

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

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</p>	<p>AE 018U (3rd Amend)</p> <p>THIRD AMENDED ORDER</p> <p>Privileged Written Communications</p> <p>28 March 2019</p>
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1. The Accused in *United States v. Khalid Shaikh Mohammad, Walid Muhammad Salih Mubarak Bin ‘Attash, Ramzi Bin al Shibh, Ali Abdul Aziz Ali, and Mustafa Ahmed Adam al Hawsawi* were arraigned on 5 May 2012. As such, this Order only applies to these cases.

2. **Definitions.**

a. Accused: Khalid Shaikh Mohammad, Walid Muhammad Salih bin ‘Attash, Ramzi Bin al Shibh, Ali Abdul Aziz Ali (aka “al Baluchi”), and Mustafa Ahmed Adam al Hawsawi.

b. Defense Counsel: Those attorneys designated by the Accused, on the record, as counsel.

c. Defense Personnel: Includes co-counsel, interpreters, translators, paralegals, investigators, experts, consultants, and all other personnel or support staff authorized and engaged in, or employed to assist in the defense of the Accused, pursuant to the authority found in the Manual for Military Commissions and the Regulation for Trial by Military Commission.

d. United States Government (USG) Personnel: Refers to any person employed by or affiliated with the United States other than counsel of record for the Accused or their Defense Personnel. The term includes, but is not limited to, persons acting at the direction of or with the knowledge of any agency of the United States and Joint Task Force Guantanamo.

e. Military Commission Privilege Review Team (Privilege Team):

(1) A team consisting of one or more Department of Defense (DoD) attorneys and one or more intelligence or law enforcement personnel who have not taken part in, and, in the future, shall not take part in, a military commission, a Combatant Status Review Tribunal, Administrative Review Board, Periodic Review Board, or habeas corpus proceedings involving the Accused (other than acting as a Privilege Team member or equivalent for the habeas corpus or other proceedings).

(2) All members of the Privilege Team will be bound by a non-disclosure agreement to preserve the lawyer-client and other related legally-recognized privileges to the fullest extent possible in a manner consistent with this Order.

(3) If required, the Military Commission Privilege Team may include interpreters and translators, provided that such personnel meet these same criteria.

f. Lawyer-Client Privileged Communications:

(1) Communications that are privileged within the meaning of Military Commission Rule of Evidence (M.C.R.E.) 502, which may include original handwritten or typewritten correspondence between the Accused and his Defense Counsel bearing the signature of the Defense Counsel (or a representative of the Defense Counsel encompassed by M.C.R.E. 502).

(2) Attorney Work Product is encompassed within Lawyer-Client Privileged Communications.

g. Other Case-Related Material:

(1) Communications between a Defense Counsel and the Accused that are directly related to the Accused's military commission but are not privileged within the meaning of M.C.R.E. 502. This includes discovery and related material, and records of Military Commission

proceedings, including court filings. Court filings may be provided to the Accused, including those marked as FOUO, unless they are specifically marked "Not Releasable to" the Accused.<sup>1</sup>

(2) Documents initially identified as Other Case-Related Material that are subsequently incorporated by Defense Counsel or the Accused into work product or lawyer-client communications or that are aggregated to support a particular communication or reflect the lawyer's mental impressions or strategy, may become Lawyer-Client Privileged Communications under M.C.R.E. 502. If such material is already in the possession of the Accused, JTF-GTMO personnel are not responsible for retrieving documents previously submitted as "Other Case-Related Material," or re-marking them in conformity with paragraph 5.b. below.

(3) Letters of introduction by the Accused that are directly related to the Military Commission involving that Accused and necessary to the preparation of the defense can be classified as "Other Case-Related Material" if they meet all Privilege Team security review requirements.

h. Military Commissions Non-Legal Mail and Material: All correspondence, documents, media in any form, or similar material that do not fall within paragraphs 2.f or 2.g, above.

i. Contraband:

(1) Any physical item or prohibited information the Commander, JTF-GTMO, or his designee, has deemed to be impermissible or inappropriate for an Accused Detainee to transmit, possess, be informed of (orally or in writing) or view, subject to the exception in paragraph 2.i.(4), below, or any physical item whose receipt and/or transmission by the Accused is prohibited without prior authorization by Commander, JTF-GTMO, or his designee. This

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<sup>1</sup> This sentence is a change from AE 018U (2<sup>nd</sup> Amend), Second Amended Order, Privileged Written Communications, dated 1 August 2018. The sentence in the prior Order read "This includes discovery and related material that is releasable to the Accused and records of commission proceedings, including court filings when releasable to the Accused."

includes material that, if introduced into the detention facility reasonably could be expected to result in immediate and substantial harm to national security, imminent acts of violence, future events that threaten national security, or present a threat to the operation of the detention facilities or to USG personnel. This material may exist in any form, including correspondence, documents, electronic media, or similar material.

