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1 [The R.M.C. 803 session was called to order at 0901,  
2 09 September 2025.]

3 MJ [Lt Col BRAUN]: This hearing is called to order.

4 I note that all parties that were present when the  
5 commission last recessed are again present this morning. The accused  
6 is also present.

7 Trial Counsel, can you confirm that we are being broadcast  
8 to the RHR this morning?

9 TC [Lt Col GOEWERT]: Your Honor, we are being broadcast to  
10 the RHR as well as the Pentagon and Fort Meade.

11 MJ [Lt Col BRAUN]: Okay. I assume you will be using the  
12 teletype capability authorized in AE 0012.020?

13 TC [Lt Col GOEWERT]: That is correct, Your Honor.

14 MJ [Lt Col BRAUN]: Upon recessing last -- or yesterday  
15 afternoon, the commission received via e-mail a memorandum that I as  
16 the military judge is an addressee in this memorandum. Trial counsel  
17 also is an addressee. And I note that defense counsel, lead defense  
18 counsel was cc'd on the letter.

19 I'm having that letter marked. It's going to be identified  
20 as Appellate Exhibit 0102.006. It is a two-page letter signed by  
21 Mr. Bruce [sic] Harvey, bearing the date 8 September 2025. That will  
22 be maintained in the -- in the record under that designation.

23 LDC [MR. FANNIFF]: Your Honor?

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1 MJ [Lt Col BRAUN]: Defense Counsel?

2 LDC [MR. FANNIFF]: Concerning that 0102.006, the defense  
3 requests that it be treated at the same -- it is of the same subject  
4 matter, it's part and parcel of AE 0111.009, a notice filed by the  
5 defense that was requested to be filed under seal. And we request  
6 that AE 0102.006 also be filed under seal, Your Honor, under the same  
7 justification provided in 0111.009.

8 MJ [Lt Col BRAUN]: Okay. Counsel, what I'm going to have you  
9 do is I'm going to have you -- I'm going to have you file an exhibit  
10 detailing that change, just so that it's clear for the record and the  
11 commission is properly considering the request.

12 To the extent that you already have a request for certain  
13 things to be placed under seal that are pending, no need to readdress  
14 that. But if you're trying to -- if you desire to capture this  
15 appellate exhibit as an additional matter filed under seal, I just  
16 ask that you produce a filing to that effect.

17 LDC [MR. FANNIFF]: Yes, Your Honor.

18 MJ [Lt Col BRAUN]: Thank you.

19 So this morning, before we move into consideration of AE  
20 0113.001 in that series of filings, the commission would like to have  
21 discussion with Mr. Hodes, detailed defense counsel for Mr. Nurjaman.  
22 I believe he is present with us via the RHR.

23 Is that understanding correct, Defense Counsel?

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1 LDC [MR. FANNIFF]: Yes, Your Honor.

2 MJ [Lt Col BRAUN]: Okay.

3 So, Mr. Hodes, if you could please approach the podium in  
4 the RHR.

5 **[Pause.]**

6 MJ [Lt Col BRAUN]: While we're waiting for Mr. Hodes, if I  
7 could just remind the parties to secure their badges in the courtroom  
8 if you have not done so.

9 **[Pause.]**

10 MJ [Lt Col BRAUN]: Good morning, Mr. Hodes.

11 LDC [MR. HODES]: Good morning.

12 MJ [Lt Col BRAUN]: So first off, I want to advise you that I  
13 did receive, as the detailed military judge, correspondence yesterday  
14 from Mr. Harvey, identified that for the record. So just so you're  
15 aware, I do have the benefit of that information. So I think that  
16 slims down a little bit some of the things that I want to discuss  
17 with you this morning.

18 To that extent, I'm going to make this session brief and I'm  
19 going to ask my questions in a very narrow fashion to aid you in only  
20 providing the information that I require to ensure that I fully  
21 understand your status as a detailed member of the defense team.  
22 Okay?

23 LDC [MR. HODES]: Yes.

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1 MJ [Lt Col BRAUN]: So, Mr. Hodes, it's my understanding  
2 you've had no contact with Mr. Nurjaman since 18 March 2024, correct?

3 LDC [MR. HODES]: Approximately.

4 MJ [Lt Col BRAUN]: March 2024, a better approximation? I  
5 appreciate you might not remember the exact date.

6 LDC [MR. HODES]: Your Honor, I think my counsel provided  
7 information in the docketed paperwork you have.

8 MJ [Lt Col BRAUN]: Okay. And we're referring to what has  
9 been identified as AE 0102.006. It appears based upon that that 18  
10 March 2024 is the last time that you've had contact with  
11 Mr. Nurjaman. The information contained in that appellate exhibit is  
12 correct, Mr. Hodes?

13 LDC [MR. HODES]: I cannot -- I cannot say, Your Honor. At  
14 this point -- I'm pleading the Fifth, Your Honor. The simple fact is  
15 I am under criminal investigation based on General Thompson's  
16 comments to me ----

17 MJ [Lt Col BRAUN]: Okay, Counsel -- you know what, Counsel,  
18 we're not going to get into that. If you don't desire to answer any  
19 questions based upon an assertion of your right against  
20 self-incrimination, that's fine. Then what I'm going have you do is  
21 I'm going to have you just listen, okay? I think that's the best way  
22 for me to proceed ahead, then, if that's where you are at and that is  
23 your right to assert. So I don't want to you to think that that's

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1 being held against you in any way by me as the detailed military  
2 judge. But I'm trying to find a way to move through this as narrowly  
3 as possible. Okay?

4 LDC [MR. HODES]: Understood.

5 MJ [Lt Col BRAUN]: So based upon the fact that you've had no  
6 contact whatsoever with Mr. Nurjaman since March of 2024, at least in  
7 accordance with Appellate Exhibit 0102.006, that in accordance with  
8 that appellate exhibit, you appear to be on a -- in a status of  
9 administrative leave. I'm going to advise you of the following  
10 expectations of the commission.

11 So I want to remind you that you are, of course, still  
12 detailed as defense counsel in this commission. That's why we're  
13 having this conversation this morning and you're in the RHR.

14 You were detailed pursuant to Rule 4.2.2 of the Rules of  
15 Practice Before Military Commissions. As part of that detailing, you  
16 along with all counsel detailed to this commission agree follow the  
17 rules and procedures applicable to military commissions. Pursuant to  
18 Rule for Military Commissions 505(d)(2)(B) and Rule of Practice 4.4,  
19 after a detailed counsel has formed an attorney-client relationship  
20 with their client, only the military judge may excuse or change  
21 counsel upon a showing of good cause on the record. Additionally,  
22 any request for excusal or withdrawal requires a written notice of  
23 termination of representation pursuant to those rules.

