

Press Release

Washington Legal Foundation

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2009 Massachusetts Ave., NW

Washington, D.C. 20036

202.588.0302

FOR IMMEDIATE RELEASE

January 29, 2004

COURT URGED TO BAR SUITS CLAIMING VIOLATIONS OF INTERNATIONAL LAW

(Sosa v. Alvarez-Machain, No. 03-339)

The Washington Legal Foundation this week urged the U.S. Supreme Court to overturn an appeals court decision that allows aliens to second-guess American law enforcement policy by filing suits for money damages under the Alien Tort Statute (ATS) alleging violations of international law. In a brief filed in *Sosa v. Alvarez-Machain*, WLF argued that allowing such suits threatens to undermine the ongoing war on terrorism. WLF filed its brief on behalf of itself, the National Fraternal Order of Police, and the Allied Educational Foundation. WLF's brief was drafted with the pro bono assistance of Donald B. Ayer and Christian Vergonis of the Washington, D.C. office of Jones Day.

"The ATS was adopted in 1789 to allow the federal courts to hear cases involving piracy and assaults on ambassadors," said WLF Chief Counsel Richard Samp after filing WLF's brief. "It has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for attacking the overseas conduct of American corporations. The Supreme Court needs to step in to bring a halt to this perversion of the ATS," Samp said.

In this case, the lower court affirmed an award of damages imposed against a law enforcement official who sought to bring Humberto Alvarez-Machain, a suspected murderer, to justice. Alvarez-Machain was present in a Guadalajara, Mexico house in 1985 while Mexican drug cartel members tortured and murdered Enrique Camarena-Salazar, an American citizen and agent of the Drug Enforcement Administration (DEA). Alvarez-Machain was indicted for murder by a federal grand jury in 1990, but discussions with Mexican officials failed to produce an agreement that he be turned over to American authorities.

DEA officials thereafter authorized a plan to apprehend Alvarez-Machain without the involvement of the Mexican government. Jose Sosa (a former Mexican police official) and other Mexicans were hired to apprehend him. They did so in April 1990; within 24 hours they had placed him on a private plane and delivered him to DEA agents in El Paso, Texas. Neither Sosa nor anyone else abused or otherwise harmed Alvarez-Machain while he was being detained.

Alvarez-Machain stood trial for murder in 1992. At the close of the government's case, the district court granted his motion for acquittal. In 1993, he filed a tort action in federal court in California against the United States, Sosa, and other individuals. He claimed that by apprehending and detaining him without a Mexican arrest warrant (all they had was an American arrest warrant), the defendants violated his rights under international law.

Sosa was the only defendant whose case went to trial. The trial court held that Alvarez-Machain could proceed against Sosa under the ATS, and it ordered that Sosa pay \$25,000 in damages for apprehending him, supposedly in violation of international law. The U.S. Court of Appeals for the Ninth Circuit in San Francisco not only upheld that damages award but also reinstated Alvarez-Machain's claims against the United States. The United States is separately appealing the decision. The Supreme Court has consolidated the appeals and will hear oral arguments in both cases on March 30, 2004.

In its brief, WLF argued that Sosa's conduct -- which was authorized by senior officials of the U.S. government -- did not violate international law. More importantly, WLF argued, the ATS does not authorize suits in the federal courts to enforce international law. WLF argued that while the ATS grants the federal courts *jurisdiction* to hear a limited number of cases (such as piracy cases), it does not grant individuals *any* rights to bring suits, and certainly does not create a right to sue for the enforcement of so-called international law (which to a large extent is a creation of law professors, not courts). WLF argued that the only type of law that the federal courts are permitted to enforce is domestic law created by Congress or by the U.S. Constitution.

WLF also argued that permitting suits such as Alvarez-Machain's would undermine law enforcement and the ongoing war on terrorism. WLF argued that U.S. law enforcement officials must be permitted to arrest terrorists in foreign countries, even when the government of those countries is non-functioning or seeks to harbor the terrorists. WLF also argued that the ATS is being used improperly by activists to challenge the overseas conduct of American corporations; those activists routinely allege that the working conditions at overseas facilities violate their notions of international law.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a substantial portion of its resources to promoting America's national security. The National Fraternal Order of Police, which has over 310,000 members nationwide, joined in on WLF's brief because it seeks to ensure that its members will not be subject to the same types of damage claims faced by Sosa. WLF also filed a brief in the case in October, urging the Court to grant review (which it did in November).

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