

UNITED STATES OF AMERICA

v.

Manning, Bradley E.  
PFC, U.S. Army,  
HHC, U.S. Army Garrison,  
Joint Base Myer-Henderson Hall  
Fort Myer, Virginia 22211

)  
)  
) **Supplement to Prosecution Response**  
) **To Scheduling Order: 39a Session On**  
) **Closure and Motion to Close the**  
) **Courtroom for Specified Testimony**

) Corrected Copy

) **15 March 2013**

(U) The Court's Scheduling Order, dated 1 March 2013, requires the United States to resubmit its List of all Classified Information it intends to Request a Closed Session (*Grunden*), dated 1 February 2013 (hereinafter "*Grunden* Filing"), to provide more specificity to the Court. See AE 503. This filing supplements the prosecution's initial *Grunden* filing by removing witnesses for which the prosecution determined other alternatives were viable in lieu of closing the courtroom and providing greater specificity on the classified content of the witness testimony for which the Government requested courtroom closure. See AE 479.

#### RELIEF SOUGHT

(U) The United States respectfully moves the Court to order courtroom closure to hear the classified testimony of the twenty-eight (28) witnesses outlined below in accordance with the Government's original *Grunden* filing. See AE 479.

#### BURDEN OF PERSUASION AND BURDEN OF PROOF

(U) The burden of proof on any factual issue, the resolution of which is necessary to decide a motion, shall be by preponderance of the evidence. RCM 905(c)(1). The burden of persuasion on any factual issue, the resolution of which is necessary to decide a motion, shall be on the moving party. RCM 905(c)(2).

#### FACTS

(U) In this filing, the United States requests courtroom closure to take the classified portions of testimony from twenty-eight (28) of its 141 witnesses. See AE 475. Approximately seventy-three (73) of these witnesses' testimony involves classified information; however, the United States will use alternatives for the majority of prosecution witnesses in lieu of closing the courtroom. See, e.g., AE 444; AE 479. In its previous *Grunden* filing, the United States requested closure for thirty-seven (37) of its 141 witnesses. See AE 479. The United States determined that there were viable alternatives to courtroom closure for nine (9) additional witnesses. Of the twenty-eight (28) witnesses, sixteen (16) will be called during the merits portion of the case and fourteen (14) will be called during presentencing proceedings (two (2) are being called during both merits and presentencing proceedings).

[REDACTED]

**WITNESSES/EVIDENCE**

(U) The United States requests the Court consider the cited Appellate Exhibits (AE). In particular, the United States directs the Court to the discussion of alternatives to closure outlined in its original *Grunden* filing. See AE 479. The United States also requests the Court consider the Information on Past Cases with Trial Closures and the Targeted Brief on Interplay of *Grunden*, MRE 505 and RCM 806, both due to the Court on 29 March 2013, before making a determination regarding closure.

**LEGAL AUTHORITY AND ARGUMENT**

(U) Each of the alternatives described in the Government's original *Grunden* filing will be used to the greatest extent possible during the court-martial. See AE 479. There are only four (4) witnesses whose testimony require an entirely closed session. For the remainder of the witness testimony, the United States only requests closure for *specific areas of testimony concerning classified information*. For these portions of the witnesses' testimony, identified by witness below, no meaningful or effective alternative exists because of the complicated and nuanced nature of the testimony. Attempting to use an alternative such as a code word or legend would significantly increase the potential for inadvertent spillage of the classified information at issue or provide pieces of information that, when combined with information available from other sources, could form a classified picture (classification by compilation).

(U) With this filing, the United States provides the Court more specific information on which it can base courtroom closure findings. The information articulated below is organized by witness simply because the evidence will be elicited in oral form. Following each witness name appears the classified subject matter to which he/she will testify. Pursuant to RCM 806(b)(2), the description also offers (a) the reasoning behind this classification in order to communicate the "overriding interest" at risk of prejudice; (b) an explanation as to why closure is a remedy "no broader than necessary" to protect this interest; and, by reference to the practical limitations described above, (c) the reason other "alternatives" are inadequate. In addressing the overriding interest, the United States has provided a classified proffer of the information the witness will address as well as an unclassified identification of the overriding national security interest pursuant to which this piece of information is classified.

1. (U) BG (Ret) Robert Carr, Defense Intelligence Agency

a. (U) **Classified Information and Overriding Interest.**

(1) [REDACTED]

[REDACTED]

(2) (U) This portion of BG (Ret) Carr's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(c)(d).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

2. (U) Col Julian Chesnutt, Defense Intelligence Agency

a. (U) **Classified Information and Overriding Interest.**

[REDACTED]

(1) [REDACTED]

(2) (U) This portion of Col Chesnutt's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(c)(d).

b. (U) **Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) **Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

3. [REDACTED]

[REDACTED]

**a. (U) Classified Information and Overriding Interest.**

(1) [REDACTED]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(c).

