



January 13, 2005

COURT BARS DETENTION OF ALIEN FELONS PENDING DEPORTATION, BUT PERMITS DEPORTATION OF FELONS TO SOMALIA

(Clark v. Martinez, No. 03-878)

(Jama v. Immigration and Naturalization Service, No. 03-674)

The U.S. Supreme Court issued decisions yesterday in two important immigration cases in which the Washington Legal Foundation was an active participant. In *Clark v. Martinez*, the Court ruled against WLF when it held that the federal government may not indefinitely detain excludable aliens while they await deportation to their native countries, even if the aliens are dangerous felons. WLF scored a victory in *Jama v. INS* when the Court overturned a decision that barred deportation of *anyone* -- even alien felons -- to Somalia because that country lacks a functioning central government.

In its 2001 *Zadvydas* decision, the Court had held that a *permanent resident alien* convicted of a felony could not be detained for more than six months while awaiting deportation, if there was little prospect that his native country would take him back. In yesterday's *Clark* decision, the Court extended *Zadvydas* to cover excludable aliens, *i.e.*, illegal aliens who have never been admitted into the country. The Court based its decision on a federal statute (not, as in *Zadvydas*, on the constitutional rights of aliens) and made clear that Congress was free to reverse the *Clark* decision by changing the law.

In *Jama*, the Court agreed with WLF that although the U.S. usually does not deport an alien when his native country objects to taking him back, federal law does not prohibit deportations to countries that lack a functioning government capable of formally accepting (or rejecting) its returning citizens. The issue is of critical importance in connection with alien felons from Somalia because Somalia has not had a functioning central government since 1991. There are now more than 8,000 aliens in this country awaiting deportation to Somalia, but lower court decisions had blocked all such deportations. Most of those awaiting deportation, including several thousand convicted of serious crimes, are not in detention but rather (as a result of the *Zadvydas* decision) are freely roaming the streets.

Although the *Clark* decision was not unexpected, it was a disappointment to WLF. "Congress has adopted numerous laws in recent years to ensure that the American public is protected from dangerous alien criminals; yet *Clark* establishes a standard that provides the public with even less protection than it had prior to the adoption of those laws," said WLF Chief

Counsel Richard Samp after reviewing the decision. "The decision has serious negative national security implications, because it leaves the federal government powerless to prevent a foreign country from dumping all of its undesirable citizens on our shores," Samp said.

Clark involved two Cubans who came to this country in 1980 as part of the Mariel boatlift; at least one of the two was a convicted armed robber who was taken from a jail cell by Cuban officials to a waiting boat. Both were detained at Key West and ultimately ordered returned to Cuba. But because the Castro government has refused to allow any Marielistas to return, they have remained in this country for 25 years awaiting deportation. Both men have been convicted of numerous felonies during that period; following their final convictions, they were determined to pose a threat to public safety and were ordered detained indefinitely pending deportation. As a result of yesterday's decision, the government will be required to release approximately 1,100 similarly situated alien felons who are awaiting deportation but whose native countries are unwilling to accept their return.

The *Jama* case involved Keyse Jama, a 25-year-old Somalian who was convicted of felonious assault after stabbing three other men in a Minneapolis street fight in 1999; he was sentenced to one year in prison. Jama had arrived in this country in 1996. During the three years before his incarceration, Jama was arrested at least 12 times. Immigration law provides for virtually automatic deportation of any alien convicted of a felony. As a result of yesterday's ruling, the government will finally be permitted to deport Jama and other Somalians convicted of felonies. The Court agreed with WLF that the relevant immigration statute, 8 U.S.C. § 1231(b)(2), does not preclude the government from deporting aliens to countries that lack a functioning central government. Other immigration laws prohibit sending aliens to areas in which they are likely to face great danger, but the immigration judge who ordered Jama's deportation determined that the ongoing civil strife in Somalia had not affected the safety of Jama's home town.

WLF is a public interest law and policy center with supporters in all 50 States. It devotes a significant portion of its resources to combatting illegal immigration and ensuring that aliens who engage in criminal activities are excluded from American society. WLF filed its brief in *Clark* on behalf of itself, several Members of Congress, the National Border Control Council, Friends of Immigration Law Enforcement, and the Allied Educational Foundation.

* * *

For further information, contact WLF Chief Counsel Richard A. Samp, (202) 588-0302. Copies of WLF's briefs in *Clark* and *Jama* are posted on its web site, www.wlf.org.