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## **COURT URGED TO BAR SUITS CLAIMING VIOLATIONS OF INTERNATIONAL LAW**

***(Sosa v. Alvarez Machain, No. 03-339)***

The Washington Legal Foundation this week urged the U.S. Supreme Court to review and ultimately overturn an appeals court decision that allows aliens to second-guess American law enforcement policy by filing suits for money damages under the Alien Tort Statute (ATS) alleging violations of international law.

In a brief filed in *Sosa v. Alvarez Machain*, WLF argued that allowing such suits threatens to undermine the ongoing war on terrorism. WLF filed its brief on behalf of itself, the National Fraternal Order of Police, and the Allied Educational Foundation.

"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 attacking the overseas conduct of American corporations. The Supreme Court needs to step in to bring a halt to this perversion of the ATS," Samp said.

In this case, the lower court affirmed an award of damages imposed against a law enforcement official who sought to bring Humberto Alvarez Machain, a suspected murderer, to justice. Alvarez Machain was present in a Guadalajara, Mexico house in 1985 while Mexican drug cartel members tortured and murdered Enrique Camarena-Salazar, an American citizen and agent of the Drug Enforcement Administration (DEA). Alvarez Machain was indicted for murder by a federal grand jury in 1990, but discussions with Mexican officials failed to produce an agreement that he be turned over to American authorities.

California against the United States, Sosa, and other individuals. He claimed that by apprehending and detaining him without a Mexican arrest warrant (all they had was an American arrest warrant), the defendants violated his rights under international law.

Sosa was the only defendant whose case went to trial. The trial court held that Alvarez Machain could proceed against Sosa under the Alien Tort Statute, and it ordered that Sosa pay \$25,000 in damages for apprehending and detaining him, supposedly in violation of international law. The U.S. Court of Appeals for the Ninth Circuit in San Francisco not only upheld that damages award but also reinstated Alvarez Machain's claims against the United States. The United States is separately appealing the decision.

In its brief, WLF argued that Sosa's conduct -- which was authorized by senior officials of the U.S. government -- did not violate international law. More importantly, WLF argued, the ATS does not authorize suits in the federal courts to enforce international law. WLF argued that while the ATS grants the federal courts *jurisdiction* to hear a limited number of cases (such as piracy cases), it does not grant individuals *any* rights to bring suits, and certainly does not create a right to sue for the enforcement of so-called international law (which to a large extent is a creation of law professors, not courts). WLF argued that the only type of law that the federal courts are permitted to enforce is domestic law created by Congress or by the U.S. Constitution.

WLF also argued that permitting suits such as Alvarez Machain's would undermine law enforcement and the ongoing war on terrorism. WLF argued that U.S. law enforcement officials must be permitted to arrest al Qaeda leaders and other terrorists in foreign countries, even when the government of those countries is non-functioning or seeks to harbor the terrorists. WLF also argued that the ATS is being used improperly by activists to challenge the overseas conduct of American corporations; those activists routinely allege that the working conditions at overseas facilities violate their notions of international law.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a substantial portion of its resources to promoting America's national security. The National Fraternal Order of Police, which has over 310,000 members nationwide, joined in on WLF's brief because it seeks to ensure that its members will not be subject to the same types of damage claims faced by Sosa.

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