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1           Similar to conversations I know you and I have had in the  
2 past when personnel have changed on the defense team, my expectation  
3 as the military judge remains the same. That is that anybody who is  
4 going to cease their relationship with this commission or request not  
5 to be detailed counsel at this commission take affirmative  
6 requests -- affirmative steps to request excusal prior to the event  
7 that would necessitate termination of that relationship. Until such  
8 time, as such a request is approved, you or anyone else would remain  
9 detailed defense counsel to this commission.

10           As of this morning the commission has not received, to my  
11 knowledge, any request from you regarding you status as detailed  
12 defense counsel. Given the timeline that I can gather, based upon  
13 the additional information provided in Appellate Exhibit 0102.006, I  
14 would expect that the commission would receive such a request  
15 shortly.

16           To that end, I encourage you to continue to work with  
17 Mr. Fanniff and the other people of the defense team on this  
18 particular matter so that the commission has the benefit of properly  
19 addressing the status of your continued detailing to this commission.  
20 Okay?

21           LDC [MR. HODES]: I understand.

22           MJ [Lt Col BRAUN]: I want to make sure that you understand  
23 that expectation.

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1 LDC [MR. HODES]: Understood.

2 MJ [Lt Col BRAUN]: Okay. Thank you. Those are all the  
3 questions, all the comments I have for you. I appreciate you coming  
4 in this morning so we can have this conversation. You can sit down.  
5 Thank you.

6 **[Pause.]**

7 MJ [Lt Col BRAUN]: And it appears that Mr. Hodes has departed  
8 the RHR.

9 Lieutenant Fernandez, can you confirm that fact for me for  
10 the record?

11 DDC [LT FERNANDEZ]: Yes, Your Honor. He's departing as we  
12 speak.

13 MJ [Lt Col BRAUN]: Thank you.

14 **[Mr. Hodes withdrew from the RHR.]**

15 MJ [Lt Col BRAUN]: Okay. So the commission directed oral  
16 argument on AE 0113.001. It's a defense motion to compel production  
17 of classification guidance and other relief.

18 DDC [LT FERNANDEZ]: Your Honor?

19 MJ [Lt Col BRAUN]: Yes?

20 DDC [LT FERNANDEZ]: Your Honor, Mr. Hodes would like to know  
21 if he's subject to recall or he is free to leave for the time being.

22 MJ [Lt Col BRAUN]: Given the accused has -- given  
23 Mr. Nurjaman has agreed to his excusal for the portions of this

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1 week's proceedings, I don't have additional questions for him, so he  
2 is free to -- free to depart. Thank you.

3 DDC [LT FERNANDEZ]: Thank you, Your Honor. Copy all.

4 MJ [Lt Col BRAUN]: Okay. So it appears Lieutenant Fernandez  
5 has departed the RHR. As that is a well -- an extension of the well  
6 of the courtroom, I'm going to wait for her return, as she is  
7 detailed defense counsel, before I proceed. So we're going to take a  
8 brief recess in place here.

9 Keep your seats.

10 **[The R.M.C. 803 session recessed at 0938, 09 September 2025.]**

11 **[The R.M.C. 803 session was called to order at 0939,**  
12 **09 September 2025.]**

13 MJ [Lt Col BRAUN]: This commission will again come to order.  
14 All parties that were present when the commission last recessed are  
15 again present.

16 So moving on to our next business. The commission directed  
17 oral argument on AE 0113.001. That's the defense motion previously  
18 described.

19 Defense, in your filing you indicate that you bear burden as  
20 the movant and the applicable burden is preponderance of the  
21 evidence. Is that understanding correct?

22 DDC [Capt TRULL]: Yes, Your Honor.

23 MJ [Lt Col BRAUN]: Trial Counsel, do you concur?



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1 TC [Lt Col GOEWERT]: Yes, Your Honor.

2 MJ [Lt Col BRAUN]: In addition, an M.C.R.E. 505(h) hearing  
3 was held yesterday which the commission heard argument on the need  
4 to -- your argument that may involve classified, or will involve  
5 classified information. As a result of that, the commission issued a  
6 ruling that will direct the closure of the courtroom for the purposes  
7 of hearing argument as it pertains specifically to that classified  
8 information. However, it is the understanding of the commission that  
9 the parties can provide the bulk of their argument in open session  
10 and we will reserve that closed session merely for the purposes of  
11 discussing the classified -- specifically the classified information.

12 This meets the overall intent in the Rules for Military  
13 Commissions to conduct commissions proceedings in open session to the  
14 greatest extent probable. So the commission is going to proceed that  
15 way.

16 We will start with this open session. Once we've concluded  
17 with that open session, we'll move into a closed session to take up  
18 those matters that require a closed session. As I informed the  
19 parties yesterday, there will be a break in time just to allow the  
20 courtroom to be reconfigured for that closed session.

21 The parties will see a ruling detailing the commission's  
22 facts/law analysis on that particular matter, and it will be  
23 identified as Appellate Exhibit 0113.008. It will be a five-page

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1 document bearing today's date.

2 With that, Defense Counsel, are you prepared to proceed?

3 DDC [Capt TRULL]: Yes, Your Honor.

4 MJ [Lt Col BRAUN]: Any additional evidence or witnesses you  
5 wish to call in support of your motion?

6 DDC [Capt TRULL]: No, Your Honor.

7 MJ [Lt Col BRAUN]: Trial Counsel, any additional evidence or  
8 witnesses you wish to call as part of your response to the defense  
9 motion?

10 TC [Lt Col GOEWERT]: Your Honor, no additional witnesses.

11 We -- I will note that we did provide the commission with a  
12 supplemental class guidance as well in this case. And we had that  
13 previously marked as AE 0107.002 and provided the commission a  
14 reference declaration in that regard as well.

15 So we would ask the court, to the extent it's necessary for  
16 the resolutions motion, to review those as well.

17 MJ [Lt Col BRAUN]: Okay. And I appreciate both parties had  
18 various attachments to their filings. It's the commission's  
19 understanding that the parties would desire the commission consider  
20 those attachments to their filings. Any objection to the commission  
21 considering those matters in addition to the supplemental information  
22 trial counsel just referenced?

23 Defense Counsel?

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1 DDC [Capt TRULL]: No, Your Honor.

