

[ORAL ARGUMENT NOT YET SCHEDULED]

No. 18-5297

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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ABDUL RAZAK ALI,  
Petitioner-Appellant,

v.

DONALD J. TRUMP, et al.,  
Respondent-Appellees.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

**APPENDIX**

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**U.S. District Court  
District of Columbia (Washington, DC)  
CIVIL DOCKET FOR CASE #: 1:10-cv-01020-RJL**

ABDAL RAZAK ALI V. TRUMP, ET AL.  
Assigned to: Judge Richard J. Leon  
Case in other court: 11-05102  
USCA, 18-05297  
Cause: 05:702 Administrative Procedure Act

Date Filed: 06/17/2010  
Date Terminated: 02/10/2014  
Jury Demand: None  
Nature of Suit: 530 Prisoner Petition:  
General (Habeas Corpus)  
Jurisdiction: U.S. Government Defendant

**Petitioner**

**ABDUL RAZAK ALI**  
*Detainee*

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V.

**Respondent**

**MIKE BUMGARNER**  
*Army Col. Commander, Joint Detention  
Operations Group, JTF - GTMO*

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		(lcrjl2) (Entered: 02/21/2011)
02/24/2011	<u>1466</u>	RESPONSE re <u>1464</u> MOTION To reocnsider release of transcript re Order on Motion for Miscellaneous Relief, filed by BARACK OBAMA. (Hussey, Olivia) (Entered: 02/24/2011)
02/25/2011	<u>1467</u>	RESPONSE re <u>1465</u> MOTION Motion for Order Declassifying Amended Traverse filed by BARACK OBAMA. (Attachments: # <u>1</u> Exhibit Exhibits A and B)(Hussey, Olivia) (Entered: 02/25/2011)
02/25/2011	<u>1468</u>	Supplemental MOTION for Entry of Writ and for Sanctions re <u>1447</u> Notice (Other) by ABDUL RAZAK ALI (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Gorman, H.). Added MOTION for Hearing, MOTION for Sanctions on 2/28/2011 (znmw, ). (Entered: 02/25/2011)
02/25/2011	<u>1469</u>	REPLY to opposition to motion re <u>1465</u> MOTION Motion for Order Declassifying Amended Traverse filed by ABDUL RAZAK ALI. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Gorman, H.) (Entered: 02/25/2011)
03/07/2011		MINUTE ORDER denying <u>1464</u> Motion to Reconsider Release of Transcript From Pretrial Conference. It is hereby ORDERED that the motion is DENIED AS MOOT. Signed by Judge Richard J. Leon on 3/7/11. (lcrjl2) (Entered: 03/07/2011)
03/07/2011	<u>1470</u>	NOTICE <i>Of Entry Of Protective Order Governing Military Commission Proceedings</i> by BARACK H. OBAMA, ROBERT M. GATES (Attachments: # <u>1</u> Exhibit Military Commission Protective Order)(Warden, Andrew) (Entered: 03/07/2011)
03/08/2011	<u>1471</u>	NOTICE <i>of filing appeal with CSO</i> by ABDUL RAZAK ALI (Gorman, H.) (Entered: 03/08/2011)
03/08/2011	<u>1485</u>	NOTICE OF APPEAL as to <u>1476</u> Memorandum & Opinion by ABDUL RAZAK ALI. Fee Status: No Fee Paid. Parties have been notified. (jf, ) Modified on 4/29/2011 to correct filing date (jf, ). (Entered: 04/28/2011)
03/09/2011	<u>1472</u>	FINAL JUDGMENT, For the reasons set forth in this Court's public Memorandum Order of January 11, 2011 and for the reasons set forth in this Court's Classified Memorandum Opinion of February 28, 2011, it is hereby ORDERED that Petitioner Ali's petition for writ of habeas corpus is DENIED. SO ORDERED. Signed by Judge Richard J. Leon on 3/9/11. (see final judgment) (kc) (Entered: 03/09/2011)
03/09/2011	<u>1473</u>	MOTION for Extension of Time to File Response/Reply as to <u>1468</u> MOTION for Writ MOTION for Hearing MOTION for Sanctions by BARACK OBAMA, DONALD RUMSFELD, JAY HOOD, MIKE BUMGARNER. (Hussey, Olivia) Modified filers on 3/10/2011 (znmw, ). (Entered: 03/09/2011)
03/10/2011		MINUTE ORDER granting <u>1473</u> Motion for Extension of Time to File Response/Reply. It is hereby ORDERED that the motion is GRANTED. Signed by Judge Richard J. Leon on 3/10/11. (lcrjl2) (Entered: 03/10/2011)
03/11/2011		MINUTE ORDER denying <u>1451</u> Defendant's Renewed Motion for Entry of Writ, or in the Alternative, for New Hearing and Sanctions. It is hereby ORDERED that the motion is DENIED. Signed by Judge Richard J. Leon on 3/11/11. (lcrjl2) (Entered: 03/11/2011)
03/14/2011	<u>1474</u>	ORDER, Before the Court is petitioner Adul Razak Ali's classified Motion for Entry of the Writ, or, in the Alternative, for a New Hearing and Sanctions <u>1447</u> . Based on the classified motions and responses, the record in this case, and on oral argument before this Court in December 2010 and January 2011, it is hereby ORDERED that the petitioner's Motion for Entry of the Writ, or, in tha Alternative, for a New Hearing and Sanctions, is DENIED. ORDERED. Signed by Judge Richard J. Leon on 3/11/11. (see order) (kc ) (Entered: 03/14/2011)
03/15/2011	<u>1475</u>	MANDATE of USCA (certified copy) discharging the order to show cause, granting the motion to exceed the page limit, ordering the Clerk to file the lodged joint response, and vacating the District Court's order requiring advance notice of transfer as to (42 in 1:05-cv-00833-UNA, 48 in 1:05-cv-01347-UNA, 83 in 1:05-cv-00359-GK, 47 in 1:05-cv-01457-GK, 20 in 1:05-cv-02083-JDB, 54 in 1:05-cv-00877-JR, 22 in 1:06-cv-01759-JDB, 76 in 1:05-cv-01505-RMC, 99 in

		<p>1:04-cv-02035-GK, 70 in 1:05-cv-00999-RBW, 63 in 1:05-cv-02199-UNA, 74 in 1:05-cv-01638-CKK, 33 in 1:04-cv-01937-UNA, 49 in 1:06-cv-01684-UNA, 83 in 1:04-cv-02215-RMC, 75 in 1:05-cv-02185-RCL, 60 in 1:05-cv-02104-RBW, 90 in 1:05-cv-01490-UNA, 43 in 1:06-cv-01766-UNA, 111 in 1:05-cv-02384-RWR, 46 in 1:05-cv-02385-ESH, 51 in 1:05-cv-02088-RWR, 28 in 1:05-cv-01725-UNA, 111 in 1:05-cv-01429-RMU, 60 in 1:06-cv-00618-RWR, 40 in 1:06-cv-01758-RMC, 72 in 1:05-cv-01504-UNA, 50 in 1:05-cv-00748-RMC, 49 in 1:05-cv-00883-RBW, 130 in 1:05-cv-00520-UNA, 68 in 1:05-cv-01607-RMU, 50 in 1:05-cv-01458-ESH-AK, 13 in 1:06-cv-01688-RMC, 194 in 1:04-cv-01136-UNA, 44 in 1:05-cv-01189-UNA, 32 in 1:05-cv-01649-RBW, 109 in 1:05-cv-00270-JR, 21 in 1:05-cv-00995-UNA, 31 in 1:07-cv-01710-RBW, 60 in 1:05-cv-00526-RMU, 39 in 1:07-cv-02337-HHK, 91 in 1:05-cv-01353-UNA, 39 in 1:05-cv-00881-JR, 48 in 1:05-cv-01646-UNA, 204 in 1:08-mc-00442-TFH, 39 in 1:07-cv-02338-HHK, 102 in 1:05-cv-02479-HHK, 81 in 1:05-cv-02249-RMC, 100 in 1:05-cv-01124-RMC, 58 in 1:05-cv-00634-RWR, 87 in 1:05-cv-01555-JR, 56 in 1:05-cv-02349-UNA, 66 in 1:05-cv-02379-JR, 67 in 1:05-cv-00764-CKK-AK, 39 in 1:05-cv-02010-HHK, 64 in 1:05-cv-01983-RMU, 96 in 1:05-cv-01592-UNA, 92 in 1:05-cv-00329-PLF, 114 in 1:05-cv-00023-RWR, 103 in 1:05-cv-02367-RWR, 521 in 1:10-cv-01020-RJL, 60 in 1:05-cv-00392-UNA, 48 in 1:05-cv-00998-RMU, 62 in 1:06-cv-01767-RMU, 26 in 1:06-cv-01668-UNA, 58 in 1:05-cv-01497-UNA, 46 in 1:06-cv-01765-UNA, 52 in 1:05-cv-01971-RMC, 25 in 1:05-cv-02444-RMC, 71 in 1:05-cv-02380-CKK, 521 in 1:09-cv-00745-RCL, 135 in 1:05-cv-01509-RMU, 11 in 1:08-cv-01104-CKK, 17 in 1:05-cv-02200-JDB, 66 in 1:05-cv-00763-JDB, 521 in 1:05-cv-02386-RBW, 54 in 1:05-cv-01645-UNA, 172 in 1:04-cv-02022-PLF, 102 in 1:05-cv-00569-EGS, 32 in 1:05-cv-01623-RWR, 47 in 1:05-cv-01244-CKK, 54 in 1:05-cv-00889-UNA, 48 in 1:05-cv-01639-RBW, 216 in 1:04-cv-01194-TFH, 83 in 1:05-cv-00492-UNA, 66 in 1:05-cv-02371-UNA, 38 in 1:05-cv-01236-RWR, 19 in 1:06-cv-01691-GK, 16 in 1:08-cv-01101-JDB, 29 in 1:05-cv-02381-JDB, 62 in 1:05-cv-00892-CKK, 83 in 1:05-cv-01601-UNA, 255 in 1:04-cv-01254-HHK, 85 in 1:05-cv-00247-UNA, 54 in 1:06-cv-01690-RBW, 68 in 1:05-cv-02186-UNA, 34 in 1:05-cv-02387-RMC, 14 in 1:08-cv-01085-PLF, 126 in 1:05-cv-01048-RMU, 77 in 1:05-cv-01506-RMC, 24 in 1:06-cv-01674-RMC, 61 in 1:05-cv-00994-JDB, 36 in 1:05-cv-02477-RMU, 93 in 1:05-cv-01704-RMU, 77 in 1:04-cv-02046-CKK, 121 in 1:04-cv-01164-RBW, 143 in 1:05-cv-00280-GK) Notices of Appeal filed by MICHAEL BUMGARNER, UNITED STATES OF AMERICA, JAY HOOD, BRUCE VARGO, BRICE GYURISKO, NELSON J. CANNON, DAVID M. THOMAS, JR., DONALD RUMSFELD, GEORGE W. BUSH, WADE F. DENNIS, GEORGE WALKER BUSH, J. HOOD, WADE F. DAVIS, MARK H. BUZBY, HARRY B. HARRIS, JR., COMMANDER OF THE JOINT TASK FORCE, GTMO, ROBERT M. GATES, GORDON R. ENGLAND, COMMANDER OF PRISON CAMP, GTMO, and TERRY CARRICO; USCA Case Number: 08-5233 (consolidated with 08-5234-08-5262, 08-5264-08-5270, 08-5272-08-5278, 08-5280-08-5286, 08-5288, 08-5289, 08-5291-08-5297, 08-5299-08-5306, 08-5308-08-5315, 08-5317-08-5323, 08-5325-08-5330, 08-5332-08-5336, 08-5338-08-5343, and 08-5345-08-5347.) (tnr, ) (Entered: 03/15/2011)</p>
03/17/2011	<u>1476</u>	REDACTED MEMORANDUM OPINION. Signed by Judge Richard J. Leon on 2/25/2011. (kc ) (Entered: 03/17/2011)
03/18/2011	<u>1477</u>	MOTION for Extension of Time to <i>File Response/Reply as to Dkt. No. 1468 Supplemental Motion for Entry of Writ and for Sanctions</i> by all respondents. (Hussey, Olivia) Modified filer on 3/21/2011 (znmw, ). (Entered: 03/18/2011)
03/18/2011		MINTUTE ORDER granting <u>1477</u> Respondent's Motion for Extension of Time. It is ORDERED that the motion is GRANTED. It is further ORDERED that respondent has up to and including April 4, 2011 to respond. Signed by Judge Richard J. Leon on 3/18/2011. (lcrjl2) (Entered: 03/18/2011)
03/21/2011		Set/Reset Deadlines: Response due by 4/4/2011. (kc) (Entered: 03/21/2011)