(2) Contraband includes Physical Contraband, as that term is defined in paragraph 2.j., below.

(3) Examples of prohibited information include:

(a) Information relating to any ongoing or completed military, intelligence, security or law enforcement operations, investigations or arrests or the results of such activities by any nation or agency;

(b) Current political or military events in any country, historical perspectives or discussions on jihadist activities, including information generated or distributed by or on behalf of foreign terrorist organizations, individuals or groups engaged in terrorist activities.

(c) Information about security procedures or changes to security procedures at JTF-GTMO or the U.S. Naval Station at Guantanamo Bay or information about the physical layout of the detention facilities;

(d) Information about the operation of or changes to the detention facility;

(e) Information about present and former detention personnel or other USG personnel (including their names, locations or assignment history); and,

(f) Information regarding the status of other Detainees (including former Detainees) at Guantanamo and information regarding any detention of Detainees; and classified,

Controlled Unclassified Information or Sensitive but Unclassified Information that has not been approved by the Government for release to the Accused.

(4) Notwithstanding sub-paragraphs 2(i)(1) - (3), above, no information shall be considered Contraband if defense counsel reasonably believes it is directly related to the Military Commission proceeding involving the Accused.

j. Physical Contraband: Consists of paper fasteners (including staples, paper clips, and binder clips), money, stamps, cigarettes, weapons, chemicals, drugs, writing instruments, items of value and material that may be used in an escape attempt, or that present a threat to the operation of the detention facilities or to USG personnel. "Physical Contraband" does not include written communications.

**3. Defense Counsel Handling and Marking of Communications with the Accused.**

a. Because of the potential for harm posed by the transmission or introduction of contraband out of/into the detention facility, Defense Counsel shall not include Contraband in Non-Legal Mail and Material or in Lawyer-Client Privileged Communications or Other Case-Related Material, subject to paragraph 2.i.(4), above.

b. With the exception of letters of introduction under paragraph 3.g.(3), Defense Counsel may not send, communicate, or otherwise distribute an Accused's mail, or any portion of its contents (legal or otherwise) to third parties. Only Commission case-related legal mail will be presented by Defense Counsel to the Accused. No member of the Defense Team will forward third-party mail to or from the Accused.

(1) Defense Counsel may disseminate the contents of the Accused's unclassified conversations to third parties for the sole purpose of preparing the Accused's defense for Commission proceedings.

(2) If Defense Counsel believes written or recorded communication between the Accused and a third party is directly related to the Military Commission and necessary to the preparation of the defense, Defense Counsel may submit such matters *ex parte* to the Military Judge together with an explanation of why the communication must be mailed from or provided to the Accused.

(3) If the Military Judge approves the Defense Counsel's request, the Military Judge shall notify the JTF-GTMO Commander of the Commission's ruling so that special handling procedures can be instituted as appropriate. The Defense must then also provide notice to the JTF-GTMO Commander, or his designee, of what material it seeks to mail from or provide to the Accused, though it need not disclose its explanation to the JTF-GTMO Commander of why that material must be mailed from or provided to the Accused.

c. When sending material to the Accused or bringing such material to a meeting with the Accused, Defense Counsel shall separate Lawyer-Client Privileged Communications, Other Case Related Material, and Non-Legal Mail and Material.

d. Defense Counsel shall ensure all communications with the Accused are marked with appropriate classification markings, including banner and portion markings. Unclassified communications shall be banner marked but do not require portion marking.

e. Lawyer-Client Privileged Communications

(1) Each page of incoming material shall include Defense Counsel's initials or signature on the top right corner, as well as the name and Internment Serial Number of the Accused. The top and bottom of each page shall also be marked as "LAWYER-CLIENT PRIVILEGED COMMUNICATION UNDER M.C.R.E. 502."

