in the former RDI Program. The Commission should deny the defense motion to relitigate the clear statutory process concerning the discovery of classified information and to reconsider prior orders approving government-proposed substitutions and other relief. The government has produced, and will continue to produce, all discoverable classified information to the defense, and it will do so in a manner that is consistent with the M.C.A. and in accordance with the Commission's orders in this case.

4. <u>Burden of Proof</u>

As the moving party, the defense must demonstrate by a preponderance of the evidence that the requested relief is warranted. R.M.C. 905(c)(1)-(2).

5. Facts

Abd Al Rahim Hussayn Muhammad Al Nashiri ("the accused") is charged with multiple offenses under the M.C.A. relating to terrorist attacks against the United States and its allies. These included the attempted attack on USS THE SULLIVANS (DDG 68) on 3 January 2000, and the attacks on USS COLE (DDG 67) on 12 October 2000 and on the French supertanker MV *Limburg* on 6 October 2002, which together resulted in the deaths of 18 people, serious injury to dozens of others, and significant property damage.[1]

1. The Government Produced, and Will Continue To Produce, All Discoverable Classified Information to the Defense

On 14 November 2011, the government filed its first motion invoking the classified-information privilege and seeking approval to substitute classified summaries in lieu of the underlying classified information. *See* AE 022. The Commission accepted an *ex parte* filing from the defense relating to its theory of the case and any issues it wanted the Commission to consider when reviewing the government-proposed summaries. Unofficial/Unauthenticated Transcript ("Tr.") at 517. The Commission issued its first protective order approving summaries in August 2012. AE 022D.

Starting in December 2011, the government began producing classified discovery to the defense. To date, the government has produced more than 32,000 pages of classified discovery.

[1] The Commission dismissed the separate charges relating to the accused's alleged participation in the attack on MV *Limburg* (Charge IV, Specification 2 & Charges VII-IX). AE 168G; AE 214C. The government moved for reconsideration of the Commission's order dismissing those charges. AE 168H; AE 241D. The Commission granted reconsideration and, on reconsideration, denied the government's requested relief while modifying the initial order to state dismissal of the charges was without prejudice. AE 168K; AE 241G. The order does not affect the Conspiracy charge (Charge V), which includes overt acts comprising the attack on MV *Limburg*. On 29 September 2014, the government filed an interlocutory appeal with the United States Court of Military Commission Review (U.S.C.M.C.R.), causing AE 168K/241G to be stayed automatically pending disposition by the U.S.C.M.C.R.. On 12 November 2014, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") granted the defense request to stay the proceedings before the U.S.C.M.C.R. Order. *In re Abd Al-Rahim Hussein Muhammed Al-Nashiri*, No. 14-1203 (D.C. Cir. Nov. 12, 2014). On 10 February 2015, the D.C. Circuit heard oral argument.

That discovery includes approximately 1,500 pages of classified summaries approved by the Commission in accordance with the M.C.A., including detailed tables, narratives, summaries, and indices relating to the accused's involvement in the former RDI Program. *See infra* at 6-7 (providing details relating to the government's production of classified discovery concerning the CIA's former RDI Program). The government also produced more than 212,000 pages of unclassified discovery to the defense, including information the government intends to rely on during its case-in-chief and information that is exculpatory, impeaching, and mitigating.

On 14 April 2014, following substantial litigation concerning a defense request for discovery of classified information relating to the former RDI Program, the Commission ordered the government to produce ten categories of classified information ("April Order"). AE 120C. On 23 April 2014, the government filed its Motion To Reconsider In Part. AE 120D; AE 120F. There, the government acknowledged its duty to produce information responsive to the April Order where such information is noncumulative, relevant, and helpful. On 28-29 May 2014, the Commission heard oral argument from both parties relating to the government's Motion To Reconsider In Part. On 24 June 2014, the Commission granted the government's Motion To Reconsider In Part and explained "[n]othing in this order should be interpreted to prevent the Prosecution from utilizing the procedures of M.C.R.E. 505 concerning summarization and substitution of classified information in fulfilling obligations imposed by this order and in otherwise fulfilling its discovery obligations." AE 120AA at 11.

