

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

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**UNITED STATES OF AMERICA**

v.

**KHALID SHAIKH MOHAMMAD,  
WALID MUHAMMAD SALIH  
MUBARAK BIN ‘ATTASH,  
RAMZI BIN AL SHIBH,  
ALI ABDUL AZIZ ALI,  
MUSTAFA AHMED ADAM  
AL HAWSAWI**

**AE 611S**

**RULING**

Pursuant to Military Commission  
Rule of Evidence 505(h)

**31 January 2019**

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1. On 22 January 2019, Mr. Ali (a.k.a. Mr. al Baluchi) moved<sup>1</sup> the Commission, pursuant to Military Commission Rule of Evidence (M.C.R.E.) 505(h), for an in camera hearing to determine the use, relevance, and/or admissibility of classified information for all motions for which notice had been given pursuant to M.C.R.E. 505(g)(1)(A). Mr. Ali’s motion for an M.C.R.E. 505(h) hearing requested the Commission require the Government to identify which information noticed by the Defense is classified information and the Commission narrowly tailor the hearing to “closure necessary to protect information for which the Government has validly claimed classified information privilege.”
2. On 25 January 2019, the Government responded<sup>2</sup> to Mr. Ali’s motion joining Mr. Ali’s motion for an M.C.R.E. 505(h) hearing, requesting the hearing include an additional M.C.R.E. 505(h)(2)(A) notice filed by the Government in the AE 616 series, and requesting the Commission to order the Defense to provide more particularized notice in certain instances.
3. On 29 January 2019, the Commission held an in camera hearing pursuant to M.C.R.E. 505(h) to determine the use, relevance, or admissibility of classified information described in the

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<sup>1</sup> AE 611M (AAA), Mr. al Baluchi’s Motion for 505(h) Hearing, filed 22 January 2019.

<sup>2</sup> AE 611O (GOV), Government Response to Mr. Ali’s Motion for an M.C.R.E. 505(h) Hearing, filed 25 January 2019.

following M.C.R.E. 505(g)(1)(A) notices filed by the Defense: AE 118K (AAA),<sup>3</sup> AE 133CCC (AAA),<sup>4</sup> AE 574H (AAA),<sup>5</sup> AE 575C (AAA),<sup>6</sup> AE 575E (WBA),<sup>7</sup> AE 599D (WBA),<sup>8</sup> AE 600A (AAA),<sup>9</sup> and AE 601A (AAA),<sup>10</sup> and the following M.C.R.E. 505(h)(2)(A) notices filed by the Government: AE 575F (GOV),<sup>11</sup> AE 616E (GOV),<sup>12</sup> and AE 616H (GOV).<sup>13</sup> The classified information addressed in these notices is intended for use in connection with oral argument for the issues presented in the following motion series: AE 118, AE 133, AE 574, AE 575, AE 599, AE 600, AE 601, and AE 616.

4. Counsel for the Government and for all Accused were present at the M.C.R.E. 505(h) hearing. During the hearing, each of the M.C.R.E. 505(g) and 505(h)(2)(A) notices were addressed as follows:

a. **AE 118K (AAA)**. Mr. Ali articulated the scope of classified information he intended to elicit. The Government, while arguing against any oral argument related to AE 118K (AAA), did not object to the use of the classified information in a closed Rule for Military Commissions (R.M.C.) 806 session should the Commission decide to take up the issue.

b. **AE 133CCC (AAA)**. Mr. Ali articulated the scope of classified information he intended to elicit and proposed certain unclassified substitutes to be used for oral argument in open session. The Government did not object to the use of the classified information in a closed RMC 806 session, or the proposed unclassified substitute for argument in open session.

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<sup>3</sup> AE 118K (AAA), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 4 January 2019.

<sup>4</sup> AE 133 (AAA), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 3 January 2019.

<sup>5</sup> AE 574H (AAA), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 19 October 2018.

<sup>6</sup> AE 575C (AAA), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 23 August 2018.

<sup>7</sup> AE 575E (WBA), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 11 October 2018.

