

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 523L</p> <p>Protective Order #5</p> <p>Defense Access to Current and Former Joint Task Force-Guantanamo Medical Providers</p> <p>2 April 2019</p>
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1. The Commission issues Protective Order #5 (PO #5), pursuant to the Military Commissions Act of 2009 (M.C.A.), 10 U.S.C. §§ 949p-3, 949p-4, and 949p-6, Rule for Military Commission (R.M.C.) 701(f) and (l), and Military Commission Rules of Evidence (M.C.R.E.) 505 and 506.

2. PO #5 is issued in tandem with the Commission’s Ruling in AE 523M (Ruling),¹ which addressed the Government’s classified *ex parte* motion² requesting the Commission issue a protective order and provide other relief under M.C.R.E. 505 and 506 in order to protect the classified and controlled unclassified information implicated by the Commission’s order in AE 523J (Order).³

3. PO #5 is a modification of the protective order proposed by the Government in AE 523K (GOV).

4. PROTECTIVE ORDER #5.

a. *Scope.* PO #5 applies to all parties to the case of *United States v. Khalid Shaikh*

Mohammad et al. PO #5 applies to all aspects of pre-trial, trial, and post-trial stages of this case,

¹ AE 523M Ruling, Defense Access to Current and Former Joint Task Force-Guantanamo Medical Providers, dated 2 April 2019.

² AE 523K (GOV), Government Motion Invoking Privilege and Seeking Protective Order and Other Relief under M.C.R.E. 505 and M.C.R.E. 506 in Response to AE 523J (Order), filed 12 November 2018.

³ AE 523J Order, Mr. al Baluchi’s Motion to Compel Production of Identities of Witnesses Referred to by Pseudonym in Discovery, dated 17 August 2018.

including any appeals, subject to modification by further order of this Commission or other court of competent jurisdiction. PO #5 does not supersede Protective Order #1,⁴ or Protective Order #2,⁵ and is applicable only to the information provided by the Government in response to the Commission's Order in AE 523J (Order).⁶

b. Protection of Classified Information Pertaining to JTF-GTMO Medical Providers.

(1) The Government represented to the Commission in AE 523K (GOV) that any information that identifies a current or former JTF-GTMO medical provider and then associates that provider with a detainee is classified. Consequently, in all instances where the name or contact information of a current or former JTF-GTMO medical provider *is* associated with a detainee, such information shall be protected under Protective Order #1.⁷

(2) That information, regardless of the source from which it is derived, will be maintained under seal until further order of this Commission or another court of competent jurisdiction.

c. Protection of Government Information Privileged from Disclosure.

(1) The Government represented to the Commission in AE 523K (GOV) that any information that identifies but does not associate a current or former JTF-GTMO medical provider with a detainee is government information privileged from disclosure. The Government has effectively claimed the Government Information Privilege under M.C.R.E. 506 in order to protect this information. Consequently, in all instances where the name or contact information of

⁴ AE 013BBBB, *Third Amended* Protective Order #1, To Protect Against Disclosure of National Security Information, dated 6 July 2015.

⁵ AE 014H, Protective Order #2, To Protect Unclassified Discovery Material Where Disclosure is Detrimental to the Public Interest, dated 20 December 2012.

⁶ AE 523J Order, Mr. al Baluchi's Motion to Compel Production of Identities of Witnesses Referred to by Pseudonym in Discovery, dated 17 August 2018.

⁷ See AE 013BBBB, *Third Amended* Protective Order #1, To Protect Against Disclosure of National Security Information, dated 6 July 2015.

a current or former JTF-GTMO medical provider *is not* associated with any detainee, such information shall be protected under Protective Order #2.⁸

(2) That information, regardless of the source from which it is derived, will be maintained under seal until further order of this Commission or another court of competent jurisdiction.

(3) In addition, the parties will adhere to the following *administrative protective measures* for all instances where the name of a current or former JTF-GTMO medical provider is held by the parties but not associated with any detainee:

i) The information shall be stored only on official government networks or within controlled-access government facilities; and

ii) Electronic copies of the information may be transmitted only on official government networks, and physical copies of the information may be transported only between controlled-access government facilities within a sealed envelope or container.

So **ORDERED** this 2nd day of April, 2019.

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

⁸ See AE 014H, Protective Order #2, To Protect Unclassified Discovery Material Where Disclosure is Detrimental to the Public Interest, dated 20 December 2012.