

Court: Sept. 11 detainee lawsuit cannot proceed



By JESSE J. HOLLAND – May 18, 2009

WASHINGTON (AP) — FBI Director Robert Mueller and former Attorney General John Ashcroft cannot be sued by a former Sept. 11 detainee who claimed he was abused because of his religion and ethnicity, a sharply divided Supreme Court said Monday in a decision that could make it harder to sue top officials for the actions of low-level operatives.

The court overturned a lower court decision that let Javid Iqbal's (Ick-ball) lawsuit against the high-ranking officials proceed.

Iqbal is a Pakistani Muslim who spent nearly six months in solitary confinement in New York in 2002. He had argued that while Ashcroft and Mueller did not single him out for mistreatment, they were responsible for a policy of confining detainees in highly restrictive conditions because of their religious beliefs or race.

But the government argued that there was nothing linking Mueller and Ashcroft to the abuses that happened to Iqbal at a Brooklyn, N.Y., prison's Administrative Maximum Special Housing Unit, and the court agreed.

"The complaint does not show or even intimate, that petitioners purposefully housed detainees in the ADMAX SHU due to their race, religion or national origin," said Justice Anthony Kennedy, who wrote the majority opinion. "All it plausibly suggests is that the nation's top law enforcement officers, in the aftermath of a devastating attack, sought to keep suspected terrorists in the most secure conditions available until the suspects could be cleared of terrorist activity."

The New York-based 2nd U.S. Circuit Court of Appeals had said the lawsuit could proceed.

Richard A. Samp, lawyer for the Washington Legal Foundation, welcomed the court's ruling. "It ensures the ability of senior national security officials to perform their duties without the distraction of having to defend against claims for money damages," he said.

"The decision's effect will be widespread. By enabling all defendants to win dismissal of unsubstantiated claims, it will make it more difficult for plaintiffs to coerce settlements from defendants seeking to avoid the costs of discovery," Samp said.

The court's liberal justices — David Souter, Ruth Bader Ginsburg, Stephen Breyer and John Paul Stevens — dissented from the court's opinion.

"Iqbal contends that Ashcroft and Mueller were at the very least aware of the discriminatory detention policy and condoned it and perhaps even took part in devising it," Souter said. He should be given chance to prove his claims in court, Souter said.

Kennedy said the Sept. 11 attacks were carried out by Arab Muslim hijackers who counted themselves members of al-Qaida.

"It should come as no surprise that a legitimate policy directing law enforcement to arrest and detain individuals because of their suspected link to the attacks would produce a disparate, incidental impact on Arab Muslims, even though the purpose of the policy was to target neither Arabs nor Muslims," he said.

The Supreme Court sent the case back to the lower courts. Iqbal could have a case against others, Kennedy said.

His "account of his prison ordeal could, if proved, demonstrate unconstitutional misconduct by some governmental actors," Kennedy said. "But the allegations and pleadings with respect to these actors are not before us here."

Iqbal was arrested at his Long Island home on Nov. 2, 2001, and charged with nonviolent federal crimes unrelated to terrorism. Two months later, he was moved to a holding facility in Brooklyn, where he was in solitary confinement for more than 150 days without a hearing, his lawsuit alleges.

He said he was subjected to physical and verbal abuse, including unnecessary strip searches. On the day he entered solitary confinement, he says, he was thrown against a wall, kicked in the stomach, punched in the face and dragged across a floor by federal prison officers.

He was cleared of any involvement in terrorism and was deported in January 2003 after pleading guilty to fraud and being sentenced to a year and four months in prison.

The appeals court said it recognized the gravity of the situation confronting government investigators after the 2001 terrorist attacks and agreed that some forms of government action that otherwise would not be proper are permitted in emergencies.

But it said most of the rights cited in the lawsuit "do not vary with surrounding circumstances, such as the right not to be subjected to needlessly harsh conditions of confinement, the right to be free from the use of excessive force and the right not to be subjected to ethnic or religious discrimination."

A 2003 Justice Department report found "significant problems" with the treatment of post-Sept. 11 detainees at the facility in Brooklyn, including physical abuse and mistreatment.

The case is Ashcroft and Mueller v. Iqbal, 07-1015.