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COURT URGED TO ALLOW TERRORISM VICTIMS TO SUE FOR PUNITIVE DAMAGES

(Jacobsen v. Oliver)

The Washington Legal Foundation (WLF) this week urged the U.S. District Court for the District of Columbia to hold that victims of Middle East terrorism are permitted to seek punitive damages against MOIS (the Iranian foreign intelligence agency) based on MOIS's active involvement in the terrorist activity.

In a brief filed in *Jacobsen v. Oliver*, WLF argued that allowing punitive damage awards against government sponsors of terrorism will make it less likely that governments will be willing to provide such support in the future. WLF filed its brief in conjunction with the Jewish Institute for National Security Affairs (JINSA).

The case involves David Jacobsen, an American who was kidnapped by the terrorist organization Hezbollah and held hostage for several years in the 1980s in Lebanon. Upon his return to this country, Jacobsen filed a tort action to recover damages for his mistreatment. MOIS provided significant financial and logistical assistance to Hezbollah and thus was a logical target of Jacobsen's suit.

The issue before the district court is whether MOIS, as an arm of the government of Iran, is entitled to sovereign immunity under the Foreign Sovereign Immunities Act (FSIA). WLF's brief argues that MOIS is not entitled to immunity from suit to the extent that it engaged in the kidnapping and torture of Americans.

The case turns on the meaning of a 1996 law, the Flatow Amendment, which addresses the liability of an "official, employee, or agent of a foreign state designated as a state sponsor of terrorism." Although Iran has been designated as a state sponsor of terrorism, the FSIA imposes strict limits on the ability of an individual to seek damages in federal court against a foreign state. WLF's brief argues that MOIS is not synonymous with the Islamic Republic of Iran; rather, WLF argues, MOIS should be deemed an "agent" of Iran within the meaning of the Flatow Amendment. If MOIS is so deemed, then it can be held liable for punitive damage awards.

WLF argued that a governmental unit of a foreign state can be deemed a mere "agent" of

that state, and thus liable for punitive damages, if it is not directly involved in policymaking but rather: (1) is involved only in implementing policy at the operational level; and (2) the alleged activity does not constitute a core government function. WLF argued that MOIS is not a central policymaking body within the Iranian government but rather is a mere rogue intelligence service that provides support for terrorists around the world. WLF further argued that MOIS was not performing core government functions when it assisted in Jacobsen's kidnapping; WLF argued that kidnapping and terrorism should never be deemed core government functions.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a significant portion of its resources to participating in legal proceedings designed to strengthen national security and to protect American citizens from terrorist activity. Joel J. Sprayregen and Jared M. Wayne, attorneys in Chicago, assisted WLF in the preparation of its brief.

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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, www.wlf.org.