03/24/2011	<u>1478</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to MIKE BUMGARNER, GEORGE W. BUSH, JAY HOOD, BARACK OBAMA, DONALD RUMSFELD. Attorney Ann E. Nash terminated. (Nash, Ann) (Entered: 03/24/2011)
04/04/2011	<u>1480</u>	NOTICE of Filing Respondents' Opposition with the CSO by BARACK OBAMA, MIKE BUMGARNER, JAY HOOD, DONALD RUMSFELD re <u>1468</u> MOTION for Writ MOTION for Hearing MOTION for Sanctions (Hussey, Olivia) Modified to add filers on 4/5/2011 (znmw, ). (Entered: 04/04/2011)
04/04/2011	<u>1481</u>	MOTION for Extension of Time to <i>File Reply</i> by ABDUL RAZAK ALI (Gorman, H.) (Entered: 04/04/2011)
04/05/2011		NOTICE OF ERROR re <u>1480</u> Notice (Other); emailed to olivia.r.hussey2@usdoj.gov, cc'd 33 associated attorneys — The PDF file you docketed contained errors: 1. Counsel is reminded to select all respondents represented in the document being filed in future. (znmw, ) (Entered: 04/05/2011)
04/07/2011	<u>1482</u>	NOTICE of Production by MIKE BUMGARNER, GEORGE W. BUSH, JAY HOOD, BARACK OBAMA, DONALD RUMSFELD re <u>1467</u> Response to Document (Hussey, Olivia) (Entered: 04/07/2011)
04/08/2011		MINUTE ORDER granting <u>1481</u> Petitioner's Motion for Extension of Time. It is hereby ORDERED that the motion is GRANTED. It is further ORDERED that petitioner has up to and including April 25, 2011, to file a reply. Signed by Judge Richard J. Leon on 4/8/11. (lcrjl2) (Entered: 04/08/2011)
04/11/2011		MINUTE ORDER denying <u>1465</u> Motion for Order Expediting Declassification of Amended Traverse. It is hereby ORDERED that the motion is DENIED AS MOOT. Signed by Judge Richard J. Leon on 4/11/11. (lcrjl2) (Entered: 04/11/2011)
04/14/2011	<u>1483</u>	MOTION for Reconsideration re Order on Motion for Miscellaneous Relief by ABDUL RAZAK ALI (Gorman, H.) (Entered: 04/14/2011)
04/19/2011	<u>1484</u>	NOTICE of Filing Reply to Supplement with CSO by ABDUL RAZAK ALI re <u>1468</u> MOTION for Writ MOTION for Hearing MOTION for Sanctions (Gorman, H.) (Entered: 04/19/2011)
04/28/2011	<u>1486</u>	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Fee remains to be paid and another notice will be transmitted when the fee has been paid in the District Court re <u>1485</u> Notice of Appeal. (jf, ) (Entered: 04/28/2011)
04/28/2011	<u>1487</u>	SUPPLEMENTAL MEMORANDUM to re <u>1468</u> MOTION for Writ MOTION for Hearing MOTION for Sanctions <i>Second Supplement</i> filed by ABDUL RAZAK ALI. (Gorman, H.) (Entered: 04/28/2011)
04/29/2011	<u>1488</u>	**RESUBMISSION**Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Fee remains to be paid and another notice will be transmitted when the fee has been paid in the District Court re <u>1485</u> Notice of Appeal. (jf, ) (Entered: 04/29/2011)
05/02/2011	<u>1489</u>	NOTICE OF APPEAL re <u>1448</u> MEMORANDUM ORDER by ABDUL RAZAK ALI. Fee Status: No Fee Paid. Parties have been notified. (Gorman, H.) Modified on 5/2/2011 to add docket link (jf, ). (Entered: 05/02/2011)
05/02/2011	<u>1490</u>	Memorandum in opposition to re <u>1483</u> MOTION for Reconsideration re Order on Motion for Miscellaneous Relief filed by MIKE BUMGARNER, GEORGE W. BUSH, JAY HOOD, BARACK OBAMA, DONALD RUMSFELD. (Attachments: # <u>1</u> Exhibit Exhibits A–D)(Hussey, Olivia) (Entered: 05/02/2011)
05/02/2011		USCA Case Number 11–5102 for <u>1485</u> Notice of Appeal filed by ABDUL RAZAK ALI. (jf, ) (Entered: 05/02/2011)
05/02/2011	<u>1491</u>	NOTICE of Filing by MIKE BUMGARNER, GEORGE W. BUSH, JAY HOOD, BARACK OBAMA, DONALD RUMSFELD re <u>1490</u> Memorandum in Opposition (Hussey, Olivia) (Additional attachment(s) added on 5/2/2011: # <u>1</u> Exhibit D (FILED UNDER SEAL)) (jf, ). (Entered: 05/02/2011)

05/02/2011	<u>1492</u>	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Fee was not paid because it was filed In Forma Pauperis re <u>1489</u> Notice of Appeal. (jf, ) (Entered: 05/02/2011)
05/03/2011		MINUTE ORDER denying <u>1483</u> Motion to Reconsider Motion For Expedited Declassification of Amended Traverse. It is hereby ORDERED that the motion is DENIED. Signed by Judge Richard J. Leon on 5/3/11. (lcrjl2) (Entered: 05/03/2011)
05/13/2011	<u>1495</u>	ORDER of USCA as to <u>1485</u> Notice of Appeal filed by ABDUL RAZAK ALI ; USCA Case Number 11-5102. ORDERED that the unopposed motion to hold in abeyance be granted and the case is held in abeyance pending further order of the court. (smm) (Entered: 05/18/2011)
05/16/2011	<u>1493</u>	RESPONSE re <u>1487</u> Supplemental Memorandum filed by MIKE BUMGARNER, GEORGE W. BUSH, JAY HOOD, BARACK OBAMA, DONALD RUMSFELD. (Hussey, Olivia) (Entered: 05/16/2011)
05/17/2011	<u>1494</u>	ENTERED IN ERROR..... MOTION Reply to Second Supplement for new hearing re <u>1493</u> Response to Document, <u>1487</u> Supplemental Memorandum by ABDUL RAZAK ALI (Gorman, H.) Modified on 5/18/2011 (znmw, ). (Entered: 05/17/2011)
05/18/2011		NOTICE OF ERROR re <u>1494</u> Motion for Miscellaneous Relief; emailed to hcgorman@igc.org, cc'd 33 associated attorneys — The PDF file you docketed contained errors: 1. Incorrect event used, 2. Please refile document, 3. Entered in Error; Please refile as Reply to (non-motion) document. (znmw, ) (Entered: 05/18/2011)
05/18/2011	<u>1496</u>	MEMORANDUM ORDER denying <u>1468</u> Motion for Writ; denying <u>1468</u> Motion for Hearing; denying <u>1468</u> Motion for Sanctions. Signed by Judge Richard J. Leon on 5/17/2011. (see memorandum order) (kc ) (Entered: 05/18/2011)
05/19/2011	<u>1497</u>	REPLY re <u>1487</u> Supplemental Memorandum <i>second supplement</i> filed by ABDUL RAZAK ALI. (Gorman, H.) (Entered: 05/19/2011)
05/20/2011	<u>1498</u>	MOTION Clarification of Court Order dated May 17, 2011 re <u>1496</u> Order on Motion for Writ, Order on Motion for Hearing, Order on Motion for Sanctions by ABDUL RAZAK ALI (Gorman, H.) (Entered: 05/20/2011)
08/12/2011	<u>1499</u>	TRANSCRIPT OF PROCEEDINGS before Judge Richard J. Leon held on 12-28-2010; Page Numbers: 1-19. Court Reporter/Transcriber Lisa Schwam, Telephone number 202-354-3238, Court Reporter Email Address : Lisa_Schwam@dcd.uscourts.gov.  For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.  <b>NOTICE RE REDACTION OF TRANSCRIPTS:</b> The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at ww.dcd.uscourts.gov.  Redaction Request due 9/2/2011. Redacted Transcript Deadline set for 9/12/2011. Release of Transcript Restriction set for 11/10/2011.(Schwam, Lisa) (Entered: 08/12/2011)
10/04/2011		MINUTE ORDER denying <u>1498</u> Motion for Clarification of Court Order Dated May 17, 2011. It is hereby ORDERED that the motion is DENIED. Signed by Judge Richard J. Leon on 10/4/11. (lcrjl2) (Entered: 10/04/2011)
06/12/2012	<u>1500</u>	MEMORANDUM ORDER, Ordered that petitioner Abdul Razak Ali's a.k.a. Saeed Bakhouches, Second Supplement to Motion (and Renewed Motion) For Entry of the Writ Or, In the Alternative, a New Hearing and for Sanctions <u>1487</u> , is DENIED. SO ORDERED. Signed by Judge Richard J. Leon on 6/11/2012. (see memorandum order) (kc ) (Entered: 06/12/2012)

07/08/2013	<u>1501</u>	NOTICE <i>By Respondents Lifting Protected Information Designation Of Decisions By the Guantanamo Bay Review Task Force</i> by BARACK HUSSEIN OBAMA, II, GEORGE WALKER BUSH, BARACK HUSSEIN OBAMA, II, GEORGE WALKER BUSH, BARACK HUSSEIN OBAMA, II, BARACK HUSSEIN OBAMA, II, ROBERT M. GATES, GEORGE WALKER BUSH, BARACK HUSSEIN OBAMA, II, BARACK HUSSEIN OBAMA, II, GEORGE WALKER BUSH, GEORGE WALKER BUSH, ROBERT M. GATES, BARACK HUSSEIN OBAMA, II, UNITED STATES OF AMERICA (Attachments: # <u>1</u> Exhibit GTMO Task Force Chart)(Warden, Andrew) (Entered: 07/08/2013)
08/08/2013	<u>1502</u>	NOTICE <i>Of Privilege Team Review Of Documents And Materials Recovered From JTF-GTMO Camp 6</i> by GEORGE WALKER BUSH, BARACK HUSSEIN OBAMA, II, BARACK HUSSEIN OBAMA, II, GEORGE WALKER BUSH, ROBERT M. GATES, GEORGE WALKER BUSH, BARACK HUSSEIN OBAMA, II, BARACK HUSSEIN OBAMA, II, BARACK HUSSEIN OBAMA, II, GEORGE WALKER BUSH, ROBERT M. GATES (Warden, Andrew) (Entered: 08/08/2013)
10/15/2013	<u>1503</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to MIKE BUMGARNER, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD: Attorney Thomas A. Gillice terminated. (ztnr, ) (Entered: 10/15/2013)
11/06/2013	<u>1504</u>	STATUS REPORT -- <i>Supplemental Status Report Addressing The Privilege Team's Review of Documents and Materials Recovered from JTF-GTMO Camp 6</i> by BARACK HUSSEIN OBAMA, II. (Attachments: # <u>1</u> Exhibit)(Warden, Andrew) (Entered: 11/06/2013)
03/12/2014	<u>1505</u>	MANDATE of USCA (certified copy) as to <u>1485</u> Notice of Appeal filed by ABDUL RAZAK ALI ; ORDERED and ADJUDGED that the judgment of the District Court appealed from in this cause is hereby affirmed, in accordance with the opinion of the court filed herein this date. USCA Case Number 11-5102. (Attachments: # <u>1</u> USCA Opinion)(md, ) (Entered: 03/13/2014)
04/03/2015	<u>1506</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to ROBERT M. GATES, JEFFREY HABERSON, BARACK HUSSEIN OBAMA, II, DONNIE THOMAS, COMMANDER, JOINT TASK FORCE, GTMO, COMMANDER, PRISON CAMP, GTMO, ROBERT M. GATES, BARACK HUSSEIN OBAMA, II, ROBERT M. GATES, DAVID M. THOMAS, JR, BRUCE E. VARGO, GEORGE WALKER BUSH, MARK H. BUZBY, ROBERT M. GATES, BRUCE VARGO, ROBERT M. GATES, BARACK HUSSEIN OBAMA, II, DAVID M. THOMAS, JR, BRUCE VARGO, MIKE BUMGARNER, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD, ROBERT GATES, DAVID M. THOMAS, JR, BRUCE VARGO, DAVID M. THOMAS, JR, BRUCE VARGO, ROBERT GATES, MARK H. BUZBY, BRUCE VARGO. Attorney Patrick D. Davis terminated. (Davis, Patrick) (Entered: 04/03/2015)
02/04/2016	<u>1507</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to BARACK H. OBAMA. Attorney Scott Douglas Levin terminated. (Levin, Scott) (Entered: 02/04/2016)
09/26/2016	<u>1508</u>	NOTICE <i>to the Court</i> by MICHAEL BUMGARNER, GEORGE WALKER BUSH, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD, MIKE BUMGARNER, GEORGE WALKER BUSH, JAY HOOD, DONALD RUMSFELD, WADE F. DAVIS, HARRY B. HARRIS, JR, MIKE BUMGARNER, JAY HOOD, MIKE BUMGARNER, BARACK HUSSEIN OBAMA, II, TOM COPEMAN, ROBERT M. GATES, BRUCE VARGO, JOHN D. ALTENBURG, JR, MICHAEL BUMGARNER, GORDON R. ENGLAND, JAY HOOD, DONALD RUMSFELD, ROBERT GATES, DAVID THOMAS, JR, BRUCE VARGO, NELSON J. CANNON, JAY HOOD, MIKE BUMGARNER, GEORGE WALKER BUSH, JAY HOOD, NELSON J. CANNON, JAY HOOD, MIKE BUMGARNER, JAY HOOD, GEORGE WALKER BUSH, BRICE GYURISKO, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD, ROBERT GATES, DAVID M. THOMAS, JR, BRUCE VARGO, MICHAEL BUMGARNER, JAY HOOD, MICHAEL BUMGARNER, HARRY B. HARRIS, JR, JAY HOOD, DONALD H. RUMSFELD, GEORGE WALKER BUSH, JAY HOOD, DONALD H. RUMSFELD, ROBERT M. GATES, DAVID M. THOMAS, JR, BRUCE E. VARGO, ROBERT M. GATES, MIKE BUMGARNER, GEORGE WALKER BUSH, DONALD RUMSFELD, GEORGE WALKER BUSH, ROBERT M. GATES, DAVID M. THOMAS, JR, BRUCE VARGO, STEVEN BLAISDELL, TOM COPEMAN, ROBERT GATES, BRICE



