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COURT LIMITS SUITS CLAIMING VIOLATIONS OF INTERNATIONAL LAW

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

The U.S. Supreme Court this week overturned an appeals court decision that allowed 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 so doing, the Court set out ground rules that will make it very difficult for others to prevail in the numerous pending ATS suits raising similar claims.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *Sosa v. Alvarez-Machain*, supporting the former police officer being sued for damages. 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 decision leaves the door slightly ajar for ATS suits. The Court said that the ATS creates federal court jurisdiction for aliens raising tort claims based on alleged violations of clearly established international norms. But the Court unanimously rejected activists' claims that the ATS itself creates any causes of action. Rather, the Court said that any ATS suits must proceed, if at all, under *federal common law* -- an extremely limited doctrine that does not permit courts to act on their own (as did the appeals court in this case) in determining the scope of enforceable international law.

"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 reviewing the Court's decision. "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 has effectively stepped 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 to justice Humberto Alvarez-Machain, wanted in connection with the murder of an American DEA agent in Guadalajara, Mexico. After the Mexican government refused to extradite Alvarez-Machain, DEA officials 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 and delivered him to DEA agents within 24 hours. Alvarez-Machain was not harmed or abused while in detention.

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. The trial court held that Alvarez-Machain could proceed against Sosa under the ATS, and it ordered that Sosa pay \$25,000 in damages, based on his supposed violations 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 U.S. The Supreme Court's decision unanimously overturned the appeals court's decision, with respect to both Sosa and the United States.

The Court agreed with WLF that the ATS does not authorize suits in the federal courts to enforce international law. The Court held 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. The Court held that ATS jurisdiction could be invoked to bring federal common law claims, but such claims must be based on *United States law* recognized by the U.S. government, not on so-called international law created by foreign bodies and law school professors.

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.