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Without Due Process, Detainees Face Detention for Life, Lawyers Warn

On Dec. 11, 2019 attorneys from the Center for Constitutional Rights urged a federal appeals court to overturn a lower court ruling against Abdul Razak Ali (aka [Saeed Bakhouch](#)), who has been detained at Guantánamo without charge since June 2002, and to rule more broadly that the fundamental protections of the Due Process Clause apply to detainees and limit otherwise limitless detentions there. Mr. Ali had filed a petition for release together with ten other Guantánamo detainees, arguing that their ongoing detention is arbitrary and unlawful, particularly in light of Donald Trump's stated policy that no one should be released from the prison regardless of the facts of their case. A lower court held that "the [Constitution's] due process clause does *not* apply in Guantánamo," which attorneys say defies Supreme Court precedent.

"During the Bush administration, the Supreme Court twice struck down attempts to gut Constitutional protections against arbitrary detention at Guantánamo, but since then the lower courts have made it effectively impossible to win a case in court no matter how weak the government's evidence is," said [Shayana Kadidal](#), Senior Managing Attorney of the Guantanamo project at the Center for Constitutional Rights, who argued today. "Today's hearing asks the court to finally provide detainees the fair process the Supreme Court envisioned ten years ago."

In its landmark 2008 decision in *Boumediene v. Bush*, the Supreme Court held that Guantánamo "is, in every practical sense, not abroad," and because of that the right to challenge one's detention in federal court could not be denied. Today, Kadidal argued that the same principle requires that "due process"—the fundamental substantive and procedural protections guaranteed by the constitution—should also apply at Guantánamo.

Attorneys further argued that Mr. Ali's continued detention does, indeed, violate the Due Process Clause. He remains detained—for what will soon be *eighteen years*—based primarily on an *eighteen day* stay in

a guesthouse in Pakistan associated with a suspected jihadi leader. Today, Kadidal told the court that after this length of detention, the government must demonstrate that there is a continued purpose for detaining Ali, using more reliable evidence than it has produced to date, and meeting a higher burden of proof.

“My client lost his first appeal six years ago even though, in the words of one of the judges, he ‘never planned, authorized, committed or aided any terrorist attacks,’ because the burden of proof on the government is lower than what’s required in traffic court,” said H. Candace Gorman, a Chicago-based attorney who has represented Ali for 13 years. “If the legal status quo doesn’t change, Ali will die in prison without ever having been charged with a crime.”

Forty men remain detained at Guantánamo. Twenty-eight of them have never been charged. Twenty-seven were held by the CIA at some point during their detention. Five have been unanimously cleared for release by all relevant agencies (including the State Department, FBI, and the military).

For more information, [visit the Center for Constitutional Rights’ case page](#) .