

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

UNITED STATES OF AMERICA v. KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI	AE 926I / AE 959G CONSOLIDATED RULING Mr. al Baluchi’s Motion to Dismiss All Charges for Unlawful Influence by Members of Congress; Mr. al Baluchi’s Motion to Compel Discovery Regarding Unlawful Influence by Members of Congress; and Mr. al Baluchi’s Motion to Dismiss Due to the Secretary of Defense’s Interference with the Convening Authority’s Discretion 7 October 2026
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1. **Background.** This ruling addresses three interrelated motions by Mr. Ali (a.k.a. al Baluchi) which are contained in the AE 926 series and AE 959 series and which all relate to allegations of unlawful influence and/or interference by members of Congress and/or the Secretary of Defense in relation to the negotiation and/or validity of potential pleas of guilt by Mr. Ali and/or his Co-Accused. The three motions at issue are as follows:

a. **AE 926 (AAA)**, Mr. al Baluchi’s Motion to Dismiss All Charges for Unlawful Influence by Members of Congress;¹

b. **AE 926D (AAA)**, Mr. al Baluchi’s Motion to Compel Discovery Regarding Unlawful Influence by Members of Congress;² and

¹ AE 926 (AAA), Mr. al Baluchi’s Motion to Dismiss All Charges for Unlawful Influence by Members of Congress, filed 8 February 2024.

² AE 926D (AAA), Mr. al Baluchi’s Motion to Compel Discovery Regarding Unlawful Influence by Members of Congress, filed 18 March 2024.

c. **AE 959 (AAA)**, Mr. al Baluchi's Motion to Dismiss Due to the Secretary of Defense's Interference with the Convening Authority's Discretion.³

2. Procedural History.

a. During the pendency of Mr. Ali's first two motions, the following pertinent events occurred:

(1) On 31 July 2024, the Convening Authority at the time, Brigadier General (BG) Escallier, entered into pretrial agreement (PTA) with Mr. Ali's three remaining Co-Accused;⁴ and

(2) On 2 August 2024, the Secretary of Defense withdrew from the PTAs.⁵

b. After the filing of Mr. Ali's third motion, the following pertinent events occurred:

(1) On 6 November 2024, this Commission issued a ruling concluding that the Secretary of Defense's withdrawal from the PTAs was invalid and amounted to a material breach of the PTAs;⁶ and

(2) On 11 July 2025, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) granted writs of mandamus and prohibition concerning the Secretary's withdrawal from the PTAs. The Court vacated the Commission's 6 November 2024 ruling and prohibited the Commission "from conducting hearings in which the Accused would enter guilty pleas or take any other action pursuant to the withdrawn pretrial agreements."⁷

³ AE 959 (AAA), Mr. al Baluchi's Motion to Dismiss Due to the Secretary of Defense's Interference with the Convening Authority's Discretion, filed 23 August 2024.

⁴ AE 956 (GOV), Government Notice Of Under Seal Filing, filed 1 August 2024 at 4.

⁵ See AE 955B (GOV) / AE 956A (GOV) / AE 957A (GOV), Government Notice of Secretary of Defense Memorandum, filed 2 August 2024, Attach. B.

⁶ See AE 955J / AE 956J / AE 957I Ruling, Defense Motions to Schedule Entry of Pleas, dated 6 November 2024.

⁷ See *In re United States*, 143 F.4th 411, 442 (D.C. Cir. 2025).

3. Law.

a. The Military Commissions Act (MCA) prohibits any person from attempting to coerce or, by an unauthorized means, to influence the action of a convening, approving, or reviewing authority with respect to their judicial acts.⁸

b. Rule for Military Commission (R.M.C.) 104 implements the MCA's prohibition on unlawful influence.⁹

c. A party seeking relief by motion ordinarily bears the burden of establishing the factual and legal basis for that relief by a preponderance of the evidence.¹⁰

d. The Commission may look to military-justice precedent addressing actual and apparent unlawful influence when applying the MCA.¹¹

e. The D.C. Circuit has held that the Secretary, as superior convening authority, lawfully could withdraw in part the Convening Authority's delegated authority over pretrial agreements, assume that authority, and withdraw from the agreements.¹² The Court rejected the contention that 10 U.S.C. § 949b(a)(2) barred that action because the Secretary did not direct the Convening Authority's exercise of delegated authority; rather, he withdrew delegated authority, assumed it, and acted independently.¹³

⁸ See 10 U.S.C. § 949b(a)(2).

