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COURT URGED TO UPHOLD DETENTION OF ALIENS CONVICTED OF FELONIES

(Demore v. Kim, No. 01-1491)

The Washington Legal Foundation (WLF) yesterday urged the U.S. Supreme Court to uphold the authority of the federal government to detain, pending deportation, those aliens ordered deported because they have been convicted of aggravated felonies.

In a brief filed in *Demore v. Kim*, WLF argued that alien felons have no constitutional right to be free from detention during the time it takes to complete deportation proceedings. A federal appeals court held that mandatory detention violates an alien felon's rights to due process of law; WLF's brief urged the Supreme Court to overturn that decision.

"Congress has adopted numerous laws in recent years to ensure that the American public is protected from dangerous alien criminals, yet several lower courts have simply refused to enforce those laws," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Once the government has determined that an alien's criminal past disqualifies him from continued residence in this country, there can be no justification for a court -- particularly in the post-9/11 era -- ordering that the alien nonetheless be set free," Samp said.

The case involves an alien, Hyong Joon Kim, with an extensive criminal background. Kim is a 24-year-old Korean citizen who has lived in the U.S. since childhood. His most recent conviction (for which he was sentenced to three years imprisonment) qualified as an "aggravated felony" under immigration law; the law mandates deportation of any alien convicted of an aggravated felony, and detention of the alien until deportation can be effected. Thus, when Kim was released from prison, the Immigration and Naturalization Service (INS) took Kim into custody and instituted deportation proceedings. But both the district court and the appeals court ruled that it is unconstitutional to detain Kim pending deportation unless the INS presents specific evidence demonstrating that Kim is a danger to society if set free. Accordingly, Kim has been free on bond since 1999 while he fights what ostensibly is an "automatic" deportation.

In its brief, WLF argued that the statute requiring detention -- 8 U.S.C. § 1226(c) -- is

constitutional. WLF argued that Congress (which adopted the statute) and the INS have good reason to believe that *any* alien felon who is released pending deportation poses a threat to public safety and is likely to flee rather than appear for deportation. WLF noted studies indicating that 89% of aliens in the position of Kim flee before they can be deported. WLF argued that in light of those figures, the INS has strong reason to detain *all* alien felons during the relatively short period of time necessary to effect deportation, regardless whether the INS has information that any particular alien poses an especially large flight risk or danger to public safety.

WLF also argued that Congress explicitly stripped the federal courts of jurisdiction to review INS decisions to detain alien felons facing deportation. WLF asked the High Court to rule that in light of the jurisdiction-stripping law, 8 U.S.C. § 1226(e), the courts never should have heard Kim's petition in the first place.

WLF is a public-interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to combating illegal immigration and ensuring that aliens who engage in criminal activities are excluded from American society. WLF filed its brief on behalf of itself, six Members of Congress (U.S. Representatives Bob Barr (Ga.), Joe Barton (Tex.), John Doolittle (Calif.), Walter Jones (N.C.), and Lamar Smith (Tex.), and U.S. Senator Jesse Helms (N.C.)), and the Allied Educational Foundation. WLF also filed a brief in the case in May 2002, in support of the INS's petition asking the Supreme Court to hear the case.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. WLF's brief is posted on its web site, www.wlf.org.