The Commission also ordered the government to produce information relating to a ten-category construct designed "to focus the Prosecution's analysis of information as it unilaterally fulfills its discovery obligations and responds to current and future discovery requests" from the defense for information regarding the CIA's former RDI Program. AE 120AA. By 31

December 2014, the government had filed motions seeking approval of government-proposed substitutions and other proposed relief relating to all ten categories identified in the Commission's Order. AE 120CC; AE 120JJ; AE 120LL; AE 120QQ; AE 120VV; AE 120AAA. The government also filed supplemental motions relating to several categories in which the government had identified additional discoverable information. AE 120BBB; AE 120CCC; AE 120DDD; AE 120EEE; AE 120FFF.

In addition to substantial compliance with all ten categories of information set forth in AE 120AA, through submissions to the Commission under the M.C.A. and Military Commission Rule of Evidence 505, the government produced to the defense the substitutions approved by the Commission in AE 120ZZ (approving AE 120JJ relating to paragraphs 13.a., 13.b., and 13.c. of the Order), AE 120YY (approving AE 120LL relating to paragraphs 13.d., 13.f., and 13.g. of the Order), and AE 120UU (approving government-proposed summaries). The government remains ready to produce additional substitutions and other relief if approved by the Commission. *See* AE 120CC; AE 120QQ; AE 120VV; AE 120AAA; AE 120BBB; AE 120CCC; AE 120DDD; AE 120EEE; AE 120FFF; AE 120GGG; AE 120III; AE 303.

The government also provided the defense with classified information marked "DISPLAY ONLY," thereby allowing the defense to share a substantial amount of classified information with the accused, including information previously produced to the defense regarding the application of "Enhanced Interrogation Techniques" ("EITs") to the accused, the conditions of the accused's confinement throughout his period in CIA custody (including photographs taken of the accused and of the spaces the accused observed while in detention), and the accused's statements. Those display-only efforts were made consistent with the government's declassification efforts in accordance with M.C.R.E. 505(a)(3).

What is more, the government has filed notices relating to its efforts to comply with the Order, generally explaining that it continues to locate, identify, and review information potentially responsive to the Order. AE 120MM; AE 120JJJ; AE 120LLL; AE 120NNN; AE 120PPP; AE 120RRR. In the notices, the government also provided an update relating to the Senate Select Committee on Intelligence's "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program." The government explained that the Senate Select Committee on Intelligence released declassified portions of the Executive Summary to its Study, and that the defense may display and discuss those declassified portions with the accused. *See* AE 206M (providing classification guidance relating to the CIA's former RDI Program). Moreover, on 18 February 2015, the Senate Select Committee on Intelligence authorized the Office of the Chief Prosecutor of Military Commissions to review the full Study for discoverable information. *See* AE 206Q (the Government's Seventh Notice Relating To The Senate Select Committee On Intelligence).

2. The Defense Previously Challenged the Statutory Process Relating to the Production of Classified Discovery

The parties fully litigated the statutory process for producing discoverable classified information to the defense. For example, on 9 December 2011, the defense challenged the statute's provisions allowing for the parties to file pleadings *ex parte* and *in camera*, particularly those provisions allowing the government to make *ex parte* presentations relating to the discovery of classified information. AE 024 (Defense Motion Objecting To The Government's *Ex Parte*, *In Camera* Motion And Memorandum For A Protective Order Pursuant To M.C.R.E. 505). In response, the government cited the statute's express provisions allowing for *ex parte* presentations, stating "[t]he military judge shall permit the trial counsel to make a request for an authorization under [10 U.S.C. § 949p-4(b)(1)] . . . 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 [CIPA]." AE 24A at 4 (quoting 10 U.S.C. § 949p-4(b)(2)). The Commission denied the defense motion objecting to the *ex parte* nature of the government's filing, appropriately finding that allowing the defense to review the government's proposed summaries would violate the M.C.A. and contradict well-established CIPA practice. Tr. at 518.

