

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

UNITED STATES OF AMERICA

v.

ABD AL RAHIM HUSSAYN
MUHAMMAD AL NASHIRI

AE 269A

ORDER

GOVERNMENT'S SIXTEENTH
MOTION FOR A PROTECTIVE ORDER
PURSUANT TO THE MILITARY
COMMISSIONS ACT OF 2009,
10 U.S.C. § 949P-4, AND MILITARY
COMMISSIONS
RULE OF EVIDENCE 505

30 APRIL 2015

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 government's *ex parte, in camera* motion for a protective order (AE 269), and its attachments, including the declarations incorporated by reference, requesting that the Commission authorize the Government 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 Government's proposed substitutions and summaries of that information. The Government 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 behind it: the first document is the underlying classified document, the second document is a redlined or highlighted version of the underlying document, which allowed the Commission to

review the modifications proposed by the Government, and the third document is the final proposed summary.

4. Having considered the Government's motion, proposed substitutions and summaries, and any materials that may be incorporated by reference or otherwise attached, I find:

a. The Government 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 Government's proposed summary is an adequate alternative to discovery of the underlying classified information. The proposed summary 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 Government's proposed summary is an adequate alternative to discovery of the underlying classified information. I authorize the Government to produce to the Defense its proposed summary in lieu of the underlying classified information. By producing the summary, the Government is considered to have met its discovery obligations with regard to those documents.

b. This order does not abrogate the Government'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.

c. The Government's *ex parte, in camera* motion, filed on 11 April 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.

d. This Commission seals and preserves the Government's entire *ex parte, in camera* presentation (including the Government's motion, the underlying classified information, the proposed substitutions and summaries, and any other attachments, including any attachments that may be 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 30th day of April, 2015.

//s//

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