

UNITED STATES OF AMERICA)	PROTECTIVE ORDER # 7
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v.)	Protection of Classified Information Throughout All Stages of Proceedings
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KHALID SHEIKH MOHAMMED,)	
WALID MUHAMMAD SALIH MUBARAK)	
BIN ATTASH,)	
RAMZI BINALSHIBH,)	
ALI ABDUL AZIZ ALI,)	
MUSTAFA AHMED ADAM AL HAWSAWI)	
)	18 December 2008

1. This Protective Order is issued pursuant to the authority under the Military Commissions Act (MCA) (10 U.S.C. §948a, *et seq.*) and the Manual for Military Commissions (MMC), to include, but not limited to:

- a. Rules for Military Commissions (RMC) 701(f)(8) and (1)(2);
- b. Military Commission Rule of Evidence (MCRE) 505;
- c. Regulation for Trial by Military Commission (DoD Trial Reg), Sec. 1703.

2. The Commission has considered the following matters prior to issuing this order:

- a. Prosecution Motion for Omnibus Protective Order, dated 23 Oct. 2008.
- b. Prosecution Proposed Protective Order #, dated 18 Dec. 2008.
- c. Declaration by the Director, Central Intelligence Agency, dated 30 May 2008.
- d. Declaration by Deputy Director, National Clandestine Service, Central Intelligence Agency, dated 11 Aug. 2008.
- e. Declarations by Associate Information Review Officer, National Clandestine Service, Central Intelligence Agency, dated 21 Jul. 2008 and 10 Nov. 2008.

This order will be attached to the record at trial. The appellate exhibits referenced above will be sealed.

3. The Commission finds that this case involves information that has been classified in the interests of national security as set forth by MCRE 505(b)(1) and (2) as well as by Executive Order 12958, as amended. The storage, handling, and control of this information will require

special precautions mandated by statute, executive order, and regulation, and access to which requires appropriate security clearances and a need to know. The Commission further finds that this case involves “protected information” that is unclassified but which remains sensitive and should be protected from dissemination outside the defense.

4. The purpose of this Order is to establish procedures that must be followed by all defense counsel of record, defense paralegals, defense translators and all other persons assisting the Defense (hereinafter the “Defense”) as well as any other person who comes into possession of classified information and protected information as a result of their participation in this case.

5. The procedures set forth in this Protective Order, and MCRE 505 and 506, will apply to all stages in this case, including discovery and disclosure of classified information subject to modification by further Order. This Order does not abrogate Protective Order #3 – Protection of Classified Information at Arraignment and Other Pretrial Proceedings, nor revises any protections contained within any previous Protective Order issued in this case.

6. As used herein, the term Classified Information shall mean:

a. Any document or information which has been classified by any Executive Branch agency in the interests of national security or pursuant to Executive Order 12958, its predecessors or as amended, as CONFIDENTIAL, SECRET or TOP SECRET, or additionally controlled as SENSITIVE COMPARTMENTED INFORMATION (SCI), or any information in such document;

b. Any document or information which has been classified as “SECRET – Releasable to Sheikh Mohammed, Bin Attash, Binalshibh, Aziz Ali, Hawsawi.”

c. Any document or information, regardless of physical form or characteristics, now or formerly in the possession of the Defense, private party or other person, which has been derived from United States government information that was classified, including any document or information that has subsequently been classified by the government pursuant to Executive Order 12958;

d. Any document or information that the Defense knows or reasonably should know, contains Classified Information; or

e. Any document or information as to which the Defense has been notified orally, or in writing, that such document or information contains Classified Information, or protected information, or implicates sources, methods or activities of the United States to acquire such information if those sources, methods and activities remain classified.

f. Presumptively Classified Information, including any statements made by the accused, and any verbal classified information known to the accused or Defense.

g. Any document or information, regardless of place of origin, and including documents classified by a foreign government, that could reasonably be believed to contain classified information, or that refers to or relates to national security or intelligence matters. Any document or information including but not limited to any subject referring to the Central Intelligence Agency, National Security Agency, Defense Intelligence Agency, Department of State, National Security Council, Federal Bureau of Investigation, or intelligence agencies of any foreign government, or similar entity, or information in the possession of such agency, shall be presumed to fall within the meaning of “classified national security information or document” unless and until the SSA or Prosecution advises otherwise in writing.

h. This provision shall not apply to documents or information which the Defense obtains from other than classified materials, or documents provided by the Prosecution with a marking to indicate that the document has been “declassified.” While information in the public domain is ordinarily not classified, such information may be considered classified, and therefore subject to the provisions of MCRE 505 and this Order, if it is confirmed or denied by any person who has, or has had, access to classified information and that confirmation or denial tends to corroborate or tends to refute the information in question. Any attempt by the Defense to have such information confirmed or denied at trial or in any public proceeding in this case shall be governed by MCRE 505 and all provisions of this Order.

