

June 26, 2003

COURT DECLINES TO REVIEW DECISION ORDERING RELEASE OF ALIEN CRIMINALS

(Snyder v. Rosales-Garcia, No. 02-1464)

The U.S. Supreme Court this week declined to review a lower-court decision that could result in the release from detention of more than 1,100 illegal aliens convicted of violent crimes. The decision was a setback for the Washington Legal Foundation (WLF), which filed a brief in the case, *Snyder v. Rosales-Garcia*, urging that review be granted. WLF argued that society's interest in being protected from violent criminals far outweighs any interest that illegal aliens may have in being free from detention during the time it takes to arrange their deportation.

The Court gave no explanation for its decision not to hear the case. The most likely explanation is that the Court recognized that the case could be rendered moot (thereby precluding any decision by the Court) as a result of the government's plan to parole, by this fall, the two detainees ordered released by the lower court. Nonetheless, it is highly likely that another case raising the same issue will come before the Court in the near future, because the lower courts are irreconcilably split regarding the government's authority to detain alien criminals.

"Congress has adopted numerous laws in recent years to ensure that the American public is protected from dangerous alien criminals; yet the holdings of some appeals courts result in a rule that provides the public with even less protection than it had prior to the adoption of those laws," said WLF Chief Counsel Richard Samp after learning of the Supreme Court's action. "Given the large number of alien criminals whose continued detention hangs in the balance, this issue cries out for eventual Supreme Court review," Samp said.

The case that the Supreme Court declined to hear involved Mario Rosales-Garcia and Reynero Carballo, two Cubans who came to this country illegally in 1980 as part of the Mariel boatlift. They were taken into custody, but because Fidel Castro would not allow any of the Mariel Cubans to return home, Rosales-Garcia and Carballo (along with virtually all of the Mariel Cubans) were temporarily released into American society until arrangements could be made for their repatriation. In the ensuing years, both Rosales and Carballo (who had been released from a Cuban jail in order to join the Mariel boatlift) were convicted on numerous occasions of violent felonies. When they completed their prison sentences, the Immigration and Naturalization Service (INS) ordered them detained pending their return to Cuba. The INS

periodically reviews their detention and has decided to release them this fall if they successfully complete a half-way house program.

To date Cuba has refused to accept them back into the country. The U.S. Court of Appeals for the Sixth Circuit in Cincinnati granted their petitions for writs of habeas corpus in March 2003, on the ground that the *indefinite* detention of a criminal alien pending removal violates the alien's constitutional rights if there is no country willing to accept him. If that decision is expanded nationwide, the federal government will be required to release more than 1,100 excludable aliens whom it has determined pose a risk to public safety.

In its brief asking that the Supreme Court review the case, WLF argued that the Sixth Circuit totally misconstrued relevant immigration law. WLF argued that federal law explicitly permits the indefinite detention of excludable aliens who have been ordered deported and whose release has been adjudged to constitute a threat to the community. WLF noted that "indefinite" detention does not mean life-long detention because Cuba can be expected eventually to agree to take back its citizens and because the INS has a policy of reviewing all such cases every six months and releasing from custody those aliens who the INS determines pose no threat to society. WLF argued that while citizens and permanent resident aliens may have a constitutional right that protects against incarceration based on predictions of future dangerousness, "excludable aliens" such as Rosales-Garcia and Carballo (that is, aliens who were intercepted while attempting to sneak into the country) have no such right.

WLF also argued that the Sixth Circuit's decision fails to take into account society's strong interest in ensuring that violent criminals not be permitted to roam the streets freely. WLF also argued that the case raises serious national security and foreign policy concerns. The Sixth Circuit has essentially held that the federal government is powerless to prevent a foreign country from dumping all of its undesirable citizens on our shores and then refusing to take them back, WLF argued.

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 on behalf of itself, the Allied Educational Foundation, Friends of Immigration Law Enforcement, and U.S. Representatives Elton Gallegly (Calif.) and Lamar Smith (Texas).

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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.