2 MJ [Lt Col BRAUN]: Trial Counsel?

3 TC [Lt Col GOEWERT]: We do not object to anything the defense  
4 has provided the commission.

5 MJ [Lt Col BRAUN]: Very well. The commission will consider  
6 those matters, then.

7 Defense Counsel, if you're ready to present argument,  
8 please -- please proceed.

9 DDC [Capt TRULL]: Good morning, Your Honor.

10 MJ [Lt Col BRAUN]: Good morning.

11 DDC [Capt TRULL]: May it please the court. This commission  
12 should compel the government to provide to the defense classification  
13 guidance concerning all of the information provided via the  
14 M.C.R.E. 505(f)(2) summaries process.

15 Further, the commission should require that this production  
16 of guidance be provided prior to allowing the government to certify  
17 completion of its obligations in discovery for this case. To date,  
18 the government has provided over 4,000 pages of these summaries to  
19 the defense. Contrary to the government's assertion that all the  
20 discovery has all proper classification markings, everything  
21 submitted to defense has banner markings of SECRET/NOFORN without any  
22 portion markings of other indicators of what in the document is  
23 classified versus unclassified. Not at all in line with the

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1 requirements of the Executive Order 13526, which governs  
2 classification markings and handling of classified information.

3           Therefore, the defense, in line with that Executive Order,  
4 is required to treat each and every piece of information contained in  
5 those documents as SECRET/NOFORN. The defense cannot ask witnesses  
6 about this information. The defense cannot verify the information.  
7 We can not resolve contradictions in various summaries. We can't  
8 even discuss with our own client his statements and their accuracy  
9 under the current process. Essentially, the defense has no  
10 meaningful way to use this information outside of the cleared defense  
11 team members.

12           The government argues that the issue has been remedied by  
13 the classification guidance recently filed in the AE 0107 series;  
14 however, this classification guidance does not address all of the  
15 information provided through the summaries process. The government  
16 based that assertion on its understanding that this motion relates  
17 only to those non-HVD statements covered by classification guidance.  
18 This is not the case.

19           This motion relates to the entire body of classified  
20 discovery that the government has produced without any guidance on  
21 how the defense team can effectively and efficiently use that  
22 information to investigate and prepare a defense for Mr. Nurjaman,  
23 degrading the very intent of the discovery process, which is why the

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1 prohibition on certification of completion is appropriate.

2           The government cannot certify its obligations in regard to  
3 discovery where it has failed to provide information in a usable  
4 format. At many points in its response, the government asserts the  
5 requested security guidelines and/or classification guidance ----

6           MJ [Lt Col BRAUN]: Counsel, I'm going to have you slow down,  
7 please.

8           DDC [Capt TRULL]: Yes, Your Honor.

9           MJ [Lt Col BRAUN]: Thank you.

10          DDC [Capt TRULL]: ----- are not relevant to the defense.

11           Specifically, they use the phrase "not relevant to the  
12 charges of the accused." This is not the standard for discovery.  
13 The correct standard starts with Rules for Military Commissions 701,  
14 which states: Information within the possession, control, or custody  
15 of the government, the existence of which is known to trial counsel  
16 or by exercise of due diligence can become known to trial counsel and  
17 which are material to the preparation of the defense shall, upon  
18 request, be given or made available for inspection by the defense.

19           The discussion underneath that rule cites to the case of  
20 United States v. Yunis as reference to what material preparation of  
21 the defense means.

22           In that case, the D.C. Circuit held that classified  
23 information is material to preparation of the defense where there is

1 a strong indication the evidence will play an important role in  
2 uncovering admissible evidence, aiding witness preparation,  
3 corroborating testimony, or assisting impeachment or rebuttal.

4 Based on the information, the court narrowed down the  
5 analysis to not whether the information is relevant to the charges as  
6 the government uses as a standard but, rather, if the information  
7 will impact decisions that might affect how to plead or pursue lines  
8 of inquiry or investigation, defense or trial strategies, to include  
9 motions the defense may seek to file.

10 The government adds in their response the additional  
11 requirement that the information must be genuinely helpful and not  
12 just theoretically.

13 The government concludes this information is not actually  
14 helpful but would only offer theoretical relevance and helpfulness to  
15 the defense. But, surely, the defense having the ability to discern  
16 when and how we can use certain information in discovery would affect  
17 how defense moves forward in this case at all stages.

18 This is more than theoretical relevance. It's more than a  
19 theoretical effect on defense preparation. While the substantive  
20 information contained in the guidance might not be used as evidence  
21 in regard to the charges or sentencing in this case, it will directly  
22 impact the defense ability to find and prepare its witnesses, to  
23 impeach the government's witnesses, and investigate the government's

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1 case for rebuttal.

2 The recommendation by the government to use M.C.R.E. 505(g)  
3 process would be inappropriate, as the commission recognized  
4 yesterday. It would also be inconsistent with the rule itself, which  
5 limits applicability to disclosure in connection with trial or  
6 pretrial proceedings. Not in -- independent defense investigation  
7 outside of the commission.

8 MJ [Lt Col BRAUN]: Counsel, I'm going to -- I'm going to jump  
9 in there.

10 So I appreciate the argument we had yesterday and I  
11 appreciate there may be some overlap between the two. I think all  
12 the parties appreciate that there is some, what appears to be,  
13 overlap between the two issues. But in this particular matter, why  
14 is that process inadequate for the defense?

15 DDC [Capt TRULL]: Yes, Your Honor. So the M.C.R.E. 505(g)  
16 process, like I said, it applies to disclosure in court in connection  
17 with the proceedings. There are times when the defense might go out  
18 and do an investigation. We might be talking to our own witnesses or  
19 trying to find those witnesses. We might want to discuss with our  
20 client here on island. It wouldn't be appropriate to use the  
21 commission process to have conversations -- to see what we can  
22 disclose outside of the commission itself.

23 The rule imagines only using it for -- the rule uses the

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1 phrase "commission proceedings" or -- "trial or pretrial proceedings  
2 in the commission." It does not have any language related to use  
3 outside of the commission itself.

4           So using that process for defense investigation would be  
5 wholly inappropriate. Additionally, it would force the defense to  
6 constantly inform the prosecution of defense efforts to build our own  
7 case, to speak to our client, something that's not imagined anywhere  
8 in the rules or criminal jurisprudence.

9           MJ [Lt Col BRAUN]: Okay. So how does that interact, then,  
10 with the walled-off review process through the DISO that the  
11 commission ordered some time ago?

12           DDC [Capt TRULL]: Yes. So we do have our Defense Information  
13 Security Officer. And as was mentioned, we've attempted to use this  
14 walled-off process to see if it would be a workable solution. I did  
15 find the specific dates and I'm happy to put this somewhere in the  
16 record for you other than here, if you request it, sir.