		GYURISKO, BARACK HUSSEIN OBAMA, II, NELSON J. CANNON, JAY HOOD, DAVID M. THOMAS, BRUCE VARGO, MIKE BUMGARNER, ROBERT M. GATES, JEFFREY HABERSON, DONNIE THOMAS, TOM COPERMAN, BRUCE VARGO, MIKE BUMGARNER, JAY HOOD, MIKE BUMGARNER, ASHTON B. CARTER, JOHN DOE, DAVID E. HEATH, JOSE R. MONTEAGUDO, NELSON J. CANNON, MICHAEL I. BUMGARNER, BRICE GYURISKO, DONALD RUMSFELD, ROBERT GATES, BRICE GYURISKO, JAY HOOD, DAVID M. THOMAS, JR, BRUCE VARGO, MIKE BUMGARNER, GEORGE WALKER BUSH, HARRY B. HARRIS, JR. JAY HOOD, DONALD H. RUMSFELD, MARK H. BUZBY, BRUCE VARGO, COMMANDER, JOINT TASK FORCE, GTMO, COMMANDER, PRISON CAMP, GTMO, JAY HOOD, RICHARD B. CHENEY, JOHN DOE, MICHAEL V. HAYDEN, CONDOLEEZZA RICE, DONALD RUMSFELD, GEORGE TENET, DAVID M. THOMAS, BRUCE VARGO, WADE F. DAVIS, HARRY B. HARRIS, JR, MIKE BUMGARNER, BRICE GYURISKO, JAY HOOD, KYLE J. COZAD, DAVID HEATH, BARACK HUSSEIN OBAMA, II, ASHTON B. CARTER, PETER J. CLARKE, BARACK HUSSEIN OBAMA, II, BRUCE VARGO (Attachments: # <u>1</u> Declaration of Rear Admiral Peter J. Clarke)(Wolfe, Kristina) (Entered: 09/26/2016)
09/26/2016	<u>1509</u>	ERRATA to Notice to the Court by MIKE BUMGARNER, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD <u>1508</u> Notice (Other),,,,,,, filed by ASHTON B. CARTER, RICHARD B. CHENEY, DAVID HEATH, BRUCE VARGO, MIKE BUMGARNER, NELSON J. CANNON, GEORGE TENET, DAVID M. THOMAS, MICHAEL I. BUMGARNER, PETER J. CLARKE, JEFFREY HABERSON, TOM COPERMAN, GEORGE WALKER BUSH, JOHN DOE, ROBERT GATES, COMMANDER, JOINT TASK FORCE, GTMO, HARRY B. HARRIS, JR., ROBERT M. GATES, JOSE R. MONTEAGUDO, MICHAEL V. HAYDEN, DONNIE THOMAS, MICHAEL BUMGARNER, KYLE J. COZAD, JAY HOOD, DONALD H. RUMSFELD, BRICE GYURISKO, DAVID M. THOMAS, JR., BRUCE E. VARGO, DAVID E. HEATH, CONDOLEEZZA RICE, DONALD RUMSFELD, DAVID THOMAS, JR., COMMANDER, PRISON CAMP, GTMO, TOM COPEMAN, STEVEN BLAISDELL, WADE F. DAVIS, JOHN D. ALTENBURG, JR., MARK H. BUZBY, BARACK HUSSEIN OBAMA, II, GORDON R. ENGLAND. (Attachments: # <u>1</u> Appendix Notice to the Court, # <u>2</u> Declaration of Rear Admiral Peter J. Clarke)(Wolfe, Kristina) (Entered: 09/26/2016)
07/12/2017	<u>1510</u>	NOTICE Regarding Camp Iguana by MIKE BUMGARNER, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD (Attachments: # <u>1</u> Exhibit 1 – Cashman Declaration)(Warden, Andrew) (Entered: 07/12/2017)
10/11/2017	<u>1511</u>	NOTICE Regarding Camp Five Echo Block by MIKE BUMGARNER, GEORGE WALKER BUSH, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD, WADE F. DAVIS, HARRY B. HARRIS, JR, DONALD RUMSFELD, TOM COPEMAN, ROBERT M. GATES, BARACK HUSSEIN OBAMA, II, BRUCE VARGO, JOHN D. ALTENBURG, JR, MICHAEL BUMGARNER, GORDON R. ENGLAND, JAY HOOD, DONALD RUMSFELD, ROBERT GATES, DAVID THOMAS, JR, BRUCE VARGO, MIKE BUMGARNER, GEORGE WALKER BUSH, JAY HOOD, NELSON J. CANNON, JAY HOOD, BARACK HUSSEIN OBAMA, II, MIKE BUMGARNER, JAY HOOD, GEORGE WALKER BUSH, BRICE GYURISKO, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD, ROBERT GATES, DAVID M. THOMAS, JR, BRUCE VARGO, MICHAEL BUMGARNER, HARRY B. HARRIS, JR, JAY HOOD, DONALD H. RUMSFELD, GEORGE WALKER BUSH, JAY HOOD, DONALD H. RUMSFELD, ROBERT M. GATES, DAVID M. THOMAS, JR, BRUCE E. VARGO, ROBERT M. GATES, MIKE BUMGARNER, GEORGE WALKER BUSH, DONALD RUMSFELD, NELSON J. CANNON, JAY HOOD, STEVEN BLAISDELL, TOM COPEMAN, ROBERT GATES, BRICE GYURISKO, JAY HOOD, BARACK HUSSEIN OBAMA, II, NELSON J. CANNON, JAY HOOD, MIKE BUMGARNER, ROBERT M. GATES, JEFFREY HABERSON, DONNIE THOMAS, TOM COPERMAN, BRUCE VARGO, MIKE BUMGARNER, JAY HOOD, ASHTON B. CARTER, JOHN DOE, DAVID E. HEATH, JOSE R. MONTEAGUDO, NELSON J. CANNON, DONALD J. TRUMP, ROBERT GATES, ASHTON B. CARTER, PETER J. CLARKE, MIKE BUMGARNER, GEORGE WALKER BUSH, HARRY B. HARRIS, JR, JAY HOOD, DONALD H. RUMSFELD, MARK H. BUZBY, BRUCE VARGO, JAY HOOD, COMMANDER,

		JOINT TASK FORCE, GTMO, COMMANDER, PRISON CAMP, GTMO, RICHARD B. CHENEY, JOHN DOE, MICHAEL V. HAYDEN, CONDOLEEZZA RICE, DONALD RUMSFELD, GEORGE TENET, DAVID M. THOMAS, BRUCE VARGO, EDWARD B. CASHMAN, DAVID CULPEPPER, JAMES N. MATTIS, HARVEY RISHIKOF, DONALD J. TRUMP, WADE F. DAVIS, HARRY B. HARRIS, JR, KYLE J. COZAD, DAVID HEATH, BARACK HUSSEIN OBAMA, II, DONALD J. TRUMP, ASHTON B. CARTER, PETER J. CLARKE, BARACK HUSSEIN OBAMA, II, DONALD J. TRUMP, DAVID M. THOMAS, JR, BRUCE VARGO (Attachments: # <u>1</u> Exhibit 1: Cashman Declaration)(Warden, Andrew) (Entered: 10/11/2017)
01/11/2018	<u>1512</u>	MOTION for Order <i>Motion for Order Granting Writ of Habeas Corpus</i> by ABDUL RAZAK ALI (Attachments: # <u>1</u> Text of Proposed Order Proposed Order)(Gorman, H.) (Entered: 01/11/2018)
01/19/2018	<u>1513</u>	Unopposed MOTION for Extension of Time to File Response/Reply as to <u>1512</u> MOTION for Order <i>Motion for Order Granting Writ of Habeas Corpus</i> by MIKE BUMGARNER, GEORGE WALKER BUSH, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD (Attachments: # <u>1</u> Text of Proposed Order)(Wiltsie, Ronald) (Entered: 01/19/2018)
01/22/2018	<u>1514</u>	Unopposed MOTION for Leave to File <i>Amicus Brief In Support of Petitioners' Motion for Writ of Habeas Corpus</i> by Muslim Advocates Muslim Advocates (Attachments: # <u>1</u> Exhibit Proposed amicus brief in support of Petitioners' Motion for Writ of Habeas Corpus)(Shebaya, Sirine) (Entered: 01/22/2018)
01/22/2018		MINUTE ORDER: Upon consideration of <u>1513</u> Respondents' Unopposed Motion for an Extension of Time to Respond to <u>1512</u> Petitioner's Motion for Order Granting Writ of Habeas Corpus, it is hereby ORDERED that Respondents shall file their Opposition to Petitioner's Motion for Order Granting Writ of Habeas Corpus on or before February 16, 2018. It is further ORDERED that Petitioner shall file his Reply, if any, on or before March 9, 2018. In their Opposition, Respondents shall include a short summary as to the detainment status of the Petitioner. SO ORDERED. Signed by Judge Richard J. Leon on 1/22/2018.(lcrjl2) (Entered: 01/22/2018)
01/22/2018	<u>1515</u>	Consent MOTION for Leave to File <i>Brief of Proposed Amici Curiae Due Process Scholars in Support of Petitioners</i> by Due Process Scholars (Attachments: # <u>1</u> Brief of Proposed Amici Curiae Due Process Scholars in Support of Petitioners, # <u>2</u> Proposed Order)(Griffinger, Michael) (Entered: 01/22/2018)
01/24/2018	<u>1516</u>	NOTICE of Appearance by Laura A. Wilkinson on behalf of Center for Victims of Torture (Wilkinson, Laura) (Entered: 01/24/2018)
01/24/2018	<u>1517</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Stephen Scott Roehm, :Firm– Center for Victims of Torture, :Address– 1015 15th Street NW, Ste. 600, Washington, DC 20005. Phone No. – (646) 522–6110. Fax No. – (212) 310–8007 Filing fee \$ 100, receipt number 0090–5301711. Fee Status: Fee Paid. by Center for Victims of Torture (Attachments: # <u>1</u> Declaration of Stephen Scott Roehm, # <u>2</u> Text of Proposed Order)(Wilkinson, Laura) (Entered: 01/24/2018)
01/24/2018	<u>1518</u>	MOTION for Leave to File <i>Brief of Amicus Curiae Center for Victims of Torture in Support of Petitioners' Habeas Corpus Motion</i> by Center for Victims of Torture (Attachments: # <u>1</u> Brief of Amicus Curiae Center for Victims of Torture in Support of Petitioners' Habeas Corpus Motion, # <u>2</u> Text of Proposed Order)(Wilkinson, Laura) (Entered: 01/24/2018)
01/25/2018		MINUTE ORDER. Upon consideration of the <u>1514</u> Motion for Leave to File Brief of Amicus Curiae Muslim, Faith–Based, and Civil Rights Community Organizations in Support of Petitioners' Motion for Order Granting Writ of Habeas Corpus, it is hereby ORDERED that the <u>1514</u> Motion for Leave to File is GRANTED. SO ORDERED. Signed by Judge Richard J. Leon on 1/25/2018. (lcrjl2) (Entered: 01/25/2018)
01/25/2018		MINUTE ORDER. Upon consideration of the <u>1515</u> Unopposed Motion of Due Process Scholars for Leave to File a Brief Amicus Curiae in Support of Petitioners, it is hereby ORDERED that the <u>1515</u> Unopposed Motion for Leave to File is GRANTED. SO ORDERED. Signed by Judge Richard J. Leon on 1/25/2018. (lcrjl2) (Entered: 01/25/2018)

