

Center for Constitutional Rights

Discrimination, Detention, and Deportation: Immigration & Refugees

<https://ccrjustice.org/detailed-legal-history-ziglar-v-abbasi-formerly-turkmen-v-ashcroft>

Policy Issue Resources

- *Turkmen v. Ashcroft* was first filed on April 17, 2002, on behalf of three non-citizens and a putative class of Arab, South Asian and Muslim men arrested on immigration charges and detained in connection to the terrorism investigation at Passaic County Jail in New Jersey, or the Metropolitan Detention Center (MDC) in New York. The original three plaintiffs Ibrahim Turkmen, Asif-Ur-Rehman Saffi, and Syed Amjad Ali Jaffri sued John Ashcroft, Robert Mueller, James Ziglar, Dennis Hasty (MDCs warden) and 20 John Doe Correctional Officers. They advanced eleven claims including Fourth Amendment and Fifth Amendment challenges their pretextual immigration detention for purposes of criminal investigation, and conditions of confinement claim, equal protection, right to counsel, and free exercise of religion claims. An amended complaint was filed on July 27, adding four additional plaintiffs: Yasser Ebrahim, Hany Ibrahim, Shakir Balock and Akil Sachveda and one additional Defendant Michael Zenk, the new warden at MDC.

- Defendants moved to dismiss the complaint, and Judge Gleeson heard oral argument on the motions in December of 2002. In April 2003, while the motion was pending, the Office of the Inspector General released a damning report on the 9/11 detentions. CCR sought and received permission to amend the complaint in light of the reports revelations, adding claims challenging the Governments blanket denial of bond to the detainees, their failure to follow the Bureau of Prisons normal process for segregating detainees from the general prison population, and the communications blackout imposed on the detainees at MDC. The Second Amended Complaint was filed on June 18, 2003.

- In December 2003, a second OIG report was released, detailing the physical and verbal abuse experienced by the MDC detainees and the inhumane conditions of their confinement. CCR fought to receive a confidential, unredacted version of the report, which named the correctional officers responsible for this abuse, and then amended the complaint again to add those officers as named Defendants. The Third Amended Complaint also added one new plaintiff Ashraf Ibrahim and new Federal Tort Claims against the United States. Around the same time, a second lawsuit, *Elmaghraby v. Ashcroft*, was filed as a related case. *Elmaghraby* was brought on behalf of two non-citizens Ehab Elmaghraby and Javaid Iqbal who were arrested on minor criminal charges rather than immigration charges, and thus were not part of the potential class in *Turkmen*. The two brought many similar claims to those advanced in *Turkmen*, and the cases were consolidated in the District Court for discovery.

- In November 2004, Judge Gleeson ordered a new round of briefing on the Defendants motions to dismiss but allowed Plaintiffs to begin discovery on their excessive force and conditions of confinement claims in the meantime.

- In September 2005, Judge Gleeson denied Defendants motions to dismiss in *Elmaghraby*. Though *Turkmen* was filed first, those motions remained pending, perhaps because the *Turkmen* plaintiffs advanced some claims, including their complex constitutional challenge to pretextual immigration detention, not at issue in *Elmaghraby*. Defendants appealed the *Elmaghraby* ruling to the Second Circuit Court of Appeals.

- Over the next few years discovery in both cases proceeded in earnest, primarily against the United States. There were many discovery battles before Magistrate Judge Gold, including Plaintiffs demand to discover whether attorney / client communications in the case had been subject to warrantless surveillance, in light of the 2006 revelations about the Bush administrations warrantless domestic spying program. The United States fought vigorously to avoid stating whether or not it had access to surveillance of CCR attorneys, but ultimately was forced to provide an *in camera* declaration to the District Court affirming that no such surveillance, if it existed, would be made accessible to defense counsel. That same year, the Plaintiffs were paroled into the country so they could be deposed. Non-citizens barred from entering the United States due to immigration violations had never before been allowed back into the country for purposes of a civil case, and the Plaintiffs had to agree to onerous conditions, including being placed in the custody of the U.S. Marshall service and detained for a week in a New York City hotel. Sadly, the conditions proved too onerous for one plaintiff, and Mr. Jaffri chose to voluntarily withdraw his claims rather than submit to deposition. However, he remains a putative class member.

- On June 14, 2006, Judge Gleeson ruled on the *Turkmen* motions to dismiss. He allowed most of Plaintiffs claims to proceed against all Defendants, but struck down Plaintiffs claims challenging the fact of their detention, holding that it did not violate the Fourth or Fifth Amendments to delay the deportation of immigration detainees to facilitate a criminal investigation. Both parties took a cross-appeal to the Second Circuit Court of Appeals. The Appeal was argued on February 14, 2008 before Judges Sotomayor, Raggi, and Jacobs.