17           We submitted for review of three documents, a small, almost  
18 nominal fraction of what we've received in discovery. Those were  
19 submitted on May 21st of this year. We requested that they be  
20 reviewed for security guidance. We were told it would take 60 days;  
21 it's been almost four months. We've requested another update, but  
22 we've yet to receive an update on how long it'll take. All we've  
23 been told is it is with the original classification authority.



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1           Again, Your Honor, those were three documents. We have over  
2   4,000 pages we would need to, at some point, submit through that  
3   process, and it would incumber defense efforts constantly waiting for  
4   all those document to come back before we can move forward in our  
5   case. Not to mention that the commission still has 505 filings from  
6   the government that have yet to be produced to the defense, which  
7   means we're not even in a position where we can hope to complete this  
8   anytime soon, which would cause further delays in the proceedings, in  
9   defense efforts, and further prejudice Mr. Nurjaman in this  
10 proceeding.

11           MJ [Lt Col BRAUN]: Thank you. Please continue.

12           DDC [Capt TRULL]: Yes, Your Honor.

13           And again, coming briefly back to the 505(g) notice, the  
14 commission has stated that the standard for those notices would be  
15 particularized notice. And it is impossible for the defense to give  
16 particularized notice when we lack the particularized knowledge of  
17 what is actually classified. Therefore, even when we use those  
18 notices, out of an abundance of caution, we are having to notice  
19 documents that might not have classified information within them. It  
20 might not even be classified information we look to disclose, but we  
21 have no way of knowing that until we go through that process and the  
22 government tells us.

23           The government filed its AE 0107 filings after this initial

1 defense motion. The government argued in its response, and briefly  
2 yesterday, that this guidance resolves the defense issues here.  
3 While hopeful, and certainly more than what the defense has had in  
4 the past, it is not a replacement for the relief requested by this  
5 motion. Its classification guidance addresses only one category of  
6 information contained in the summaries, non-HVD statements.

7           What it does not address is how we discuss those statements  
8 with Mr. Nurjaman, how we discuss with Mr. Nurjaman summaries that do  
9 contain HVD statements, or summaries that contain statements of U.S.  
10 officials, or even his own statements made in U.S. custody.

11           While the government indicated in yesterday's argument they  
12 will give us further guidance, I'm using Mr. Nurjaman's statements  
13 when discussing with him. It does not answer the remaining questions  
14 and does not address future concerns over informational categories  
15 the defense has not yet recognized or the government has not yet  
16 produced.

17           And while the defense holistically disagrees with trial  
18 counsel's assertion that we can discuss and take certain risks  
19 because it is privileged, the defense does not feel comfortable doing  
20 that with our client, nor does that resolve our concerns over talking  
21 to other witnesses, government officials, or foreign governments  
22 where that information would not be privileged.

23           These effects on the defense are more than theoretical.

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1 Statements of other high-value detainees might contradict other  
2 statements or include new information that we want to discuss with  
3 our client or others.

4 As it stands, we have no guidance on how to utilize these  
5 documents for our investigation and trial preparation. The  
6 statements of these individuals contained various levels of hearsay  
7 that might need to be asked about on direct or cross-examination of  
8 witnesses. We have no idea when it crosses the line of a non-HVD  
9 into an HVD statement when they're commingled in summaries.

10 Statements of U.S. officials, we currently have no guidance  
11 on how to use these statements contained in summaries, statements  
12 that might discuss conditions of confinement of our client or other  
13 detainees. However, based on current classification guidance, we do  
14 not have any indication of what in that is classified and what is  
15 not.

16 We have no way of getting that information without having to  
17 go back and forth with the government or through the walled-off  
18 process which, again, causes extreme delays and is ineffective for  
19 our preparation.

20 A lot of defense preparation that I've mentioned in this  
21 argument does deal with discussing with our client but, again, that's  
22 not the only time we will be disclosing this information. The  
23 defense might want to talk to other witnesses. We might want to talk

1 with people in the -- in our government who might not necessarily  
2 have requisite security clearances anymore. We might want to talk  
3 with foreign governments about this case. But we cannot do that  
4 without risking our security clearances because we are currently not  
5 in a position to properly protect the information that has been  
6 provided to us.

7 The guidance offered is simply insufficient to address the  
8 challenges the defense faces in this arena. Further, the alternative  
9 solutions posed by the government of submitting one-offs to them for  
10 consideration is equally insufficient.

11 The commission should assume that the defense would request  
12 virtually all documents that have been produced through this process  
13 since the commission has already found the information contained  
14 therein is noncumulative, relevant, and helpful to a legally  
15 cognizable defense.

16 Secondly, it would force us to reveal defense strategies and  
17 conversations even with our own client prior to undertaking them.

18 MJ [Lt Col BRAUN]: How does -- how so?

19 DDC [Capt TRULL]: Your Honor, if we have to come to the  
20 commission or to the prosecution every time we hope to go and ask  
21 Mr. Nurjaman about one of his own statements or a collection thereof,  
22 it wouldn't be difficult for the prosecution to then glean exactly  
23 what the goal of that conversation would be. It would force us to

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1 always show our hand to them, to always say this is the information  
2 we're concerned with now, where we are in our defense strategies. It  
3 would essentially give them control over our entire defense strategy.

4 Additionally, we have no guidance on timelines. If we're  
5 coming down to the island during the commission's hearing, we're  
6 going to have meetings with our client. Do we submit those documents  
7 we hope to discuss with him a month in advance, two months in  
8 advance, three months in advance?

9 MJ [Lt Col BRAUN]: And I appreciate the portion of your  
10 argument about the timeliness piece. I appreciate that.

11 I'm trying to understand how requesting the government, we  
12 want to discuss all of our client's statements with our client and  
13 they can be found at Bates numbers 3 through 304. I'm trying to  
14 understand how providing that information to the government so that  
15 they can potentially provide you additional guidance to address that  
16 particular concern would reveal a defense strategy.

17 DDC [Capt TRULL]: Yes, Your Honor.

18 MJ [Lt Col BRAUN]: Or a technique or, you know.

19 DDC [Capt TRULL]: I appreciate the commission's questions  
20 here. So based on your hypothetical, it would actually be less  
21 prejudicial to do it that way. However, the alternative proposed by  
22 the government was not a bulk submission of all those things, one  
23 whole category. Their suggestion was instead literal one-off

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1 documents like we can say we need this summary, and forcing us to  
2 reveal that. We would then have to go through all the discovery,  
3 categorize it, make sure we know exactly which Bates numbers contain  
4 our client's statements, package them up, send that to the  
5 prosecution. That's unrealistic especially if the timelines are ----

6 MJ [Lt Col BRAUN]: How so? How so?

7 DDC [Capt TRULL]: Well, Your Honor ----

8 MJ [Lt Col BRAUN]: I understand it's -- I understand it's a  
9 lot of work. I mean, I understand that but how is that unrealistic?