01/25/2018	<u>1521</u>	AMICUS BRIEF by DUE PROCESS SCHOLARS. (jf) (Entered: 01/29/2018)
01/25/2018	<u>1522</u>	AMICUS BRIEF by MUSLIM ADVOCATES. (jf) (Entered: 01/29/2018)
01/26/2018	<u>1519</u>	NOTICE of Appearance by Sirine Shebaya on behalf of MUSLIM ADVOCATES (Shebaya, Sirine) (Entered: 01/26/2018)
01/26/2018	<u>1520</u>	NOTICE of Appearance by Johnathan James Smith on behalf of MUSLIM ADVOCATES (Smith, Johnathan) (Entered: 01/26/2018)
01/30/2018	<u>1523</u>	NOTICE <i>Regarding Camp Four</i> by MIKE BUMGARNER, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD (Attachments: # <u>1</u> Exhibit Declaration of Rear Admiral Cashman)(Warden, Andrew) (Entered: 01/30/2018)
02/04/2018		MINUTE ORDER denying <u>1517</u> Motion for Leave to Appear Pro Hac Vice. It is hereby ORDERED that the Motion is DENIED WITHOUT PREJUDICE. In error, the declaration does not state whether the non-member is admitted to the District of Columbia Bar. Counsel is directed to Local Civil Rule 83.2(d), which contains the requirements for attorneys seeking leave to appear pro hac vice in this Court. Signed by Judge Richard J. Leon on 2/4/2018. (lcrjl2) (Entered: 02/04/2018)
02/16/2018	<u>1524</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Stephen Scott Roehm, :Firm– Center for Victims of Torture, :Address– 1015 15th Street, NW, Suite 600, Washington, DC 20005. Phone No. – 646–522–6110. Fax No. – 212–310–8007 Filing fee \$ 100, receipt number 0090–5336762. Fee Status: Fee Paid. by CENTER FOR VICTIMS OF TORTURE (Attachments: # <u>1</u> Declaration of Stephen Scott Roehm, # <u>2</u> Text of Proposed Order)(Wilkinson, Laura) (Entered: 02/16/2018)
02/16/2018	<u>1525</u>	Memorandum in opposition to re (274 in 1:05–cv–00764–CKK) MOTION for Order <i>Motion for Order Granting Writ of Habeas Corpus</i> , (2061 in 1:05–cv–02386–RBW) MOTION for Order <i>Granting Writ of Habeas Corpus</i> , (248 in 1:08–cv–01440–CKK) MOTION for Order <i>Granting Writ of Habeas Corpus</i> , (332 in 1:05–cv–00023–EGS) MOTION for Order <i>Granting Writ of Habeas Corpus</i> , (1109 in 1:04–cv–01194–UNA) MOTION for Order <i>Granting Writ of Habeas Corpus</i> , (488 in 1:08–cv–01360–UNA) MOTION for Order <i>Granting Writ of Habeas Corpus</i> , (1512 in 1:10–cv–01020–RJL) MOTION for Order <i>Motion for Order Granting Writ of Habeas Corpus</i> , (380 in 1:05–cv–01607–RCL) MOTION for Order <i>Granting Writ of Habeas Corpus</i> , (1885 in 1:09–cv–00745–RCL) MOTION for Order <i>Granting Writ of Habeas Corpus</i> filed by ALL RESPONDENTS, MIKE BUMGARNER, GEORGE WALKER BUSH, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD, NELSON J. CANNON, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD J. TRUMP, NELSON J. CANNON, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD, ROBERT GATES, DAVID M. THOMAS, JR, BRUCE VARGO, ROBERT GATES, NELSON J. CANNON, JAY HOOD, MIKE BUMGARNER. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit, # <u>15</u> Exhibit, # <u>16</u> Exhibit, # <u>17</u> Exhibit, # <u>18</u> Exhibit, # <u>19</u> Exhibit, # <u>20</u> Exhibit, # <u>21</u> Exhibit, # <u>22</u> Exhibit, # <u>23</u> Exhibit, # <u>24</u> Text of Proposed Order, # <u>25</u> Exhibit)(Wiltsie, Ronald) (Entered: 02/16/2018)
02/21/2018		MINUTE ORDER granting <u>1524</u> Motion for Leave to Appear Pro Hac Vice. It is hereby ORDERED that Stephen Scott Roehm is allowed to appear for amicus Center for Victims of Torture in this case. Signed by Judge Richard J. Leon on 2/21/2018. (lcrjl2) (Entered: 02/21/2018)
02/21/2018		MINUTE ORDER. Upon consideration of <u>1518</u> Motion for Leave to File Brief of Amicus Curiae Center for Victims of Torture in Support of Petitioners' Habeas Corpus Motion, it is hereby ORDERED that the <u>1518</u> Motion for Leave to File is GRANTED. SO ORDERED. Signed by Judge Richard J. Leon on 2/21/2018.(lcrjl2) (Entered: 02/21/2018)
02/21/2018	<u>1526</u>	AMICUS BRIEF by CENTER FOR VICTIMS OF TORTURE. (jf) (Entered: 02/23/2018)
02/27/2018		MINUTE ORDER. It is hereby ORDERED that a Status Conference is scheduled for 3/5/2018 at 03:00 PM in Courtroom 18 before Judge Richard J. Leon. Signed by Judge Richard J. Leon on 2/27/2018. (lcrjl2) (Entered: 02/27/2018)

03/05/2018		Minute Entry for proceedings held before Judge Richard J. Leon: Status Conference held on 3/5/2018. Hearing on <u>1512</u> Motion for Order Granting Writ of Habeas Corpus is scheduled for 3/23/2018 at 3:00 PM in Courtroom 18 before Judge Richard J. Leon. (Court Reporter: William P. Zaremba). (jth) (Entered: 03/05/2018)
03/06/2018	<u>1527</u>	MOTION to Amend/Correct <u>1512</u> MOTION for Order <i>Motion for Order Granting Writ of Habeas Corpus</i> by ABDUL RAZAK ALI (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Gorman, H.) (Entered: 03/06/2018)
03/09/2018	<u>1528</u>	REPLY to opposition to motion re <u>1512</u> MOTION for Order <i>Motion for Order Granting Writ of Habeas Corpus</i> filed by ABDUL RAZAK ALI. (Gorman, H.) (Entered: 03/09/2018)
03/12/2018		MINUTE ORDER granting <u>1527</u> Motion to Amend/Correct. Petitioner's motion <u>1527</u> for an order allowing the filing of a corrected motion for writ of habeas corpus is GRANTED. The Clerk is hereby directed to file the Corrected Motion for Order Granting Writ of Habeas Corpus [ <u>1527-1</u> ]. SO ORDERED. Signed by Judge Richard J. Leon on 3/12/2018.(lcrjl2) (Entered: 03/12/2018)
03/12/2018	<u>1529</u>	Corrected Motion for Order Granting Writ of Habeas Corpus by ABDUL RAZAK ALI (Attachments: # <u>1</u> Text of Proposed Order)(jf) (Entered: 03/13/2018)
03/15/2018	<u>1530</u>	NOTICE of Appearance by J. Wells Dixon on behalf of ABDUL RAZAK ALI (Dixon, J.) (Entered: 03/15/2018)
03/19/2018	<u>1531</u>	NOTICE of Filing of Memorandum of Understanding by ABDUL RAZAK ALI (Kadidal, Shayana) (Entered: 03/19/2018)
03/19/2018	<u>1532</u>	NOTICE of Filing of Memorandum of Understanding by ABDUL RAZAK ALI (Dixon, J.) (Entered: 03/19/2018)
03/23/2018		Minute Entry for Proceedings held before Judge Richard J. Leon: Motion Hearing held on 3/23/2018 re <u>1529</u> Corrected MOTION for Order Granting Writ of Habeas Corpus filed by Petitioner ABDUL RAZAK ALI. The <u>1529</u> Corrected Motion was Heard and Taken Under Advisement. (Court Reporter: William P. Zaremba). (jth) (Entered: 03/23/2018)
04/24/2018	<u>1533</u>	ENTERED IN ERROR.....NOTICE Regarding <i>Camp II, Building 8</i> by MIKE BUMGARNER, GEORGE WALKER BUSH, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD (Attachments: # <u>1</u> Exhibit Declaration)(Wiltsie, Ronald) Modified on 4/24/2018 to enter in error due to linkage issues; counsel will refile.(ztnr) (Entered: 04/24/2018)
04/24/2018	<u>1534</u>	NOTICE Regarding <i>Camp II, Building (refiled due to linkage issue)</i> by MIKE BUMGARNER, GEORGE WALKER BUSH, JAY HOOD, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD, WADE F. DAVIS, HARRY B. HARRIS, JR, DONALD RUMSFELD, TOM COPEMAN, ROBERT M. GATES, BARACK HUSSEIN OBAMA, II, BRUCE VARGO, JOHN D. ALTENBURG, JR, MICHAEL BUMGARNER, GORDON R. ENGLAND, JAY HOOD, DONALD RUMSFELD, ROBERT GATES, DAVID THOMAS, JR, BRUCE VARGO, MIKE BUMGARNER, GEORGE WALKER BUSH, JAY HOOD, NELSON J. CANNON, JAY HOOD, BARACK HUSSEIN OBAMA, II, MIKE BUMGARNER, JAY HOOD, DONALD J. TRUMP, GEORGE WALKER BUSH, BRICE GYURISKO, BARACK HUSSEIN OBAMA, II, DONALD RUMSFELD, ROBERT GATES, DAVID M. THOMAS, JR, BRUCE VARGO, MICHAEL BUMGARNER, HARRY B. HARRIS, JR, JAY HOOD, DONALD H. RUMSFELD, GEORGE WALKER BUSH, JAY HOOD, DONALD H. RUMSFELD, ROBERT M. GATES, DAVID M. THOMAS, JR, BRUCE E. VARGO, ROBERT M. GATES, MIKE BUMGARNER, GEORGE WALKER BUSH, DONALD RUMSFELD, NELSON J. CANNON, JAY HOOD, STEVEN BLAISDELL, TOM COPEMAN, ROBERT GATES, BRICE GYURISKO, JAY HOOD, BARACK HUSSEIN OBAMA, II, NELSON J. CANNON, JAY HOOD, MIKE BUMGARNER, TOM COPERMAN, BRUCE VARGO, MIKE BUMGARNER, JAY HOOD, ASHTON B. CARTER, JOHN DOE, DAVID E. HEATH, JOSE R. MONTEAGUDO, NELSON J. CANNON, DONALD J. TRUMP, ROBERT GATES, GEORGE WALKER BUSH, HARRY B. HARRIS, JR, JAY HOOD, DONALD H. RUMSFELD, MARK H. BUZBY, BRUCE VARGO, JAY HOOD, COMMANDER, JOINT TASK FORCE, GTMO, COMMANDER, PRISON CAMP, GTMO, RICHARD B. CHENEY, JOHN DOE, ROBERT M.

		GATES, MICHAEL V. HAYDEN, CONDOLEEZZA RICE, DONALD RUMSFELD, GEORGE TENET, DAVID M. THOMAS, BRUCE VARGO, EDWARD B. CASHMAN, DAVID CULPEPPER, JAMES N. MATTIS, HARVEY RISHIKOF, DONALD J. TRUMP, WADE F. DAVIS, HARRY B. HARRIS, JR, KYLE J. COZAD, DAVID HEATH, BARACK HUSSEIN OBAMA, II, DONALD J. TRUMP, DAVID M. THOMAS, JR, BRUCE VARGO (Attachments: # <u>1</u> Exhibit Declaration)(Wiltsie, Ronald) (Entered: 04/24/2018)
05/08/2018	<u>1535</u>	<p>TRANSCRIPT OF MOTION HEARING PROCEEDINGS before Judge Richard J. Leon held on March 23, 2018; Page Numbers: 1–26. Date of Issuance: May 8, 2018. Court Reporter/Transcriber: William Zaremba; Telephone number: (202) 354–3249. Transcripts may be ordered by submitting the <u>Transcript Order Form</u></p> <p>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi–page, condensed, PDF or ASCII) may be purchased from the court reporter.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS:</b> The parties have twenty–one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.</p> <p>Redaction Request due 5/29/2018. Redacted Transcript Deadline set for 6/8/2018. Release of Transcript Restriction set for 8/6/2018.(wz) (Entered: 05/08/2018)</p>
06/07/2018	<u>1536</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by ABDUL RAZAK ALI (Dixon, J.) (Entered: 06/07/2018)
07/09/2018	<u>1537</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by MIKE BUMGARNER, JAY HOOD, DONALD RUMSFELD, DONALD J. TRUMP (Attachments: # <u>1</u> Exhibit Letter)(Wiltsie, Ronald) (Entered: 07/09/2018)
08/08/2018	<u>1538</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by MIKE BUMGARNER, JAY HOOD, DONALD RUMSFELD, DONALD J. TRUMP (Attachments: # <u>1</u> Exhibit)(Wiltsie, Ronald) (Entered: 08/08/2018)
08/10/2018	<u>1539</u>	RESPONSE re <u>1538</u> NOTICE OF SUPPLEMENTAL AUTHORITY filed by ABDUL RAZAK ALI. (Kadidal, Shayana) (Entered: 08/10/2018)
08/10/2018	<u>1540</u>	MEMORANDUM OPINION. Signed by Judge Richard J. Leon on 8/10/2018. (jth) (Entered: 08/10/2018)
08/10/2018	<u>1541</u>	ORDER. Upon consideration of the <u>1529</u> Correct Motion for Order Granting Writ of Habeas Corpus, the law, the record, and being otherwise fully advised on the matter, it is hereby ORDERED that, for the reasons stated in the accompanying Memorandum Opinion, the Motion is DENIED. SO ORDERED. Signed by Judge Richard J. Leon on 8/10/2018. (jth) (Entered: 08/10/2018)
10/01/2018	<u>1542</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>1540</u> Memorandum & Opinion, <u>1541</u> Order on Motion for Order, by ABDUL RAZAK ALI. Fee Status: No Fee Paid. Parties have been notified. (Dixon, J.) (Entered: 10/01/2018)
10/01/2018	<u>1543</u>	MOTION for Leave to Proceed in forma pauperis by ABDUL RAZAK ALI (Gorman, H.) (Entered: 10/01/2018)
10/01/2018	<u>1544</u>	Transmission of the Notice of Appeal, Order Appealed (Memorandum Opinion), and Docket Sheet to US Court of Appeals. Motion to proceed on appeal in forma pauperis has been filed. Another transmission will be forwarded when the motion has been decided re <u>1542</u> Notice of Appeal to DC Circuit Court. (jf) (Entered: 10/01/2018)
10/02/2018		MINUTE ORDER. Upon consideration of <u>1543</u> Motion for Leave to Proceed in forma pauperis, it is hereby ORDERED that <u>1543</u> the Motion is GRANTED. The Clerk is directed to transmit a copy of this Order to the United States Court of