- The *Turkmen* appeal was still pending when the Second Circuit affirmed the District Courts decision in *Elmaghraby*, which had been renamed *Iqbal* after Mr. Elmaghraby settled all his claims against the United States. Defendants Ashcroft and Mueller successfully petitioned for *certiorari*, and *Iqbal* was argued before the Supreme Court on December 10, 2008.

- In May 2009, the Supreme Court ruled in Defendants favor, holding that Mr. Iqbal had failed to plausibly plead that Defendants Ashcroft and Mueller discriminated against him by having him placed in restrictive conditions of confinement based on his race, religion, and national origin. The ruling changed the relevant law, making it harder for Plaintiffs to sue high-level officials for rights

violations.

- On November 3, 2009, after the *Iqbal* ruling and while the *Turkmen* appeal was still pending in the Second Circuit, the five MDC *Turkmen* plaintiffs settled their claims against the United States for \$1.26 million. Around the same time, Mr. Iqbal also settled those of his claims that survived the Supreme Courts ruling, thus ending the *Iqbal* case. *Turkmen* plaintiffs sought to dismiss the Second Circuit appeal in light of the settlement, seeking permission to amend their complaint before the District Court to add new MDC Plaintiffs to represent the putative class. The Second Circuit denied the request, instead ruling on the appeal on December 18, 2009, and affirming Judge Gleesons dismissal of Plaintiffs challenge to pretextual and discriminatory immigration detention. The Circuit declined to rule on the balance of the case, remanding it to the District Court to consider Plaintiffs request to amend the complaint and add new class representatives. Justice Sotomayor, who had by then been elevated to the Supreme Court, took no part in the decision.

- The Government vigorously opposed Plaintiffs subsequent motion to add six new Plaintiffs and to amend the complaint to add factual detail about Defendants roles in the 9/11 detentions, in light of the Supreme Courts decision in *Iqbal*. Leave was granted nonetheless, and on September 13, 2010, Plaintiffs filed a Fourth Amended Complaint, adding current plaintiffs Ahmer Iqbal Abbasi, Anser Mehmood, Benamar Benatta, Ahmed Khalifa, Saeed Hammouda, and Purna Raj Bajracharya. The new complaint was brought only against the high-level defendants Ashcroft, Mueller, and Ziglar and certain particularly culpable supervisors at MDC, including Wardens Hasty and Zenk, Associate Warden Sherman, Captain LoPresti, and Lieutenant Cuciti. Plaintiffs did not bring new claims against the many correctional officers they had initially sued, some of whom had declared bankruptcy during the course of proceedings. One Defendant, Captain Lopresti, was in prison when the new complaint was filed, having been convicted, along with other MDC officials, of violating civil rights, obstructing justice, and making false statements, all in connection with the beating of a different MDC prisoner in 2002.

- In December 2010, Defendants moved to dismiss the new complaint, and argument on that motion was heard on March 11, 2011. On January 15, 2013, Judge Gleeson issued his opinion, dismissing the high-level Defendants from the case on pleading grounds, and allowing most, but not all of Plaintiffs claims to move forward against the lower-level Defendants. The parties took another cross appeal to the Second Circuit Court of Appeals.

- The second appeal was argued on May 1, 2014, before Judges Wesley, Raggi, and Pooler. They issued their decision on June 17, 2015, reversing the District Court and reinstating Plaintiffs claims against Ashcroft, Mueller, and Ziglar. In a rare joint opinion, Judges Wesley and Pooler held that Plaintiffs could bring a *Bivens* action for damages under the Fourth and Fifth Amendments, that Plaintiffs had adequately alleged Defendants personal involvement in abusive conditions of confinement and discrimination, and that Defendants were not entitled to qualified immunity. However, the Court did dismiss the Passaic Plaintiffs Ibrahim Turkmen and Akhil Sachveda from the case, as conditions at Passaic County jail were not as severe and could not be traced to Defendants actions. The Court also dismissed Plaintiffs First Amendment religious practice claim and dismissed all claims against former MDC warden Michael Zenk, who began working at MDC towards the end of the detentions. Judge Raggi wrote a lengthy dissent.

- In August 2015 Defendants sought rehearing *en banc* by the entire Second Circuit Court of Appeals. That request was denied by a 6-6 vote of the Circuit in December of 2015.

- On May 9, 2016, Defendants petitioned for review by the Supreme Court, raising three legal questions: (1) whether the Court was correct to allow a *Bivens* claim for damages in this context; (2) whether Plaintiffs adequately pled Defendants personal involvement in the alleged constitutional violations; and (3) whether Defendants are entitled to qualified immunity.

- On October 11, the Supreme Court agreed to hear the case.

- On November 17, the Court re-captioned the case as *Ziglar v. Abbasi* from *Turkmen v. Ashcroft*.

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