(2) Defense Counsel shall include an identically marked cover sheet indicating the number of attached pages and a signed attestation by the Defense Counsel the attached

communication is privileged from disclosure under M.C.R.E. 502 and, to the best of his/her knowledge and belief, the attached communication does not contain Contraband, Classified, Controlled Unclassified Information, or Sensitive but Unclassified Information the intended recipient of the communication is not authorized to receive under M.C.R.E. 505, the Military Commissions Act, and the laws, orders, directives and regulations governing classified, Controlled Unclassified Information, or Sensitive but Unclassified Information, including any protective orders in the case. Accused's notes and other materials, even if initially assessed by Defense Counsel to be Classified, Controlled Unclassified Information, or Sensitive but Unclassified Information, once properly reviewed and stamped as "Releasable to the Accused" in accordance with this Order, may be returned to the Accused. Material thus returned to the Accused will not bear any classification markings.

f. Other Case-Related Material

(1) Each page of incoming material shall include Defense Counsel's initials or signature on the top right corner, as well as the name and Internment Serial Number of the Accused. The top and bottom of each page shall also be marked as "OTHER CASE-RELATED MATERIAL." In the case of bound books, only the front and back cover need to be marked.

(2) Discovery Material. In addition to the markings described in paragraph 3.e, above, before being provided to the Accused by a Defense Counsel, material provided by the Prosecution in discovery must be marked by the Prosecution in a manner that makes clear the material has been approved for release to the Accused. The specific language for these markings shall be determined by the Prosecution and placed on each page of the document as part of the discovery process. The Prosecution shall provide a list of the approved markings to Defense Counsel, the Military Judge, the Privilege Team, and JTF-GTMO personnel. If requested to do so by the Defense Counsel or ordered to do so by the Military Judge, the Prosecution will

provide a duplicate copy of paper discovery materials releasable to the Accused directly to the Privilege Team for delivery to the Accused.

(3) Other Material. If the Other Case-Related Material was not discovery provided by the Prosecution or a record from a Military Commission proceeding, Defense Counsel shall include an identically marked cover sheet indicating the number of attached pages and an attestation signed by Defense Counsel stating the attached communication is related to the case and, to the best of his/her knowledge and belief, the material does not contain Contraband, Classified, Controlled Unclassified Information, or Sensitive but Unclassified Information, the intended recipient of the communication is not authorized to receive under M.C.R.E. 505, the Military Commissions Act, and the laws, orders, directives and regulations governing Classified, Controlled Unclassified Information, or Sensitive but Unclassified Information, including any protective orders in the case.

g. Military Commissions Non-Legal Mail and Material

(1) Each page of incoming material shall include Defense Counsel's initials or signature on the top right corner, as well as the name and Internment Serial Number of the Accused. The top and bottom of each page shall also be marked as "MILITARY COMMISSION NON-LEGAL MAIL AND MATERIAL."

(2) Defense Counsel shall send Non-Legal Mail and Material to the Accused through the United States Postal Service. It shall be reviewed by USG personnel at JTF-GTMO under the Standard Operating Procedures for Detainee Non-Legal Mail. However, in extraordinary circumstances, if a Defense Counsel requires delivery of such material to the Accused in an expedited manner, Defense Counsel can submit a request for expedited processing to JTF-GTMO via the Privilege Team. In the request, Defense Counsel shall state the requested delivery date for the material and an explanation for why expedited processing is required. The



Privilege Team shall deliver Defense Counsel's request and the Non-Legal Mail and Material to personnel at JTF-GTMO. If the request is granted, this material shall, to the maximum extent possible, be given expedited priority by JTF-GTMO.

(3) During some meetings with the Accused, a Defense Counsel may receive material from the Accused which requires expedited processing for reasons related to the Military Commission proceedings. For example, the Accused may provide the Defense Counsel with a letter of introduction for the Defense Counsel to use when meeting with a witness. In such instances, the Defense Counsel can submit a request for expedited processing to JTF-GTMO via the Privilege Team. In the request, Defense Counsel shall state the date by which processing is required and an explanation for why expedited processing is required. The Privilege Team shall deliver the Defense Counsel's request and the Non-Legal Mail and Material to personnel at JTF-GTMO. If the request is granted, this material shall, to the maximum extent possible, be given expedited priority by JTF-GTMO.