		Appeals for the District of Columbia Circuit. SO ORDERED. Signed by Judge Richard J. Leon on 10/2/2018. (lcrjl2) (Entered: 10/02/2018)
10/04/2018	<u>1545</u>	Supplemental Record on Appeal transmitted to US Court of Appeals re Minute Order granting Motion for Leave to Proceed in forma pauperis; USCA Case Number Unknown. (znmw) (Entered: 10/04/2018)
10/10/2018	<u>1546</u>	NOTICE of Change of Address by Andrew I. Warden (Warden, Andrew) (Entered: 10/10/2018)
10/11/2018	<u>1547</u>	NOTICE of Change of Address by Terry Marcus Henry (Henry, Terry) (Entered: 10/11/2018)
10/11/2018	<u>1548</u>	NOTICE of Change of Address by Ronald James Wiltsie (Wiltsie, Ronald) (Entered: 10/11/2018)
10/12/2018		USCA Case Number 18-5297 for <u>1542</u> Notice of Appeal to DC Circuit Court filed by ABDUL RAZAK ALI. (zrdj) (Entered: 10/12/2018)
02/08/2019	<u>1549</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to MUSLIM ADVOCATES. Attorney Johnathan James Smith terminated. (Smith, Johnathan) (Entered: 02/08/2019)

Ali v. Trump, 317 F.Supp.3d 480 (2018)

317 F.Supp.3d 480  
United States District Court, District of Columbia.

Abdul Razak ALI, Petitioner,  
v.  
Donald J. TRUMP, et al., Respondents.

Civil Case No. 10-cv-1020 (RJL)

Signed 08/10/2018

### Synopsis

**Background:** Alien detainee, an Algerian national, brought corrected motion for order granting writ of habeas corpus pursuant to the Authorization for Use of Military Force (AUMF), challenging his continued detention as an enemy combatant at United States Naval Station at Guantanamo Bay, Cuba, arguing that the amount of time that passed since his apprehension rendered his continued detention unlawful.

**Holdings:** The District Court, [Richard J. Leon, J.](#), held that:

detainee was not subjected to an indefinite detention that exceeded the government's authority under the AUMF;

AUMF continued to supply government with authority to detain detainee;

detainee was unable to point to a grave and doubtful constitutional question of the kind to trigger the canon of constitutional avoidance; and

protections of the Due Process Clause did not extend to Guantanamo Bay detainees.

Motion denied.

See also [736 F.3d 542](#).

### Attorneys and Law Firms

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### MEMORANDUM OPINION

[RICHARD J. LEON](#), United States District Judge

Petitioner Abdul Razak Ali ("Ali" or "petitioner") challenges his continued detention at the United States Naval Station at Guantanamo Bay, Cuba, where he has been held since June 2002. Although this Court, [Ali v. Obama](#), 741 F.Supp.2d 19 (D.D.C. 2011), and our Court of Appeals, [Ali v. Obama](#), 736 F.3d 542 (D.C. Cir. 2013), previously determined that Ali could lawfully be detained as an enemy combatant under the Authorization for Use of Military Force ("AUMF"), Pub. L. No. 107-40 § 2(a), 115 Stat. 224 (2002), Ali now argues that the amount of time that has passed since his apprehension renders his \*[482](#) continued detention unlawful under the AUMF and the due process clause of the Fifth Amendment to the U.S. Constitution, [U.S. Const. amend. V](#).

Currently before the Court is Ali's Corrected Motion for Order Granting Writ of Habeas Corpus [Dkt. # 1529] ("Corrected Mot."). Upon consideration of the pleadings, the law, the record, and for the reasons stated below, I find that Ali's detention remains lawful, and **DENY** his Corrected Motion for Order Granting Writ of Habeas Corpus [Dkt. # 1529].

Ali v. Trump, 317 F.Supp.3d 480 (2018)

## BACKGROUND

Petitioner Abdul Razak Ali is an Algerian national. *See Ali*, 741 F.Supp.2d at 21. In March 2002, he was captured by Pakistani forces in a four-bedroom house in Faisalabad, Pakistan along with a well-known al Qaeda facilitator, Abu Zubaydah. *Id.* Indeed, Abu Zubaydah was at that very time assembling a force to attack U.S. and Allied forces. *Id.* Captured along with petitioner and Abu Zubaydah were a bevy of Abu Zubaydah's senior leadership, including instructors in engineering, small arms, English language (with an American accent), and various electrical circuitry specialists. *See id.* Also found at the guesthouse were pro-al Qaeda literature, electrical components, and at least one device typically used to assemble remote bombing devices (*i.e.*, improvised explosive devices or "IEDs"). *See id.* Following his capture, and before his transfer to Guantanamo, Ali was transported to Bagram Air Force Base for questioning. *See id.* Since June 2002, he has been held at the U.S. Naval Base at Guantánamo Bay.

Ali filed his first petition for writ of habeas corpus in this Court on December 21, 2005. *See* Pet. for a Writ of Habeas Corpus, *Ali v. Bush*, Civ. No. 5-2386 (D.D.C. Dec. 21, 2005) [Dkt. # 1]. The case was initially assigned to Judge Walton. As with the hundreds of other habeas petitions filed around the same time, Ali's case was stayed pending the U.S. Supreme Court decision in *Boumediene v. Bush*, 553 U.S. 723, 771, 128 S.Ct. 2229, 171 L.Ed.2d 41 (2008) (holding that Guantanamo detainees are "entitled to the privilege of habeas corpus to challenge the legality of their detention").

Following the *Boumediene* decision, for reasons of judicial economy, Judge Walton transferred this case to then-Chief Judge Royce Lamberth. Order, *Ali v. Obama*, Civ. No. 5-2386 (D.D.C. Apr. 21, 2009) [Dkt. # 1153]. On June 6, 2010, while the discovery process was pending, and after denying Petitioner's Motion to Expedite, Judge Lamberth recused himself on Petitioner's Motion. Order, *Ali v. Obama*, Civ. No. 5-2386 (D.D.C. June 6, 2010) [Dkt. # 1418]. On June 16, 2010, Ali's case was randomly reassigned to this Court. *See* Reassignment of Civil Case, *Ali v. Obama*, Civ. No. 9-745 (D.D.C. June 16, 2010) [Dkt. # 1419].

On August 25, 2010, I issued a Case Management Order ("CMO"). *See* Case Management Order, *Ali v. Obama*, Civ. No. 10-1020 (D.D.C. Aug. 25, 2010) [Dkt. # 1423]. This order was virtually identical to those issued in the eight habeas petitions that had been previously litigated before this Court. *See Ali*, 741 F.Supp.2d at 22. The CMO placed the burden of proof on the Government, set the standard of proof as preponderance of the evidence,

provided discovery rights for detainees (including a right to "exculpatory" materials), formulated the procedural processes that would guide the hearings in Court, and set forth the definition of "enemy combatant." \*483 *Id.* at 24 n.2.<sup>1</sup> These procedures had already been blessed by our Court of Appeals. *See Al-Bihani v. Obama*, 590 F.3d 866, 869–70, 875–881 (D.C. Cir. 2010).

<sup>1</sup> The definition of enemy combatant is as follows:

[A]n individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States 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.

*Ali v. Obama*, 741 F.Supp.2d 19, 24 (D.D.C. 2011) (quoting *Boumediene v. Bush*, 583 F.Supp.2d 133, 135 (D.D.C. 2008) ).

In December 2010, I conducted three days of hearings on the merits of Ali's petition. Unfortunately for Mr. Ali, following those hearings, I concluded that he was being lawfully detained as an "enemy combatant." *Ali*, 741 F.Supp.2d at 27. I based this determination on (i) the undisputed fact that Ali was captured at a guesthouse in Faisalabad, Pakistan, with a well-known al Qaeda facilitator, Abu Zubaydah;<sup>2</sup> (ii) credible testimony from other individuals at the guesthouse that Ali participated in Abu Zubaydah's "training programs" while in their company at the guesthouse; and (iii) credible evidence placing Ali in various locations in Afghanistan with Abu Zubaydah and his band of followers. *See id.* at 25–27. Our Circuit affirmed my decision on December 3, 2013. *See Ali*, 736 F.3d at 543. And at oral argument in this case, Ali's counsel confirmed that the present habeas petition does *not* challenge my earlier ruling as to the legality of Ali's apprehension and detention. *See* 3/23/18 Hr'g Tr. 4:25-5:5 [Dkt. # 1535].

<sup>2</sup> Other courts in this district have concluded that Abu Zubaydah and his band of followers had well established ties to al Qaeda and the Taliban, and were thus an "associated force" under the 2001 Authorization for the Use of Military Force. *See Barhoumi v. Obama*, 609 F.3d 416, 420, 432 (D.C. Cir. 2010); *Al Harbi v. Obama*, No. 05-02479, 2010 WL 2398883, at \*14 (D.D.C. May 13, 2010).

## PETITIONER'S CURRENT STATUS



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In January 2009, President Obama established the Guantanamo Bay Review Task Force. *See Exec. Order No. 13,492, 74 Fed. Reg. 4897 (Jan. 22, 2009)*. The Task Force was charged with evaluating whether each detainee’s “continued detention is in the national security and foreign policy interests of the United States.” *Id.* § 2(d), *74 Fed. Reg. 4897–99*. The Task Force reviewed the status of each Guantanamo detainee, and made a recommendation whether to (i) transfer the detainee, (ii) continue his detention, or (iii) prosecute him. Final Report: Guantanamo Rev. Task Force at 1 (Jan. 22, 2010) (“GTMO Task Force Report”), <https://www.justice.gov/sites/default/files/ag/legacy/2010/06/02/guantanamo-review-final-report.pdf>.

A separate Executive Order requires periodic status reviews of detainees, like Ali, whom the Task Force decided to continue to detain. *See Exec. Order 13,567, 76 Fed. Reg. 13,277 (Mar. 7, 2011)*; *see also Exec. Order 13,823, 83 Fed. Reg. 4831, 4831–32 (Jan. 30, 2018)* (continuing these procedures for periodic reviews). The Periodic Review Board (“PRB” or “Board”) conducts these reviews. This process assesses whether continued custody of a detainee is necessary to protect against a significant threat to the security of the United States. *Exec. Order 13,567, § 2*. It is not intended as an assessment of the legality of continued detention. *Id.* § 8.

After the initial PRB review, each detainee is eligible for a “full” review every three years. *Id.* § 3(b). In addition, each \*484 detainee is eligible for a “file review” every six months. *Id.* § 3(c). If the file review reveals that a “significant question” has arisen concerning the detainee’s continued detention, then a full PRB review is promptly convened. *Id.*

In its February 16, 2018 submission, the Government represented that Ali had his initial Periodic Review Board hearing on July 6, 2016. *See Respondents’ Opposition to Petitioners’ Mot. for Order Granting Writ of Habeas Corpus, Ali v. Trump*, Civ. No. 10-1020, at 7 (Feb. 16, 2018) [Dkt. # 1525] (“Opp’n”). The PRB designated Ali for continued detention. *Id.* Ali’s PRB file was reviewed on February 3, 2017 and again on September 1, 2017. *Id.* As of February 14, 2018, Ali has a third PRB file review ongoing. *Id.*

Notwithstanding his pending PRB review, Ali and ten other detainees jointly filed a Motion for Petition for Habeas Corpus on January 11, 2018. Mot. for Order Granting Writ of Habeas Corpus, Civ. No. 10-1020 [Dkt. # 1512]. An identical motion was filed in all nine separate cases.<sup>3</sup> On January 22, 2018, I set a briefing schedule, ordering that the Government file its Opposition by

Friday, February 16, 2018, and that Petitioner file his Reply by Friday, March 9, 2018.<sup>4</sup> Following the March 5, 2018 status conference, Ali filed a Corrected Motion for Order Granting Writ of Habeas Corpus in the case at bar in order to address a clerical error in the case caption. [Dkt. # 1529]. The briefing is complete and the motion is ripe for review.

