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WLF Urges Eleventh Circuit To Follow Supreme Court's Recent *Nestlé* Decision

(*Mamani v. Berzain*)

“The Supreme Court made clear that Congress’s incorporation of international law is fixed; it is not everchanging.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Eleventh Circuit to overturn a \$10 million jury verdict against a foreign nation’s civilian leaders. In an *amicus* brief, WLF argues that the Eleventh Circuit should follow the Torture Victim Protection Act’s plain language and limit incorporation of international law into the U.S. Code.

The case arises from a lawsuit against a foreign country’s civilian leaders. The plaintiffs argue that United States courts can hold the defendants liable for negligently overseeing military forces. The Eleventh Circuit has issued conflicting rulings in the case. First, it held that the defendants are liable only if they acted deliberately. But nine years later it changed course and held that negligence alone was enough to impose liability.

In its brief supporting the defendants, WLF argues that the jury charge conflicted with the TVPA’s plain language because it permitted a liability finding for mere negligence rather than a deliberate act. The brief explains that the Supreme Court’s recent *Nestlé* decision shows that courts must look to international law at the time Congress passed a statute—not today’s international law. Because 1992 international law did not include a civilian command-responsibility theory, the district court erred by allowing the jury to impose liability under that theory.

WLF’s brief also explains how holding civilian leaders liable for negligently overseeing troops would cause international relations problems. Allies’ civilian leaders could be hauled into U.S. court for their troops’ or American troops’ actions. This case also shows the perils of allowing juries to engage in international relations. The day after the District Court’s order denying the defendants’ motion for judgment as a matter of law, a foreign country used the order as proof that the U.S. should extradite the defendants. WLF therefore urges the Eleventh Circuit to limit the incorporation of international law, and allow the President to engage in international relations by reversing the jury’s verdict.

Celebrating its 44th 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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