**4. General Obligations of Military Commission Privilege Review Team (Privilege Team).**

a. To the fullest extent possible and consistent with the terms of this Order, the Privilege Team must preserve the lawyer-client and other related legally-recognized privileges. Members of the Privilege Team shall not disclose to any person any information provided by the Accused or Defense Counsel, except as provided in this Order.

b. All members of the Privilege Team will execute a non-disclosure agreement to preserve the lawyer-client and other related legally-recognized privileges to the fullest extent possible in a manner consistent with this Order. Non-disclosure agreements will be provided to the designated Court Information Security Officer.

c. The Privilege Team may not consult with security and intelligence experts regarding potential Contraband or other unauthorized information the Privilege Team becomes aware of

when executing its responsibilities under this Order without first notifying the Defense. Defense will be given an opportunity to address the issue with the Privilege Team. If the issue is not resolved, either the Defense or the Privilege Team may raise the issue to the Military Judge. Only after resolution by Defense and the Privilege Team or by the Military Judge, may the Privilege Team consult with security and intelligence experts regarding potential Contraband. In extraordinary circumstances, the Privilege Team may contact the Military Judge *ex parte*, without notice to either side, to address concerns. Contact with the Military Judge will be made through the Trial Judiciary staff.

d. The Privilege Team shall maintain a log, which contains general information about its processing of material under this Order (such as the number of pages, date of review, etc., but *not* including details about the content of the documents), as well as information about Contraband or other unauthorized material that was placed into the mail or meeting process by Defense Counsel or defense personnel. This log and information shall be kept in a secure location, and shall not be disclosed to any person except as provided in this Order or as necessary to address these issues with competent authorities, to include the Chief Defense Counsel. Whenever possible, the Privilege Team shall advise the involved Defense Counsel in advance before disclosing this information.

e. Nothing in this order prevents the Privilege Team from consulting with JTF-GTMO Staff Judge Advocate (SJA) office about logistical needs in complying with this order. Subject to the exceptions within this order, the Privilege Team may not disclose any substantive information learned through communications with the JTF-GTMO SJA office.

f. After receiving permission from the Military Judge, the Privilege Team shall report to the JTF-GTMO Commander any information that reasonably could be expected to result in immediate and substantial harm to national security, imminent acts of violence, or future events

that threaten national security or present a threat to the operation of the detention facilities or to USG personnel. In his discretion, the Commander, JTF-GTMO, may disseminate the relevant portions of the information to law enforcement, military, and intelligence officials, as appropriate.

g. This Order does not authorize the Privilege Team to conduct a classification review of any document encompassed within the provisions of this Order.

**5. Material from Defense Counsel to the Accused ("Incoming Material").**

a. After completing the requirements under paragraph 3, above, Defense Counsel may either deliver Incoming Materials (including Lawyer-Client Privileged Communications, Other Case-Related Material, and requests for expedited Non-Legal Mail and Material) addressed to his client, to the Privilege Team at JTF-GTMO, or mail them to an address for the Privilege Team in the Washington, D.C. area that shall be provided by the government.

b. Defense Counsel shall seal the Lawyer-Client Privileged Communications, Other Case Related Material, and Non-Legal Mail and Material in separate envelopes. Defense Counsel shall clearly mark the outside of an envelope containing the material with an appropriate annotation depending on the category of material:

**LAWYER-CLIENT PRIVILEGED COMMUNICATION UNDER M.C.R.E. 502  
- FOR DELIVERY TO DETAINEE**

**MILITARY COMMISSION OTHER CASE RELATED MATERIAL  
- FOR DELIVERY TO DETAINEE.**

**MILITARY COMMISSION NON-LEGAL MAIL OR MATERIAL  
- FOR DELIVERY TO DETAINEE**

c. Each envelope shall also include the Accused's name and Internment Serial Number and the Defense Counsel's name and return address and the classification level of any information contained within it. Envelopes received by the Privilege Team that are not properly

marked shall be returned to Defense Counsel unopened. Clear plastic envelopes or bags are approved for use to contain external hard drives.

d. Incoming material shall not include Physical Contraband (including paper fasteners, staples, paperclips, and binder clips) or other Contraband.

e. Prior to placing the material into the envelope, Defense Counsel shall ensure each page of Incoming Material is marked in accordance with paragraphs 3.e.(1) or 3.f.(1), above.

f. The Privilege Team shall open the envelopes to inspect the contents for Physical Contraband and to verify that each page of the material includes the markings required by paragraph 3.e.(1) or 3.f.(1), above. Defense Counsel or his/her representative may be present during this inspection. This inspection shall not include a review of the substantive content of the incoming material privileged under M.C.R.E. 502.

