

~~SECRET//ORCON/NOFORN~~

MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA

v.

ABD AL-RAHIM HUSSEIN
MUHAMMED ABDU AL-NASHIRI

AE 369YYY

NOTICE OF CLASSIFIED RULING

20 September 2017


This placeholder serves as notice for AE 369YYY Classified Ruling. The Ruling has been served on the Counsel of record by the Chief Clerk of Trial Judiciary.

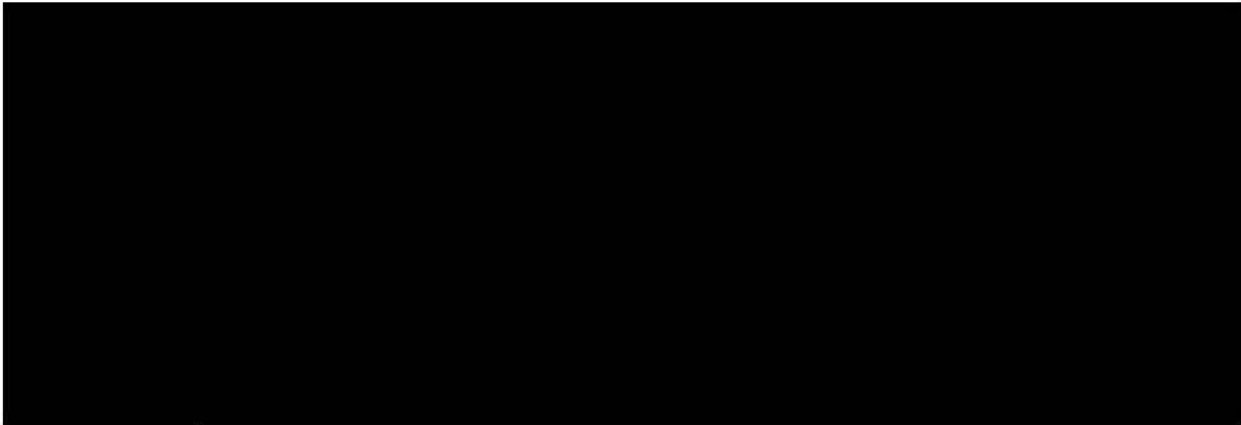
~~SECRET//ORCON/NOFORN~~

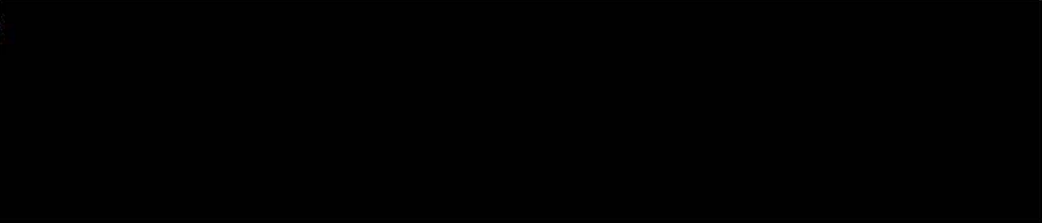
~~SECRET//ORCON/NOFORN~~

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY**


UNITED STATES OF AMERICA v. ABD AL-RAHIM HUSSEIN MUHAMMED ABDU AL-NASHIRI	AE 369YYY Ruling Defense Motion to Compel Production of Discovery Materials Related to Potential Intrusions into Attorney-Client Communications 20 September 2017
---	--

1. ~~(S//OC/NF)~~ In AE 369PP, Defense requests the Commission's order production 



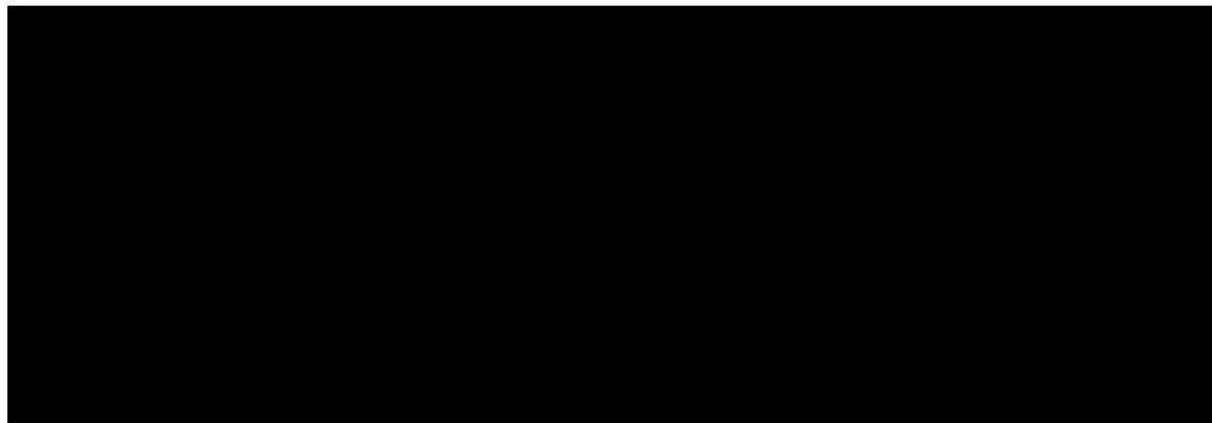
2. ~~(S//OC/NF)~~ 

Classified By: ~~Martin Sims~~
Derived From: ~~Multiple Sources~~
Declassify On: ~~25X1, 20420920~~

