

December 26, 2000

COURT URGED TO PERMIT GOVERNMENT TO DETAIN ALIEN CRIMINALS

(*Zadvydas v. Underdown*, No. 99-7791)
(*Reno v. Kim Ho Ma*, No. 00-38)

The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to overturn a series of lower-court decisions that could result in the release from detention of hundreds of illegal aliens convicted of violent crimes. In a brief filed in the consolidated cases of *Zadvydas v. Underdown* and *Reno v. Kim Ho Ma*, WLF argued 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 several lower courts have simply refused to enforce those laws," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Once the government has determined that an alien's criminal past disqualifies him from continued residence in this country, there can be no justification for a court ordering that the alien nonetheless be set free," Samp said.

Each of the two consolidated cases involves an alien with a violent criminal background. One 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 issued a deportation order in October 1998. However, to date Cambodia has refused to accept Ma back into the country. He has been free from detention since October 1999, when a federal court ordered his release 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 other case involves Kestutis Zadvydas, a German-born alien whose parents are of Lithuanian heritage. Zadvydas, who came to this country as a child, has spent virtually his entire life either engaged in criminal activity or serving time in prisons as a result of

repeated criminal convictions. The INS tried to deport Zadvydas in the 1970s as a result of his criminal activity, but Zadvydas avoided deportation for 15 years by hiding from the INS. They finally located him in 1992 when he was arrested and sentenced to 16 years imprisonment in Virginia as a major drug dealer. Virginia released Zadvydas to the INS in 1994, and he soon thereafter was ordered deported. However, because it is not altogether clear whether Zadvydas should be considered a citizen of Germany or Lithuania, neither country has been willing to accept him. A federal district court ordered Zadvydas released from INS custody in 1997 on the ground that his indefinite detention by the INS violated his constitutional rights. Although that decision was later overturned on appeal, Zadvydas has remained free pending a decision from the Supreme Court.

In its brief asking that the Supreme Court permit the continued detention of both Zadvydas and Ma, WLF noted that the INS generally does *not* detain aliens who have been ordered deported but whose deportation has been delayed. Rather, WLF noted, the INS only detains such aliens if they have been convicted of an "aggravated felony" *and* they are deemed by INS officials to constitute a threat to public safety. WLF argued that under those circumstances, the Constitution does not prohibit the detention of aliens awaiting deportation. WLF argued that lower-court decisions to the contrary fail to take into account society's strong interest in ensuring that violent criminals not be permitted to roam the streets freely. WLF noted, for example, that after his October 1999 release, Ma was arrested (and is free on bail awaiting trial) for a vicious assault.

WLF also asserted that "indefinite" detention of Zadvydas and Ma does not mean life-long detention because countries such as Cambodia can be expected eventually to agree to take back their 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.

The Supreme Court agreed to review these cases in October. That decision was a victory for WLF, which in July filed a brief with the Court asking it to hear the cases. They will be argued before the Court 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. It devotes a significant portion of its resources to combating 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 *Ma* case when it was in the federal appeals court.

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