(1) Physical Contraband shall be removed from the envelopes and shall not be processed for delivery to the Accused.

(2) If, in inspecting under paragraph 5.f, above, the Privilege Team observes in plain view material that is not correctly marked as required by paragraph 3 above, that material shall not be processed for delivery to the Accused. This incorrectly marked material can include:

(a) General interest magazines, print media, or third party communications that are marked as Lawyer-Client Privileged Communications;

(b) Classified information, Controlled Unclassified Information, or Sensitive but Unclassified Information whose markings indicate it is not approved for release to the Accused.

g. The Privilege Team shall consult with Defense Counsel regarding the material described in paragraph 5.f, above, in an effort to address the apparent problem(s).

(1) If the discussions resolve the apparent problem, the material shall be processed for delivery to the Accused.

(2) If the discussions do not resolve the problem, the material shall be returned to Defense Counsel by the Privilege Team, with a written explanation regarding why it was not processed for delivery to the Accused.

h. Following the inspection, the Privilege Team shall annotate each page of the material with the Internment Serial Number of the Accused, a code indicating which Privilege Team member conducted the inspection, and a standardized marking that indicates the Privilege Team has processed the material in accordance with this Order.

i. The processing by the Privilege Team shall generally be completed within five (5) working days of the Privilege Team's receipt of this material.

j. The Privilege Team shall seal the processed material in separate envelopes, in the presence of Defense Counsel or its representative if requested, marked as:

**LAWYER-CLIENT PRIVILEGED COMMUNICATION UNDER M.C.R.E. 502  
-- APPROVED FOR DELIVERY TO DETAINEE**

**OTHER CASE RELATED MATERIAL  
-- APPROVED FOR DELIVERY TO DETAINEE**

**REQUEST FOR EXPEDITED NON-LEGAL MAIL OR MATERIAL  
FOR DELIVERY TO JTF-GTMO STAFF JUDGE ADVOCATE**

k. The sealed envelopes for Lawyer-Client Privileged Communications and Other Case Related Material shall clearly indicate the identity of the Accused to who the envelopes are to be delivered and, based on the markings found on the documents, the classification level of the documents contained within it.

l. The sealed envelopes containing Lawyer-Client Privileged Communications, Other Case-Related Material, and Requests for Expedited Non-Legal Mail may be returned to the

Defense Counsel or defense personnel for transmission to JTF-GTMO in a manner consistent with the classification level of the information. If requested by Defense Counsel, the Privilege Team shall place this material on the next mail courier run to JTF-GTMO.

m. If Defense Counsel desires confirmation that the documents were delivered to the Accused, Defense Counsel shall provide a self-addressed envelope for that purpose. The Accused shall be responsible for mailing any confirmation of delivery to Defense Counsel. This method shall be the sole and exclusive means by which confirmation of delivery is provided to Defense Counsel.

**6. Material Sent from the Accused to Defense Counsel ("Outgoing Material").**

a. Detainees shall be provided by JTF-GTMO with paper and a writing utensil to prepare written communications to Defense Counsel. Access to such items may be limited or restricted because of the Accused's disciplinary and/or medical status, although the Accused's disciplinary status shall not be a basis for denying all access to such items.

b. In the presence of JTF-GTMO staff, the Accused shall seal the written communication in an envelope that shall be annotated as "LAWYER-CLIENT MATERIAL--FOR DELIVERY TO DEFENSE COUNSEL." Each envelope shall be dated and labeled with the name and Internment Serial Number of the Accused and the name of Defense Counsel. It shall be marked and secured as TS/SCI pending review by Defense Counsel or other authority for a classification determination. The sealed envelope shall be placed in a courier bag which shall then be locked and provided to the Privilege Team.

c. The Privilege Team shall store all Outgoing Material in a safe location in the secure area at JTF-GTMO in a manner designed to protect any classified material and lawyer-client and related privileges until properly transferred to an authorized courier for delivery to the Defense Counsel.