On 27 January 2012, the defense again challenged the statutory procedures relating to the production of classified information. AE 035. There, the defense moved to compel the government to disclose the "general subject matter to which the government's proposed substitutions pertain" and "the general type of document from which the substitutions are being drawn." AE 035 at 3-4. The defense, however, failed to offer a legal basis for its requested relief. In response, the government again cited the statute's clear language relating to the production of classified information. *See* 10 U.S.C. §§ 949p-1 through 949p-7. The Commission denied the defense motion. AE 035C.

On 22 March 2012, the defense challenged the statutory bar on the accused's right to seek reconsideration of the Commission's rulings on classified substitutions. AE 043 (the Defense Motion On The Constitutionality Of The Bar On The Accused's Right To Seek Reconsideration Of The Military Judge's Ruling On Classified Substitutions). In response, the government—for the third time—cited the statute's clear language prohibiting the accused from seeking reconsideration of any order authorizing the government to substitute, summarize, withhold, or prevent access to classified information. *See* 10 U.S.C. § 949p-4(c) (stating "[a]n order of a military judge authorizing a request of the trial counsel to substitute, summarize, withhold, or prevent access to classified information under this section is not subject to a motion for

reconsideration by the accused . . . ."). The Commission denied the defense motion. Tr. at 786. The parties also have engaged in significant litigation relating to the production of classified information responsive to the Commission's 24 June 2014 Order. *See* AE 120 *et seq.*

Nevertheless, the defense now seeks to compel the production of classified information—including the identities of covert personnel and the locations of covert operations—in a manner that directly conflicts with the plain language of the statute. Indeed, the defense requests that the Commission compel the production of the underlying classified information, "not MIL COMM R EVID 505 summaries," including "names and locations." AE 206R at 1, 12. The Commission should deny the defense motion.

6. Law and Argument

Though the parties previously briefed and argued several defense motions relating to the well-established statutory process governing the production of classified information—a process used in military commissions, courts-martial, and federal civilian courts—the defense again seeks to challenge that process. In doing so, the defense asks the Commission to order the production of highly sensitive and classified information relating to the identities and locations of covert personnel and actions, and the defense asks for the production of that classified information in a manner that directly contravenes the plain language of the statute. The Commission should deny the defense motion.

The government's discovery obligations with regard to classified information extend to information that is actually noncumulative, relevant, and helpful. *United States v. Yunis*, 867 F.2d 617, 623 (D.C. Cir. 1989) ("[C]lassified information is not discoverable on a mere showing of theoretical relevance."); *United States v. Mejia*, 448 F.3d 436 (D.C. Cir. 2006) (applying *Yunis*); R.M.C. 701(c), Discussion (citing *Yunis* to define what information is material to the

preparation of the defense). The government is not required to produce "cumulative information already provided to [the accused] in the course of discovery . . . ." *United States v. Abu-Jihaad*, 630 F.3d 102, 142 (2d Cir. 2010). Similarly, the government is not required to produce information if it fails to counter the government's case or bolster a defense. *See United States v. Stewart*, 590 F.3d 93, 131 (2d Cir. 2009); *United States v. Aref*, 533 F.3d 72, 79 (2d Cir. 2008); *United States v. Bhutani*, 175 F.3d 572, 577 (7th Cir. 1999).

