

# Solitary Watch

## Criminal Justice Issues and Prisoners' Rights

**<https://solitarywatch.org/2017/07/12/how-the-supreme-court-handed-trump-a-free-pass-for-discrimination-and-abuse-against-detainees/>**

## Policy Issue Resources

close

Search

close

close

by [Joshua Manson](#) | July 12, 2017

In a far-reaching decision issued last month, the Supreme Court has ruled that high-ranking federal officials cannot be held responsible for abuse against individuals held in prisons and detention centers, even when that abuse results from their policies and directives.

The June 19 ruling in [Ziglar v. Abbasi](#) grants immunity from lawsuits to the top-level officials behind the Bush Administrations post-9/11 mass detention of Muslim men. It also promises to empower federal officials to carry out abuses, including the arbitrary and discriminatory use of solitary confinement, unchecked and shielded from accountability.

The ruling could not come at a more critical moment, given the Trump Administrations proven disregard for the human and civil rights of migrants, Muslims, and incarcerated people. The Courts decision has in effect given the regime even more power than before to operate with impunity as it implements its hard-line policies in the immigration, criminal justice, and national security arenas.

The casethe last to be argued before the Supreme Court by the Obama Justice Departmentwas initially filed in 2002 by a group of Muslim men of Arab and South Asian descent. In the weeks following the terrorist attacks of September 11, 2001, the men were rounded up and detained, ostensibly for civil immigration violations, and subjected to prolonged solitary confinement, frequent strip searches, and other abuses, without reason or due process. Most were eventually deported.

The plaintiffs sought to hold personally accountable under the law the men who created the detention and confinement scheme responsible for the harms they had suffered. These included not only prison wardens and staff, but also such high-ranking Bush-era officials as Attorney General John Ashcroft, FBI Director Robert Mueller, and Immigration and Naturalization Service Commissioner James Ziglar.

The remedy sought by the men was far from unprecedented. Rachel Meeropol of the Center for Constitutional Rights (CCR), lead counsel for the plaintiffs, explained to Solitary Watch: Given the proven impacts of prolonged solitary confinement, prison officials who impose it may face personal liability. Because prolonged solitary confinement causes such significant harm it cannot be imposed for any reason consistent with the Eighth Amendment and international law.

But the Supreme Court ruled, in a 4-2 decision, in favor of immunity for the federal officials. Justice Kennedy, writing for the majority, acknowledged the discriminatory and tragic nature of the plaintiffs detention, but concluded that, for a number of mostly procedural reasons, the high-level officials could not be sued, and would never have to defend their actions in court.

### Victims of a Post-9/11 Dragnet

The *Ziglar* plaintiffs were swept up by the FBI and federal immigration authorities in the months following the terrorist attacks of September 11, 2001, as part of a discriminatory dragnet operation that targeted over 700 Muslim men who were non-citizens living in the United States. The men were detained and held indefinitely, many in isolation, as terrorism suspects.

The government argued that the detention of these hundreds of men was in response to violations of civil immigration law and in connection to terrorism investigations. The men, however, asserted that the immigration justification was merely a false pretext, and that they were rounded up and imprisoned based solely on their ethnic and religious identities.

The plaintiffs argued that there was virtually no evidence to support the governments claim that any of the men were remotely involved in terrorism, even when they did violate civil immigration laws. In the case of one plaintiff, the governments evidence was as thin as a tip to an FBI hotline from a landlord who had rented an apartment to a few Middle Eastern men and would feel awful if her tenants were involved in terrorism and she didnt call.

Once detained, many of the men were subject to brutal and prolonged solitary confinement at the Metropolitan Detention Center (MDC), a federal jail in Brooklyn. There, according to a [subsequent report](#) released by the U.S. Department of Justices Office of the Inspector

General, the men were subject to flagrant violence and abuse.

As the [CCR describes it](#), the men were locked for 23 hours a day in tiny, brightly lit cells, denied access to the outside world, including an attorney, arbitrarily and abusively strip-searched, subjected to sleep deprivation and interference with religious practice, denied basic personal items like soap and toilet paper, and deprived of adequate food. Hanging on the walls in the detention center was a bloody t-shirt with an American flag and the words These colors dont run.

Meeropol told Solitary Watch: It is especially deplorable that my clients were subjected to solitary confinement for no legitimate reason, but rather based on religion, ethnicity, and immigration status. She added, But torture is torture even if a person truly does present a security threat. Torture is never reasonable.

### **Amicus Brief on Solitary Confinement**

The 15-year case attracted attention from experts and activists mobilized around a diverse swath of issues including national security, immigration, criminal justice reform, and solitary confinement. Notably, a group of nineteen medical, scientific, and health professionals submitted a [friend-of-the-court brief](#) focusing exclusively on the use of solitary confinement against the plaintiffs.

The amicus brief, Meeropol told Solitary Watch, conclusively demonstrates the disastrous impacts of solitary confinement on human beings. It reads as much like a comprehensive history of solitary confinement and its harms as it does a legal brief.