**b. (U) Scope of Closure.**

(1) [REDACTED]

(2) (U) As the witness's association with this proceeding, as well as the subject matter of testimony is classified, the courtroom should be closed for the entirety of this individual's testimony, including the announcement of the witness's name.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation associated with his or her testimony and the witness's actual testimony is classified, shielding the witness's identity from the public would not be useful. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons

[REDACTED]

articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

4. (U) Ms. Elizabeth Dibble, Principal Deputy Assistant Secretary, Bureau of Near Eastern Affairs, Department of State

**a. (U) Classified Information and Overriding Interest.**

(1)

[REDACTED]

(2) (U) This portion of Ms. Dibble's testimony relates to interests of national security addressed in EO 13526, Section 1.4(c)(d).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays,

[REDACTED]

unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

5. (U) John Doe, Department of Defense

(U) Court closure information for this witness is listed in AE 477.

6. (U) RADM Kevin Donegan, Director, Naval Warfare Integration, Pentagon

a. (U) **Classified Information and Overriding Interest.**

(1) [REDACTED]

(2) (U) This portion of RADM Donegan's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(c)(d).

b. (U) **Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) **Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis

[REDACTED]

of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

7. (U) Mr. John Feeley, Principal Deputy Assistant Secretary, Bureau of Western Hemisphere Affairs, Department of State

**a. (U) Classified Information and Overriding Interest.**

(1)

[REDACTED]

(2)

[REDACTED]

[REDACTED]

(3) (U) This portion of Mr. Feeley's testimony relates to interests of national security addressed in EO 13526, Section 1.4 (b)(d).

b. (U) **Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

c. (U) **Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

8. (U) AMB Patrick F. Kennedy, Under Secretary for Management, Department of State

a. (U) **Classified Information and Overriding Interest.**

(1) (U) AMB Patrick F. Kennedy will testify at sentencing about compromised data and the impact to the Department of State. AMB Kennedy will testify about the steps the Department took to respond to the compromise, the impact of that compromise on the management of the Department and its diplomatic mission, the nexus between the information gathered by the Department and the formulation of USG policy, as well as lost opportunities as a result of the leaks. The Government may request court closure with respect to

[REDACTED]

certain testimony by AMB Kennedy regarding the impact of the compromise on the management of the Department and its diplomatic mission, as well as certain testimony regarding the nexus between the information gathered by the Department and the formulation of USG policy, based on the overriding interest in protecting classified information and the lack of alternatives. Further, AMB Kennedy's testimony may expand upon the classified testimony of other Department of State witnesses and discuss specific examples of damage in the classified draft damage assessment. If necessary, the Government will request court closure to address the specific testimony of other Department witnesses and/or the classified draft damage assessment, based on the same overriding interest in protecting classified information and lack of alternatives. This information is properly classified up to the SECRET level according to the Department of State Classification Guide (DSCG 11-01, dated May 2011). Unauthorized disclosure of this information could cause serious damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of AMB Kennedy's testimony relates to interests of national security addressed in EO 13526, Section 1.4(c)(d).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

9. (U) Mr. John Kirchhofer, Defense Intelligence Agency

**a. (U) Classified Information and Overriding Interest.**

(1) [REDACTED]

[REDACTED]

(2) (U) This portion of Mr. Kirchhofer's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(d).

b. (U) **Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

c. (U) **Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

10. (U) AMB Michael Kozak, Department of State

a. (U) **Classified Information and Overriding Interest.**

(1) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(2) (U) This portion of AMB Kozak's testimony relates to interests of national security addressed in EO 13526, Section 1.4(d).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

11. [REDACTED]

**a. (U) Classified Information and Overriding Interest.**

(1) [REDACTED]

[REDACTED]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(c).

**b. (U) Scope of Closure.**

(1) [REDACTED]

(2) (U) As the witness's association with this proceeding, as well as the subject matter of testimony is classified, the courtroom should be closed for the entirety of this individual's testimony, including the announcement of the witness's name.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

12. (U) Mr. Danny J. Lewis, Defense Intelligence Agency

**a. (U) Classified Information and Overriding Interest.**

[REDACTED]

(1) [REDACTED]

(2) (U) This portion of Mr. Lewis's testimony relates to interests of national security addressed in EO 13526, Section 1.4(c).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

13. (U) Mr. Randall MacRobbie, Defense Intelligence Agency

**a. (U) Classified Information and Overriding Interest.**

(1) [REDACTED]

[REDACTED]

(2) (U) This portion of Mr. MacRobbie's testimony relates to interests of national security addressed in EO 13526, Section 1.4(g).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

14. (U) Mr. James McCarl, Joint IED Defeat Organization (JIEDDO),

**a. (U) Classified Information and Overriding Interest.**

(1) [REDACTED]

