

November 11, 2002

COURT URGED TO AFFIRM RULING BLOCKING RELEASE OF DETAINEE INFORMATION

(Center for National Security Studies v. Dep't of Justice)

The Washington Legal Foundation (WLF) filed a brief in the United States Court of Appeals for the District of Columbia Circuit on behalf of itself and its client, the Jewish Institute for National Security Affairs, urging the court to affirm that part of a lower court ruling blocking the release of certain information about the aliens held in the United States since the September 11 terrorist attack on America. A hearing in the case is scheduled for November 18, 2002.

In this case, some two dozen activist groups, including the ACLU, the Center for Constitutional Rights, People for the American Way, National Association of Criminal Defense Lawyers, Amnesty International, and the Multiracial Activist, filed a Freedom of Information Act (FOIA) request late last year with DOJ seeking to obtain the names of all aliens who were arrested or detained in connection with the DOJ's investigation of the terrorist attack, as well as the names of any of their attorneys. The groups also sought the release of related information, such as the dates of the aliens' arrest or detention, and location of the facilities in which they were detained.

DOJ responded by releasing the information with respect to those aliens who were criminally charged, but withheld the names of approximately 750 detainees charged with violating Immigration and Naturalization Service (INS) laws and regulations. However, DOJ did release other information about the INS detainees, such as their country of origin, the date they were charged with an INS violation, and the specific provision of the INS law that they were charged with violating. DOJ defended its refusal to release the names on the grounds that their release could jeopardize the ongoing investigation by revealing to the al Qaeda terrorist network the identity of those aliens of special interest to law enforcement. Releasing the names could endanger the safety of the public and the detainees, and constitute an unwarranted invasion of privacy, particularly for those detainees who were initially held, but then released after further investigation. All detainees and their lawyers are free to talk to the press about their arrest and conditions of their detention, and some have done so.

In the lower court, WLF argued in its brief that the activists were not entitled to the information requested under FOIA, the common law, or the First Amendment. In August, the federal district court judge ordered the DOJ to release the names of the detainees, but gave an opportunity for the aliens to "opt out" of the required disclosure by signing a statement that they do not wish to have their identity revealed. WLF argued in its initial appellate brief that FOIA does not require such a procedure, and that, in any event, it would be impractical to obtain the aliens' request for confidentiality because approximately 700 of the 750 aliens originally detained have since been deported, and their whereabouts unknown.

Although the trial court ruled against DOJ on the issue of releasing the names of the detainees, the court upheld DOJ's refusal to disclose the dates of the arrests and places of detention or release. The court agreed with DOJ and WLF that such information may enable terrorist groups to gather a "mosaic" of intelligence information that could harm our national security and the safety of individuals and the public. The district court also agreed with WLF that neither the common law nor the First Amendment entitled the activist groups to the information. The ACLU appealed that part of the lower court's decision, and WLF's recent brief argued that the common law does not entitle the ACLU to obtain that kind of sensitive information.

Over the years, WLF has been the only prominent public interest law and policy organization that has actively litigated high-profile cases supporting national security, anti-terrorism, and immigration related issues.

* * * * *

For further information, contact Paul D. Kamenar, WLF Senior Executive Counsel, at 202-588-0302