
Five Guantanamo Detainees Ordered Released

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A federal court today upheld the claim of five Bosnian-Algerian men that the US Government had no lawful basis for imprisoning them at Guantanamo Bay, where they have been held for nearly seven years. US District Court Judge Richard J. Leon ruled in favor of Lakhdar Boumediene, Mustafa Ait Idir, Hadj Boudella, Saber Lahmar, and Mohamed Nechla who were represented on a pro bono basis by a team of attorneys from WilmerHale. However, Judge Leon reached the opposite conclusion as to Belkacem Bensayah, finding that the US government could continue to detain him as an "enemy combatant"—a ruling WilmerHale attorneys vowed to appeal.

In granting the writ of habeas corpus and ordering the release of the five men, Judge Leon took the extraordinary step of urging the Government not to appeal. Judge Leon urged the heads of the Justice Department, the Department of Defense, and the Central Intelligence Agency to "take a hard look at the evidence both presented and lacking," and stated that seven years of imprisonment was "more than plenty."

Today's decision came after years of pro bono efforts by scores of WilmerHale attorneys and staff members on behalf of the six men detained in Guantanamo Bay. The ruling was the next step in the case of *Boumediene v. Bush*, the Supreme Court case in which WilmerHale partner [Seth Waxman](#) argued for, and won, the right of individuals detained at Guantanamo to seek habeas corpus. The firm's efforts will continue as the appeals process goes forward, with the Government still insisting that the men should be detained, and WilmerHale working to ensure that all six of its clients are freed.

"We're immensely gratified that a habeas court has spoken so decisively and so eloquently about the need for these men to be freed immediately," said WilmerHale Partner Stephen Oleskey, a leader of the case team that secured today's ruling.

Now in their seventh year of indefinite detention by the US military, the six men hardly fit the profile of dangerous terrorists or "enemy combatants." They have wives and children, most worked for charities in Bosnia, thousands of miles from the battlefield in Afghanistan, and not one had directly participated in any hostilities against the United States. They have long insisted that their detention was a grave error that implicated the highest levels of the Bush administration. Their argument gathered even more force when, shortly before trial, the Government abandoned the claim that

initially led to the men's arrest and transportation to Guantanamo—the accusation, recited by President Bush in his 2002 State of the Union Address, that the men were part of a supposed plot to blow up the United States embassy in Sarajevo. With that accusation no longer part of the case, the government has essentially argued that the men were planning to travel from Bosnia to Afghanistan at some point in the future and support the Taliban or Al-Qaeda. One of the men, Bensayah, was also accused of being a member and “facilitator” for Al-Qaeda. Judge Leon held that credible and reliable evidence supported Bensayah's continued detention.

The victory represents a major advance in the largest pro bono effort in the history of a firm that has distinguished itself as a leader in pro bono representation. Two WilmerHale partners, Stephen Oleskey and [Robert Kirsch](#), have led this impressive effort, marshaling a team of attorneys from the firm's United States and European offices. Nearly 30 attorneys have contributed hundreds—in some cases thousands—of hours of work on behalf of the imprisoned men. The case has led the team on nearly a dozen visits to Guantanamo Bay and on investigatory visits to Bosnia; has prompted meetings with government officials of various countries, both in Washington and Europe; and has led to numerous court filings in US courts in Washington, DC and Boston and in the European Court of Human Rights in Strasbourg, France.

At times over the past four years, WilmerHale's decision to represent these six men has been the subject of criticism from various quarters, including those who have prejudged all Guantanamo detainees to be “the worst of the worst” and view the representation of Guantanamo detainees in habeas proceedings as an inherently suspicious enterprise. Notwithstanding these challenges, and inspired in no small part by the firm's pro bono legacy—including its historic defense of the United States Army against Sen. Joseph R. McCarthy's allegations of Communist infiltration, which hastened the demise of McCarthy's Communist witch-hunts—WilmerHale has never wavered in its commitment to its clients.

Critical documents in the case, including the prisoners' legal brief and the Petitioners' Public Traverse, which provides the factual background for the men's imprisonment, are available at <http://www.wilmerhale.com/boumediene>.