<sup>8</sup> AE 599D (WBA), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 24 October 2018.

<sup>9</sup> AE 600A (AAA), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 19 October 2018.

<sup>10</sup> AE 601A (AAA), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 17 October 2018.

<sup>11</sup> AE 575F (GOV), Government Notice Pursuant to M.C.R.E. 505(h)(2)(A), filed 15 January 2019.

<sup>12</sup> AE 616E (GOV), Government Notice Pursuant to M.C.R.E. 505(h)(2)(A), filed 25 January 2019.

<sup>13</sup> AE 616H (GOV), Government Notice Pursuant to M.C.R.E. 505(h)(2)(A), filed 28 January 2019.

c. **AE 574H (AAA)**. Mr. Ali articulated the scope of classified information he intended to elicit and withdrew paragraph 3.c.i of the notice.<sup>14</sup> The Government did not object to the use of the remaining classified information in a closed R.M.C. 806 session.

d. **AE 575C (AAA)**. Mr. Ali articulated the scope of classified information he intended to elicit.<sup>15</sup> The Government did not object to the use of the classified information in a closed R.M.C. 806 session.

e. **AE 575E (WBA)**. Mr. bin ‘Attash did not present argument regarding the use, relevance, or admissibility of the classified information in the notice. The Government did not object to the use of the classified information in a closed R.M.C. 806 session.

f. **AE 575F (GOV)**. The Government articulated the scope of classified information they intended to elicit. The Defense did not object.

g. **AE 599D (WBA)**. Mr. bin ‘Attash articulated the scope of classified information he intended to elicit. The Government did not object to the use of the classified information in a closed R.M.C. 806 session; but requested the Commission allow the Government to argue the AE 599 and AE 600 series together in closed session. Mr. bin ‘Attash did not object to the Government’s request.

h. **AE 600A (AAA)**. Mr. Ali articulated the scope of classified information he intended to elicit. The Government did not object to the use of the classified information so long as argument was in a closed R.M.C. 806 session. The Government reiterated its request for the Commission to allow the Government to argue the AE 599 and AE 600 series together in closed session. Mr. Ali objected to the Government’s combined argument and posited that certain portions of his argument in the AE 600 series were unclassified and could be made in open session. The Government disagreed.

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<sup>14</sup> The Defense clarified a scrivener’s error indicating that references to paragraphs 1. in AE 574G (AAA) were actually intended to reference paragraphs 4.

<sup>15</sup> *Id.*

i. **AE 601A (AAA)**. The parties consulted and the Government did not object to the use of the classified information in a closed R.M.C. 806 session.

j. **AE 616E (GOV) and AE 616H (GOV)**. The Commission issued a separate ruling regarding the use, relevance, or admissibility of these notices in a separate ruling (AE 611R).<sup>16</sup>

## 5. Ruling.

a. The motions for an M.C.R.E. 505(h) hearing to determine the use, relevance, or admissibility of the classified information for all motions pending in the January 2019 docket are **GRANTED IN PART** with respect to the M.C.R.E. 505(g)(1)(A) and M.C.R.E. 505(h)(2)(A) notices identified in paragraph 3 of this ruling.

b. The classified information the Defense and Government seek to disclose in the following M.C.R.E. 505(g)(1)(A) notices is relevant for a fair determination of the issues before the Commission:

- (1) **AE 118K (AAA)**;
- (2) **AE 133CCC (AAA)**;
- (3) **AE 574H (AAA)**;
- (4) **AE 575C (AAA)**;
- (5) **AE 575E (WBA)**;
- (6) **AE 575F (GOV)**;
- (7) **AE 599D (WBA)**;
- (8) **AE 600A (AAA)**;
- (9) **AE 601A (AAA)**;

c. The Government's request to argue the AE 599 and AE 600 series together in closed session is **GRANTED**.

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<sup>16</sup> AE 611R Ruling, Pursuant to Military Commissions Rule of Evidence 505(h), dated 29 January 2019.

d. Mr. Ali's request to argue certain unclassified portions of AE 600 in open session is

**GRANTED.**

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

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