

## WilmerHale Lawyers Prepare For Gitmo Detainee Hearing

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Hearings began Thursday, November 6, for six Bosnian-Algerian prisoners challenging their indefinite detention at Guantanamo Bay, a group represented on a pro bono basis by WilmerHale. The trial—the first of its kind for Gitmo detainees—was made possible by WilmerHale’s landmark victory this summer in *Boumediene v. Bush*, in which the Supreme Court ruled the detainees have a right to challenge their detention in court.

WilmerHale has committed tremendous resources to the case. The *Boumediene* litigation team, consisting of over 35 attorneys and staff from WilmerHale’s Boston, New York, and Washington DC offices, will argue that the men’s detention represents a grave error implicating the highest levels of the Bush administration. That argument recently gathered even more traction when the government abandoned the very claim that initially led to the men’s arrest and transportation to Guantanamo—an accusation that the men were part of a purported plot to blow up the United States embassy in Sarajevo.

WilmerHale lawyers appeared in court on October 23 to argue the proper definition of the term “enemy combatant,” and who can be lawfully detained under its parameters. The government proposed an expansive definition of the term; WilmerHale argued that the laws of war called for a definition that targeted only soldiers or civilians who directly engaged in hostilities against the United States. A transcript of that argument is available at [www.wilmerhale.com/boumediene](http://www.wilmerhale.com/boumediene).

Judge Richard Leon of the US District Court for the District of Columbia adopted the definition previously employed by the government’s Combatant Status Review Tribunals (“CSRT”): “An enemy combatant is an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the US or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.” Although the Supreme Court previously held that the CSRT procedures were not a constitutional substitute for habeas corpus review, it declined to determine whether their definition of “enemy combatant” was lawful, and this issue is likely to play a pivotal role in any future appeal.

Judge Leon’s order can also be found on the case page at [www.wilmerhale.com/boumediene](http://www.wilmerhale.com/boumediene). The hearings will focus on whether the prisoners qualify as enemy combatants. Now that the alleged plot to bomb the United States embassy in Sarajevo is no longer part of the case, the government

has essentially argued that the men planned to travel to Afghanistan at some point to support the Taliban or Al-Qaeda.