i. The words “documents” and “information” shall include, but are not limited to, all written or printed matter of any kind, formal or informal, including originals, conforming copies and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise), handwritten notes, or any electronic storage on any electronic storage media or device of any documents or information or information acquired orally, including but not limited to papers, correspondence, memoranda, notes, letters, reports, summaries, photographs, maps, charts, graphs, inter-office communications, notations of any sort concerning conversations, meetings or other communications, bulletins, teletypes, telegrams, and telefascimilies, invoices, worksheets and drafts, alterations, modifications, changes and amendments of any kind to the foregoing; graphic or oral records or representations of any kind, including but not limited to photographs, charts, graphs, microfiche, microfilm, videotapes, sound recordings of any kind and motion pictures; electronic, mechanical or electric records of any kind, including but not limited to tapes, cassettes, disks, recordings, films, typewriter ribbons, word processing or other computer

tapes, disks, or thumb drives and all manner or electronic data processing storage; and Classified Information acquired orally.

7. All Classified Documents and other matters and the Classified Information contained therein shall remain classified unless the documents bear a clear indication that they have been declassified by the agency or department that is the originator of the document or the information contained therein (hereinafter, the "Original Classification Authority").

8. As used herein, the term Protected Information shall mean:

a. Protected information that is unclassified but otherwise privileged, such as Law Enforcement sensitive (LES) information or information For Official Use Only (FOUO), which does not warrant a national security classification but nonetheless requires limitation in dissemination and/or disclosure.

9. The Prosecution will provide the classified discovery for each of the Accused to the Senior Security Advisor (SSA) on compact disks (CD's) that are properly marked with the security classification level. The SSA will ensure that the material is delivered to each of the Accuseds' respective Defense teams together with a copy of this Order and will verify that the person receiving the materials has the appropriate security clearances and has otherwise complied with this Order and Protective Order #3. The person receiving the materials on behalf of each Defense team will be responsible for ensuring that access to and storage of the CD's is in accordance with this Order and Protective Order #3. Pending the establishment of storage facilities and procedures for the materials at the Accuseds' detention facility, Defense counsel are responsible for the appropriate handling and storage of the classified material.

10. Any and all discovery materials are to be provided to the Defense, and used by the Defense, solely for the purpose of allowing the Accused to prepare their defenses and that none of the discovery materials produced by the Prosecution to the Defense shall be disseminated to, or discussed with the media or any other individual or entity outside the

defense team. This provision does not prohibit the media from obtaining copies of any items that become declassified public exhibits at any hearing, trial or other proceeding.

11. The Defense is prohibited from disclosing classified information or information they know or reasonably should know is classified to the Accused absent a specific Order from this Commission.

12. Persons subject to this Order are advised that all information to which they obtain access by this Order, or any previous protective order issued by the Commission, is now and will forever remain the property of the United States Government. The Defense shall return all materials that may have come into their possession for which they are responsible because of such access upon demand by the Prosecution or SSA.

13. The Defense shall comply with MCRE 505(g) prior to any disclosure of Classified Information during any proceeding in this case. The Defense is required to notify the Prosecution in writing of any intention to disclose, or cause the disclosure of, classified information in any manner at any stage of the proceedings. The Defense notice must be particularized and set forth the specific classified information sought to be disclosed. The Defense notice must be provided to the Prosecution with sufficient time for the Prosecution to respond and seek relief under MCRE 505(h) prior to the proceeding in which the disclosure is expected to occur.


14. Any pleading or other document filed or transmitted by the Defense, which the Defense knows or has reason to know contains Classified Information in whole or in part, believes may be classified in whole or in part, or implicates information, sources, methods or activities of the United States Government which the Defense knows or has reason to know contains Classified Information, or which concern or relate to national security or

intelligence matters (as defined in paragraph 6 above), shall be filed UNDER SEAL with the SSA in the case of a filing and shall be transmitted in an appropriate manner, commensurate with its classification status.

15. Any breach of this Protective Order may result in disciplinary action or other sanctions.

16. Persons subject to this Order are further admonished that they are obligated by law and regulation not to disclose any national security classified information in an unauthorized fashion and that any breach of this Order may result in the termination of their access to classified information. In addition, they are admonished that any unauthorized disclosure of classified information may constitute violations of the United States criminal laws, including without limitation, the provisions of 18 U.S.C. §§ 371, 641, 1001, 793, 794, 798, 952, and 1503; 50 U.S.C. §§ 421 (the Intelligence Identities Protection Act) and 783; and that a violation of this Order or any portion hereof may be chargeable as a contempt of this Commission.

17. Either party may file a motion for appropriate relief to obtain an exception to this Order should they consider it warranted.



Stephen R. Henley
Colonel, U.S. Army
Military Judge