

October 10, 2000

COURT AGREES TO REVIEW DECISION ORDERING RELEASE OF ALIEN CRIMINALS

(*Reno v. Kim Ho Ma*, No. 00-38)

The U.S. Court Supreme Court today agreed to review a lower-court decision that could result in the release from detention of hundreds of illegal aliens convicted of violent crimes. The decision was a victory for the Washington Legal Foundation (WLF), which had filed a brief urging the High Court to review the case, *Reno v. Kim Ho Ma*.

WLF argued in its brief that society's interest in being protected from violent criminals far outweighs any interest that illegal aliens may have in being free from detention during the time it takes to arrange their deportation.

"Congress has adopted numerous laws in recent years to ensure that the American public is protected from dangerous alien criminals; yet the appeals court's holding results in a rule that provides the public with even less protection than it had prior to the adoption of those laws," said WLF Chief Counsel Richard Samp after the Supreme Court agreed to review the case. "Given the large number of aliens whose cases are affected by the appeals court's holding, this case cries out for reversal," Samp said.

The case involves Kim Ho Ma, a Cambodian who came to this country in 1986. In 1995, Ma and four fellow gang members ambushed and shot another gang member and left him to bleed to death. Charged with first-degree murder, Ma was convicted of first-degree manslaughter and was sentenced to three years in prison. He was released from state prison (in Washington State) in 1997 and handed into the custody of the Immigration and Naturalization Service (INS), which immediately began deportation proceedings. Ma's deportation order became final in October 1998.

However, to date Cambodia has refused to accept Ma back into the country. A federal district court in Seattle ordered Ma's release from detention in October 1999, on the ground that the *indefinite* detention of a criminal alien pending deportation violates the alien's constitutional rights if there is no country willing to accept him. The INS appealed from that decision. The U.S. Court of Appeals for the Ninth Circuit in San Francisco affirmed the decision in April, finding that Congress did not intend to permit the detention of illegal aliens who lack immediate prospects for deportation, for more than 90 days after the entry of a final deportation order.

In its brief asking that the Supreme Court review the case, WLF argued that the Ninth Circuit totally misconstrued relevant immigration law. WLF argued that federal law explicitly permits the indefinite detention of aliens who have been ordered deported and whose release has been adjudged to constitute a threat to the community. WLF noted that "indefinite" detention does not mean life-long detention because Cambodia can be expected eventually to agree to take back its citizens and because the INS has a policy of reviewing all such cases every six months and releasing from custody those aliens who the INS determines pose no threat to society.

WLF also argued that the Ninth Circuit's decision fails to take into account society's strong interest in ensuring that violent criminals not be permitted to roam the streets freely. WLF noted that after his October 1999 release, Ma was arrested (and is free on bail awaiting trial) for a vicious assault.

The Supreme Court also agreed to review a nearly identical case, *Zadvydas v. Underdown*, in which the indefinite detention of a criminal alien was *upheld* by the lower courts. *Zadvydas* involves the INS's efforts to deport to Lithuania a life-long career criminal and major drug dealer; although the alien is a Lithuanian citizen, Lithuania does not want to take him back because he has lived in the United States virtually his entire life. The two cases are likely to be orally argued in February, with a final decision likely no later than June 2001.

WLF is a public-interest law and policy center with supporters in all 50 states, including many in Washington State. It devotes a significant portion of its resources to combatting illegal immigration and ensuring that aliens who engage in criminal activities are excluded from American society. WLF filed its brief on behalf of itself and the Allied Educational Foundation (AEF). WLF and AEF also filed a brief in the *Kim Ho Ma* case in the Ninth Circuit.

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