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March 19, 2019

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In Victory for WLF, Supreme Court Upholds Detention of Criminal Aliens Pending Removal

(Nielsen v. Preap)

“Congress reasonably determined that the only way to ensure that aliens convicted of felonies are eventually deported is to detain them while removal proceedings are pending. By enforcing the mandatory-detention law as written, the Supreme Court ended a practice under which large numbers of criminal aliens committed new crimes after being set free.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The U.S. Supreme Court today overturned an appeals court decision that eviscerated enforcement of a 1996 federal statute that requires the detention of aliens convicted of serious crimes while they contest the government’s efforts to deport them. The decision was a victory for the Washington Legal Foundation (WLF), which (on behalf of a group of 10 Members of Congress) filed an *amicus* brief in *Nielsen v. Preap* urging reversal. The Court agreed with WLF that the mandatory-detention statute, 8 U.S.C. § 1226(c), applies even if immigration officials do not manage to take custody immediately following the alien’s release from criminal incarceration.

WLF filed its brief on behalf of 10 U.S. Representatives, including Andy Biggs, Scott DesJarlais, Paul Gosar, Andy Harris, Jody Hice, Doug LaMalfa, and Ted Yoho. The Members’ brief argued that Congress reasonably concluded that unless criminal aliens are detained while they await removal, there exists too great a danger that they will abscond and/or commit new felonies. The brief noted that one of the six criminal aliens released by order of the lower courts was later convicted of first-degree murder.

Section 1226(c) requires immigration authorities to detain a criminal alien “when the alien is released” from criminal incarceration and bars them from releasing the alien until removal proceedings are completed. The U.S. Court of Appeals for the Ninth Circuit held that the “when . . . released” language indicates that mandatory detention is inapplicable when, for whatever reason, immigration authorities fail to take the alien into custody immediately after his release—for example, when an uncooperative State fails to inform them of an impending release. The Supreme Court disagreed, concluding that Congress never intended that the obligation to detain and hold criminal aliens should dissipate if immigration officials delay even slightly in taking them into custody.

Celebrating its 42nd year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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