

**FOR IMMEDIATE RELEASE****January 19, 2006**

## **COURT URGED TO DISMISS CHALLENGES TO DETENTIONS AT GUANTANAMO BAY**

*(Al Odah v. United States)*

The Washington Legal Foundation (WLF) yesterday urged the U.S. Court of Appeals for the District of Columbia Circuit to dismiss challenges to the American military's detention of aliens being held as enemy combatants at Guantanamo Bay, Cuba.

WLF filed a brief in *Al Odah v. United States* in response to the appeals court's request for supplemental briefing on the effects of the Detainee Treatment Act (DTA), a statute recently enacted by Congress and signed into law by President Bush on December 30, 2005. WLF argued that the DTA strips federal courts of jurisdiction over habeas corpus claims filed by Guantanamo detainees and requires dismissal of the suits filed by at least 300 of the detainees.

WLF has been actively involved in the Guantanamo Bay detention litigation for the past four years. In June 2004, the Supreme Court ruled that the federal district courts possess jurisdiction over habeas corpus challenges to federal detention filed by nonresident aliens being held outside of the U.S. That decision led to a flood of challenges being filed in federal district court in the District of Columbia by virtually every detainee at Guantanamo Bay. Virtually all of the detainees deny the military's contention that they are enemy combatants who fought against the U.S. on behalf of either al Qaeda or the Taliban. The district courts issued conflicting decisions in the cases, and most are now on appeal to the U.S. Court of Appeals for the District of Columbia Circuit. WLF filed a brief in April 2005 in connection with that appeal, arguing that the Guantanamo Bay detainees are not entitled to invoke the protection of the U.S. Constitution. The appeal was argued before a three-judge panel in September and is awaiting decision.

In the meantime, congressional leaders became increasingly upset by the amount of resources that the military was being forced to devote to defending the hundreds of detainee suits. It responded by adopting the DTA, which eliminates federal court habeas corpus jurisdiction over the claims of Guantanamo Bay detainees. Attorneys representing the detainees argue that the DTA should be deemed inapplicable to cases pending on the date the statute was adopted, and that any attempt by Congress to strip the courts of habeas corpus jurisdiction would be unconstitutional.

In its supplemental brief filed at the invitation of the appeals court, WLF argued that the language of the DTA indicates that Congress clearly intended the statute to apply to existing suits filed by Guantanamo Bay detainees. WLF added that that interpretation is buttressed by the presumption that statutes that do not change the substantive law but rather only make procedural changes (such as expansion or contraction of federal court jurisdiction) are -- in the absence of an express intent to the contrary -- to be effective immediately.

WLF noted that the DTA does not leave detainees without any remedies. WLF noted that the Department of Defense has established Combat Status Review Tribunals (CSRTs) to which Guantanamo Bay detainees may bring claims that they are not enemy combatants. Moreover, the DTA provides that a detainee whose claims have been rejected by a CSRT may seek review of that action before the U.S. Court of Appeals for the District of Columbia Circuit. Accordingly, WLF argued, detainees do not have any basis for asserting that the DTA is unconstitutional on the ground that it leaves them without any access to federal court.

WLF also argued that the DTA does not violate the Constitution's Suspension Clause, which prohibits Congress from suspending the writ of habeas corpus except in war time. WLF argued that the Suspension Clause only applies to situations in which the writ of habeas corpus has been historically available. WLF argued that federal courts held for the first two centuries of our history that they lacked jurisdiction over the habeas claims of nonresident aliens being held overseas. Several years ago, the Supreme Court held for the first time that the then-current habeas statute opened the courthouse doors to nonresident aliens being held overseas. But, WLF argued, Congress is free to amend that law and eliminate habeas jurisdiction without violating the Suspension Clause, given the absence of a historical pedigree for such jurisdiction.

"Throughout our history, the courts have never allowed nonresident aliens to invoke the Constitution as a basis for challenging their detention by American authorities," said WLF Chief Counsel Richard Samp after filing WLF's brief. "To allow enemy combatants to use the Constitution to challenge their detention would be a sure-fire way to undermine American military strength, by diverting the attention of field commanders from the military offensive abroad to the legal defensive at home," Samp said.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a considerable portion of its resources to promoting America's national security.

\* \* \*

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site.