10 DDC [Capt TRULL]: It's the timeline piece. If we do that,  
11 how long is it going to take the government to get it back to us or  
12 produce guidance? How many meetings are we going to go through with  
13 our client before we can start discussing it? Because it's a bulk of  
14 information as opposed to the two or three pages we need to discuss  
15 with him next week. So either we're facing the timeliness problem  
16 because it's a large volume of documents, or we're facing the  
17 prejudicial aspect of these are the ones we immediately need but it  
18 makes it so much clearer what we're after with those documents.

19 MJ [Lt Col BRAUN]: Okay.

20 DDC [Capt TRULL]: And, again, the walled-off process, the  
21 timeliness of that is also not a workable solution for us.

22 However, the government knows exactly what the defense  
23 possesses. There's no need for us to tell them all of the RDI

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1 statements. They know what they are. They should know the summaries  
2 because they're the ones who created the summaries. They produced  
3 the summaries. And they use classification guidance as a touchstone  
4 when creating those summaries, so they know what to protect.

5           The government has the ability to identify and protect what  
6 it claims as national security information, but they have deprived  
7 the defense of the same opportunity. We have obligations to this  
8 commission and to our security clearances to protect that  
9 information, yet we lack the resources to do so. So we're constantly  
10 stuck between protecting national security information and  
11 effectively representing our client.

12           I have a summation, but first, does the commission have  
13 further questions?

14           MJ [Lt Col BRAUN]: I don't at this time. Thank you.

15           DDC [Capt TRULL]: Because the information sought is critical  
16 to defense preparation and relevant to every piece of evidence that  
17 has been produced via the 505(f)(2) process in this case, the  
18 commission should compel production of the classification guidance  
19 and prevent the government from certifying completion of discovery  
20 until that guidance is produced and the defense can meaningfully use  
21 the information contained in discovery.

22           Thank you, Your Honor.

23           MJ [Lt Col BRAUN]: Thank you, Defense Counsel.

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1 Trial Counsel, are you read to present argument?

2 TC [Lt Col GOEWERT]: We are, Your Honor.

3 MJ [Lt Col BRAUN]: Please proceed.

4 TC [Lt Col GOEWERT]: Good morning, Your Honor. Good morning,  
5 Commission.

6 MJ [Lt Col BRAUN]: Good morning.

7 TC [Lt Col GOEWERT]: It's an interesting motion because it  
8 begins by the premise. The premise begins with something -- asking  
9 for something that they actually are not entitled to under the law.  
10 The process that gets us to resolution of many of these issues is the  
11 505(g) process. And that is the heart of this issue. The defense is  
12 not following the 505(g) process as they're supposed to do and  
13 required to do under the rules.

14 Were the defense to file 505(g) notice for matters related  
15 to witnesses in this case, then much of this would be resolved by  
16 operation of law.

17 MJ [Lt Col BRAUN]: Well, so let's talk about the 505(g)  
18 process, then. I want you to address directly defense counsel's  
19 assertion that this isn't based upon the language in 505(g). This  
20 isn't the -- it doesn't appear to be the purpose of that provision of  
21 the rule. This isn't -- this isn't an in-court presentation. This  
22 is merely defense trying to prepare their case.

23 TC [Lt Col GOEWERT]: Well, right, Your Honor. So I guess we



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1 need to rewind a few -- a few -- to sort of dissect these issues a  
2 little bit. We have a couple of issues at play. One is use of these  
3 in any upcoming depositions that may occur, right? Because that is  
4 the genesis, part of their requested relief.

5 MJ [Lt Col BRAUN]: Well, I think that -- I think while that  
6 may be part, I think defense counsel pretty clearly stated this is  
7 broader than that.

8 TC [Lt Col GOEWERT]: Yes. And, Your Honor, they've  
9 asked -- they've asked throughout the motion series for two different  
10 items, right? One being guidance and one being security guidance,  
11 right?

12 In their initial motion, they had asked for guidance, and  
13 then in their reply, they asked for the underlying security guidance  
14 themselves, because that was mentioned in their discovery request.  
15 So two different things worth parsing out as we discuss this issue.

16 One, they have asked for guidance, and I understand that.  
17 And the problem is we provided them initial guidance. We said, "You  
18 may use non-HVD statements." They are -- they are in and of  
19 themselves unclassified, right?

20 So that tells them a great deal of information, right? So  
21 they claim that we can't go talk to other people about what may be in  
22 these summaries. But there's now an enormous body of material that  
23 they can go speak to them about. They can go speak to a person about

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1 the various facts that are stated in there that come from that  
2 individual. They can go ask other people about those facts that come  
3 from the individual because the non-HVDs, their statements are not  
4 classified, right? The words that come out of their mouth by -- as a  
5 general matter, are not -- are not classified.

6           So they can go talk to people, any non-HVD they're able to  
7 speak to about their previous statements with the content of those  
8 statements, right? How the United States acquired those statements  
9 is an entirely different matter. They cannot talk to them about  
10 that. But that's not important because what they're trying to do is  
11 they're trying to confirm a variety of facts, which they can do,  
12 assuming that that is their intention, right?

13           So they can speak to their client about any of these  
14 statements made by the non-HVDs. They just can't talk about the  
15 circumstances in which those statements occurred and how the United  
16 States may or may not have acquired those statements.

17           So the assertion, too, that they are -- they are lost and  
18 they're without resource may be a little overbroad because they  
19 haven't explained to this commission anything except a theoretical, a  
20 "we might not be able to do this; we might not be able to do that; we  
21 might not be able to do this." They haven't explained how they have  
22 taken the guidance and actually hit a roadblock.

23           What they said is this is lot of possibilities for problems.

1 "We're possibly hindered." But they haven't told you any way, shape,  
2 or form how they took a -- a non-HVD statement, of which there are  
3 many, many in that discovery, right? They've said -- they are now  
4 lumping together two different things. One are the statement of  
5 non-HVDs, of which there are many of those, and the statement of the  
6 HVDs, which are -- which are far fewer in number.

7           They have not said to this commission, "All right. We tried  
8 to take this non-HVD statement and then we tried to use it with our  
9 client." Because we're allowed to do that, right? The  
10 statement -- the classification guidance unambiguously says you are  
11 allowed to tell your client what this person said, right?