<sup>3</sup> This Court retained Civ. No. 10-1020. Judge Sullivan similarly retained jurisdiction over Civ. Nos. 8-1360 and 5-23. Judge Kollar-Kotelly, Judge Lamberth, and Judge Walton agreed to transfer the cases assigned to them to Judge Hogan. These transfers were made on January 18, 2018.

<sup>4</sup> Judges Hogan and Sullivan ordered the same briefing schedule in their cases. Petitioners and Government have filed identical pleadings in all cases,

## LEGAL STANDARD

The Government bears the burden of proving by a preponderance of the evidence that Ali is lawfully detained. If the Government fails to meet that burden, the Court must grant the petition and order Ali’s release. This is the standard that governed the Court’s review of Ali’s original habeas petition. *See Case Management Order, Ali v. Obama*, Civ. No. 10-1020, at 3 (D.D.C. Aug. 25, 2010) [Dkt. # 1423] (“The Government must establish, by a preponderance of the evidence, the lawfulness of the petitioner’s detention. The Government bears the ultimate burden of persuasion that the petitioner’s detention is lawful.”). Our Circuit has repeatedly affirmed that a preponderance standard is constitutionally appropriate when reviewing Guantanamo detainee habeas petitions. *See Al Odah v. United States*, 611 F.3d 8, 13–14 (D.C. Cir. 2010) (“It is now well-settled law that a preponderance of the evidence standard is constitutional in considering a habeas petition from an individual detained pursuant to authority granted by the AUMF.”); *Awad v. Obama*, 608 F.3d 1, 10 (D.C. Cir. 2010) (“[A] preponderance of the evidence standard is constitutional in evaluating a habeas petition from a detainee held at Guantanamo Bay, Cuba.”).

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## DISCUSSION

Ali advances two arguments: that (i) the Government lacks the authority under the Authorization for the Use of Military Force (“AUMF”), Pub. L. 107–40, § 2(a), 115 Stat. 224 (Sept. 18, 2001), to continue to detain him, *see* Corrected Mot. at 29–37; Petitioners’ Reply in Support of Mot. for Order Granting Writ of Habeas Corpus \*485 15–25 [Dkt. # 1528] (“Reply”); and (ii) Ali’s continuing detention deprives him of both substantive and procedural due process, *see* Corrected Mot. at 15–29; Reply at 7–15.<sup>5</sup> Although repackaged under different authority, these arguments flow from the same premise: that the duration of Ali’s detention erodes the legal basis for his continued detention. Ali, in effect, asks this Court to use its “broad, equitable common law habeas authority” to order the issuance of a writ of habeas corpus. *Id.* at 37. For the following reasons, I cannot do so!

<sup>5</sup> Ali’s brief contains a third line of argument—that “the continuing detention of petitioners approved for transfer from Guantanamo violates substantive due process because their detention no longer serves its ostensible purpose.” Corrected Mot. at 26 (alteration in original). This line of argument does not apply to Ali, who has not been deemed eligible for transfer. Opp’n at 7. Instead, this argument applies only to Tofiq Nasser Awad Al-Bihani and Abdul Latif Nassar, two petitioners who have been cleared for transfer and whose habeas motions are pending before Judge Hogan. *See* Corrected Mot. at 26. Ali, Al-Bihani, and Nassar, along with eight other detainees, all filed identical briefs, despite the different factual circumstances surrounding their detention.

### I. The Government’s Detention Authority Pursuant to the AUMF

Ali first argues that the Executive Branch lacks the authority to continue to detain him. He contends that he is effectively subject to “indefinite” detention, since the campaign against al Qaeda, Taliban, and associated forces continues to persist. Corrected Mot. at 1. Such “indefinite” detention, the argument goes, exceeds the scope of the Government’s detention authority under the AUMF. *Id.* Second, Ali contends that the sheer length of the conflict has “unraveled” the Government’s authority pursuant to the AUMF, since “the practical circumstances of the conflict with al Qaeda have long ceased to resemble any of the conflicts that informed the development of the law of war.” *Id.* at 3 (alteration in original). Unfortunately

for the petitioner, both arguments are without merit.

Shortly after the September 11, 2001 terrorist attacks, Congress passed the Authorization for Use of Military Force (“AUMF”), which provides:

That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

Pub. L. 107–40, § 2(a), 115 Stat. 224 (Sept. 18, 2001). The AUMF gives the President authority to detain enemy combatants—i.e., individuals who were “part of” or provided support to al Qaeda and Taliban forces in Afghanistan. *Al-Bihani*, 590 F.3d at 872 (“[An individual] is lawfully detained [under the AUMF if he] is ... an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners” (quotations omitted)).<sup>6</sup>

<sup>6</sup> This Court has already determined that Ali is an enemy combatant who can be lawfully detained under the AUMF. *See Ali*, 741 F.Supp.2d at 27, *aff’d*, *Ali*, 736 F.3d at 550. Ali does not challenge this initial determination. *See* 3/23/18 Hr’g Tr. 4:25-5:5 [Dkt. # 1535]; *cf.* Corrected Mot. at 23. Instead, Ali’s motion presents the question whether the Government’s detention authority has lapsed in the sixteen years since his capture.

In 2004, a plurality of the Supreme Court observed in *Hamdi v. Rumsfeld* \*486 that it was a “clearly established principle of the law of war that detention may last no longer than active hostilities.” 542 U.S. 507, 520–21, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004) (plurality opinion) (citing Geneva Convention (III) Relative to the Treatment of Prisoners art. 118, Aug. 12, 1949, [1955] 6 U.S.T. 3316, 3406, T.I.A.S. No. 3364); *see also Al-Alwi v. Trump*, No. 17-5067, slip op. at 8 (D.C. Cir. Aug. 7, 2018) (observing that “the laws of war are open-ended

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and unqualified” in permitting detention of enemy combatants for the duration of active hostilities). Informed by the principles of the law of war, the Court held that the AUMF’s grant of authority to use “necessary and appropriate force” included within it “the authority to detain [enemy combatants] for the duration of the relevant conflict.” *Id.* at 521, 124 S.Ct. 2633; *see also Aamer v. Obama*, 742 F.3d 1023, 1041 (D.C. Cir. 2014) (same). Because Ali does not challenge this Court’s initial determination that he was “part of Al Qaeda, the Taliban, or associated forces,” and because “hostilities are ongoing,” the Government may continue to detain him. *Aamer*, 742 F.3d at 1041; *see also Al-Alwi v. Trump*, No. 17-5067, slip op. at 8 (D.C. Cir. Aug. 7, 2018) (“Although hostilities have been ongoing for a considerable amount of time, they have not ended.”). Ali’s detention, far from open-ended and “indefinite,” is tied to this ongoing conflict against al Qaeda, the Taliban, and associated forces. As such, Ali’s first argument, that he is subject to “indefinite” detention that exceeds the Government’s authority under the AUMF, is wholly without merit.

As for Ali’s second argument, that the war against al Qaeda and the Taliban has ended, our Circuit Court has already made short shrift of this argument. In essence, Ali invites this Court to undertake a wide ranging factual inquiry into whether active hostilities persist. To say the least, it would not be proper for this Court to do so. In *Al-Bihani v. Obama*, our Circuit Court rejected a Guantanamo detainee’s argument that the United States’ war against the Taliban had ended and that he must therefore be released. 590 F.3d at 874. The Circuit Court noted that release was required after the cessation of active hostilities, but held that the “determination of when hostilities have ceased is a political decision, and we defer to the Executive’s opinion on the matter, at least in the absence of an authoritative congressional declaration purporting to terminate the war.” *Id.*

Just days ago, our Circuit Court reaffirmed *Al-Bihani’s* holding. *See Al-Alwi*, slip op. at 8. In *Al-Alwi*, the panel held that the AUMF continues to supply authority to detain an enemy combatant captured in 2001 after having “stayed in Taliban guesthouses, traveled to a Taliban-linked training camp to learn how to fire rifles and grenade launchers and joined a combat unit led by an al Qaeda official that fought alongside the Taliban.” *Id.* at 3. Instead, our Circuit Court specifically rejected the notion that “the nature of hostilities has changed such that the particular conflict in which [the detainee was] captured is not the same conflict that remains ongoing today.” *Id.* at 10. To the contrary, the Court explained, “the Executive Branch represents, with ample support from record evidence, that the hostilities described in the

AUMF continue.” *Id.* That Executive Branch judgment and representation, in the absence of a “contrary Congressional command,” ends the judicial inquiry. *Id.*; *see also Ludecke v. Watkins*, 335 U.S. 160, 168–70, 68 S.Ct. 1429, 92 L.Ed. 1881 (1948) (deferring to Executive Branch determination that “war with Germany” persisted despite the fact that Germany had “surrender[ed]” and “Nazi Reich” had “disintegrate[ed].”). Simply put, the AUMF continues to supply the \*487 Government with the authority to detain Ali.<sup>7</sup>

<sup>7</sup> Ali argues that, in order to avoid a “serious constitutional problem” – namely, the denial of due process rights – I must apply the canon of constitutional avoidance in order to construe the AUMF not to authorize his continued detention. Corrected Mot. at 33–34. That canon is inapplicable for two reasons. First, the AUMF is not “susceptible of two constructions,” such that the canon would assist the Court in choosing one interpretation over another. *See Jones v. United States*, 529 U.S. 848, 857, 120 S.Ct. 1904, 146 L.Ed.2d 902 (2000). As described above at length, the AUMF plainly and unmistakably applies here, and authorizes Ali’s continued detention. Second, and as discussed below, the protections of the due process clause do not extend to Guantanamo Bay. *See infra* pp. 487–89. Thus, Ali cannot point to a “grave and doubtful constitutional question[ ]” of the kind required to trigger the avoidance canon. *Jones*, 529 U.S. at 857, 120 S.Ct. 1904.

Not surprisingly, this is not the first time that Ali has challenged the Executive’s authority to detain him based on the passage of time. In 2013, our Circuit Court rejected this very argument, observing that the war against al Qaeda, the Taliban, and associated forces “obviously continues,” and that the AUMF “does not have a time limit, and the Constitution allows detention of enemy combatants for the duration of hostilities.” *Ali*, 736 F.3d at 552. Indeed it emphasized that, absent a differently-drawn statute, “it is not the Judiciary’s proper role to devise a novel detention standard that varies with the length of detention.” *Id.*; *see also Al-Alwi*, slip op. at 5 (noting that the AUMF does not “place[ ] limits on the length of detention in an ongoing conflict”); *cf. El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 843 (D.C. Cir. 2010) (“[W]hether the terrorist activities of foreign organizations constitute threats to the United States ‘are political judgments, decisions of a kind for which the Judiciary has neither aptitude, facilities[,] nor responsibility, and have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.’” (quoting *People’s Mojahedin Org. of Iran v. U.S. Dep’t of State*, 182 F.3d 17, 23 (D.C. Cir. 1999) )).

Presidents Trump and Obama have reported on a regular

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basis, including most recently in June 2018, that “[t]he United States remains in an armed conflict, including in Afghanistan and against the Taliban, and active hostilities remain ongoing.” Notice of Supp. Auth. Ex., Text of a Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate (June 8, 2018) [Dkt. # 1537-1]. And Congress has not only refrained from repealing or amending the AUMF, but explicitly clarified in the National Defense Authorization Act of 2012 (“NDAA”) that the AUMF gives the President authority to detain combatants “under the law of war without trial until the end of hostilities.” NDAA, Pub. L. No. 112–81, §§ 1021(c), (b)(2), 125 Stat. 1298, 1562 (2011).<sup>8</sup> As such, the record amply demonstrates here that it is the political judgment of both branches that active hostilities indeed persist pursuant to the AUMF. As such, Ali’s time-based arguments are wholly without merit. See *All*, 736 F.3d at 552.

<sup>8</sup> The conclusions of the political branches are consistent with the facts on the ground. The United States maintains a substantial military presence in Afghanistan, and U.S. troops continue to engage in a counterterrorism mission against al Qaeda, the Taliban, and associated forces in that region. See Dep’t of Defense Report on Enhancing Security and Stability in Afghanistan at 3, 5–6 (Dec. 2017) [Dkt. # 1525-9]. This campaign involves traditional uses of military force, such as air strikes, ground operations, and combat enabler support. See *id.* at 3–7, 22–29,

## II. Ali’s Due Process Arguments

Undaunted, Ali makes two additional due process arguments, one sounding \*488 in “substantive” and the other in “procedural” due process. In order to prevail under either theory, however, Ali must first establish that the protections of the due process clause extend to Guantanamo Bay detainees. Unfortunately for Ali, our Circuit Court has already held that the due process clause does *not* apply in Guantanamo. See *Kiyemba v. Obama*, 555 F.3d 1022, 1026–27 (D.C. Cir. 2009) (“*Kiyemba I*”), *vacated and remanded*, 559 U.S. 131, 130 S.Ct. 1235, 175 L.Ed.2d 1070, *reinstated in relevant part*, 605 F.3d 1046, 1047–48 (D.C. Cir. 2010) (“*Kiyemba II*”), *cert. denied*, 563 U.S. 954, 131 S.Ct. 1631, 179 L.Ed.2d 925 (2011).

