

**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 6240 RULING Pursuant to Military Commission Rule of Evidence 505(h) 1 May 2019
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1. On 30 April 2019, upon the motions of Mr. Ali (a.k.a. al Baluchi)¹ and the Government,² the Commission held an in camera hearing pursuant to Military Commission Rule of Evidence (M.C.R.E.) 505(h) to determine the use, relevance, and/or admissibility of classified information described in one (1) M.C.R.E. 505(g)(1)(A) notice filed by the Defense, AE 523O (AAA),³ and two (2) M.C.R.E. 505(h)(2)(A) notices filed by the Government, AE 616Q (GOV)⁴ and AE 616T (GOV).⁵ The classified information noticed in AE 523O (AAA) is intended for use in connection with oral argument for the issues presented in the AE 523N (AAA)⁶ series. The classified information noticed in AE 616Q (GOV) and AE 616T (GOV) is intended for 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).⁷

¹ AE 624F (AAA), Mr. al Baluchi’s Motion for 505(h) Hearing, filed 18 April 2019. The Defense motion also requested that the Commission require the Government to identify which information noticed by the Defense is classified information and the Commission narrowly tailor the hearing to protect only classified information for which the Government claimed a valid classified information privilege.

² AE 624K (GOV), Government Response to Mr. Ali’s Motion for an M.C.R.E. 505(h) Hearing, filed 25 April 2019. The Government motion also requested the Commission order the Defense to provide more particularized notice in certain instances.

³ AE 523O (AAA), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 12 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.

⁶ AE 523N (AAA), Mr. al Baluchi’s Motion to Reconsider AE 523L Protective Order #5 and AE 523M Ruling, filed 12 April 2019. AE 523 (AAA), Mr. al Baluchi’s Motion to Compel Production of Identities of Witnesses Referred to by Pseudonym in Discovery, filed 25 September 2017, *et. seq.*

⁷ AE 350RRR Order, Defense Motions in the AE 350 Series, dated 13 December 2018. The Commission subsequently ordered that future filings regarding the testimony of the “Interpreter” be filed in the AE 616 series. *See* AE 350SSS/AE 616 Order, Expedited Briefing Schedule, dated 10 January 2019.

2. 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 523O (AAA)**. Mr. Ali articulated the scope of the classified information he intended to elicit. The Government did not object to the use of the classified information in a closed Rule for Military Commissions (R.M.C.) 806 session.

b. **AE 616Q (GOV)** and **AE 616T (GOV)**. The Government articulated the scope of classified information they intended to use in conjunction with the testimony of the “Interpreter.” The Defense objected to the closure of the hearing, arguing that the noticed classified information could be used in an unclassified hearing if minimal redactions were applied.

3. **Ruling.**

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

b. **AE 530O (AAA)**. The classified information the Defense seeks to disclose is relevant for a fair determination of the issues raised in AE 523N (AAA).

c. **AE 616Q (GOV)** and **AE 616T (GOV)**. The classified information the Government seeks to use in conjunction with the testimony of the “Interpreter” is relevant for a fair determination of issues before the Commission.

So **ORDERED** this 1st day of May, 2019.

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