

UNCLASSIFIED//FOR PUBLIC RELEASE  
MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA

v.

ABD AL RAHIM HUSSAYN  
MUHAMMAD AL NASHIRI

AE 206V

RULING

DEFENSE MOTION TO COMPEL  
DISCOVERY OF ALL DOCUMENTS  
CITED IN THE SSCI EXSUM  
RELATING TO THE ARREST,  
DETENTION, AND INTERROGATION  
OF MR. AL-NASHIRI

28 APRIL 2015

1. The Accused is charged with multiple offenses in violation of the Military Commissions Act (M.C.A.) of 2009, 10 U.S.C. §§ 948 *et seq.*, Pub. L. 111-84, 123 Stat. 2574 (Oct. 28, 2009). He was arraigned on 9 November 2011.

2. The Defense filed AE 206R requesting the Commission compel discovery of all documents cited in the Executive Summary (“EXSUM”) of the Senate Select Committee on Intelligence’s Report on the Central Intelligence Agency’s (CIA) Rendition, Detention, and Interrogation (“RDI”) Program, (hereinafter “SSCI Report”) relating to the arrest, detention, and interrogation of the Accused. The Government response, AE 206S, requested the Commission deny AE 206R, due to the Defense seeking “the underlying classified documents” and not the Military Commission Rule of Evidence (M.C.R.E.) 505 summaries expressly allowed by statute.<sup>1</sup> (AE 206S at 1). The Government asserted it produced and will continue to produce discoverable classified information in a manner consistent with M.C.R.E. 505 and in accordance with the Commission’s orders. *Id.* at 3. The Government argued the Defense’s request is in contravention of the plain language of 10 U.S.C. § 949p-4(c). *Id.* at 14.

<sup>1</sup> See 10 U.S.C. § 949p-4 and M.C.R.E. 505(f)(2)(c).

3. The Defense requested oral argument. The Prosecution's position was oral argument was not required, however if the Defense request was granted, the Prosecution desired to be heard. "In accordance with Rule for Military Commission (R.M.C.) 905(h) the decision to grant oral argument on a written motion is within the sole discretion of the Military Judge."<sup>2</sup> In this instance, oral argument is not necessary to the Commission's consideration of the issue before it. The Defense request for oral argument is **DENIED**.

4. 10 U.S.C. § 949p-4 and M.C.R.E. 505 authorize the Commission to approve the use of substitutions, summaries, tables, narratives, indices, or other means of admitting relevant facts, so long as the accused is provided with substantially the same ability to make a defense as would discovery of or access to the specific classified information. The Government gained full access to the SSCI Report and started its review for discovery on 18 February 2015. (AE 206Q at 3). The record since the Defense's filing of AE 206 and AE 206R has not yielded any facts or information giving the Commission cause to believe the Government has ceased or will cease providing all discoverable classified information to the Defense in a manner consistent with the M.C.A., case law, and the Commission's Orders.<sup>3</sup> Thus, AE 206R is **MOOT**.

So **ORDERED** this 28th day of April, 2015.

//s//  
VANCE H. SPATH, Colonel, USAF  
Military Judge  
Military Commissions Trial Judiciary

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<sup>2</sup> Military Commissions Trial Judiciary Rule of Court 3(5)(m) (May 2014).

<sup>3</sup> See AE 120AA, ORDER, Government Motion to Reconsider AE 120C In Part So The Commission May Take Into Account Declassification Efforts Underway at Prior Prosecution Request, Clarify the Discovery Standard the Commission is Applying, and Safeguard National Security While Ensuring a Fair Trial, dated 24 June 2014 and pleadings filed thereafter; and the numerous notices of provision of discovery filed pursuant to the Commission's Order in paragraph 1a of AE 045H, ORDER, Government Motion for a Scheduling Order, dated 21 August 2013.