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SUPREME COURT DECLINES TO REVIEW CASE IMPOSING EIGHT-YEAR SENTENCES FOR REGULATORY OFFENSE

(Blandford, et al., v. United States)

The United States Supreme Court declined to review a case filed by the Washington Legal Foundation (WLF) on behalf of three seafood importers and dealers seeking review and reversal of a lower court decision that upheld their convictions and sentences of up to eight years in prison for importing "illegal" seafood. In a outrageous case of over-criminalization of normal business activities, the seafood dealers were prosecuted and convicted for importing lobster tails from Honduras because they allegedly violated an obscure Honduran regulation requiring that frozen seafood be shipped in cardboard boxes instead of clear plastic bags, and because about three percent of the 70,000 pound shipment consisted of Caribbean spiny lobster tails that were less than 5.5 inches in length, which allegedly violated another Honduran regulation on size limits. The Honduran seafood exporter, David Henson McNab, was also convicted and sent to prison for eight years. A separate petition to the Supreme Court filed on his behalf by Miguel Estrada of Gibson Dunn & Crutcher, LLP. was also denied by the High Court.

WLF's case drew national media attention and was supported by briefs filed by the Republic of Honduras and by the National Association of Manufacturers, the National Federation of Independent Businesses, the National Wilderness Institute, and the National Association of Criminal Defense Lawyers.

Because the seafood was shipped in clear plastic bags instead of opaque boxes, they were also charged with "smuggling," even though the shipments regularly went through Customs inspections and testing by the Food and Drug Administration (FDA) at the port near Mobile, Alabama. Furthermore, because the seafood importers paid Mr. McNab for the seafood they purchased in a normal commercial transaction, they were charged with money laundering. All of these charges were predicated upon alleged violations of the Lacey Act, a federal law originally enacted in 1900 and amended by Congress in 1981, that makes it illegal to import any fish or wildlife that violates not only any United States law or regulation or any State law or regulation, but also "any foreign law." Not satisfied with seizing the 1999 shipment and imposing heavy civil fines, prosecutors based felony criminal charges against the individuals primarily on Honduran regulations regarding

lobster size and packaging.

There was just one problem with the Justice Department's case: the Honduran regulations that served as the predicate for the charges were later declared to be null and void, repealed, and otherwise of no legal effect by Honduran courts, the Honduran Attorney General, and other high level Honduran officials, including the Honduran Human Rights Commission. The Honduran government took the extraordinary step of filing a brief in the court of appeals, and again in the Supreme Court, providing the official views of the country that the regulations were invalid.

Nevertheless, in a 2-1 decision, the Court of Appeals for the Eleventh Circuit upheld the convictions and draconian sentences, ignored the official views of the Honduran government, and relied instead on the testimony of a lower-level Honduran agency attorney who testified at the trial that the regulations were valid. But she had already recanted her trial testimony after the Honduran courts subsequently ruled that the size regulation was invalid. As dissenting Circuit Judge Fay declared, "what was thought to be a crime turns out not to be a crime under Honduran law;" therefore, "under both U.S. and Honduran law, retroactive application is warranted for a criminal defendant charged or convicted of a subsequently declared invalid criminal statute."

In the petition filed on behalf of Robert D. Blandford, Abner Schoenwetter, and Diane H. Huang, all hardworking small business persons with no criminal history, WLF argued that the Supreme Court should have reviewed the case because the issue of deference to foreign countries about the meaning of their own laws was not only an important issue, but also because other circuit courts routinely give substantial deference to the foreign countries in these kind of cases. WLF had also asked the Court to review another question regarding the interpretation of the Lacey Act which prohibits importing seafood or wildlife in "violation of any *State law or regulation* or any foreign *law*." WLF argued that even if the Honduran regulations were valid, they do not come within the definition of foreign "law" since Congress made a clear distinction in the statute when referring to "law" and "regulation." In fact, Congress expressly repealed the prior Lacey Act which did include a provision regulation imports in violation of foreign law *or regulation*. WLF also noted that the National Marine Fishery Service which enforces the law, published monthly official price lists of Honduran lobster tails measuring less than 5.5 inches. WLF further noted that sentences for many drug dealers are less than those imposed in this case.

WLF attorneys were assisted with *pro bono* support by Barry M. Hartman and Dylan B. Carp of Kirkpatrick & Lockhart, LLP. WLF's clients will begin serving their sentences in the next month or so.

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