

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

UNITED STATES OF AMERICA v. ABD AL-HADI AL-IRAQI	AE 143R RULING Pursuant to Military Commission Rule of Evidence (M.C.R.E.) 505(h)(1)(D) 5 March 2019
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1. On 22 February 2019, the Defense filed AE 143B,¹ requesting a hearing pursuant to M.C.R.E. 505(h) be held during the March 2019 session 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).² In AE 143A,³ the Government moved the Commission, pursuant to M.C.R.E. 505(h), to conduct an *in camera* hearing prior to taking oral argument on any of the motions docketed for the March session. The Government anticipated that classified oral argument will only be necessary to resolve AE 137, AE 138, and AE 141, but that a hearing

¹ AE 143B, Defense Motion for a Military Commission Rule of Evidence 505(h) Hearing, filed 22 February 2019.

² AE 135B, Defense Notice Pursuant to MCRE 505(g) With Regard to AE 135, as it relates to Defense Motion To Compel Discovery Related to White House and DOJ Consideration of the CIA Rendition, Detention and Interrogation Program, filed 22 February 2019; AE 136B, Defense Notice Pursuant to MCRE 505(g) With Regard to AE 136, as it relates to Defense Motion To Compel Discovery Regarding CIA Rendition, Detention and Interrogation Program, filed 22 February 2019; AE 137B, Defense Notice Pursuant to MCRE 505(g) With Regard to AE 137, as it relates to Defense Motion To Compel Discovery of Information Related to and Access to Buildings in which the Accused or any Potential Witnesses Have Been Confined, filed 22 February 2019; AE 140A, Defense Notice Pursuant to MCRE 505(g) With Regard to AE 140, as it relates to Defense Motion To Compel The Full, Unredacted Version Of The “Memorandum of Agreement Between The Department Of Defense (DOD) And The Central Intelligence Agency (CIA) Concerning The Detention by DOD Of Certain Terrorist At A Facility At Guantanamo Bay Naval Station” That Was Approved For Release On 6 October 2016, filed 22 February 2019; AE 141B, Defense Notice Pursuant to MCRE 505(g) With Regard to AE 141, as it relates to Defense Motion To Compel Proper Reclassification of Discovery Materials, filed 22 February 2019; AE 143M, Defense Notice Pursuant to MCRE 505(g) With Regard to AE 135, 136, 137, 138, 139, 140, and 141, filed 28 February 2019; and AE 134P, Defense Notice, Pursuant to MCRE 505(g) With Regard to AE 135, 136, 137, 138, 139, 140, and 141, filed 5 March 2019.

³ AE 143A, Government Motion for a Military Commission Rule of Evidence 505(h) Hearing, filed 27 February 2019. *See also* AE 143O, Government Notice of Specific Classified Information at Issue in AE 137A, AE 138A and AE 141A, filed 5 March 2019.

under M.C.R.E. 505(h) prior to any argument will help prevent disclosure of classified information, and help determine the scope of oral arguments. Additionally, the Government intended to request appropriate measures to protect the classified information the Commission determines to be relevant and necessary. (AE 143A at 2).

2. On 5 March 2019, the Government provided the Commission and the Defense a tabbed binder, AE 143Q,⁴ containing all classified documents listed in the Defense's various M.C.R.E. 505(g)(1)(A) notices. The Commission held an *in camera* hearing pursuant to M.C.R.E. 505(h)(1)(C) to determine the use, relevance, or admissibility of the classified information contained in AE 143Q.

3. Counsel for the Government and for the Accused were present at the M.C.R.E. 505(h)(1)(C) hearing during which the Parties presented argument on the use, relevance, and admissibility of each of the 39 tabbed documents in AE 143Q.

4. **Ruling.**

a. Each party's request to conduct an M.C.R.E. 505(h) hearing to determine the use, relevance, or admissibility of classified information for motions docketed for the March 2019 session is **GRANTED**.

b. Having considered the motions to be ligated, the evidence contained within the 39 Tabs of AE 143Q, and the arguments by counsel, the Commission finds the following classified information (organized by appellate exhibit number and Tab number from AE 143Q) to be relevant for a fair determination of the issues before the Commission:

⁴ AE 143Q, Government Notice of Defense 505(g) Documents, filed 5 March 2019.

(1) **AE 136** – information in Tabs 6,⁵ 31, and 35;

(2) **AE 138** – information in Tab 4;⁶ and,

(3) **AE 141** – information in Tabs 1, 2, 36, 37, and 38.

c. The Commission finds that the information in the remaining tabs of AE 143Q (3, 5, 7-30, 32-34, and 39) are not relevant for a fair determination of the issues before the Commission.

d. Given the limited quantity of classified information at issue, prior to the start of the Rule for Military Commission (R.M.C.) 803 session on **6 March 2019**, a R.M.C. 802 session will be conducted at **0845** between the Trial Counsel, Defense Counsel, and Military Judge during which the Government will identify the measure(s) contemplated by M.C.R.E. 505 that it will request the Commission take to protect against the disclosure of the relevant classified information in connection with argument on AE 136, AE 137,⁷ AE 138, and AE 141.

So **ORDERED** this 5th day of March, 2019.

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M.D. LIBRETTO
LtCol, USMC
Military Judge

⁵ Information included at paragraph 4 indicating existence of additional documents.

⁶ References to foreign language audio discovery at page 3.

⁷ Although none of the evidence contained within AE 143Q is relevant for the Commission's consideration of AE 137, the Government identified the likelihood of classified information being disclosed during argument.