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COURT UPHOLDS NEW YORK DRIVER'S LICENSE RESTRICTIONS

(Cubas v. Martinez)

The New York Court of Appeals (that State's highest court) today upheld new regulations adopted by the State of New York that make it extremely difficult for illegal aliens to obtain driver's licenses. The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief urging the courts to uphold the regulations.

In a brief filed in *Cubas v. Martinez*, WLF argued that the restrictions are needed to ensure that terrorists and criminals do not obtain fake identification documents that can facilitate their activities. The Court of Appeals agreed and held that those interests outweigh any interests that illegal aliens may have in obtaining driver's licenses. The court upheld the decision of an intermediate appellate court to overturn a trial court's preliminary injunction against the new regulations.

"The trial court injunction against these new regulations seriously impaired national security. Law enforcement personnel unanimously agree that the failure to ensure that driver's licenses are issued only to those whose identity has been confirmed greatly facilitates a wide range of criminal activity, from money laundering to check fraud to terrorism," said WLF Chief Counsel Richard Samp after reviewing the Court of Appeals decision. "Illegal aliens have no cause to complain if the new rules make it difficult for them to obtain driver's licenses, because they have no right to be in this country in the first place," Samp said.

The new regulations, adopted by New York's Department of Motor Vehicles (DMV), are intended to implement a statutory mandate that DMV issue licenses only to those who can adequately establish their "identity." In the past, New York, and most other states, have been relatively lax in accepting proof of "identity." The result has been that criminals and terrorists have been able to obtain driver's licenses under false names using forged identity documents. The new driver's license is then used in turn to obtain a whole host of services, from bank accounts to aircraft boarding privileges.

Among other changes, the new DMV regulations prohibit use of foreign-source documents (such as foreign passports) to establish identity, because their authenticity cannot easily be verified. The result is that illegal aliens rarely qualify to obtain new or

renewed driver's licenses, because they rarely possess verifiable U.S.-source documents (*e.g.*, birth certificates or immigration papers) that establish their identity.

A group of illegal aliens filed suit in 2004 against the new regulations, alleging among other things that the State Legislature had not authorized DMV to adopt rules that had the effect of prohibiting all illegal aliens from obtaining driver's licenses. The plaintiffs claimed that any decision to bar all illegal aliens from obtaining licenses ought to be made by the Legislature, not by an administrative agency. A Manhattan trial judge agreed and in May 2005 issued an injunction against the new rules. New York's Appellate Division overturned the trial judge's injunction in July 2006. The plaintiffs then appealed to the New York Court of Appeals, which today affirmed the Appellate Division.

The Court of Appeals agreed with WLF's argument that DMV's authority to demand proof of "identity" includes the right to adopt any reasonable rule designed to ensure that the driver license applicant is who he says he is. In particular, DMV was acting within its authority when it required applicants lacking a Social Security number to submit U.S. Department of Homeland Security documents demonstrating that they nonetheless are eligible to be in this country. The regulations are not rendered invalid simply because they have the effect of preventing illegal aliens from obtaining licenses, the Court of Appeals agreed.

WLF's brief noted that a new federal law, The Real ID Act of 2005, essentially mandates that *all* States by 2008 adopt rules akin to New York's. WLF argued that Congress's adoption of the Real ID Act, designed to prevent terrorists from obtaining driver's licenses, demonstrates that the security concerns that led New York to adopt its new regulations are legitimate. WLF noted that 18 of the 19 9/11 hijackers acquired some form of U.S. identification, some by fraud, and that acquisition of these forms of identification assisted them in boarding commercial flights, renting cars, and engaging in other activities that aided their attacks.

WLF is a public interest law and policy center with supporters in all 50 States, including many in New York. WLF devotes a substantial portion of its resources to promoting America's security and enforcement of U.S. immigration laws. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

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For additional information, contact WLF Chief Counsel Richard Samp, 202-588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.