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April 11, 2007

COURT URGED TO BAR USE OF U.S. COURTS TO ASSERT CLAIMS LACKING NEXUS TO U.S.

(Mother Doe v. Sheikh Mohammed)

The Washington Legal Foundation (WLF) this week urged a federal district court in Miami not to permit human rights activists to use U.S. courts as a platform for asserting international law claims that bear no relation to the United States. WLF argued that when it adopted the Alien Tort Statute (ATS) in 1789, Congress never intended to assign federal courts the role of policing alleged human rights violations throughout the world.

In a brief filed in *Mother Doe v. Sheikh Mohammed*, WLF argued that federal court intervention in overseas activities is particularly inappropriate when, as here, the case raises sensitive foreign policy considerations. Noting that the defendants in the suit include senior officials in the government of the United Arab Emirates (UAE), WLF argued that the issues raised by the suit ought to be handled within the UAE -- given that no Americans are involved in the suit and all the events described took place overseas.

"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 after filing WLF's suit. "It has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for challenging overseas conduct of which they do not approve. The federal courts need to step in to bring a halt to this perversion of the ATS," Samp said.

This case involves allegedly oppressive working conditions within the camel racing industry in Middle East countries. The suit alleges that the industry in the past recruited young boys from Pakistan and other Muslim countries to work as jockeys, and then held them in dangerous and slave-like conditions for little or no pay. The plaintiffs (several former jockeys and their family members) allege that the defendants -- including the President of the UAE and the Ruler of Dubai -- actively participated in the camel racing industry and were aware of the mistreatment of child jockeys.

In fact, as the plaintiffs concede, the UAE has taken significant steps both to eliminate use of children as jockeys and to repatriate and compensate past victims of abusive labor practices. Working in conjunction with UNICEF (the United Nations Children's Fund), the UAE has established the UAE Program, which to date has resulted in the repatriation of more than 1,000 children. The plaintiffs nonetheless insist that they should be entitled to sue for punitive damages in U.S. courts under the ATS, based on alleged violations of international law.

In its brief, WLF argued that the case should be dismissed under the doctrine of international comity. WLF argued that where, as here, the issues raised in a lawsuit are already being addressed by a forum located in the country in which those issues arose, comity requires

U.S. courts to abstain from adjudicating those same issues. WLF noted that the U.S. government has endorsed the UAE Program as a means of resolving this issue, and that the federal courts should not risk undermining that program -- as well as endangering U.S. relations with a key foreign ally -- by jumping into a dispute with no connection to the United States. WLF argued that if federal courts insist on adjudicating disputes such as this one with no connection to the U.S., then the Executive Branch will have difficulty maintaining its opposition to efforts in Germany and elsewhere to investigate potential criminal charges against senior U.S. officials based on their conduct of U.S. foreign policy.

WLF also argued that the case should be dismissed for lack of personal jurisdiction over the defendants. WLF noted that none of the plaintiffs has ever visited the U.S., their claims do not involve any events taking place within the U.S., and the plaintiffs do not allege that the defendants ever visited Florida. While the plaintiffs allege that the defendants own corporations that have done a limited amount of business in Florida, such corporate activity has never been deemed sufficient to establish personal jurisdiction over shareholders, WLF argued.

In 2004, the U.S. Supreme Court ruled in *Sosa v. Alvarez-Machain* that the ATS is not completely moribund -- it creates federal court jurisdiction over a very limited category of tort claims asserted by aliens. The Court also held open the possibility that -- in addition to the 1789 torts (principally, piracy) deemed actionable under the ATS -- there *may* exist additional federal common law rights of action over which federal courts are permitted to exercise ATS jurisdiction. In its brief, WLF argued that while a very few actions (such as genocide) might qualify, the types of oppressive, slave-like labor conditions alleged by the plaintiffs are not the types of potentially-actionable conduct that *Sosa* had in mind.

WLF is a public interest law and policy center with supporters nationwide. WLF devotes a substantial portion of its resources to opposing expansive private rights of action under the ATS because such litigation generally seeks (inappropriately, in WLF's view) to incorporate large swaths of international law into the domestic law of the U.S.

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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 website, www.wlf.org.