

**D.C. Circuit Court of Appeals**  
**9/11: ISN 10024 Khalid Sheikh Mohammad, et. al.**  
**Military Commissions Plea Agreement Appeal**  
**January 28, 2025**

*Events:*

On January 28, 2025, the D.C. Circuit Court of Appeals heard oral argument in the case labeled “25-1009 – USA,” which concerned the ability of the Secretary of Defense to withdraw a plea offer after the Convening Authority and all pleading parties signed it. The petitioner sought relief in the form of a writ of mandamus and extension of the stay of proceedings if relief was not granted.

Petitioner arguments held that:

- The Military Commissions judge made an error in judgment by determining that the Secretary of Defense's withdrawal was invalid.
- The proceedings that would stem from any reading of the pleas into the record would result in an inability to appeal any result, potentially due to a constitutional claim of double jeopardy.
- Since no parties have begun performance of any promises made in the plea agreement, there is no prejudice that would come from its nullification at this point.

Respondent arguments held that:

- This is not a matter of contract law, so contract law should not be used to examine the plea agreement, but if it is so used, the signing of the stipulations of fact attached to the plea agreement became an instantaneous performance of one of the promises in the agreement.
- Even if the stipulation of fact is not considered a performance of a promise, the fact that defense counsel has not questioned some witnesses brought forth for Ali/Baluchi (the KSM 9/11 defendant not participating in the plea agreement) indicates a performance of the requirement that no further motions and arguments be brought forth.
- The Secretary of Defense gave the Convening Authority full authority to negotiate a plea agreement and did not use any remedies against it prior to the conclusion of the agreement, so he is not permitted to withdraw the plea after it has been concluded.

The circuit judges questioned both the petitioner and the respondents unrelentingly, causing the hearing to extend to 3 hours and 40 minutes in public session, with a further unrecorded closed session to discuss materials that remained under seal.

*Observations:*

The circuit judges displayed great irritation at both the petitioner and the respondents for bringing a military commissions case of unfamiliar legal precedent before them. They also exposed the weakness in the logic of every oral argument. Initially, the judges seemed to be against the petitioner but later seemed to be against the respondents.

A ruling by the court had not been rendered as of January 29.

Prior to the oral arguments before the circuit court, the Military Commissions presiding judge, Air Force Col. Matthew McCall, directed that all trial and defense counsel should make themselves available at 9:00 a.m. on Thursday, January 30, in expectation of reading the pleas into the record. The judge appeared to expect that the circuit court would not extend the stay and would not authorize mandamus relief.