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

(Mother Doe v. Sheikh Mohammed)

A federal district court in Miami ruled today that human rights activists are not permitted to use U.S. courts as a platform for asserting international law claims that bear no relation to the United States. The court dismissed tort claims filed against leaders of the United Arab Emirates (UAE), ruling that the defendants lacked sufficient contacts with this country to subject them to the jurisdiction of federal courts in Florida.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *Mother Doe v. Sheikh Mohammed*, urging that the case be dismissed. 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.

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 included senior officials in the government of the UAE, WLF argued that the issues raised by the suit ought to be handled within the UAE -- given that no Americans were involved in the suit and all the events described took place overseas. The court did not address those arguments. Instead, it based its dismissal on an alternative argument raised by WLF: the courts lack jurisdiction over individuals, such as the defendants, who have insufficient contacts with the forum state.

"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 reading the court's decision. "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. Today's decision is a breath of fresh air. The federal courts need to step in to bring a halt to this perversion of the ATS," Samp said.

This case involved allegedly oppressive working conditions within the camel racing industry in Middle East countries. The suit alleged 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) alleged 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 insisted 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 ally -- by jumping into a dispute with no connection to the U.S. WLF argued that if federal courts insist on adjudicating disputes such as this one with no connection to the U.S., then the U.S. 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.

The court instead ruled, as WLF had also urged, that the case should be dismissed for lack of personal jurisdiction over the defendants. WLF noted that none of the plaintiffs had ever visited the U.S., their claims did not involve any events taking place within the U.S., and the plaintiffs did not allege that the defendants ever visited Florida. While the plaintiffs alleged that the defendants own corporations that have done business in Florida, such corporate activity has never been deemed sufficient to establish personal jurisdiction over shareholders, WLF argued. The district court agreed and dismissed the suit. The plaintiffs now have two options: they can appeal or they can refile the suit in Kentucky, a State in which the defendants have somewhat greater contacts.

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.