12           So when they come up here and complain to the commission and  
13 say, "We don't know what we can and can't tell our client," that's  
14 not correct. They know that they can tell their client something  
15 that a non-HVD said. That's hundreds and hundreds and hundreds of  
16 pages of those, of statements. There are a few facts they cannot  
17 tell them. But those -- those facts, they haven't explained to you  
18 how those facts at this point are material, are material to their  
19 preparation. They've just said hypothetically maybe, maybe we can't.

20           They haven't said in any way, shape, or form to this  
21 commission -- even in an ex parte filing -- "We tried to interview  
22 this person and we tried to talk to them about these facts, and it  
23 became clear that the circumstances of the taking of that statement

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1 were so vitally important that we couldn't move forward at all in our  
2 investigation."

3           They didn't say that to you because they can't, right?  
4 Because it's a theoretical possibility at this point. They haven't  
5 taken the classification guidance and used it meaningfully, and that  
6 may be because it's fairly recent. And they do have -- they probably  
7 have questions about it, and that's fair.

8           But the answer to that isn't to come to the commission and  
9 create this as a general hypothetical problem. The answer is, let's  
10 actually ask the government more about what we can and can't do. And  
11 they did that do a degree in their -- in the motion, and we responded  
12 to that by developing new classification guidance and additional  
13 guidance to answer the questions they posed.

14           It doesn't really reveal their strategy, like they say. I  
15 mean, it's true that we've seen all these statements. We have them.  
16 And some of the issues in this case are just going to be patently  
17 obvious in some regard. It's obvious that you would want to impeach  
18 a witness with their prior statement. That is -- that is not out of  
19 left field. That's not revealing anything. And we don't have a lot  
20 of time or energy to spend thinking or worrying about how they may or  
21 may not use something.

22           Ultimately, how they may or may not use something will  
23 depend on the 505(g) process and how it comes out. The reality is

1 that they haven't made any efforts to provide the prosecution with  
2 questions that we can then feed to the OCA and get answers to them,  
3 resolve this, right? Real questions, not theoretical ones.

4 And that was what the 505(g), in relation to the  
5 depositions, would unearth. It would tell us, all right, we intend  
6 to use these facts, right? So, for instance, in some of  
7 their -- their filings to this commission, they have noted summaries.  
8 So summaries contain statements of non-HVDs.

9 Well, you can read those and you can see that virtually all  
10 of the content that they would ask about is not classified, and they  
11 would know that because the classification guidance told them. What  
12 they would also know is that the document itself remains classified  
13 for various reasons.

14 So they would know that to request in a 505(g), we want to  
15 use this document, but we want to use the conditions under which this  
16 document was taken and ask specifically about them.

17 MJ [Lt Col BRAUN]: Counsel, hold on one moment.

18 So for purposes of the record, it looks from the commission  
19 that our RHR feed has gone down. We do have detailed defense counsel  
20 in the RHR. What I'm going to do is I'm going to place us in a  
21 recess.

22 I apologize, Counsel, for cutting off your arguments, but  
23 I'm going to place us in a recess to allow us to investigate a little

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1 further. And once we're ready to go -- I don't think all the feeds  
2 are up yet, Counsel.

3 So let's just take a moment here. We'll recess. And when  
4 we're ready to come back on the record to reassume, we'll do so at  
5 that time.

6 So this commission is in recess.

7 **[The R.M.C. 803 session recessed at 0946, 09 September 2025.]**

8 **[The R.M.C. 803 session was called to order at 1018,**  
9 **09 September 2025.]**

10 MJ [Lt Col BRAUN]: This commission will come to order. All  
11 parties that were present when the commission last recessed are again  
12 present.

13 I also note that Mr. Nurjaman is with us and the RHR feed is  
14 back up and running and I can see Lieutenant Fernandez present there.

15 Okay, Trial Counsel. Please continue.

16 TC [Lt Col GOEWERT]: Your Honor, thank you. I would like to  
17 rewind a little bit, if we may, and talk about the central premise of  
18 the defense's argument.

19 Their argument relies upon the assumption that 505 and its  
20 protections and requirements do not apply, except when we're here in  
21 trial. So saying we don't -- we don't have to give the commission,  
22 the government, 505 notice of the use of classified information in  
23 any of our interviews, in any of our conversations with our clients,

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1 anything we want to do in any of our investigations, et cetera. And  
2 that's just -- that's just wrong.

3 If the commission looks at 949p-5 in the MCA, which is  
4 Notice By Accused of Intention to Disclose Classified Information,  
5 you'll see right up -- right up from the jump, at the very beginning,  
6 Notice By Accused, it requires notification ----

7 MJ [Lt Col BRAUN]: Counsel, one moment.

8 TC [Lt Col GOEWERT]: Yes. Of course, sir.

9 MJ [Lt Col BRAUN]: Were you -- where are you?

10 TC [Lt Col GOEWERT]: I'm at page 655.

11 MJ [Lt Col BRAUN]: No, what's the -- what's the statute  
12 citation?

13 TC [Lt Col GOEWERT]: Excuse me. 949p-5.

14 MJ [Lt Col BRAUN]: Okay. Thank you.

15 Please continue.

16 TC [Lt Col GOEWERT]: It says that if an accused -- and that's  
17 at (a)(1). That's starts off: If an accused reasonably expects to  
18 disclose or to cause the disclosure of classified information in any  
19 manner in connection with any trial or pretrial proceeding.

20 All right. It doesn't say in a -- in a proceeding. It  
21 doesn't say in a -- in a motions hearing. It says, "in connection  
22 with."

23 Because what's happened is the defense has received the

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1 classified information in discovery prior to trial as part of the  
2 overarching process, the overarching trial process that we have,  
3 knowing that they may have a variety of uses for it. They didn't  
4 receive it out of some FOIA request or because of any other -- any  
5 other reason. They only received it because of its eventual use in  
6 their trial preparation and in a trial itself.

7           So they're not exempt from providing 505 disclosures and  
8 following the mandates of 505 just because they intend to disclose in  
9 an interview with somebody, wherever they may be at. They still have  
10 to come to the commission and ask for its use. Or prior to its use,  
11 provide the government notice, and the government counsel can go to  
12 the OCA and give them left and right limits on it, additional  
13 guidance, or provide a substitution. And that's exactly what hasn't  
14 happened here.

15           If the commission looks further on, we have limitations on  
16 disclosure by accused in connection with the trial proceedings. So  
17 it's that word "in connection with." It's much broader than they  
18 would have this commission interpret the rule. They want and asking  
19 the commission to say I only have to give it to you if we're going to  
20 use it in open court or something to do -- a very formal part of this  
21 proceeding.