⁹ See R.M.C. 104(a)(2).

¹⁰ See R.M.C. 905(c)(1)-(2).

¹¹ See *In re Abdul-Aziz Ali*, 558 F.Supp.3d 1167, 1177-78 (C.M.C.R. 2021).

¹² See *In re United States*, 143 F.4th at 435-36.

¹³ See *id.* at 435. (Secretary Austin did not direct Escallier or seek to govern how she performed her delegated duties. Instead, the Secretary withdrew Escallier's authority over the pretrial agreements, assumed that authority for himself, and independently exercised the authority to withdraw from the pretrial agreements. These actions were consistent with the Secretary's broader responsibilities, as well as with his particular statutory and regulatory authority over military commissions.)

f. Under R.M.C. 701(c)(1), the Prosecution must permit the Defense to examine specified items within the possession, custody, or control of the Government that are material to the preparation of the defense. A discovery request does not itself establish materiality; the moving party must show a non-speculative basis that the requested material is relevant to a litigable issue and material to preparing the defense.¹⁴

g. Written motions may be resolved without a session. The decision whether to grant an R.M.C. 803 session for oral argument or an evidentiary hearing rests within the Military Judge's discretion.¹⁵

4. Analysis.

a. AE 959 (AAA).

(1) Mr. Ali seeks dismissal of the charges against him or, alternatively, striking of the capital referral upon the assertion that the Secretary's decision to withdraw the Convening Authority's power over pretrial agreements impaired the Convening Authority's independence and constituted unlawful influence.¹⁶

(2) That premise cannot be reconciled with the D.C. Circuit's binding decision. The D.C. Circuit held that the Secretary lawfully withdrew the Convening Authority's delegated authority over the pretrial agreements, lawfully assumed that authority, and lawfully withdrew from the agreements.¹⁷

¹⁴ See R.M.C. 701(c)(1); R.M.C. 905(c)(1)-(2).

¹⁵ See R.M.C. 905(h).

¹⁶ See AE 959 (AAA) at 1; AE 959F (AAA), Mr. al Baluchi's Response to AE 959C (GOV Sup), Supplement to Government Response to Mr. Ali's Motion to Dismiss Due to the Secretary of Defense's Interference with the Convening Authority's Discretion, filed 21 February 2025, at 4-5.

¹⁷ See *In re United States*, 143 F.4th at 435-36.

(3) The D.C. Circuit also rejected the proposition that 10 U.S.C. § 949b(a)(2) prevented the Secretary's action. It explained that the Secretary did not direct the Convening Authority how to perform her delegated duties. Instead, he withdrew the relevant authority, assumed it, and exercised it himself.¹⁸

(4) Mr. Ali identifies no separate action by which the Secretary directed the Convening Authority to resolve a pending matter in a particular manner, coerced her with respect to a judicial act that remained within her authority, or otherwise used an unauthorized means to influence an identified judicial act. Rather, the asserted unlawful influence is the Secretary's withdrawal of PTA authority itself. The action by the Secretary was determined to be lawful and is a matter of controlling appellate authority.¹⁹

(5) Accordingly, Mr. Ali has not established that the Secretary's withdrawal of delegated PTA authority constituted actual or apparent unlawful influence for which relief is warranted. AE 959 will be denied on the merits.

b. AE 926 (AAA).

(1) Mr. Ali contends that Members of Congress sought to influence the President and the Secretary of Defense regarding potential plea-related matters and that those efforts constituted actual or apparent unlawful influence. He seeks dismissal of the charges against him or, alternatively, striking of the capital referral.²⁰

(2) The Commission does not minimize the importance of maintaining a military commissions system that is free from actual or apparent unlawful influence. But the statutory

¹⁸ See *id.* at 435.

¹⁹ See *id.* at 435.

