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## **COURT REINSTATES TORT SUIT ALLEGING HUMAN RIGHTS LAW VIOLATIONS**

*(Doe v. Exxon Mobil Corp.)*

The U.S. Court of Appeals for the District of Columbia Circuit today reinstated a lawsuit by activists who claim that a multinational corporation aided and abetted human rights violations by the government of Indonesia, by providing financial support to security forces. The 2-1 decision in *Doe v. Exxon Mobil Corp.* was a setback for the Washington Legal Foundation (WLF), which filed a brief urging affirmance of the district court's dismissal of the case.

WLF argued that federal law does not permit nonresident aliens to file tort suits in federal court based on overseas events having no connection to the United States. WLF noted that the only connection between this suit and the U.S. is that the defendant corporation has its principal place of business here. WLF urged the court to reject claims that such suits are authorized by the Alien Tort Statute (ATS), a 1789 law that lay dormant for nearly 200 years before activists began seeking to invoke it in the past several decades. WLF argued that the presumption against extraterritorial application of U.S. laws counseled against an expansive interpretation of the ATS.

The appeals court disagreed with WLF's argument, noting that numerous federal court decisions over the past 30 years have applied the ATS extraterritorially. But WLF took heart in the fact that Judge Kavanaugh made the extraterritoriality argument the centerpiece of his dissent. Also encouraging was the fact that the majority opinion included a lengthy section responding to WLF's argument. Because extraterritoriality had not been raised by the parties, WLF feared that the court might elect to ignore the argument. By engaging the argument so extensively in both its majority and dissenting opinions, the D.C. Circuit ensured that the extraterritoriality issue will figure prominently in future ATS cases.

"The ATS was adopted in 1789 to allow the federal courts to hear cases involving piracy and assaults on ambassadors," said WLF Chief Counsel Richard Samp following the Court's decision. "It has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for attacking the overseas conduct of corporations. The courts need to step in to bring a halt to this perversion of the ATS," Samp said.

In this case, Exxon Mobil was engaged in oil production activity in the Indonesian province of Aceh, for many years the site of a civil war. Members of the Indonesian

military were assigned to guard the Exxon Mobil facilities from attacks by insurgents. The plaintiffs (a group of Indonesian citizens) allege that those military officials violated their rights under international law by engaging in extrajudicial killing, torture, and prolonged arbitrary detention. They further allege that Exxon and its Indonesian subsidiary ought to be held responsible for the alleged misconduct of the military personnel.

The case was pending in federal district court in the District of Columbia for a decade. In 2005, the district court dismissed the ATS claims but allowed the case to continue based on common law claims. In 2009, the district court dismissed the remaining common law claims, finding that the plaintiffs lacked “prudential standing” to maintain their suit. The plaintiffs, supported by a large group of international law professors, appealed from both the 2005 dismissal of the ATS claims and the 2009 dismissal.

Much of the legal dispute between the parties regarding the ATS centers around the meaning of the U.S. Supreme Court’s 2004 decision in *Sosa v. Alvarez-Machain*, which dismissed the claims of a Mexican doctor who sued under the ATS after he was kidnaped in Mexico at the instigation of U.S. officials and brought to this country to face criminal charges. The plaintiffs’ bar has insisted that *Sosa* actually endorsed a broad reading of the ATS. In its brief, WLF argued that, to the contrary, *Sosa* made clear that alleged violations of international law only rarely are actionable in federal court.

In particular, WLF argued that when Congress adopted the ATS, it intended to limit the law’s application to events taking place either in the United States (*e.g.*, an attack on a foreign ambassador on the streets of an American city) or on the high seas in areas not under the control of any country (*e.g.*, attacks by pirates on shipping). WLF argued that in adopting the ATS, Congress never intended to permit foreigners to sue in United States courts based on events that took place overseas; rather, such suits should be filed in the country where the events took place, WLF argued.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 States. It devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. 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, [www.wlf.org](http://www.wlf.org).