22           But what they're doing when they're interviewing someone is  
23 not talking to someone in a restaurant or bar or cafe idly or



1 casually. They're doing it because they're trying to find  
2 information that might ultimately be usable in a proceeding. And  
3 that's the very purpose of it.

4           So the rule itself tells them if you're going to use  
5 it -- you got it because you're in a proceeding, you're in a case,  
6 you need -- you need to disclose that if you intend to do it. And  
7 they can't get around it by saying that the rule somehow hamstring  
8 them because it imposes a hard requirement on them. And certainly,  
9 we work around that by them asking questions like in this motion,  
10 when they're asking for additional guidance.

11           You'll also see in 505 itself, in (a)(1), it says: This  
12 rule applies to all stages of the proceedings.

13           So certainly the discovery phase and their use of discovery  
14 information would mandate a requirement that they provide notice of  
15 intent to disclose it. So if they have something that is  
16 unambiguously classified and all the documents they received, which  
17 are, in fact, only a fraction of the total discovery in this  
18 case -- if the documents that they have received that are marked  
19 CLASSIFIED are clearly classified and they received no other  
20 guidance, then they must treat them as such. And they don't get to  
21 make that determination.

22           So one of the problems that we've been hearing defense  
23 counsel state is that they think that things are unclassified in

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1 those materials. It's not their role or their decision to decide  
2 what matters may be classified or unclassified. They have documents  
3 that are marked -- clearly marked as CLASSIFIED, as the role of the  
4 OCA to tell the commission, to tell us, to tell the defense what is  
5 classified.

6           If we went to the OCA and said, "We're going to use 60  
7 things and we're going to interpret it our own way," they would tell  
8 us to go jump in a creek. Like, I cannot do that. Similarly, the  
9 defense can't do that. What happens is they have to tell -- they  
10 have to provide information about what they intend to disclose.

11           They don't have to say how they intend to ask the question  
12 exactly. They don't have to provide everything. But they have to  
13 provide those limited details which the law, under 505 and its  
14 interpreting cases, have required. They have to provide notice of  
15 the intent to disclose information.

16           And then the OCA can say, "All right, I'm going to -- I can  
17 get you that information unclassified. I can give you the  
18 substitute." Right? We have a process. And it is -- it is -- it is  
19 very absurd to say we're going to shove every document before the  
20 government because we need to know everything. That's not how this  
21 works.

22           You provide particularized notice of the particular  
23 information that you intend to disclose and then the government can

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1 work with the OCA to get you guidance on that, to tell you what is  
2 and what isn't and how it can and can't be used. And then if we  
3 can't get that, get you a substitute. And if we cannot resolve it  
4 between the parties, then we come to the commission and the defense  
5 can follow the rules and make the case as to its relevance,  
6 materiality, and use.

7 The commission can help forge a proper substitute for it or  
8 provide a remedy if none can be found. Those are the rules. We have  
9 a process, and it applies to this stage of the proceedings, too.

10 Your Honor, the defense has asked for the original -- the  
11 classification security guides. And, you know, I don't want to  
12 belabor this point, but they have no right of access to those and  
13 they have no -- they're simply not relevant and not material for them  
14 to have these things, right?

15 They're not relevant to them because the guides themselves  
16 make no fact that is -- that is before this commission any more  
17 probable or less probable. They're not -- they're not evidence.  
18 They are not a report, a statement of a person. They're  
19 not -- they're not something fundamental to the trial process such as  
20 evidence. They are -- they are -- they are -- they are what they  
21 are. They are security classification guidelines that help the OCA  
22 to do their -- the job.

23 The defense does not have the training, the knowledge, or

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1 authorization to use them and does not have the training, knowledge,  
2 or authorization to interpret them. The prosecution does not either.  
3 So they're not material to them because it -- it's -- they can't  
4 possibly be helpful for them because they're not authorized and  
5 allowed to use them. They don't get to interpret the documents that  
6 they've received based on the guidance that the OCA would use, or the  
7 guide the OCA would use.

8           It's just -- it's just entirely outside their role. It's  
9 entirely unhelpful to them. It's entirely inappropriate for them,  
10 just as it would be inappropriate and wrong for any member of the  
11 prosecution to attempt the same thing. It's not our job. If we  
12 have -- if we have to get something declassified or figure out how to  
13 use it, then we must ask. And if we need to in this case, we  
14 will -- we will ask and we will tell the defense that we are seeking  
15 declassification of things as well. You know, there's -- those rules  
16 are mutually applied.

17           So, Your Honor, I think the question that we have to go back  
18 to is why do we have this process? We have -- we have a clearly  
19 articulated system that is established, and the defense needs to  
20 follow that in every case in which they wish to do it. And we've  
21 seen it working already. We saw it work without them revealing  
22 anything in which they said, all right, how do we use statements we  
23 might -- we wish to use in interviews or talking to witnesses or even

1 with their own client, right?

2 And they asked, and we pointed them to the guidance that  
3 they had received prior to the motion. You guys can look at any  
4 non-HVD statement and the information that they contain, meaning that  
5 statements by them, they're not classified. So go forth and use that  
6 in any way that you -- shape or form that you see fit. Because it's  
7 not -- there are only certain limitations to those, but they don't  
8 bound you in any -- in many ways. And when they do bind you, you  
9 have to come to us.

10 And that's the whole problem with this motion. This motion  
11 is not framed in such a way that it gives you something to decide,  
12 right? Because the normal way the commission would decide something  
13 is the commission receives a fact in issue, right? In this case it  
14 would be a dispute over a particular piece of classified information,  
15 right?

16 The defense says, "I need to use this. Here's why I need to  
17 use this. Here's its relevance and materiality, and here's what's  
18 going to happen if I can't use it, Your Honor." Right?

19 And then the commission can then turn to the government and  
20 say tell me about that and the parties can debate and discuss it and  
21 then provide the commission with either a substitution or a lack of  
22 substitution and the commission can resolve the issue.

23 They didn't follow a process like that. They brought you a

1 very generic, very broad, very sweeping, well, what if, maybe, might.  
2 And so they haven't brought you a real case or controversy to decide  
3 because they haven't brought you a concrete issue.

4           505 classification guidance requires concrete issues. It  
5 requires concrete information to resolve. Without that concrete  
6 information, this commission can't really go forward and decide this  
7 because this commission needs to see how this works. Because we've  
8 already seen a process by which defense has said, all right, we need  
9 some help figuring this out, and we said, all right, we have given  
10 you -- the government, I mean, the OCA, has given you the ability to  
11 use statements of non-HVDs. That's the information contained in  
12 those statements. That is a large body of information.

