

**IN A GENERAL COURT-MARTIAL  
IN THE SECOND JUDICIAL CIRCUIT, U.S. ARMY TRIAL JUDICIARY  
FORT BRAGG, NORTH CAROLINA**

UNITED STATES	)	
	)	
v.	)	GOVERNMENT MOTION FOR HEARING
	)	ON USE OF CLASSIFIED INFORMATION
BERGDAHL, ROBERT BOWDRIE	)	PURSUANT TO M.R.E. 505(j)
(BOWE)	)	
SGT, U.S. Army	)	
HHC, Special Troops Battalion	)	23 AUGUST 2017
U.S. Army Forces Command	)	
Fort Bragg, North Carolina 28310	)	

---

**I. RELIEF SOUGHT**

The Government requests the Court schedule a hearing on the use of classified material in accordance with the provisions of Military Rule of Evidence 505(j) regarding the classified information contained in paragraph one of the Defense's M.R.E. 505(i) Notice dated 28 July 2017.

**II. BURDEN OF PERSUASION AND BURDEN OF PROOF**

The Defense, as the proponent of the evidence, has the burden of persuasion in accordance with RCM 905(c)(2), and the burden of proof is preponderance of the evidence in accordance with RCM 905(c)(1).

**III. FACTS**

The Government adopts the facts as previously written in the Motion for Hearing Pursuant to M.R.E. 505(j) filed on 5 May 2017. The document referenced in paragraph one is a fragmentary order (FRAGO) dated 13 May 2009 and issued by Combined Joint Special Operations Task Force – Afghanistan (CJSOTF-A). The Task Force that SCPO (Ret) Hatch belonged to, however, did not fall under CJSOTF-A, and as such, the order did not apply to them.

**IV. LAW AND ARGUMENT**

"If an accused reasonably expects to disclose, or to cause the disclosure of, classified information in any manner in connection with any trial or pre-trial proceeding involving the prosecution of such accused, the accused must...notify the trial counsel and the military judge in writing." M.R.E. 505(i)(1). Subsequent to such notice, "either party may move for a hearing concerning the use at any proceeding of any classified information. Upon a request by either

party, the military judge must conduct such a hearing and must rule prior to conducting any further proceedings.” M.R.E. 505(j)(1)(A).

“Classified information is not subject to disclosure under subdivision (j) unless the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence. In presentencing proceedings, relevant and material classified information pertaining to the appropriateness of, or the degree of, punishment must be admitted only if no unclassified version of such information is available.” M.R.E. 505(j)(1)(D).

The Defense, having given notice of its intent to cause the disclosure of classified information, has the burden of establishing that the information meets the standards for disclosure under M.R.E. 505(j)(1)(D). As the FRAGO was for a unit unrelated to this case, it is irrelevant.

## V. CONCLUSION

The Government respectfully requests that the Court hold a hearing concerning the use of the classified material contained in the Defense M.R.E. 505(i) notice.



JUSTIN C. OSHANA  
MAJ, JA  
Trial Counsel

I certify that I have served or caused to be served a true copy of the above on the Defense Counsel on 23 August 2017.



JUSTIN C. OSHANA  
MAJ, JA  
Trial Counsel