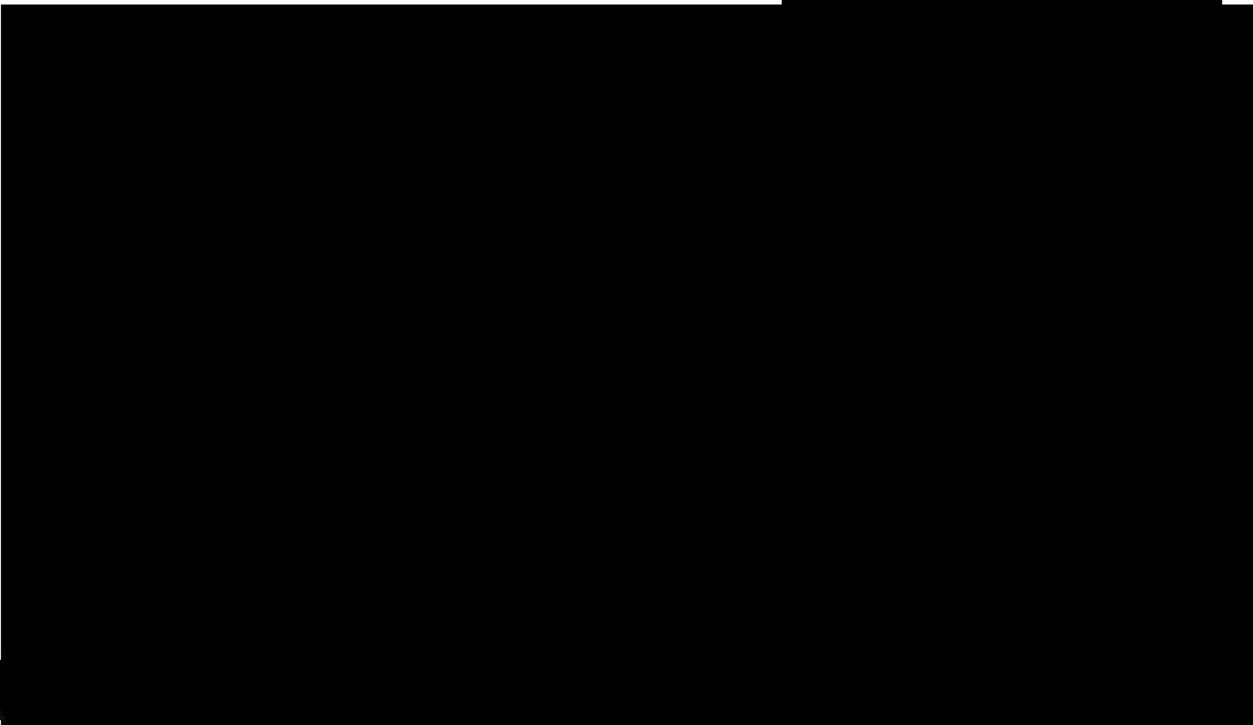


~~SECRET//ORCON/NOFORN~~

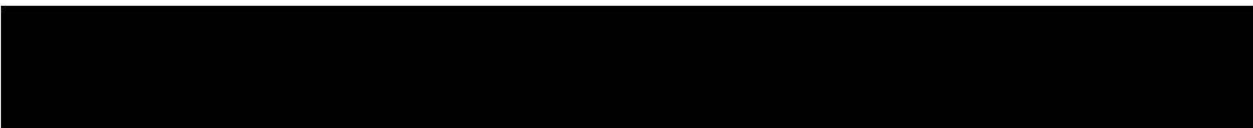
~~SECRET//ORCON/NOFORN~~



3. ~~(S//OC/NF)~~ Generally, information is discoverable if it is “material to the preparation of the defense.” *See* Rule for Military Commission (R.M.C.) 701(c)



See Weathersford v. Bursey, 429 U.S. 545 (1977) (to establish a violation of an defendant’s 6th Amendment right to counsel, the defendant must show not only the monitoring of attorney/client communications, but also that the evidence acquired was used to the prejudice of the defendant in his criminal trial.); *see also United States v. Levy*, 577 F.2d 200, 209 (3d Cir



~~SECRET//ORCON/NOFORN~~

~~SECRET//ORCON/NOFORN~~

1978) (“we think the inquiry into prejudice must stop at the point where attorney-client confidences are *actually disclosed* to the government enforcement agencies responsible for investigating and prosecuting the case”) (emphasis added); *Bishop v. Rose*, 701 F2d 1150, 1156 (6th Cir 1983); *Sinclair v. Schriber*, 916 F2d 1109, 1112 (6th Cir 1990). As such, the Defense has failed to carry its burden of proof to support its motion to compel discovery.

4. (U) The Defense motion, as well as the request for oral argument, is **DENIED**.

So **ORDERED** this 20th day of September, 2017.

//s//

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

~~SECRET//ORCON/NOFORN~~