

# Press Release



Washington Legal Foundation  
Advocate for Freedom and Justice®  
2009 Massachusetts Avenue, NW  
Washington, DC 20036  
202.588.0302 wlf.org

FOR IMMEDIATE RELEASE

November 3, 2015

Media Contact: Mark Chenoweth | mchenoweth@wlf.org | 202-588-0302

## **WLF Asks *En Banc* D.C. Circuit to Heed Congress and the Commander-in-Chief in al Qaeda Leaders' Military Trials**

*(al Bahlul v. United States)*

**"It defies reason and the separation of powers to hold, as a three-judge D.C. Circuit panel did, that federal courts must heed international opinion regarding the conduct of military tribunals rather than Congress and the Commander-in-Chief."**

— Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation late yesterday filed a brief in *al Bahlul v. United States*, encouraging the *en banc* U.S. Court of Appeals for the D.C. Circuit to uphold the Obama Administration's right to bring al Qaeda leaders to trial before military commissions.

WLF's brief argues that the Constitution does not limit military commission jurisdiction to offenses approved by international tribunals; rather, it gives Congress the power to decide what violates international law, including the law of war. WLF's brief notes that Congress adopted a statute in 2006 that explicitly authorizes military commissions to try alien enemy combatants on conspiracy charges. Article I, section 8 of the Constitution provides for such laws by authorizing Congress to both "define" and "punish" any "Offenses against the Law of Nations."

A three-judge panel of the D.C. Circuit overturned the conviction of a senior al Qaeda leader—Ali Hamza Ahmad Suliman al Bahlul—who played a major role in the 9/11 attacks and was convicted by a military commission of conspiracy to commit war crimes (including the murder of civilians). The panel held that international criminal tribunals do not recognize conspiracy as an offense chargeable under the international law of war. It held that if the U.S. wishes to charge war criminals with conspiracy, it must do so in civilian courts. The D.C. Circuit has voted to rehear the case *en banc* (that is, before all 11 judges on the appeals court).

WLF filed its brief on behalf of six retired generals and admirals with extensive experience in addressing law-of-war issues: Major Generals (retired) John D. Altenburg, Michael J. Marchand, and Michael J. Nardotti; Rear Admiral (retired) Steven B. Kantrowitz; Brigadier General (retired) Thomas L. Hemingway; and Rear Admiral (Lower Half) (retired) Christian L. Reismeier. WLF also filed on behalf of itself and the Allied Educational Foundation.

After filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: "The supreme law of the land is the U.S. Constitution and laws adopted pursuant to it—not the opinions of international lawyers and jurists. It defies reason and the separation of powers to hold, as a three-judge D.C. Circuit panel did, that federal courts must heed international opinion regarding the conduct of military tribunals rather than Congress and the Commander-in-Chief."

*WLF is a public-interest law firm and policy center that devotes significant resources to promoting national security and defending the separation of powers as a bulwark of liberty.*

###