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Supreme Court Upholds Law Requiring Detention of Criminal Aliens Pending Removal

(Jennings v. Rodriguez)

“The Supreme Court’s *Jennings* decision is a victory for the rule of law. When Congress determines that the best way to prevent aliens convicted of felonies from repeating their crimes is to lock them up until they can be deported, lower courts have no authority to second-guess that determination by attempting to re-write the law.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The U.S. Supreme Court today upheld key provisions of a 1996 federal statute that requires the detention of several classes of aliens (including convicted felons) while they contest the government’s efforts to deport them. The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in *Jennings v. Rodriguez* in support of the statute on behalf of 31 Members of Congress. The Court agreed with WLF that the statute should be enforced as written, despite the claims of some critics that detaining criminal aliens indefinitely might violate their constitutional rights.

WLF filed its brief on behalf of 31 Members of Congress: House Judiciary Chairman Robert Goodlatte, Senate Judiciary Chairman Charles Grassley, House Homeland Security Chairman Michael McCaul, House Science Committee (and former Judiciary Committee) Chairman Lamar Smith, Senator Ted Cruz, and Representatives Brian Babin, Andy Biggs, Diane Black, Marsha Blackburn, Dave Brat, Mo Brooks, Scott DesJarlais, Jeff Duncan, Bill Flores, Trent Franks, Paul Gosar, Sam Graves, Jody Hice, Lynn Jenkins, Walter Jones, Steve King, Doug LaMalfa, Doug Lamborn, Blaine Luetkemeyer, Tom McClintock, Roger Marshall, John Ratcliffe, Mike Rogers, Dana Rohrabacher, Kevin Yoder, and Ted Yoho. The brief argued that Congress reasonably concluded that unless criminal aliens are detained while they await removal, there is too great a danger that they will abscond and/or commit new felonies.

The lower court essentially read the mandatory detention provisions out of the statute, concluding that under the “constitutional avoidance” doctrine they should be interpreted as applying only during the first six months of detention—thereby avoiding any danger of violating the constitutional rights of detained aliens. The Supreme Court disagreed, ruling that the “constitutional avoidance” doctrine is inapplicable when (as here) there is no ambiguity in the statute. The Court remanded the case to permit the lower courts to determine whether the statute violates the plaintiffs’ constitutional rights. The Court agreed with WLF that any constitutional claims should be considered on an individualized basis; the brief of WLF and the 31 Members pointed out that the lower courts lack statutory authority to consider claims on a class-wide basis.

Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.