

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

UNITED STATES OF AMERICA v. ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI	AE 128C Order Pursuant to Military Commission Rule of Evidence 505(h) 21 February 2014
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1. 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 R.M.C. 806(b)(2).
2. The Defense provided notice (AE 125) of its intent to disclose classified information in the filing at AE 120, pursuant to M.C.R.E. 505(g).
3. The Prosecution filed AE 128, requesting the Commission conduct a hearing pursuant to M.C.R.E. 505(h), to determine the use, relevance and admissibility of classified information sought to be disclosed.
4. The Commission conducted the M.C.R.E. 505(h) hearing on 20 February 2014, with all counsel present. All persons present during the *in camera* hearing had the appropriate security clearances and access. The hearing, recorded and transcribed, involved discussions of classified information.
5. During the hearing on 20 February 2014, the parties presented oral argument involving both classified and unclassified information before this Commission in AE 120.
6. Findings:
 - a. The classified information the defense seeks to disclose, is relevant and necessary to for a fair determination of the issue before the Commission.
 - b. This is an interlocutory legal proceeding and does not relate to evidence the Prosecution intends to introduce on the merits of the case.
 - c. Closure of a portion of these proceedings and exclusion of the accused for the purpose of litigating AE 120 only is necessary to protect information the disclosure of which could reasonably be expected to damage national security, including intelligence or law enforcement sources, methods, or activities.

d. After reviewing the relevant information in AE 120 and AE 125, the Commission finds a compelling government interest, in that public disclosure of the information identified by the defense reasonably could be expected to damage national security.

e. The closure of the proceedings ordered herein is narrowly tailored to protect information that, if publicly disclosed, would pose a grave danger to national security:

- (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 transcript of the closed session, excising only classified national security information, will be provided in accordance with the Regulation for Trial by Military Commission and the Trial Judiciary Rules of Court.

f. The closure of a portion of the proceeding effectively will protect the classified information at issue by not disclosing the information to individuals who do not hold the requisite security clearance and a “need to know.”

g. Pursuant to the M.C.R.E. 505(h) hearing conducted on AE 120 on 20 February 2014, there are no less restrictive means or reasonable alternatives, other than closure of a limited portion of the proceedings that would adequately protect the compelling interest in protecting this national security information.

7. The Commission hereby Orders:

a. The Commission will hear argument in a closed session on Defense motion AE 120 only.

b. The Accused shall be excluded from the closed session for the purpose of litigating AE 120 only.

c. That the closed session on AE 120 be limited to evidence and argument pertaining to the classified information described in AE 125.

d. That a redacted, unclassified transcript of the closed session be prepared expeditiously and provided to the public in a similar manner as the unauthenticated transcripts of open sessions; and

e. All classified filings related to AE 120, AE 125, and the unredacted transcript shall be SEALED until further order of this Commission or another court of competent jurisdiction.

SO ORDERED this 21st day of February, 2014.

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JAMES L. POHL
COL, JA US Army
Military Judge