

**MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA**

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<p><b>UNITED STATES OF AMERICA</b></p> <p>v.</p> <p><b>KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</b></p>	<p><b>AE 575H</b></p> <p><b>RULING</b></p> <p>Pursuant to Military Commission Rule of Evidence 505(h) and Rule for Military Commissions 806(b)(2)</p> <p><b>31 January 2019</b></p>
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1. The Commission conducted an in camera Military Commission Rule of Evidence (M.C.R.E.) 505(h) hearing on 29 January 2019, with Defense Counsel for all Accused present.<sup>1</sup> The purpose of the M.C.R.E. 505(h) hearing was for the Commission to determine whether classified information the Government and Defense intended to use and disclose was relevant for use by the Commission to reach a fair determination of the issues raised in various appellate exhibit series to include AE 575 (GOV).<sup>2</sup> In AE 575C (AAA),<sup>3</sup> AE 575E (WBA),<sup>4</sup> and AE 575F (GOV),<sup>5</sup> the Defense and the Government notified the Commission, pursuant to M.C.R.E. 505(g)(1)(A) and M.C.R.E. 505(h)(2)(A) respectively, that they reasonably expected to disclose, or cause the disclosure of classified information, or use the classified information in connection with argument regarding AE 575 (GOV). Messrs. Ali and bin ‘Attash and the Government presented classified oral argument before this Commission regarding the use,

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<sup>1</sup> AE 611S Ruling, Pursuant to Military Commission Rule of Evidence 505(h), dated 31 January 2019.

<sup>2</sup> AE 575 (GOV), Government Unclassified Notice of Unclassified Filing, filed 5 June 2018.

<sup>3</sup> AE 575C (AAA), Defense Notice Pursuant to MCRE 505(g)(1)(A), filed 23 August 2018.

<sup>4</sup> AE 575E (WBA), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 11 October 2018.

<sup>5</sup> AE 575F (GOV), Government Notice Pursuant to M.C.R.E. 505(h)(2)(A), filed 15 January 2019.

relevance, and admissibility of the classified information identified by the parties pertaining to AE 575 (GOV).

2. The Commission ruled the classified information noticed in AE 575C (AAA), AE 575E (WBA), and AE 575F (GOV) is relevant for a fair determination of the issues before the Commission in AE 575 (GOV).

3. When the Commission finds the classified information relevant, the Government is given the opportunity to request the Commission (1) order a substitution in lieu of disclosing classified information; (2) approve a summary of the specific classified information; or (3) permit any other “procedure or redaction limiting disclosure of specific classified information.”<sup>6</sup>

4. The Military Judge may close all or a portion of Commission proceedings upon appropriate findings in accordance with 10 U.S.C. § 949d(c) and Rule for Military Commissions (R.M.C.) 806(b)(2).

#### **5. Findings.**

a. The classified information noticed in AE 575C (AAA), AE 575E (WBA), and AE 575F (GOV) is relevant for a fair determination of the issues before the Commission in AE 575 (GOV).

b. The Government has not requested the Commission order a substitution in lieu of disclosing classified information, approve a summary of the specific classified information, or permit any other “procedure or redaction limiting disclosure of specific classified information.”

c. Upon hearing oral argument and reviewing the classified information sought to be disclosed, the Commission finds an overriding government interest in preventing public disclosure of the information identified by the Defense that could reasonably be expected to cause serious damage to national security.

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<sup>6</sup> See 10 U.S.C § 949p-6(d)(1).

d. Closure of a portion of these proceedings is necessary to protect information the disclosure of which could reasonably be expected to cause serious damage to national security, including intelligence or law enforcement sources, methods, or activities.

e. The closure of proceedings in accordance with R.M.C. 806(b)(2), ordered herein, is narrowly tailored to protect information that, if publically disclosed, could reasonably be expected to cause serious damage to national security, in that:

(1) Only the portion of the proceedings directly pertaining to the classified information identified by the Defense will be closed to the public; and

(2) A redacted, unofficial/unauthenticated, transcript of the closed session, excising only classified national security information, will be released to the public in accordance with the Regulation for Trial by Military Commission and the Trial Judiciary Rules of Court.

f. Closure of a portion of the proceedings will protect the classified information at issue by preventing its disclosure to individuals having neither the security clearance nor the “need to know” that are prerequisite to its receipt.

g. The Commission has determined there are no less restrictive means or reasonable alternatives, other than closure of a limited portion of the proceedings, which will adequately satisfy the Government’s overriding interest in protecting this national security information.

**6. Ruling.** The Commission will hear classified argument regarding the information noticed in AE 575C (AAA), AE 575E (WBA), and AE 575F (GOV) in closed session on a date to be determined. The closed session will be limited to evidence and argument pertaining to the classified information noticed in AE 575C (AAA), AE 575E (WBA), and AE 575F (GOV).

7. **Order.** Within **30 days** after the closed session referenced above, a redacted unclassified, unofficial/unauthenticated, transcript of that session will be expeditiously prepared and provided to the public in a manner similar to unauthenticated transcripts of open sessions.

So **ORDERED** this 31st day of January 2019.

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