**7. Material Brought by Defense Counsel into a Meeting with the Accused.**

a. Defense Counsel and defense personnel may only bring into a meeting with the Accused material which meets the requirements for Incoming Mail in paragraph 5, above, and that has been previously inspected and processed by the Privilege Team. This material shall be submitted to the Privilege Team with sufficient time for such inspection to be conducted and for the material to be sent to JTF-GTMO on the next courier run (if required), but generally not less than five (5) working days in advance of the visit. Material not provided to the Privilege Team sufficiently in advance of a scheduled meeting may not be inspected and transported to JTF-GTMO in time for Defense Counsel to bring it into the meeting.

b. Defense Counsel and defense personnel may bring writing utensils and blank paper into a meeting with the Accused. JTF-GTMO personnel may perform a Physical Contraband inspection of the bags and briefcases of Defense Counsel and defense personnel. Written materials are subject to inspection by the Privilege Team to ensure they have been marked and processed.

c. Defense Counsel may request permission to bring into a meeting with the Accused tapes or other forms of electronic communications. This material may be either Case Related or Other Lawyer-Client Material and shall be submitted to the Privilege Teams for processing at least fourteen days (14) prior to the scheduled visit. The Privilege Team is responsible for inspecting tapes and other forms of electronic media for physical contraband, and to verify that the tapes and other forms of electronic media are appropriately marked, pursuant to this Order. This inspection shall not include a review of the substantive content of this incoming electronic material, as such material is privileged under M.C.R.E. 502. The Commander, Joint Detention Group, shall not unreasonably withhold approval of such requests if this review determines that sharing the communication with the Accused would not reasonably be expected to result in

immediate and substantial harm to national security, imminent acts of violence, or future events that threaten national security or present a threat to the operation of the detention facilities or to USG personnel.

**8. Material Brought Out of a Meeting Between the Accused and Defense Counsel.**

a. Material Retained by the Accused

(1) At the completion of each meeting, the Accused shall be allowed to retain any written notes made during the meetings and any written material that was processed pursuant to paragraph 5, above, and brought into the meeting.

(2) For the written loose-leaf notes made during the meeting, Defense Counsel shall mark them pursuant to the procedures in paragraph 3, above. All material shall then be inspected by the Privilege Team pursuant to the procedures in paragraph 5, above. Each Accused will be provided an appropriately pre-marked notebook in which to take notes during his legal meetings. This book may only be kept in his possession and legal bin.

(3) Under no circumstances should the Accused or Defense Counsel commingle Lawyer-Client Privileged Communications, Other Case-Related Material, and/or Legal or Non-Legal Material.

b. Material Retained by Defense Counsel

(1) Following a Defense Counsel's meeting with the Accused, the notes or documents used or produced during the visits shall be sealed by the Defense Counsel in the presence of JTF-GTMO personnel. The envelope shall be marked with the Internment Serial Number of the Accused and name of the Defense Counsel and labeled as "Military Commissions Meeting Documents-For Delivery to Counsel" and the classification level of any information contained within it.



(2) Any material Defense Counsel requires for further meetings can be placed in a separate envelope and made available to Defense Counsel at the next meeting.

(3) Upon completion of all meetings, the envelope(s) shall be sealed into a larger envelope by JTF-GTMO personnel. The larger envelope shall be marked as "Military Commission Meeting Documents--For Delivery to Counsel" and annotated with Defense Counsel's name and the Accused's Internment Serial Number and the classification level of any information contained within it.

(4) If Defense Counsel will not be couriering this material, the larger envelope shall be placed in a courier bag, which shall then be locked and provided to the Privilege Team at JTF-GTMO. The Privilege Team shall store this material in a safe location in the secure area at JTF-GTMO in a manner designed to protect any classified material and lawyer-client and related privileges until properly transferred to a government-designated courier for delivery to Defense Counsel.

## **9. Material Brought Into and Out of Military Commission Hearings.**

### **a. Material Brought Into Commission Hearings**

(1) The Accused may bring into a Military Commission hearing any documents and material properly possessed in accordance with this Order that are necessary and relevant to the Accused's Military Commission proceeding. This material shall not be subject to inspection by the Privilege Team before being brought into a hearing, but is subject to inspection by JTF-GTMO staff for Physical Contraband.