13           We're also giving them the ability to discuss with their  
14 client those RDI statements because those should be marked ready to  
15 display, or given to them in some way they can talk to him about  
16 them.

17           If they have more questions about how to use things, the  
18 proper thing to do is to file a 505(g), is to tell them what  
19 information. We don't even have to know exactly how you're going to  
20 do it or how it plays into your strategy, but we can then -- the  
21 commission can assess its relevance, materiality, and use and make a  
22 proper decision. But we cannot have a situation where the commission  
23 is going to just -- they're asking to very surreptitiously, very

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1 secretly throw out the entire whole body of 505 law and 505 rule  
2 process because they say maybe, might, we can't use it.

3 Your Honor, that's our argument barring your questions, sir.

4 MJ [Lt Col BRAUN]: I don't have any additional questions at  
5 this time. Thank you, Trial Counsel.

6 Defense Counsel?

7 DDC [Capt TRULL]: Brief rebuttal, Your Honor.

8 MJ [Lt Col BRAUN]: Please.

9 DDC [Capt TRULL]: Your Honor, the government's entire  
10 argument misses the mark on what the defense is asking for. First,  
11 I'd like to start with what was just offered as the premise of 505(g)  
12 notice.

13 The government states that it is for us to give  
14 particularized notice of what we intend to disclose. That is missing  
15 a key phrase from that rule. What we have the obligation to notice  
16 is the classified information we intend to disclose. That rule  
17 assumes the defense knows what information is classified. We do not.

18 The government also asserts that we think things are  
19 unclassified. We do not think things are unclassified.

20 We have now received guidance in the 0107 series saying that  
21 large portions of certain summaries that are marked SECRET//NOFORN  
22 are, in fact, unclassified. This highlights that the government has  
23 the capability to do that for large buckets, if you will, of

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1 information.

2 They've done that for the non-HVD statements. They've  
3 stated they intend to do that for the RDI statements of Mr. Nurjaman.

4 They have the capability to narrow down into these  
5 categories the information and provide guidance from the OCA. We are  
6 not asking the government to decide what is classified. We are not  
7 asking this commission to decide what is classified, and we are not  
8 asking this commission allow us to decide what is unclassified.

9 We want to simply comply with our clearance obligations,  
10 with our obligations to this commission, and appropriately use the  
11 information.

12 We do not want to have to do the work of filing a 505(g)  
13 notice, use this commission's time to notice things that are, in  
14 fact, unclassified. Prior to the filings in AE 0107, that is exactly  
15 what we would have had to do. We would have had to notice all of  
16 those documents broadly because information is not just the document  
17 itself. It is every portion contained in that document. That's why  
18 portion markings are so important. That is why guidance to help  
19 people using those documents is important. What information in this  
20 document can I talk about in a SCIF, in a collateral space, in the  
21 open?

22 There's no need for the defense to notice classified  
23 information if we're talking to someone in a SCIF with the requisite



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1 security clearance. Just like there's no obligation for us to notice  
2 information that is unclassified when we're talking to a potential  
3 witness.

4 But the government's framework that they suggest comes from  
5 505 would require us to do both of those things. Because the  
6 government has argued that we have the obligation to provide  
7 particularized notice of what we intend to disclose. Period. Full  
8 stop.

9 That is simply not what we are required to do. But we have  
10 no way to comply with that rule without doing so based on the process  
11 as it currently stands.

12 We have to assume all of the information is, in fact,  
13 classified. We have to act under that framework and notice what the  
14 government what might later assert is not classified.

15 Now the defense has wasted time filing a 505(g) notice,  
16 putting it together, possibly delayed parts of our investigation,  
17 maybe we've delayed travel, which we have in the past, because we  
18 were unclear on what we could and could not talk to potential  
19 witnesses about.

20 This puts the defense at a serious disadvantage. The  
21 government argues we are not entitled to the classification guidance  
22 or security guidelines because it is not relevant as it does not make  
23 a fact of consequence more or less likely in the case.

1           Your Honor, that is not the standard for discovery. That is  
2 the standard for the Rules of Evidence when we are in trial. That is  
3 not how this commission should decide this case. You should use the  
4 701 standard and the accompanying Yunis definition of material to the  
5 preparation of the defense and find that we cannot prepare a defense  
6 without knowing what information we can and cannot use in which  
7 settings, with which other people who might be witnesses, who might  
8 inform the defense about certain issues on the case.

9           Further, Your Honor, the government states that we've been  
10 unclear about what we've requested. Maybe the defense could have  
11 been clearer with the vernacular that we used in our original filing,  
12 but we are asking for the security guidelines to make it perfectly  
13 clear from the OCAs what we can and cannot use to best protect the  
14 information. Because, to be perfectly clear, the defense is not  
15 looking to subvert any obligations to national security. We are  
16 trying very hard to comply with them.

17           But should the commission find those aren't the gold  
18 standard, for whatever reason, you have the power under 906 to give  
19 appropriate relief to cure any defect that affects the rights and  
20 remedies of any party. This is affecting the right to effective  
21 assistance of counsel to participate in his own defense. This is  
22 affecting Mr. Nurjaman.

23           So if you're not inclined to grant our motion to compel

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1 these security guidelines themselves, our motion does still ask for  
2 classification guidance in the form the prosecution has previously  
3 produced to cure that defect in a meaningful way.

4 Therefore, the commission should force the government to  
5 give the defense some form of guidance on how to use the entire body  
6 that has been produced via the M.C.R.E. 505 summaries in this case.

7 MJ [Lt Col BRAUN]: Thank you, Defense Counsel.

8 Counsel, as indicated earlier, at this point we're going to  
9 move into a closed session to discuss the classified portion of  
10 counsel's argument.

11 I anticipate this will take us about 30 minutes to make that  
12 transition. We still have time, I believe, to do that, and then come  
13 back on the record and continue that argument.

14 Is there anything additional that we need to discuss in this  
15 open session as it pertains to AE 0113 or, as I anticipate this could  
16 potentially be our last open session on the record, is there anything  
17 else that needs to be discussed on the open session of the record for  
18 this particular hearing?

19 DDC [Capt TRULL]: Nothing further from the defense.

20 TC [Lt Col GOEWERT]: No, Your Honor. Thank you.

21 MJ [Lt Col BRAUN]: Very well, then. This court is in recess  
22 to transition into a closed session.

23 **[The R.M.C. 803 session recessed at 1037, 09 September 2025.]**