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**WLF URGES COURT TO DISMISS CHALLENGE
TO "EXTRAORDINARY RENDITIONS,"
CITING STATE SECRETS DOCTRINE**

(Mohamed v. Jeppesen Dataplan, Inc.)

The Washington Legal Foundation (WLF) this week urged the U.S. Court of Appeals for the Ninth Circuit to affirm dismissal of an ACLU lawsuit that challenges the CIA's "extraordinary rendition" program -- the program under which suspected terrorists captured overseas are transported to other countries for purposes of interrogation.

In a brief filed in *Mohamed v. Jeppesen Dataplan, Inc.*, WLF argued that the CIA has convincingly demonstrated that allowing the case to go forward would create unacceptable risks that highly classified information would be disclosed, and that the disclosure would cause serious damage to national security.

"The judicial branch is simply not the appropriate forum for airing these types of issues," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Those who disagree with the extraordinary rendition program should take their concerns to Congress or the Executive Branch. The CIA could not maintain the confidentiality of its affairs if those who oppose its policies were free to air their opposition in an open courtroom," Samp said.

The plaintiffs are five overseas aliens who allege that they were taken into custody and tortured in connection with the extraordinary rendition program. Three of the five allege that they were handed over to foreign governments for interrogation (two to Morocco, one to Egypt) and were tortured by agents of those governments. The other two allege that they were flown to Afghanistan and were tortured there by U.S. government officials. Two of the five have been released from custody. One is serving a nine-year prison sentence in Morocco, one is serving a 15-year prison sentence in Egypt, and one is being held by the U.S. at Guantanamo Bay, Cuba after having been designated an "enemy combatant."

The only defendant in the suit is Jeppesen Dataplan, Inc., a subsidiary of Boeing. The plaintiffs allege that the CIA hired Jeppesen to operate the aircraft used to transport suspected terrorists captured in connection with the extraordinary rendition program. They allege that Jeppesen provided its assistance with knowledge that they would be subjected to forced disappearance and torture. The plaintiffs filed their suit under the Alien Tort Statute, which grants federal courts jurisdiction over tort actions by aliens who claim a violation of their rights under customary international law.

Before Jeppesen answered the complaint, the United States intervened to argue that further litigation of the case was barred by the state secrets privilege. The district judge agreed and dismissed the complaint. The plaintiffs then appealed to the Ninth Circuit.

In its brief, WLF argued that the district court properly dismissed the case without permitting any discovery. WLF noted that the state secrets privilege does not necessarily require dismissal of cases in which it is properly invoked; it can often be possible to exclude classified evidence and still permit the case to go forward based on unclassified evidence. But WLF argued that when, as here, the very subject matter of a lawsuit is a matter of state secret, the suit must be dismissed at its inception without permitting any discovery. WLF argued that a CIA program does not lose its "secret" status simply because there have been numerous news accounts about the program. WLF noted that the state secrets privilege belongs exclusively to the federal government; it is the only entity empowered to assert or to waive the privilege.

WLF argued that there are many instances where government confirmation of information can cause severe damage to national security even when the information has been widely disseminated by others. WLF noted, for example, that unconfirmed press accounts can often be ignored by foreign governments that might perceive themselves to be harmed by disclosure of their cooperation with the CIA, but the same is not true of information officially acknowledged by the CIA -- in that case, a government may be forced to retaliate.

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. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

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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 web site.