In *Kiyemba I*, our Circuit Court recited a string of Supreme Court cases for the proposition that “the due process clause does not apply to aliens without property

or presence in the sovereign territory of the United States.” *Kiyemba I*, 555 F.3d at 1026 (collecting cases). Although the Supreme Court vacated *Kiyemba I* in order to afford our Circuit the opportunity to pass on factual circumstances that had changed while the petition for certiorari was pending, see 559 U.S. at 131, 130 S.Ct. 1235, our Circuit promptly reinstated *Kiyemba I*’s judgment and opinion in pertinent part in *Kiyemba II*, 605 F.3d at 1048. In subsequent cases, our Circuit has confirmed that *Kiyemba II* reinstated *Kiyemba I*’s holding on the extension of the due process clause to Guantanamo. See *Al Madhwani v. Obama*, 642 F.3d 1071, 1077 (D.C. Cir. 2011); see also *Bahlul v. United States*, 840 F.3d 757, 796 (D.C. Cir. 2016) (Millet, J., concurring); *Al Bahlul v. United States*, 767 F.3d 1, 33 (D.C. Cir. 2014) (Henderson, J., concurring). Applying *Kiyemba II*, district courts in this Circuit have *uniformly* refused to recognize due process claims by Guantanamo Bay detainees. See *Salahi v. Obama*, Civ. No. 05-0569 (RCL), 2015 WL 9216557, \*5 (D.D.C. Dec. 17, 2015) (“[T]he Due Process Clause of the Fifth Amendment, does not apply to Guantanamo detainees.”); *Rabbani v. Obama*, 76 F.Supp.3d 21, 25 (D.D.C. 2014) (same); *Ameziane v. Obama*, 58 F.Supp.3d 99, 103 n.2 (D.D.C. 2014) (same); *Bostan v. Obama*, 674 F.Supp.2d 9, 29 (D.D.C. 2009) (same). As such, Ali’s due process arguments are unavailing and must be summarily dismissed.<sup>9</sup>

<sup>9</sup> Petitioners contend that procedural due process mandates that they cannot continue to be detained (i) under a preponderance of the evidence standard or (ii) based on factual determinations made some time ago. Corrected Mot. at 3, 22–29. Once again, Ali supports this theory with various cases from outside the national security context. See *id.* at 23. Even assuming the due process clause extends to Guantánamo Bay – which, under the law of our Circuit, it does not – these cases are inapposite because our Circuit Court previously endorsed the very procedures Ali now challenges. See *Al-Bihani*, 590 F.3d at 878 (rejecting argument that “the prospect of indefinite detention” requires a reasonable doubt or clear-and-convincing standard, and instead endorsing a preponderance-of-the-evidence standard in determining whether detainee was part of or substantially supported Al Qaeda, the Taliban, or associated forces); see also *id.* at 879 (permitting use of hearsay evidence); *Al Odah v. United States*, 611 F.3d 8, 13 (D.C. Cir. 2010) (“It is now well-settled law that a preponderance of the evidence standard is constitutional in considering a habeas petition from an individual detained pursuant to authority granted by the AUMF.”); *Awad v. Obama*, 608 F.3d 1, 10 (D.C. Cir. 2010) (“[A] preponderance of the evidence standard is constitutional in evaluating a habeas petition from a detainee held at Guantanamo Bay, Cuba.”); *Latif v. Obama*, 666 F.3d 746, 755 (D.C. Cir. 2011) (affording presumption of regularity to government intelligence

Ali v. Trump, 317 F.Supp.3d 480 (2018)

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reports); *Ali*, 736 F.3d at 546 (affirming district court's inference that detainee captured at al Qaeda guesthouse was a member of al Qaeda). Thus, even were Ali eligible for the protections of the due process clause, these cases would foreclose his procedural arguments.

For all of the foregoing reasons, the Court **DENIES** Ali's Corrected Motion for Order Granting Writ of Habeas Corpus [Dkt. # 1529]. A separate order consistent with this opinion will be issued this day.

**All Citations**

317 F.Supp.3d 480

**\*489 CONCLUSION**

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

**AUG 10 2018**

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

Abdul Razak Ali, )  
)  
Petitioner, )  
)  
v. )  
)  
Donald J. Trump, *et al.*, )  
)  
Respondents, )  
)

Civil Case No. 10-cv-1020 (RJL)

ORDER


August 10, 2018 [Dkt. #1529]

THIS CASE comes before the Court upon petitioner's Corrected Motion for Order Granting Writ of Habeas Corpus [Dkt. #1529].

UPON CONSIDERATION of the Corrected Motion, the law, the record, and being otherwise fully advised on the matter, it is hereby

ORDERED that, for the reasons stated in the accompanying Memorandum Opinion, the Motion is DENIED.

SO ORDERED.

  
RICHARD J. LEON  
United States District Judge

Ali v. Trump, Not Reported in Fed. Rptr. (2019)

2019 WL 850757

Only the Westlaw citation is currently available.  
United States Court of Appeals, District of Columbia  
Circuit.

Abdul Razak ALI, Detainee, Appellant

v.

Donald J. TRUMP, President of the United States,  
et al., Appellees

No. 18-5297

Filed On: February 22, 2019

Appeal from the United States District Court for the  
District of Columbia (No. 1:10-cv-01020)

On Petition for Initial Hearing En Banc

#### Attorneys and Law Firms

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Michael Shih, Sonia M. Carson, Sharon Swingle, U.S.  
Department of Justice, Washington, DC, for Appellees.  
Before: Garland, Chief Judge; Henderson, Rogers, Tatel\*,  
Griffith, Srinivasan, Millett, Pillard\*, Wilkins, and  
Katsas\*\*, Circuit Judges

\* A statement by Circuit Judge Tatel, with whom Circuit  
Judge Pillard joins, is attached.

\*\* Circuit Judge Katsas did not participate in this matter.

### ORDER

Per Curiam

\*1 Upon consideration of appellant's petition for initial

hearing en banc, the response thereto, and the absence of  
a request by any member of the court for a vote, it is

**ORDERED** that the petition be denied.

Tatel, Circuit Judge, with whom Pillard, Circuit Judge,  
joins, concurring:

At the heart of this appeal lies a question undoubtedly of  
exceptional importance: whether the procedural  
protections of the Fifth Amendment's Due Process Clause  
extend to persons detained at the Guantanamo Bay Naval  
Base. Someday this court may well need to address that  
question en banc, but this is not that day. Because I read  
our case law to leave unresolved the extent of the Due  
Process Clause's reach into Guantanamo Bay, I concur in  
the denial of initial hearing en banc.

The tightrope walk performed by both parties in the  
briefing on this petition well illustrates the dilemma.  
Petitioner apparently recognizes that our cases do "not  
preclude extension of the Due Process Clause to  
Guantánamo." Pet. 13. Perhaps recognizing that this  
position is unlikely to win him an initial hearing en banc,  
he adds that there is "obvious confusion" on the issue  
among the "various opinions and statements by judges of  
this Circuit." *Id.* at 16. On the other side, the government  
thinks there is no work for a panel to do because this court  
has "clearly and repeatedly answered" the question by  
holding that due process is unavailable at Guantanamo,  
Opp. 7, but nonetheless takes the position that initial en  
banc review is inappropriate, *id.* at 7–8.

The government traces its insistence that this circuit has  
resolved the question to *Kiyemba v. Obama (Kiyemba I)*,  
555 F.3d 1022, 1026–27 (D.C. Cir. 2009), *vacated*, 559  
U.S. 131 (2010) (per curiam), *reinstated in relevant part*,  
605 F.3d 1046 (D.C. Cir. 2010) (per curiam). *See* Opp. 7;  
*see also Ali v. Trump*, 317 F. Supp. 3d 480, 488 (D.D.C.  
2018) (reading *Kiyemba I* to answer the question). But as  
I read the opinion in *Kiyemba I*, that case neither  
implicated the right to procedural due process nor decided  
whether its protections reach Guantanamo.

In *Kiyemba I*, all agreed that the detainees in question  
should be released. 555 F.3d at 1024. The only question  
was where. *See id.* Granting the detainees habeas relief,  
the district court ordered the government to release them  
into the United States. *Id.* We reversed, *id.* at 1032,  
explaining that the Constitution committed the question in

## Ali v. Trump, Not Reported in Fed. Rptr. (2019)

that case—concerning who may enter the United States—to the political branches, *see id.* at 1026 (“As a result, it ‘is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien.’ ” (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950) )).

Along the way, however, the *Kiyemba I* court addressed the district court’s notion that “some ‘constitutional imperative’ ” protecting “ ‘the fundamental right of liberty’ ” authorized the release order. *Id.* (quoting *In re Guantanamo Bay Detainee Litigation*, 581 F. Supp. 2d 33, 34, 43 (D.D.C. 2008) ). These phrases, according to the court, “suggest[ed] that the [district] court may have had the Fifth Amendment’s due process clause in mind.” *Id.* “But the due process clause,” the *Kiyemba I* court explained, “cannot support the court’s order of release” because “[d]ecisions of the Supreme Court and of this court ... hold that the due process clause does not apply to aliens without property or presence in the sovereign territory of the United States.” *Id.* The court consigned to a footnote the remaining piece of the syllogism, stating that “[t]he Guantanamo Naval Base is not part of the sovereign territory of the United States.” *Id.* at 1026 n.9.

\*2 In my view, *Kiyemba I* did not resolve whether the Fifth Amendment affords detainees any procedural due process protections. The *Kiyemba I* court addressed only one theory of how the Due Process Clause might reach Guantanamo. When the court said that the line of cases constraining the clause to sovereign U.S. territory barred the requested relief, *see id.* at 1026 & n.9, it never contemplated—because nobody raised—whether a successful theory might find support in *Boumediene v. Bush*, 553 U.S. 723 (2008), the Supreme Court’s pathmarking decision issued just eight months earlier. In that case, the Court questioned the “argument that, at least as applied to noncitizens, the Constitution necessarily stops where *de jure* sovereignty ends,” *id.* at 755, and went on to explain “that questions of extraterritoriality turn on objective factors and practical concerns, not formalism,” *id.* at 764. *Accord Al Bahlul v. United States*, 767 F.3d 1, 65 n.3 (D.C. Cir. 2014) (Kavanaugh, J., concurring in the judgment in part and dissenting in part) (reading *Boumediene* to “require[ ] a ‘functional’ rather than ‘formalistic’ analysis” to determine whether a “particular constitutional provision” applies to “non-U.S. citizens in U.S. territories”).

The *Kiyemba I* court, moreover, did not explain whether it was referring to the right to substantive due process or to the right at issue here, the right to procedural due process. *Cf. County of Sacramento v. Lewis*, 523 U.S. 833, 845–46

(1998) (due process both requires “fundamental procedural fairness” and “protects against government power arbitrarily and oppressively exercised”). Context, however, indicates that the court was referring to the right to substantive due process. The relevant passage in *Kiyemba I* refuted the premise that a “fundamental right of liberty” required the government to release the detainees onto United States soil. *Id.* at 1026 (internal quotation marks omitted). That hardly sounds like a procedural protection. *See Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (recognizing that substantive due process is concerned with “fundamental liberty interest[s]”). Indeed, the relevant dispute in *Kiyemba I* concerned only whether the law gave the detainees a substantive right to enter the United States. The detainees asserted no procedural due process rights, *see 555 F.3d at 1024*, and we should not lightly read our opinions to sweep far beyond the facts of a given case. *See American Federation of Musicians v. FCC*, 356 F.2d 827, 830 (D.C. Cir. 1966) (“[T]he judicial function is best served, we believe, when appellate decision, after appropriate review, is limited to only those questions necessary to decide the case ....”). And although this court has occasionally restated *Kiyemba I*’s holding, *see, e.g., Bahlul v. United States*, 840 F.3d 757, 796 (D.C. Cir. 2016) (en banc), it has never purported to expand the original opinion’s ambit.

This limited understanding of *Kiyemba I* helps explain why subsequent panels of this court have demurred from reading the case to resolve, for all time, the due process rights of Guantanamo detainees. For example, in *Rasul v. Myers*, issued just two months after *Kiyemba I*, the court, including the two members of the *Kiyemba I* majority, declined to “decide whether *Boumediene* portends application of the Due Process Clause ... to Guantanamo detainees.” 563 F.3d 527, 529 (D.C. Cir. 2009) (per curiam). Similarly, in *Al-Madhwani v. Obama*, we avoided deciding whether *Kiyemba I* foreclosed any due process rights by “assuming [the detainee] had a constitutional right to due process.” 642 F.3d 1071, 1077 (D.C. Cir. 2011). If *Kiyemba I* had actually decided that territorial sovereignty offers the only possible basis for extending any due process protections, then *Rasul* and *Al-Madhwani* would have had no reason to avoid the question.

