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D.C. Circuit Rejects al Qaeda Propaganda Chief's Challenge to His Conspiracy Conviction by a Military Commission

(Al Bahlul v. United States)

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WASHINGTON, DC—The U.S. Court of Appeals for the District of Columbia Circuit today upheld the Obama Administration’s right to try al Qaeda leaders before military commissions for conspiring to murder American citizens in the September 11 attacks. The decision marked a victory for the Washington Legal Foundation (WLF), which filed a brief urging the Court to reinstate charges against Ali al Bahlul, who served as al Qaeda’s media chief at the time of the attacks. The Court agreed with WLF by a 6-1 vote that the conspiracy charge did not violate the Ex Post Facto Clause of the U.S. Constitution.

In response to the decision, WLF released the following statement by Chief Counsel Richard Samp: “This decision takes a major step toward bringing the leaders of the 9/11 conspiracy to justice. Had the *en banc* court accepted al Bahlul’s argument that the Ex Post Facto Clause bars the conspiracy charge, as the prior panel did, it would have thrown the Administration’s ability to try al Qaeda leaders before military commissions into considerable doubt.”

Mr. Samp continued: “WLF was particularly pleased that the Court did not rule that al Bahlul and other detainees at Guantanamo Bay are protected by the Ex Post Facto Clause and other provisions of the U.S. Constitution. As WLF explained in its brief, the Administration unwisely conceded the applicability of the Ex Post Facto Clause to nonresident aliens being held outside the U.S. by the U.S. military. In light of that misguided concession, the Court merely ‘assumed without deciding’ that Guantanamo detainees were entitled to a broad range of constitutional protections. Indeed, Judge Henderson (who wrote the majority decision) and Judge Brown stated that they would have ruled that the Ex Post Facto Clause was wholly inapplicable to al Bahlul. The court also ruled that al Bahlul can still raise several other objections to his conspiracy conviction, but as Judge Brown’s concurrence explained, those objections are insubstantial and are likely to be summarily dismissed.”

WLF is a public interest law firm and policy center that regularly litigates in support of the national security of the United States. WLF filed its brief on behalf of a group of five retired generals and admirals.

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