

**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 632M

RULING

Pursuant to Military Commission
Rule of Evidence 505(h) and Rule for
Military Commissions 806(b)(2)

12 September 2019

1. The Commission conducted an in camera Military Commission Rule of Evidence (M.C.R.E.) 505(h) hearing on 10 September 2019, with Defense Counsel for all Accused present. The purpose of the M.C.R.E. 505(h) hearing was for the Commission to determine whether classified information the parties intended to disclose is relevant for use by the Commission to reach a fair determination of the issues presented in AE 632E (MAH)¹. In AE 632G (MAH)² and AE 632K (MAH),³ Mr. Hawsawi notified the Commission, pursuant to M.C.R.E. 505(g)(1)(A), that he reasonably expected to disclose, or cause the disclosure of, classified information in connection with argument regarding AE 632E (MAH). Mr. Hawsawi presented classified oral argument before this Commission regarding the use, relevance, and/or admissibility of the classified information identified by the Defense pertaining to AE 632E (MAH). The Government did not object to the use of the information in closed session.
2. The Commission ruled⁴ the classified information noticed in AE 632G (MAH) and AE 632K (MAH) is relevant for a fair determination of the issues before the Commission in AE 632E (MAH).

¹ AE 632E (MAH), Mr. al Hawsawi’s First Motion to Compel Discovery Necessary for Suppression Hearing, filed 15 August 2019.

² AE 632G (MAH), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 16 August 2019.

³ AE 632K (MAH), Defense Notice Pursuant to M.C.R.E. 505(g)(1)(A), filed 5 September 2019.

⁴ AE 652R Ruling, Pursuant to Military Commission Rule of Evidence 505(h), dated 11 September 2019.

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.”⁵

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 632G (MAH) and AE 632K (MAH) is relevant for a fair determination of the issues before the Commission in 632E (MAH).

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.

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:

⁵ See 10 U.S.C § 949p-6(d)(1).

(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.

a. The Commission will hear classified argument regarding the information noticed in AE 632G (MAH) and AE 632K (MAH) in closed session on a date to be determined.

b. The closed session will be limited to evidence and argument pertaining to the classified information noticed.

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 12th day of September, 2019.

//s//
W. SHANE COHEN, Colonel, USAF
Military Judge
Military Commissions Trial Judiciary