

Supreme Court tosses former detainee's lawsuit

The justices rule that Javid Iqbal, a Pakistani Muslim arrested after Sept. 11, may not sue former Atty. Gen. John Ashcroft and FBI Director Robert S. Mueller III for abuses he says he suffered.

By David G. Savage

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Reporting from Washington — The Supreme Court served notice Monday that it would set a high bar for anyone seeking to hold top government officials liable for abuse suffered by prisoners held as part of the Bush administration's war on terrorism.

Justice Anthony M. Kennedy spoke for a 5-4 majority in throwing out a lawsuit against former Atty. Gen. John Ashcroft and FBI Director Robert S. Mueller III that claimed the two ordered the roundup of hundreds of Muslim men after the Sept. 11 terrorist attacks.

"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," Kennedy said. "The Sept. 11 attacks were perpetrated by 19 Arab Muslim hijackers who counted themselves members in good standing of Al Qaeda, an Islamic fundamentalist group."

The ruling could serve as a procedural barrier for lawsuits against former officials who have been sued by prisoners being held as "enemy combatants."

The suit dismissed Monday alleged that Javid Iqbal -- who worked as a cable television installer on Long Island, N.Y. -- was roughed up, strip-searched, shackled and locked in a maximum-security facility for months because he was a Pakistani Muslim.

His case, the first involving the post-Sept. 11 detention of more than 700 men in the U.S. to get to the Supreme Court, described Ashcroft as the "principal architect" of the policy. None of those arrested was charged as a terrorist, although many pleaded guilty to immigration offenses.

In the decision, the high court shielded Ashcroft and Mueller from being sued because Iqbal could not show that the two personally ordered that he be mistreated.

Peter S. Margulies, a law professor at Roger Williams University in Rhode Island, said other former prisoners would "face an insoluble dilemma. They will need information to meet the heightened pleading requirement. But they won't be able to get it without discovery [the pretrial phase during which relevant facts must be disclosed], which today's ruling will preclude."

Several former detainees at Guantanamo Bay, Cuba, have sued top Pentagon officials, alleging they were subjected to abuse.

Former Defense Secretary Donald H. Rumsfeld and his deputies face a lawsuit from Jose Padilla, a native New Yorker with ties to Al Qaeda who was arrested and held for 3 1/2 years in a military brig in South Carolina. Padilla was convicted in federal court of aiding terrorists, but he has sued on the grounds that he was subjected to abuse.

Hope R. Metcalf, a human rights lawyer who teaches at Yale Law School, sued on Padilla's behalf.

"I think the court is heading down a dangerous path," she said. "They are creating unnecessary obstacles to just getting in the door. This is about being heard."

She added, however, that Padilla's lawsuit contained enough detailed information that it should get past the initial barrier.

The **Washington Legal Foundation** applauded the court's decision.

It is "particularly welcome because it ensures the ability of senior national security officials to perform their duties without the distraction" of answering to lawsuits, said **Richard Samp**, a lawyer for the group.

In fall 2001, after the attacks in New York and at the Pentagon, the Justice Department started a search for possible agents of Al Qaeda who could be hiding in the U.S.

Ashcroft said natives of certain Muslim countries should be questioned and, if necessary, held on immigration charges.

Iqbal was designated a person of "high interest" and spent several months locked in a maximum-security facility in Brooklyn. He pleaded guilty to working in the country illegally and was deported to Pakistan.

A federal judge in Brooklyn and the U.S. 2nd Circuit Court of Appeals in Manhattan ruled that his case could go forward because he alleged specific violations of his constitutional rights.

The Supreme Court disagreed Monday in *Ashcroft vs. Iqbal*.

"We are impelled to give real content to the concept of qualified immunity for high-level officials who must be neither deterred nor detracted from the vigorous performance of their duties," Kennedy said.

Chief Justice John G. Roberts Jr. and Justices Antonin Scalia, Clarence Thomas and Samuel A. Alito Jr. joined Kennedy to form the majority.

Although the ruling shields the highest officials at the Justice Department, it does not end the lawsuits against prison officials who were directly involved in holding and allegedly abusing Iqbal and other Muslim men.

Retiring Justice David H. Souter, speaking for the dissenters, said the suit against the top officials should have been allowed to go forward.

"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," he said. Based on such an allegation, he said, the plaintiff should be given a chance to prove his case.

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