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 956SS** **RULING** Mr. bin 'Attash's Motion to Schedule Breach of PTA Hearing 17 July 2026

1. **Background**. This ruling addresses whether the Commission may schedule a hearing to determine if the Secretary of Defense's withdrawal from Mr. bin 'Attash's pretrial agreement (PTA) constituted a bad-faith breach. The dispute arises following the United States Court of Appeals for the District of Columbia Circuit's (D.C. Cir.) decision validating the Secretary of Defense's withdrawal from the PTA and vacating this Commission's prior ruling on the matter.

2. **Procedural History**. Mr. bin 'Atash moved the Commission to schedule a hearing regarding an alleged breach of his pretrial agreement.[1] The Prosecution responded in opposition.[2] Mr. bin 'Attash replied.[3]

3. **Findings**.

a. On 31 July 2024, the Convening Authority entered a PTA with Mr. bin 'Attash.[4]

[1] *See* AE 956OO (WBA), Mr. bin 'Atash's Motion to Schedule Breach of PTA Hearing, filed 12 March 2026.

[2] *See* AE 955XX (GOV) / AE 956PP (GOV) / AE 957SS (GOV), Government Notice of Under Seal Filing, filed 12 March 2026.

[3] *See* AE 956RR (WBA), Mr. bin 'Atash's Reply to AE 956PP (GOV), filed 19 March 2026.

[4] *See* AE 956 (GOV), Government Notice Of Under Seal Filing, filed 1 August 2024.

b. On 2 August 2024, the Secretary of Defense withdrew from the PTA.[5]

c. On 6 November 2024, this Commission issued a ruling concluding that the withdrawal was invalid and amounted to a material breach of the pretrial agreement.[6]

d. On 11 July 2025, the D.C. Cir. granted the Prosecution's petition for a writ of mandamus and prohibition, 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"from conducting hearings in which the Accused would enter guilty pleas or take any other action pursuant to the withdrawn pretrial agreements."[7]

4. **Law**.

a. The Mandate Rule dictates that an inferior court has no power or authority to deviate from the mandate issued by an appellate court.[8]

b. The rule operates as a powerful version of the law-of-the-case doctrine, preventing courts from reconsidering issues that have already been decided in the same case.[9]

c. A trial court cannot fashion a remedy or take any action that is inconsistent with either the express terms, or the spirit, of the higher court's holding.[10]

5. **Analysis**.

a. Mr. bin 'Attash asserts that the Commission's prior finding of a "material breach" remains the law of the case because the D.C. Cir. did not explicitly address or vacate that specific finding in its opinion. Mr. bin 'Attash requests a hearing to determine if the breach was in bad faith.

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[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).

[8] *See Am. Council of Blind v. Mnuchin*, 977 F.3d 1, 5 (D.C. Cir. 2020).

[9] *See id*.

[10] *See id*.

b. The Commission is not persuaded. The D.C. Cir. explicitly held that the Secretary of Defense lawfully and timely withdrew from the pretrial agreements, and it expressly vacated the Commission's 6 November 2024 ruling in its entirety.[11] A lawful withdrawal authorized by the governing rules cannot concurrently be construed as a breach of the agreement. The appellate court's mandate eviscerated the underlying premise of the Commission's prior ruling, rendering the "material breach" finding defunct.

c. More fundamentally, the D.C. Circuit's mandate explicitly and unambiguously prohibits this Commission from conducting hearings in which the Respondents would enter guilty pleas or "take any other action pursuant to the withdrawn pretrial agreements."[12]

d. This prohibition is a direct order. Scheduling a hearing to litigate whether the Government breached the agreement in bad faith would require the Commission to take an action strictly pursuant to the withdrawn pretrial agreement. Granting the motion would constitute a direct violation of a clear mandate from a superior court.

6. **Ruling**. Mr. bin 'Attash's motion to schedule a breach of PTA hearing is **DENIED**.

So **ORDERED** this 17th day of July, 2026.

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

[11] *See in re United States*, 143 F.4th 411, 442 (D.C. Cir. 2025).

[12] *See*, *id*. at 442.