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## COURT ASKED TO ALLOW DEPORTATION OF PALESTINIAN TERRORISTS

*(Reno v. American-Arab Anti-Discrimination Comm., No. 97-1252)*

The Washington Legal Foundation (WLF) today asked the U.S. Supreme Court to review a case in which fundraisers for a Palestinian terrorist organization have blocked government efforts to have them deported for the past 11 years.

In a brief filed in *Reno v. American-Arab Anti-Discrimination Committee*, WLF argued that the lower-court decisions in this case threaten the government's ability to take effective measures to combat terrorism, both here and abroad. WLF argued that the First Amendment does not protect the activities of those who engage in fundraising for terrorist organizations with full knowledge of the organizations' purposes.

WLF filed its brief on behalf of several groups with a strong interest in Middle East affairs, including the Jewish Institute for National Security Affairs, the Jewish Policy Center, the Christians' Israel Public Action Campaign, and the Allied Educational Foundation.

Since 1987, the federal government has been attempting to deport eight aliens because they have engaged in fundraising for the Popular Front for the Liberation of Palestine (PFLP), a terrorist organization that has proclaimed the United States to be one of its principal enemies. Among its many violent acts, the PFLP assassinated the U.S. ambassador to Lebanon in 1976, and it has suspended its participation in the Palestinian Liberation Organization (PLO) because of its bitter opposition to the Oslo peace accords between Israel and the PLO.

The government sought to deport six of the eight aliens because their visas had expired. The U.S. Court of Appeals for the Ninth Circuit agreed that the six were in this country illegally, but it nonetheless enjoined deportation proceedings on the ground that the six were the victims of "selective prosecution." The appeals court noted that the government often does not seek to deport aliens solely on the basis of visa violations; the

court said the six were improperly singled out for deportation solely because they had exercised their First Amendment rights to associate with the PFLP.

The government sought to deport the remaining two individuals (who are both *resident* aliens) on the ground that they had violated laws prohibiting the provision of material support to terrorist groups. The appeals court blocked those deportation proceedings as well, on the ground that the First Amendment protects the right to raise funds for an organization -- except in those instances in which the government can prove that one has a "specific intent" to further the organization's terroristic aims. The appeals court said that the government could not prove such an intent in this case, because the PFLP uses a small portion of its funds for humanitarian purposes, and the eight aliens stated that it was those humanitarian activities that they wished to support.

In its brief, WLF argued that the Supreme Court ought to agree to review the appeals court decision because it appears to conflict with the Supreme Court's leading decisions on selective prosecution and First Amendment freedom of association issues. WLF argued that the act of fundraising is conduct that has both expressive and nonexpressive elements. WLF argued that in such cases involving expressive conduct, the appeals court should have reviewed the government's actions under the more relaxed First Amendment standard articulated in *United States v. O'Brien*.

WLF also argued that the appeals court's "selective prosecution" analysis makes no sense. The appeals court held, in essence, that the Fifth Amendment's prohibition of "selective prosecution" requires the government to treat all terrorists alike; it may not seek to deport those who fundraise for one terrorist organization unless it has a policy of deporting *all* individuals who raise funds for terrorists. WLF argued that national security concerns require the government to decide which terrorist groups threaten American interests and which do not. WLF further argued that the federal government should have the discretion to deport aliens who fundraise for anti-American terrorist groups, such as the PFLP, while not deporting aliens who fundraise for groups that have engaged in terrorism but do not threaten the U.S., such as the Nicaraguan Contras.

The petition filed by the federal government seeking Supreme Court review of this case also argued that the federal courts lack jurisdiction to enjoin on-going deportation proceedings. WLF's brief does not address that jurisdictional issue.

WLF is a public-interest law and policy center with supporters nationwide. It devotes a significant portion of its resources to promoting America's national security.

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