The M.C.A. codifies these principles. The Commission may authorize the discovery of classified information only when it would be noncumulative, relevant, and helpful to (i) a legally cognizable defense, (ii) rebuttal of the prosecution's case, or (iii) sentencing. 10 U.S.C. § 949p-4(a)(2); M.C.R.E. 505(f)(1)(B). Providing classified information outside this ambit places the information at risk and fails to comply with the statutory imperative of ensuring a fair trial while safeguarding national security. Where classified information is discoverable, the government may exercise its statutory right to produce substitutions, summaries, or statements admitting relevant facts instead of disclosing specific items of classified information, so long as the accused would have substantially the same ability to make his defense as if he were provided discovery of the underlying classified information. 10 U.S.C. § 949p-4(b)(1); M.C.R.E. 505(f). If the government-proposed substitutions and summaries would place the accused in substantially the same position, the Commission should enter a protective order authorizing the government to produce the substitutions and summaries. This process is functionally the same as that used in federal civilian courts pursuant to CIPA. *See* 18 U.S.C. app. 3 § 1, *et seq.* In fact, the M.C.A. provides that CIPA is "authoritative in the interpretation" of the M.C.A.'s provisions governing discovery of classified information, except where the M.C.A. is expressly inconsistent with CIPA. 10 U.S.C. § 949p-1(d).

When seeking to produce substitutions or summaries in lieu of underlying materials, the government first provides the Commission with the underlying classified materials so it can ensure the proposed substitutions and summaries provide the accused with substantially the same ability to prepare a defense as if he received discovery of, or access to, the underlying information. *See* 10 U.S.C. § 949p-4(b)(3). The Commission has applied the statute several times in this case, and it recognize the government's statutory right to rely on the statutory process in the Order. See AE 120AA at 11 (stating "[n]othing in this order should be interpreted to prevent the Prosecution from utilizing the procedures of M.C.R.E. 505 concerning summarization and substitution of classified information in fulfilling obligations imposed by this order and in otherwise fulfilling its discovery obligations."). The government complied with the process here, where it produced classified information to the defense after the Commission reviewed the underlying information and approved the government-proposed substitutions. But the defense now asks the Commission to reconsider its prior orders and to ignore the plain language of the statute by compelling the government to produce classified information—much of which the government already produced—in a manner that directly conflicts with the statute.[2] *See* AE 206R (where the defense asked for the "supporting [classified] documents, not MIL COMM R EVID 505 summaries . . . .").

[2] The defense asserts—in mere conclusory fashion—that the government produced "only about 25% of the information contained in the SSCI Report . . . Such a small amount can hardly give the full picture" of the accused's involvement in the former RDI Program. AE 206R at 12. But the defense position that it received "only about 25% of the information contained in the SSCI Report" is a red herring. Though the government cannot determine how the defense calculated the supposed 25% figure, the defense likely did so based on comparing the classified information in its possession to the entire Senate Select Committee on Intelligence Study. The defense is not entitled to all information cited or otherwise contained in the Senate Select Committee on Intelligence Study; the defense is entitled only to the discoverable information, *i.e.*: the information that is noncumulative, relevant, and helpful. Moreover, the defense does not yet have possession of all the classified information the government identified for production to the defense. *See* AE 120TTT (stating "[t]he government remains ready to produce additional substitutions and other relief if approved by the Commission" and citing AE 120CC; AE 120QQ; AE 120VV; AE 120AAA; AE 120BBB; AE 120CCC; AE 120DDD; AE 120EEE; AE 120FFF; AE 120GGG; AE 120III; AE 303).

In doing so, the defense made clear that it seeks discovery relating to the identities of covert personnel and the locations of covert operations—information the Commission already found not discoverable or appropriately substituted and summarized by the government, and information the government cannot produce without causing exceptionally grave damage to the national security of the United States. *See*, *e.g.*, AE 120CC (explaining the reasonable expectation of harm to national security by producing information relating to covert identities and covert locations in the context of government-proposed substitutions relating to paragraphs 13.a., 13.b., and 13.c. of the Order); AE 120JJ (same); AE 120LL (explaining the reasonable expectation of harm to national security by producing information relating to covert identities and covet locations in the context of government-proposed substitutions relating to paragraphs 13.d., 13.f., and 13.g. of the Order); AE 120CCC (same); AE 120DDD (same).