[REDACTED]

(2) (U) This portion of Mr. McCarl's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(g).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

15. (U) MajGen Kenneth McKenzie, USMC HQ Staff

**a. (U) Classified Information and Overriding Interest.**

(1) [REDACTED]

[REDACTED]

(2) (U) This portion of MajGen McKenzie's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(d).

b. (U) **Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

c. (U) **Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

16. (U) Mr. James Moore, Department of State

a. (U) **Classified Information and Overriding Interest.**

(1) [REDACTED]

[REDACTED]

(2) (U) This portion of Mr. Moore's testimony relates to interests of national security addressed in EO 13526, Section 1.4(b)(d)

b. (U) **Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) **Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

17. (U) MG Michael Nagata, Joint Staff, the Pentagon

a. (U) **Classified Information and Overriding Interest.**

(1) [REDACTED]

[REDACTED]

[REDACTED]

(2) (U) This portion of MG Nagata's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(c)(d).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

18. (U) SSA Alexander Otte, Federal Bureau of Investigation

**a. (U) Classified Information and Overriding Interest.**

(1) [REDACTED]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(c).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than

[REDACTED]

necessary to protect the classified information.

c. (U) **Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

19. (U) AMB David Pearce, Department of State

a. (U) **Classified Information and Overriding Interest.**

(1)

[REDACTED]

(2) (U) This portion of testimony relates to interests of national security

[REDACTED]

addressed in EO 13526, Section 1.4(b)(d).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

20. (U) Mr. Adam Pearson, Joint IED Defeat Organization (JIEDDO)

**a. (U) Classified Information and Overriding Interest.**

(1) [REDACTED]

(2) (U) This portion of Mr. Pearson's testimony relates to interests of national security addressed in EO 13526, Section 1.4(c) and (g).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified

[REDACTED]

testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

21. (U) Mr. H. Dean Pittman, Department of State

a. (U) **Classified Information and Overriding Interest.**

(1) [REDACTED]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(b)(d).

b. (U) **Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

c. (U) **Alternatives.** As this testimony will be offered orally, it is not capable of

[REDACTED]

redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

22. [REDACTED]

**a. (U) Classified Information and Overriding Interest.**

(1) [REDACTED]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(c)(g).

**b. Scope of Closure.**

(1) [REDACTED]

(2) (U) As the witness's association with this proceeding, as well as the subject matter of testimony is classified, the courtroom should be closed for the entirety of this

individual's testimony, including the announcement of the witness's name.

c. (U) **Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

23. (U) AMB Stephen Seche, Department of State

a. (U) **Classified Information and Overriding Interest.**

(1)



[REDACTED]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(b)(d).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

24. (U) SA David Shaver, U.S. Department of Treasury

**a. (U) Classified Information and Overriding Interest.**

(1) [REDACTED]

(2) (U) This portion of testimony relates to interests of national security

[REDACTED]

addressed in EO 13526, Section 1.4(c)(g).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

25. (U) Ms. Cathryn Strobl, Central Intelligence Agency

**a. (U) Classified Information and Overriding Interest.**

(1) [REDACTED]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(c)(g).

[REDACTED]

b. (U) **Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

c. (U) **Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

26. (U) AMB Don Yamamoto, Department of State

a. (U) **Classified Information and Overriding Interest.**

(1) [REDACTED]

[REDACTED]

[REDACTED]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(b)(d).

b. (U) **Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) **Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

27. (U) AMB Marie Yovanovitch, Department of State

a. (U) **Classified Information and Overriding Interest.**

(1) [REDACTED]

[REDACTED]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(b)(d)(e).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.

**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted. The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

28. (U) Mr. Joseph Yun, Department of State

**a. (U) Classified Information and Overriding Interest.**

(1) [REDACTED]

[REDACTED]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(b)(d).

**b. (U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would, therefore, be no broader than necessary to protect the classified information.


**c. (U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. An unclassified summary or reduction to code is also untenable. The classified testimony is necessary to fully explore the witness's observations and, where necessary, the basis of the witness's opinions, and the witness will be testifying to nuanced information requiring complicated explanation. As such, the witness must remain free to describe the information to the parties and fact-finder as they may require. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. No stipulations have been agreed upon for this witness to date, although it is a possibility if both parties agree. Finally, for the reasons articulated above, declassification is not warranted.

[REDACTED]

The information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure.

**CONCLUSION**

(U) The United States respectfully requests the Court order courtroom closure to hear the classified testimony of the twenty-nine (28) witnesses as outlined above.

  
JODEAN MORROW  
CPT, JA  
Trial Counsel

(U) I certify that I served or caused to be served a true copy of the above, via SIPRNET email, to Mr. David Coombs, Civilian Defense Counsel, though the defense security experts on 15 March 2013.

  
JODEAN MORROW  
CPT, JA  
Trial Counsel