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## **COURT URGED TO PERMIT DEPORTATION OF ALIEN FELONS TO SOMALIA**

*(Jama v. Immigration and Naturalization Service)*

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to permit the U.S. government to deport alien felons to Somalia. WLF urged the Court to reject a lower court decision that bars deporting *anyone* to Somalia because that country lacks a functioning central government.

In a brief filed in *Jama v. Immigration and Naturalization Service*, WLF argued 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 the U.S. Court of Appeals for the Ninth Circuit in San Francisco has issued an injunction blocking all such deportations. Most of those awaiting deportation, including several thousand convicted of serious crimes, are not in detention but rather are freely roaming the streets -- because in a separate case, the Supreme Court held that immigration authorities may not detain deportable aliens for more than six months while they await an opportunity to carry out the deportation.

"As a result of an appeals court decision, thousands of criminal aliens at this moment are walking freely on the nation's streets, despite having been convicted of serious felonies and despite being subject to final orders of removal," said WLF Chief Counsel Richard Samp after filing WLF's brief. "The rights of the public to be protected from the threat posed by dangerous alien felons outweigh whatever rights those criminal aliens may have to avoid removal to a country that lacks a functioning central government," Samp said.

The case before the Supreme Court involves 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. Accordingly, the government initiated deportation proceedings against Jama, and in 2000 an immigration judge (IJ) ordered that he be deported to Somalia. The IJ denied Jama his requested relief from deportation under the Convention Against Torture, finding that Jama had failed to demonstrate that he would be tortured if sent to Somalia.

Jama thereafter challenged the deportation order by filing a petition for a writ of habeas corpus in federal district court. The district court granted the petition, agreeing with Jama that federal law prohibits deportation of an alien without the explicit consent of the government of the country to which the alien is being sent. On appeal the U.S. Court of Appeals for the Eighth Circuit disagreed with the district court and ordered that the petition be dismissed. Because the Eighth Circuit decision conflicts with the Ninth Circuit decision cited above, the Supreme Court agreed to resolve the conflict by hearing Jama's appeal from the Eighth Circuit decision.

In its brief, WLF argued 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. WLF argued that that statute indicates that Congress's principal concern was ensuring that immigration authorities would be able to find a place to send deportable aliens, not protecting aliens from being deported to areas that may be dangerous because they lack a government. WLF also argued that the Immigration Judge adequately addressed Jama's safety concerns when he considered (but ultimately rejected) Jama's claim that he would be subject to torture if returned to Somalia. WLF argued that although Somalia may be a dangerous place, Jama's safety concerns are far outweighed by the safety concerns of American citizens who should not be forced to put up with hardened criminals such as Jama being released on U.S. streets.

The Supreme Court is likely to hold oral arguments in November 2004, with a decision to be issued in early 2005. 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 this case on behalf of itself and the Allied Educational Foundation.

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For further information, contact WLF Chief Counsel Richard A. Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).