First, the brief presents research demonstrating the remarkably consistent, well-established, and convincingly documented grave psychological damage inflicted on individuals by solitary confinement. Citing studies ranging from 19th-century Germany and England to contemporary Rikers Island and Pelican Bay, it notes a strikingly unique constellation of harms experienced by people subjected to prolonged isolation a discreet illness caused by solitary.

The brief further emphasizes the permanence of the damage inflicted, and the increased risks of suicide and self-harm: One 2014 study found that exposure to solitary confinement increased the odds of experiencing self-harm by 6.89 times and potentially fatal self-harm by 6.27 times.

Significantly, the authors of the brief point out that the psychological damage is not an unintended side effect of solitary, but rather is the reason for doing it. Since the very practice of isolation is itself the cause of the damage, there is no safe way to implement, nor any safe version of, solitary confinement.

The brief goes on to provide one of the first comprehensive summaries of the adverse *physical* effects of solitary, again citing a diverse set of data from wide-ranging sources. The physical health consequences of solitary confinement include insomnia, headaches, lethargy, dizziness, heart palpitations, severe digestive problems, back [and joint] pain, deteriorated vision, shaking, chills.

Neurological studies, the brief notes, strongly suggest that solitary confinement can fundamentally alter the structure of the human brain in profound and permanent ways and certain regions of the brain of people who experience extreme physiological stress (like those in solitary confinement) literally diminish in volume because the neural cells become shriveled. Again, these harms directly result from the inherent characteristics of solitary confinement.

Finally, the brief enters into a discussion of international law and legal standards that prohibit the imposition of solitary confinement, both in general, as a practice, and in the circumstances specific to this case. It points to gross violations of these laws and standards, based on the fact that the plaintiffs were subjected to solitary confinement 1) based on religion or race; 2) on the pretext of immigration violations, and 3) as a measure of first, rather than last, resort,

Both the International Convention on the Elimination of All Forms of Racial Discrimination and the UNs Standard Minimum Rules for the Treatment of Prisoners explicitly forbid the discriminatory application of incarceration or harsh prison conditions based on race, religion, or national origin, among other categories. Various international legal authorities prohibit solitary confinement for immigrant detainees, even if based on suspicion of terrorism.

International law forbids the use of even short-term solitary confinement as part of an initial sentence, demanding that it always be based on some *additional*, enumerated factor arising after the individual is detained, such as a proven safety risk or severe violation of prison rules. None of these factors was in play in the case of the plaintiffs, who had not even been convicted nor charged with any crime. The solitary confinement of pre-trial detainees, the brief points out, is especially grievous because the isolation can be used to coerce confessions or forcibly extract information.

Beyond these three particular reasons, the brief argues, the indefinite and prolonged nature of the plaintiffs solitary confinement alone ran afoul of international law by virtue of the extreme isolation and sensory deprivation to which they were subjected.

Despite the force of its arguments, the amicus brief on solitary was effectively disregarded by the Supreme Court, along with other proof of harm suffered by the plaintiffs. While the justices ordered that the case against low-ranking prison officials be sent back to the lower court for review, it categorically ruled that Ashcroft, Mueller, Ziglar, and other high-level administration officials, could not be held responsible for abuses that occurred as a direct result of their actions.

### **Implications for the Age of Trump**

The Supreme Courts decision in the *Ziglar* case is of particular concern to those who fear similarly discriminatory and egregious actions by the current administration. Justice Kennedys majority opinion extends a tremendous amount of deference to policymakers and other high-level officials in the executive branch. By ruling that these officials cannot be sued, for abuses that stem from their policies and took place on their watch, the Court seriously undermined the judiciarys power to reign in the excesses of this or any White House.

Unless Congress explicitly intervenes to legislate a path to accountability, Kennedy reasoned, victims of high-level policies should enjoy

no path to justice for their abuse. His reasoning, that Congress silence on the matter amounts to an intention to foreclose justice, essentially grants high-level officials immunity for no reason other than that they are in positions of power.

The blank check the Supreme Court has written to federal officials is, of course, especially disturbing given the Trump Administrations agenda and appointments. The President has promised to reinstate discriminatory law enforcement measures, dramatically broaden dragnet counter-terrorism programs, ramp up punishment for immigration violations, and, with Attorney General Sessions, [undo years of efforts to curb solitary confinement](#) and other forms of prison abuse.

Indeed, less than two weeks before the decision was handed down, President Trump nominated to head the FBI Christopher Wray, a former Assistant Attorney General who, according to a [White House press release](#), was a key part of the team overseeing the Justice Departments actions in the war on terrorism following the 9/11 attacks.

In her argument before the Supreme Court, Meeropol warned of the dangers of accepting the governments immunity argument: If that theory were accepted, she said, any Muslim or Arab noncitizen present in this country could be placed for months in solitary confinement for violating the immigration law. This, a frightening prospect under any circumstances, is especially so here and now.

*Photo: [Justin Norman/Shrieking Tree](#) | Witness Against Torture vigil outside Supreme Court during the Ziglar v. Abbasi hearing in January.*

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September 29, 2022

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