

Center for Constitutional Rights

Discrimination, Detention, and Deportation: Immigration & Refugees

<https://ccrjustice.org/home/blog/2015/09/15/13-years-fight-hold-bush-officials-accountable-post-911-abuses-continues>

Public Facing Advocacy Writing

The CCR blog

Back in June, the Second Circuit Court of Appeals handed a [stinging rebuke](#) to the federal government and a significant victory to CCR and our clients in *Turkmen v. Ashcroft*, a case we brought over 13 years ago. The court reinstated claims against high-level government officials former Attorney General John Ashcroft, former FBI director Robert Mueller, and former INS Commissioner James Ziglar for their roles in the post-9/11 immigration detentions and abuse.

We filed *Turkmen* in 2002 on behalf of a class of Muslim, South Asian, and Arab non-citizens, who were swept up by the INS and FBI after 9/11 based solely on their race, religion, ethnicity, and immigration status. Hundreds of men who were the subject of racist tips like my neighbor is Arab and keeps strange hours, I think he might be a terrorist were detained as suspected terrorists and held in brutal detention conditions for the many months it took the FBI and CIA to clear them of any connection to terrorism. They were then deported. Not a single detainee was found to have any connection to the 9/11 attacks.

Its 13 years later, and we are still fighting. The case has been up and down the circuit twice, we have amended our complaint five times, five plaintiffs settled and six more came aboard, and a companion case *Ashcroft v. Iqbal* went to the Supreme Court, but finally, this year, we have made real progress toward holding accountable the high-level officials who are ultimately responsible for our clients abuse. In an unusual 109-page opinion, the appeals court wrote:

If there is one guiding principle to our nation it is the rule of law. It protects the unpopular view, it restrains fearbased responses in times of trouble, and it sanctifies individual liberty regardless of wealth, faith, or color. The Constitution defines the limits of the Defendants authority; detaining individuals as if they were terrorists, in the most restrictive conditions of confinement available, simply because these individuals were, or appeared to be, Arab or Muslim exceeds those limits. It might well be that national security concerns motivated the Defendants to take action, but that is of little solace to those who felt the brunt of that decision. The suffering endured by those who were imprisoned merely because they were caught up in the hysteria of the days immediately following 9/11 is not without a remedy.

Not surprisingly, the defendants are fighting this ruling. They filed a motion for the Second Circuit to rehear the case *en banc*, arguing that people should never be able to sue government officials for money damages for setting executive policy even if that policy is unconstitutional. *An en banc* rehearing is a relatively rare occurrence where all the active judges on the court decide the issue (as opposed to a three-judge panel, like the one that issued the decision in June). The court ordered CCR to respond to the *en banc* request, and we did so last Friday.

Our new [brief](#) argues that the landmark ruling by the appeals court panel does not require reconsideration by the entire circuit court. Specifically, we show that the appellate panel was correct in finding that we had alleged adequate detail to move forward with our claims against defendants, and that federal detainees do have the right to hold federal officials accountable for constitutional violations, even when those officials operate at the highest levels of government.

The appeals court already took an important step reinstating the claims against Ashcroft and others. It was a powerful message to U.S. officials that the rights of human beings, whether U.S. citizens or not, are not expendable in times of crisis. We hope the court stands by that ruling and denies the governments efforts to continue delaying justice for our clients.

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