The defense nevertheless seeks to compel the information because "[w]ithout those primary resources, including names and locations, the Defense cannot interview those who witnessed" the accused's involvement in the former RDI Program. AE 206R at 12. The defense also argues that it "is unable to properly conduct its mitigation investigation" without the names and locations withheld from discovery. *Id*. The government cannot disclose the classified names and locations the defense seeks without causing exceptionally grave damage to the national security of the United States, particularly given that the defense seeks the classified information for the purpose of investigating individuals and locations allegedly connected to the former RDI Program. To be sure, such an investigation by the defense would require the defense to disclose classified information through their investigative functions—an act that would amount to an improper *per se* disclosure of classified information and illegally compromise national security. *See* the declarations incorporated by reference *infra* for an explanation of the damage that would

be caused by disclosing the classified information sought by the defense. Moreover, the Commission previously found—with each order approving government-proposed substitutions—that the defense would be in substantially the same position with the government-produced substitutions, each of which withheld information that would tend to reveal classified names and locations. *See*, *e.g.*, AE 120ZZ (approving AE 120JJ relating to paragraphs 13.a., 13.b., and 13.c. of the Order); AE 120YY (approving AE 120LL relating to paragraphs 13.d., 13.f., and 13.g. of the Order). *See also* AE 120AA at 9, n. 9 (allowing the government to protect covert identities and stating "Personally Identifiable Information can be substituted with a pseudonym consistent with the procedures of M.C.R.E. 505" and the Order "should not be interpreted as requiring the Prosecution to violate the Intelligence Identities Protection Act, 50 U.S.C. § 421.").

Though the government cannot disclose the classified names and locations sought by the defense, the government created the unique-functional-identifier system for individuals and locations, thus empowering the defense to understand each individual's contact with the accused, including the number of contacts, the nature and details of that contact (*e.g.*, medical treatment or assessment, interrogation), the relevant timeframe of the contact (*i.e.*, the year and the portion of year), and the locations of the contact (using the same unique-functional-identifier system for locations as that offered by the government in response to the Order at paragraphs 13.a., 13.b., and 13.c.). The Commission appropriately found the unique-functional-identifier system to place the defense in substantially the same position as if the government produced the underlying classified information sought by the defense. See AE 120ZZ; AE 120YY. The government-proposed substitutions also provide cleared defense counsel with information relating to each noncumulative, relevant, and helpful individual's employment and training records.[3]

[3] The government sought to produce the classified information that is "noncumulative, relevant, and helpful to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing," and to do

What is more, the government agreed to establish an arrangement by which it will make best efforts to facilitate defense requests to speak with noncumulative, relevant, and helpful individuals (without identifying names or providing physical descriptions of the individuals). *See*, *e.g.*, Tr. at 4535 ("we are . . . making available for the defense through our best offices an ability to request interviews with CIA personnel, some of [ ] who are covert, to discuss matters related to the [former] RDI Program as they relate to [the accused."). To the extent those individuals agree to speak with the defense, the defense would have the opportunity to collect additional information by asking specific questions relating to each individual's contact with the accused. Stated differently, the defense will have the opportunity to interview those individuals "who witnessed" the accused's involvement in the former RDI Program. AE 206R at 12. The defense does not need to compromise national security to investigate the accused's involvement in the former RDI Program.

Though the government produced the discoverable classified information in a manner consistent with the statute and in accordance with the Commission's orders, the defense asks the Commission to reconsider its prior orders in contravention of the plain language of the M.C.A. *See* 10 U.S.C. § 949p-4(c) (stating "[a]n order of a military judge authorizing a request of the trial counsel to substitute, summarize, withhold, or prevent access to classified information . . . **is not subject to a motion for reconsideration by the accused** . . . .") (emphasis added). The Commission approved the government-proposed substitutions and other relief, thus authorizing the government to withhold classified names and locations from discovery. It should not reconsider those prior orders.

