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COURT URGED NOT TO PERMIT TORT SUIT ALLEGING OVERSEAS RIGHTS VIOLATIONS

(Kiobel v. Royal Dutch Petroleum)

The Washington Legal Foundation (WLF) yesterday urged the U.S. Supreme Court to dismiss a lawsuit filed by human rights activists; the suit claims that a multinational corporation aided and abetted human rights violations by the government of Nigeria against its own citizens.

In a brief filed in *Kiobel v. Royal Dutch Petroleum Co.*, WLF argued that federal law does not permit nonresident aliens to file tort suits in federal court based on overseas events having no connection to the United States. WLF noted that the only connection between this suit and the United States is that the defendant (Royal Dutch Petroleum, an oil company based in the Netherlands and the United Kingdom) conducts some business in the United States. WLF urged the court to reject claims that such suits are authorized by the Alien Tort Statute (ATS), a 1789 law that lay dormant for nearly 200 years before activists began seeking to invoke it in the past several decades.

“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 brief. “It has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for attacking the overseas conduct of corporations. The courts need to step in to bring a halt to this perversion of the ATS,” Samp said.

Royal Dutch Petroleum operates oil wells in the Ogoni region of Nigeria. Some residents of the Ogoni region have actively opposed the policies of the Nigerian government; they contend that the government has responded to their opposition with a brutal crackdown on the Ogoni people, including torture, executions, and crimes against humanity. They further allege that Royal Dutch Petroleum provided support for the Nigerian government that aided and abetted the crackdown. The plaintiffs, Nigerians who have been granted political asylum in the United States, did not file suit against Nigeria or any of its officials. Instead, in 2002 they filed suit against Royal Dutch Petroleum under the ATS in federal court in New York.

In September 2010, the U.S. Court of Appeals for the Second Circuit dismissed the lawsuit on the grounds that corporations are not proper defendants under the ATS. In October 2011, the Supreme Court agreed to review that decision. Following oral argument in March of this year, the Supreme Court called for briefing on an additional

issue: whether and under what circumstances the ATS allows courts to recognize a cause of action for “violations of the law of nations” occurring within the territory of a foreign nation.

Much of the legal dispute between the parties centers around the meaning of the U.S. Supreme Court’s 2004 decision in *Sosa v. Alvarez-Machain*, which dismissed the claims of a Mexican doctor who sued under the ATS after he was kidnaped in Mexico at the instigation of U.S. law enforcement authorities and brought to this country to face criminal charges. The plaintiffs’ bar has insisted that *Sosa* actually endorsed a broad reading of the ATS. In its brief, WLF argued that, to the contrary, *Sosa* made clear that alleged violations of international law only rarely are actionable in federal court.

In particular, WLF argued that when Congress adopted the ATS, it intended to limit the law’s application to events taking place either in the United States (*e.g.*, an attack on a foreign ambassador on the streets of an American city) or on the high seas in areas not under the control of any country (*e.g.*, attacks by pirates on shipping). WLF argued that in adopting the ATS, Congress never intended to permit foreigners to sue in United States courts based on events that took place overseas; rather, such suits should be filed in the country where the events took place, WLF argued.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 States. It devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. WLF filed its brief on behalf of itself and the Allied Educational Foundation

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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 web site, www.wlf.org.