Ali’s argument that the Due Process Clause has something to say about the length of his confinement is serious—and deserves to be taken seriously. The detentions at Guantanamo Bay, which the government tells us may last at least until the hostilities authorized in 2001 abate, are lengthening into decades, with no end in sight. This situation requires this court’s careful



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consideration. But because it should be considered first by a panel, I concur in the denial of initial hearing en banc.

Not Reported in Fed. Rptr., 2019 WL 850757

**All Citations**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

----- x  
 SUHAIL ABDU ANAM, et al., CA No. 1:04-cv-01194  
  
 Petitioners, Washington, D.C.  
 v. Wednesday, July 11, 2018  
 11:00 a.m.  
  
 DONALD J. TRUMP, et al.,  
  
 Respondents.  
 ----- x

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TRANSCRIPT OF ORAL ARGUMENT  
 HELD BEFORE THE HONORABLE THOMAS F. HOGAN  
 UNITED STATES DISTRICT JUDGE

---

APPEARANCES:

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1 THE COURT: Wait, wait, wait a minute. You're  
2 presuming now that there's more due process than the Supreme  
3 Court argued in -- ordered in Boumediene; right?

4 MR. AZMY: That the --

5 THE COURT: You're saying that the due process  
6 clause should be interpreted much broader to apply or their  
7 rights should be much broader than the habeas relief ordered  
8 in Boumediene?

9 MR. AZMY: Yes, Your Honor.

10 THE COURT: All right. And then what do I do with  
11 my circuit cases about that? You've got four -- at least  
12 four circuit cases that said it's uncontested; does not  
13 apply, the Fifth Amendment rights.

14 MR. AZMY: Yes. May I address --

15 THE COURT: I think we have said that. I  
16 understand your arguments, it's dicta. But how many times  
17 do I have to have dicta to make it the law for me to follow?

18 MR. AZMY: I understand, Your Honor. And if  
19 you -- if I could just be heard on this matter, because we  
20 feel very strongly that this has been incorrectly  
21 interpreted because, yes, the --

22 THE COURT: I mean, you've got --

23 MR. AZMY: -- proclamation in Kiyemba --

24 THE COURT: You've got Kiyemba; you've got Ali;  
25 you've got Nawar [ph]; you've got Al-Bihani; you've got Doe

1 v. Mattis --

2 MR. AZMY: Respectfully, Your Honor, it's just --

3 THE COURT: -- and each one all say that. Maybe  
4 they're repeating what someone else had already said, but I  
5 don't know what's clearer, and the District Court's at least  
6 taken that as binding. Judge Huvelle, on a series of cases,  
7 started off saying it may not be -- it may be that  
8 there's -- more due process rights apply, and then after  
9 these cases came out, she's consistently written -- one of  
10 our best judges -- in three opinions we're bound by these  
11 statements.

12 MR. AZMY: Your -- actually, in Basardh, Judge  
13 Huvelle recognizes that Kiyemba is dicta because it only  
14 deals with the ability to enter the United States --

15 THE COURT: But then she went on in the next  
16 case --

17 MR. AZMY: And I believe there are other cases  
18 that recognize it's dicta, including subsequent panels of  
19 Kiyemba itself. Kiyemba II and Kiyemba III --

20 THE COURT: Right.

21 MR. AZMY: -- cabin the holding to the possibility  
22 of entry. And I would note the four justices in Kiyemba who  
23 dissented from the denial of cert also classified the  
24 holding as narrow. And the, you know -- the Government has  
25 conceded in Al Bahlul in the D.C. Circuit that the ex post

1 factio clause applies and Judge Kavanaugh --

2 THE COURT: And I agree, and then so that -- and I  
3 agree Judge Kavanaugh, in a concurring opinion, left that  
4 open.

5 MR. AZMY: Well, he does, but -- and then the  
6 majority opinion says five of the seven judges of this court  
7 believe the ex post facto clause applied. If Kiyemba had  
8 been the law, the D.C. Circuit would not have said that.

9 THE COURT: How do I treat the dicta where they  
10 clearly say that? Particularly, Judge Henderson clearly  
11 says it does not apply -- she repeats that it does not apply  
12 in the next two different opinions.

13 MR. AZMY: Your Honor, I think the way to treat it  
14 is to follow the Supreme Court's admonition in Boumediene to  
15 identify whether or not it's improper and anomalous and ask  
16 the Government if they have any arguments about why it would  
17 be improper and anomalous any more so than the suspension  
18 clause or the ex post facto clause --

19 THE COURT REPORTER: Can you slow down, please.

20 MR. AZMY: Sorry.

21 -- any more than the ex post facto or the due  
22 process clause, and to recognize that five judges of the  
23 D.C. Circuit agree that Kiyemba cannot be the law because  
24 they have concluded that the ex post facto clause applies to  
25 Guantanamo. So that --

1 Iraq and Syria individuals as well as others, and that they  
2 asked the Court to not follow which is at least the dicta,  
3 if not the actual holdings of our Circuit, and to applying  
4 this enhanced due process to hold that indefinite -- not  
5 indeterminate, but indefinite -- detention is  
6 unconstitutional or is also in violation of AUMF as no  
7 longer being related to the purpose of the AUMF to detain  
8 these people who have been allegedly in support of al-Qaeda,  
9 the Taliban or associated forces engaged in hostilities  
10 against the United States.

11 I'm going to take the matter under advisement. I  
12 do think that the petitioners, with their substantial  
13 support of all the lawyers that work so hard in these cases,  
14 have presented some serious issues. I do not, however, come  
15 away convinced that this Court has a position to overrule  
16 our Court of Appeals and interpret what the Supreme Court --  
17 some of the Supreme Court judges may have said or some of  
18 our judges may have said as the law that applies to these  
19 cases as opposed to the law of this Circuit that seems  
20 fairly clear, at least in some of the Circuit opinions.  
21 There are some conflicts and some more involved issues in  
22 some of these cases; that I will trace them.

23 But I do want to note for the record, again, how  
24 much these attorneys who are volunteer attorneys have meant  
25 to the Court and to our system of justice representing these

1 individuals who are detained, who have been detained for  
 2 many, many years -- as long as, I'm sure, the average  
 3 sentence is for very serious crimes in the United States --  
 4 who yet have no seen way of being released. Whether that's  
 5 been foreclosed because of the announcements of the  
 6 President or because of the actions taken by the Executive  
 7 to date and which may conflict with the executive orders, we  
 8 will review. But the Court appreciates the work that has  
 9 been done, and it is an ongoing issue that I'm sure the  
 10 Court and all the judges who handle these cases would like  
 11 to see finally resolved in a reasonable time frame.

12 So with that, I'm going to, again, thank counsel;  
 13 thank counsel for the Government; and we'll stand in recess.  
 14 Thank you.

15 MR. AZMY: Thank you, Your Honor.

16 THE DEPUTY CLERK: All rise. This Honorable Court  
 17 stands adjourned.

18 (Proceedings concluded at 12:37 p.m.)

19 \* \* \* \* \*

**CERTIFICATE OF OFFICIAL COURT REPORTER**

20 I, **TIMOTHY R. MILLER, RPR, CRR, NJ-CCR**, do hereby certify  
 21 that the above and foregoing constitutes a true and accurate  
 22 transcript of my stenographic notes and is a full, true and  
 complete transcript of the proceedings to the best of my  
 ability, dated this 25th day of July 2018.

23 /s/Timothy R. Miller, RPR, CRR, NJ-CCR  
 24 Official Court Reporter  
 25 United States Courthouse  
 Room 6722  
 333 Constitution Avenue, NW  
 Washington, DC 20001

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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KHALID AHMED QASSIM, :

Appellant, :

v. : No. 18-5148

DONALD J. TRUMP, PRESIDENT OF :  
THE UNITED STATES, ET AL., :

Appellees. :

----- X

Tuesday, January 15, 2019  
Washington, D.C.

The above-entitled matter came on for oral argument pursuant to notice.

BEFORE:

CIRCUIT JUDGES MILLETT AND PILLARD, AND SENIOR  
CIRCUIT JUDGE EDWARDS

APPEARANCES:

ON BEHALF OF THE APPELLANT:

THOMAS B. WILNER, ESQ.

ON BEHALF OF THE APPELLEES:

BRAD HINSHELWOOD (DOJ), ESQ.



1 substantive due process question about whether there's a  
2 liberty interest of a habeas corpus petitioner to be  
3 released into the United States. And really, a lot of the  
4 laboring oar in that case has to do with sovereign authority  
5 to, on the part of the political branches to make decisions  
6 about who comes in and who doesn't, and that that's not  
7 within the Court's remedial power. Better authority for you  
8 that there actually is Circuit precedent saying that due  
9 process, procedural due process does not apply to habeas  
10 corpus proceedings, pursuant to Boumediene?

11 MR. HINSHELWOOD: Well, Your Honor, I think first  
12 of all, the Kiyemba holding, the way it addresses due  
13 process is not so limited, I mean, it doesn't couch itself  
14 as addressing only the sort of things you're describing.  
15 And Your Honor, I think further in this Court's decision --

16 JUDGE MILLETT: But wait, wait, wait. Just to be  
17 clear on your answer to that, the issue wasn't remotely  
18 before the Court. Nothing in that case involved the  
19 procedures for adjudicating detention --

20 JUDGE EDWARDS: Nothing.

21 JUDGE MILLETT: -- correct?

22 MR. HINSHELWOOD: No, it didn't involve procedures  
23 for adjudicating detention, but the Court's language in  
24 Kiyemba says quite flatly that due process does not apply to  
25 individuals at Guantanamo.

1 JUDGE MILLETT: Well, it says -- no.

2 MR. HINSHELWOOD: And --

3 JUDGE EDWARDS: No.

4 JUDGE MILLETT: It says --

5 JUDGE EDWARDS: No.

6 JUDGE MILLETT: -- the due process clause is not  
7 an authority, source of authority for the remedy of a  
8 release --

9 JUDGE EDWARDS: Right.

10 JUDGE MILLETT: -- into the United States, see,  
11 and then has a parenthetical, right?

12 JUDGE EDWARDS: Yes, and you both explained --

13 MR. HINSHELWOOD: Your Honor, it says it's not an  
14 authority because decisions of the Supreme Court and of this  
15 Court, decisions the District Court do not acknowledge hold  
16 that the due process clause does not apply to aliens without  
17 property or presence in the sovereign territory of the  
18 United States.

19 JUDGE MILLETT: It is for purposes of providing a  
20 source of a right for release into the United States. I  
21 mean --

22 JUDGE EDWARDS: Right.

23 JUDGE MILLETT: -- it would seem, it just seems  
24 kind of crazy to me to think that a case where the right to  
25 release had already been fully adjudicated, no one was

1 challenging those procedures, and the only issue was whether  
2 there were different sources, asserted sources with a right  
3 for a specific remedy of release into the United States, and  
4 in that context the Court says due process clause, that's  
5 not a source of a right for release into the United States,  
6 see how we've dealt with exclusion, and has that, and cites  
7 an exclusion case in its quotation --

8 MR. HINSHELWOOD: It says --

9 JUDGE MILLETT: -- somehow means we have, that we  
10 decided there once and for all that when it comes to  
11 adjudicating the right to detain you've got no due process  
12 rights at all.

13 MR. HINSHELWOOD: Well, Your Honor, I think this  
14 would come as a surprise to both Mr. Qassim, who hasn't  
15 contended that the case doesn't control in this instance,  
16 and I think it would also come as a surprise to the District  
17 Court, both here and in other instances, which is routinely  
18 treated at its holding.

19 JUDGE MILLETT: Would it come as a surprise to the  
20 Government?

21 MR. HINSHELWOOD: And Your Honor -- it would come  
22 as a surprise to the Government, Your Honor, which I think  
23 has repeatedly said --

24 JUDGE EDWARDS: Or it came as a surprise --

25 JUDGE PILLARD: I just was --

1 JUDGE EDWARDS: It came as a surprise to all three  
2 of us that you were focused on this case, because this case  
3 is not what we're talking about.

4 MR. HINSHELWOOD: Well, Your Honor --

5 JUDGE EDWARDS: And there's no question -- I mean,  
6 I'm just stunned, I kept reading it --

7 MR. HINSHELWOOD: Well, Your Honor --

8 JUDGE EDWARDS: -- Kiyemba is not about what we're  
9 talking about.

10 MR. HINSHELWOOD: Well, two additional points  
11 then, Your Honor, one is that this Court in Rasul treated  
12 Kiyemba as being part of the line of cases from this Court  
13 predating Boumediene that addressed Fifth Amendment rights  
14 extending to individuals outside the United States without  
15 property or presence here, cases like Pauling or Jeffrey --

16 JUDGE EDWARDS: It is in the line of authority,  
17 but when you look at that case it's not about the issues  
18 that we are considering today. It's not.

19 JUDGE PILLARD: But that's actually what --

20 MR. HINSHELWOOD: Your Honor --

21 JUDGE PILLARD: -- my question was that started  
22 this line of questioning. I wanted to hear your best  
23 authority for the proposition that in the briefing is tagged  
24 onto Kiyemba, but as you say there's more, and from your,  
25 your perspective the more that you would commend us to read

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on May 15, 2019.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

*/s/Shayana Kadidal*

Shayana Kadidal

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