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so through the statutory process for producing summaries and substitutions. 10 U.S.C. §§ 949p-4, 949p-6.

Significantly, the government relied on those prior orders when producing significant quantities of detailed classified information that places the defense in substantially the same position as if it had access to the underlying classified information it now seeks. *See*, *e.g.*, AE 120ZZ (approving AE 120JJ relating to paragraphs 13.a., 13.b., and 13.c. of the Order) and AE 120YY (approving AE 120LL relating to paragraphs 13.d., 13.f., and 13.g. of the Order). And the government will produce similarly detailed classified information if its pending motions proposing substitutions and other relief are approved by the Commission. *See* AE 120CC; AE 120QQ; AE 120VV; AE 120AAA; AE 120BBB; AE 120CCC; AE 120DDD; AE 120EEE; AE 120FFF; AE 120GGG; AE 120III; AE 303. *See also* AE 120TTT (outlining the government's efforts to comply fully with the Order). Accordingly, the Commission should deny the defense motion to compel the production of classified information cited by the Senate Select Committee on Intelligence in its "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program."

7. Conclusion

The Commission should deny the defense motion to compel the production of classified information cited by the Senate Select Committee on Intelligence in its "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program." The defense chooses to ignore the plain language of the statute, and it asks the Commission to do the same, by seeking to compel the underlying classified documents and specifically "not [the] MIL COMM R EVID 505 summaries" expressly allowed by statute. Simply, the statute requires the government to produce discoverable classified information, but it allows the government to do so in a manner that strikes the appropriate balance between ensuring a fair trial while protecting national

security. *See* 10 U.S.C. § 949p-4. The Commission should not set aside the statute, and, instead, it should deny the defense motion.

Moreover, the Commission should deny the defense motion to reconsider prior orders from the Commission, where it allowed the government to withhold classified information that, if disclosed, would cause exceptionally grave damage to the national security. The defense asks the Commission to compel the production of classified information that would reveal the identities of covert personnel and the locations of covert operations. The disclosure of that classified information has limited value to the defense, at best, and its disclosure comes with significant costs to the national security. The government created a system of unique functional identifiers that empowers the defense to understand the intricacies and connections of each covert individual and each location where covert operations were conducted to the accused. The Commission should deny the defense motion to compel additional information that would reveal information relating to the covert identities and locations.

8. Oral Argument

The defense requested oral argument. The Commission can decide this matter without oral argument. *See* Military Commissions Trial Judiciary Rule of Court 3.9.(a). If the Commission grants the defense an opportunity to present oral argument, however, the government requests an opportunity to be heard.

9. Witnesses or Evidence

The government does not intend to rely on any witnesses or evidence in support of this response, except for the *ex parte* and *in camera* declarations incorporated by reference.[4]

[4] Because the government addressed the relevant background facts, discovery standards, and law relating to the application of the M.C.A. and M.C.R.E. 505 in prior *ex parte*, *in camera*, and under seal submissions (*see*, *e.g.*, AE 022; AE 120D; AE 120F; AE 120I; AE 120J; AE 120CC), the government incorporates those pleadings and attachments by reference. The *ex parte* and *in camera* pleadings and

10. Additional Information

The government has no additional information.

11. Attachments

A. Certificate of Service, dated 13 March 2015.

Respectfully submitted,

//s//
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attachments remain *ex parte*, *in camera*, and under seal pursuant to the Commission's Orders and the M.C.A. *See* 10 U.S.C. § 949p-4(b)(2).

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 13th day of March 2015, I filed AE 206S, US v Nashiri**, Government Response** To Defense Motion To Compel Discovery Of Information In The Possession Of All Documents Cited In The SSCI Report Relating To The Arrest, Detention, And Interrogation Of Mr. Al-Nashiri, with all attachments, with the Office of Military Commissions Trial Judiciary and served a copy on counsel of record.

//s//
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