(2) Defense Counsel may bring into a Military Commission hearing any documents and material necessary and relevant to represent the Accused. This material shall not be subject to inspection by the Privilege Team before being brought into a hearing, but is subject to inspection by JTF-GTMO staff for Physical Contraband. Defense Counsel are required to

protect Classified material, Controlled Unclassified Information, and Sensitive but Unclassified Information from unauthorized disclosure, including during commission hearings.

b. Material Brought Out of Commission Hearings

(1) The Accused may not return to the detention facility with material brought out of a Military Commission hearing unless the material is inspected by the Privilege Team in accordance with the same criteria and procedures outlined in paragraph 5, above.

(2) Defense Counsel may retain material brought out of a Military Commission hearing without an inspection by the Privilege Team. As in all situations, if Defense Counsel knows, reasonably should know, or is uncertain whether material brought out of a Military Commission hearing with the Accused contains classified information, Defense Counsel must take appropriate measures to protect such material.

(3) Defense Counsel qualified as couriers at the appropriate level shall seal, handle, transport, and secure such material in accordance with DoD regulations. Defense Counsel who are not qualified as couriers at the appropriate level shall give the classified or believed to be classified notes, documents, or material used or produced during the hearing to a qualified courier to be stored, handled, and transported as classified material at the appropriate level of classification

**10. Storage of and Access to Legal Material.** The Accused's storage of and access to Lawyer-Client Privileged Communications and Other Case-Related Material shall be in accordance with the JTF-GTMO Standard Operating Procedures, provided that these Standard Operating Procedures allow the Accused at least one legal bin within his cell at all times regardless of his disciplinary status, with no time limit on access to legal bins. The Accused will be present if legal bins are moved or replaced.

**11. Inspection of Legal Bins.**

a. Each Accused possess one or more containers known as "legal bins," in which they store materials protected by the lawyer-client privilege, as defined in M.C.R.E. 502(a)(1). These materials are identified by various markings, including stamps of various forms placed from time to time by USG personnel and banners or markings placed by counsel for the Accused or their representatives. The content of materials bearing any of these various markings, notwithstanding inconsistencies in their form, may not be read or otherwise observed for content by USG personnel other than to identify that the materials are, in fact, marked.

b. USG personnel may inspect legal bins of an Accused only in the presence of a trained Non-Commissioned Officer or higher as designated by the Joint Detention Group Commander and only for contraband. Contraband is defined in paragraph 2.i., above.

c. Materials other than physical Contraband observed in the legal bins of the Accused, if any, which do not bear the markings referred to in paragraph 3 shall be segregated in a sealed container, labeled with the date, time and identification of the USG personnel by whom it was observed, and retained by the Non-Commissioned Officer supervising the inspection. In such an event, an attorney representative of the SJA will be immediately notified. Seizure of such material may occur only upon the prior authorization of an attorney representative of the SJA, made upon personal inspection. If the materials are determined to be properly marked, they will be returned to the Accused. If the materials are not properly marked, they will be retained by the attorney representative of the SJA and counsel for the Accused shall be immediately notified. If the materials originated with Defense Counsel, they shall be promptly returned to counsel. The materials shall not be duplicated, photographed, or otherwise copied by any process prior to being shown to Defense Counsel.

d. Material, marked as indicated in paragraph 11.a, above, that is found in locations other than the legal bin of an Accused, shall be segregated in a sealed container, labeled with the date and time and identification of the USG personnel by whom it was observed, and retained by the Non-Commissioned Officer supervising the inspection.

(1) In such an event, an attorney representative of the SJA will be immediately notified. Seizure of such material may occur only upon the prior authorization of an attorney representative of the SJA, made upon personal inspection. If the materials are determined to be properly marked, they will be returned to the Accused.

(2) If the materials are not properly marked, they will be retained by the attorney representative of the SJA, and Defense Counsel for the Accused shall be immediately notified. If the materials originated with counsel, they shall be promptly returned to Defense Counsel. The materials shall not be duplicated, photographed, or otherwise copied by any process prior to being shown to counsel.

12. **Storage of and Access to Non-Legal Material.** The Accused's storage of and access to Non-Legal Mail and Material shall be in accordance with the JTF-GTMO Standard Operating Procedures.

So **ORDERED** this 28th day of March, 2019.

//s//  
K. A. PARRELLA  
Colonel, U. S. Marine Corps  
Military Judge