²⁰ See AE 926 (AAA) at 1; AE 926 (AAA 2nd Sup), Supplement to AE 926 (AAA), Mr. al Baluchi's Motion to Dismiss All Charges for Unlawful Influence by Members of Congress, filed 14 August 2024, at 15.

prohibition is not a generalized restriction on public advocacy, political disagreement, or communications between branches of Government. It requires an attempt to coerce, or an attempt by an unauthorized means to influence, a statutorily identified actor with respect to a protected action.²¹

(3) The record cited by Mr. Ali establishes that Members of Congress communicated views concerning potential resolution of this case and that some Members publicly took credit for influencing Executive Branch decision-making.²² Those circumstances, without more, do not establish that a Member of Congress coerced, or used an unauthorized means to influence, an identified convening, approving, or reviewing authority with respect to a particular judicial act.

(4) Mr. Ali principally asks the Commission to infer prohibited influence from the content and timing of the congressional communications and subsequent Executive Branch actions. But an inference of unlawful influence cannot rest solely on political advocacy, post hoc claims of credit, and temporal association. The motion identifies no evidence that any Member of Congress directed the Convening Authority's disposition of a matter within her authority, threatened an identified official, or otherwise employed a coercive or unauthorized means within the meaning of 10 U.S.C. § 949b(a)(2).

(5) Moreover, insofar as AE 926 relies upon the Secretary's withdrawal of the three PTAs as evidence that congressional advocacy produced an unlawful result, the D.C. Circuit has held that the Secretary's action was lawful, independent, and within the Secretary's authority as superior convening authority.²³

²¹ See 10 U.S.C. § 949b(a)(2).

²² See AE 926 (AAA) at 1; AE 926D (AAA) at 2.

²³ See *In re United States*, 143 F.4th at 435-36.

(6) The court's holding does not convert every congressional communication into permissible conduct, but it does foreclose treating the Secretary's lawful withdrawal of delegated authority and withdrawal from the agreements as itself the unlawful act necessary to sustain Mr. Ali's requested relief.

(7) The record therefore does not establish actual unlawful influence, apparent unlawful influence, or a basis to dismiss the charges or strike the capital referral. AE 926 will be denied on the merits.

c. AE 926D.

(1) Mr. Ali seeks broad discovery concerning correspondence among Executive Branch officials and agencies relating to plea negotiations, as well as a privilege log and the production of witnesses.²⁴

(2) The requested discovery is premised on the proposition that further communications may establish that Members of Congress unlawfully influenced Executive Branch officials concerning potential plea-related matters.²⁵

(3) The Commission will deny AE 926 because the facts identified by Mr. Ali do not establish an attempt to coerce, or an attempt by an unauthorized means to influence, a statutorily protected decisionmaker with respect to an identified judicial act. The request in AE 926D does not identify particular documents or communications that would cure that deficiency. Instead, it seeks a broad category of internal and interagency deliberative communications in the hope that additional material might reveal a sufficient nexus.

²⁴ See AE 926D (AAA) at 1-2.

²⁵ See AE 926F (AAA), Mr. al Baluchi's Reply to Government Response to AE 926D (AAA), Mr. al Baluchi's Motion to Compel Production of Discovery Regarding Unlawful Influence by Members of Congress, filed 8 April 2024, at 1-2.

(4) R.M.C. 701 does not require discovery based on such speculation. Because Mr. Ali has not established a non-speculative basis to conclude that the requested materials are material to preparing a legally viable claim for dismissal or other relief, he has not carried his burden under R.M.C. 701 and R.M.C. 905(c).²⁶

(5) The Commission therefore need not reach the Prosecution's assertions of deliberative-process privilege or the requested privilege-log procedure. AE 926D will be denied on the merits.

d. Oral Argument and Evidentiary Hearing.

(1) The parties' written submissions adequately present the material factual and legal contentions necessary to resolve these motions. The dispositive issue in AE 959 is governed by the D.C. Circuit's published decision. AE 926 and AE 926D fail on the legal and factual predicates identified above.

(2) The Commission therefore declines to convene a session for oral argument or an evidentiary hearing.²⁷

²⁶ See R.M.C. 701(c)(1); R.M.C. 905(c)(1)-(2).

²⁷ See R.M.C. 905(h).

5. **Rulings.**

- a. AE 926 (AAA) is **DENIED**.
- b. AE 926D (AAA) is **DENIED**.
- c. AE 959 (AAA) is **DENIED**.

So **ORDERED** this 7th day of October, 2026.

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MICHAEL A. SCHRAMA, Lieutenant Colonel, USAF
Military Judge
Military Commissions Trial Judiciary