

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

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 616V RULING Pursuant to Military Commission Rule of Evidence 505(h) and Rule for Military Commissions 806(b)(2) 1 May 2019
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1. The Commission conducted an in camera Military Commission Rule of Evidence (M.C.R.E.) 505(h) hearing on 30 April 2019, with Defense Counsel for all Accused present.¹ The purpose of the M.C.R.E. 505(h) hearing was for the Commission to determine whether classified information the Government intended to use during the expected testimony of the witness referred to as the “Interpreter” in a closed session (as ordered by this Commission in AE 350RRR)² is relevant for use by the Commission in that closed session.³ In AE 616Q (GOV)⁴ and AE 616T (GOV),⁵ the Government notified the Commission, pursuant to M.C.R.E. 505(h)(2)(A), that it reasonably expected to use classified information in connection with the testimony of the “Interpreter.” The Government presented classified oral argument before this Commission regarding the use, relevance, and/or admissibility of the classified information identified by the Government as pertaining to the “Interpreter’s” testimony.
2. The Commission ruled the classified information noticed in AE 616Q (GOV) and AE 616T (GOV) is relevant for a fair determination of issues before the Commission.

¹ AE 624O Ruling, Pursuant to Military Commission Rule of Evidence 505(h), dated 1 May 2019.

² AE 350RRR Order, Defense Motions in the AE 350 Series, dated 13 December 2018.

³ The Commission is currently administratively stayed by order of the United States Court of Military Commission Review from taking the testimony of the “Interpreter.” U.S.C.M.C.R. Order 19-002, dated 25 April 2019.

⁴ AE 616Q (GOV), Government Notice Pursuant to M.C.R.E. 505(h)(2)(A), filed 26 March 2019.

⁵ AE 616T (GOV), Government Notice Pursuant to M.C.R.E. 505(h)(2)(A), filed 23 April 2019.

3. 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).

4. Findings.

a. The classified information noticed in AE 616Q (GOV) and AE 616T (GOV) is relevant for a fair determination of issues before the Commission.

b. 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 Government that could reasonably be expected to cause serious damage to national security.

c. 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.

d. 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 Government 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, the Trial Judiciary Rules of Court, and this Commission's ruling in AE 616J.⁶

⁶ AE 616J Ruling, Pursuant to Rule for Military Commissions 806(b)(2), dated 1 March 2019 at para. 5.b (ordering the Government, within 10 days of the taking of testimony from the "Interpreter" in closed session to produce a redacted unclassified unofficial/unauthenticated transcript.)

e. 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.

f. 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.

5. **Ruling.** The Commission will hear testimony regarding the information noticed in AE 616Q (GOV) and AE 616T (GOV) in a closed session on a date to be determined.

6. **Order.** Within **10 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 1st day of May, 2019.

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