

# Center for Constitutional Rights

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://ccrjustice.org/home/get-involved/tools-resources/factsheets-and-faqs/factsheet-turkmen-v-ashcroft>

## Campaign and Advocacy

### What is *Turkmen v. Ashcroft*?

[\*Turkmen v. Ashcroft\*](#) is a case that was filed in April 2002 on behalf of a class of Muslim, South Asian, and Arab non-citizens swept up in connection with the 9/11 investigation, and is part of CCR's broader efforts to challenge illegal detentions and prisoner abuse, discriminatory policing, and anti-Muslim profiling. In 2017, the Supreme Court heard the case under the name *Ziglar v. Abbasi* and dismissed all of our claims but one. It remanded the case back to the U.S. District Court for the Eastern District of New York where it is currently pending.

*Turkmen* plaintiffs and dozens of other men were detained as "terrorism suspects" in the months after 9/11 and treated as dangerous based only on their race, religion, immigration status, and national origin. In prison, they were physically and psychologically abused, and detained in harsh and punishing solitary confinement in the Administrative Maximum Special Housing Unit of the Metropolitan Detention Center (MDC ADMAX SHU) in Brooklyn until they were cleared of any connection to terrorism by the FBI and CIA, at which point they were deported. Most were only ever charged with civil immigration offenses such as overstaying a visa or working without authorization, others were eventually charged with minor nonviolent crimes.

The case was filed against high-level Bush administration officials: former Attorney General John Ashcroft, former FBI director Robert Mueller, and the former commissioner of the Immigration and Naturalization Service (INS) James Ziglar; as well as the former warden and other Metropolitan Detention Center officials who oversaw the abuse.

### Why has the case gone on for more than 16 years?

Unlike constitutional violations by State officials, there is no statute that allows people to sue federal officials for damages compensation for constitutional violations. Instead, civil rights plaintiffs have relied on a set of Supreme Court cases, starting with *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, that implied a damages cause of action directly under the [Fourth Amendment](#), the [Equal Protection Clause](#) and the [Eighth Amendment](#). Yet, the Supreme Court has consistently rejected attempts to "expand" the *Bivens* doctrine to allow damage actions against federal agencies, private corporations and private actors and to limit its application where Congressional action in the field leaves no room or no need for an implied cause of action. Because of this litigation on this issue can be complex.

CCR first filed the case in 2002, while our clients were still in detention, and then amended the complaint several times over the next few years, to include newly discovered information, including from both OIG reports. Defendants' first motions to dismiss the case were not decided until 2006. Both parties appealed to the Second Circuit Court of Appeals, and while the decision in the Circuit was pending the Supreme Court decided a closely related case, *Ashcroft v. Iqbal*, which changed the relevant law, making it harder for plaintiffs to sue high-level officials for rights violations. After the *Iqbal* decision, five *Turkmen* plaintiffs settled, and the case was remanded to the District Court so that CCR could add new plaintiffs and new facts adequate to meet *Iqbal*'s stricter pleading standard.

CCR filed a fourth amended complaint in 2010, adding six new plaintiffs: [Ahmer Iqbal Abbasi](#), [Purna Raj Bajracharya](#), [Anser Mehmood](#), [Benamar Benatta](#), Ahmed Khalifa, and Saeed Hammouda. Defendants moved to dismiss the new complaint in 2010, and the District court granted that motion in part and denied it in part in early 2013, dismissing all the high-level officials from the case. CCR appealed to the Second Circuit, and in June of 2015 the court ruled in our favor reinstating the claims against Ashcroft, Mueller, and Ziglar. This was a historic ruling, allowing claims against high-level officials to proceed (essentially holding that they are not above the law), and subsequently, the government petitioned the Supreme Court to review the issue.

### *Turkmen* and the Supreme Court

The Supreme Court heard the case on January 18, 2017, and on June 19, 2017, the Supreme Court [reversed](#) the lower court ruling and held that individuals who are injured by clearly unconstitutional policy set by high-level government officials in the name of national security cannot sue those who are responsible for their abuse, even when the policy in question is clearly unconstitutional.

The Court dismissed all claims but one: the Plaintiffs' claims that the warden of the MDC allowed (and even encouraged) guards to physically, verbally, and religiously abuse plaintiffs. The Court remanded that claim back to the lower court to decide if it should go forward.

### What is the current status of the case?

The case was remanded to the U.S. District Court for the Eastern District of New York. Both parties have briefed this issue, and are awaiting a decision from the court.

Plaintiffs alleged that guards routinely abused them, that the warden encouraged the abuse by referring to them as "terrorists," that he stayed away from the Unit to avoid seeing the abuse, that he was made aware of the abuse through inmate complaints, staff complaints, hunger strikes, and suicide attempts, that he ignored other direct evidence of the abuse, including logs and other official records, and that he took no action to rectify or address the situation. The Supreme Court held that these allegations, if true, would mean the warden violated constitutional rights. The only open question is whether plaintiffs should be allowed to sue for damages.

It has long been established that convicted prisoners can sue wardens, and other supervisors, who allow abuse or unsafe conditions, but the former Warden of the MDC is now arguing that detainees, similarly abused, should not have the same right.

### **Why is this case so important?**

The 9/11 detentions now stand with the Palmer Raids and Japanese Internment as infamous historical examples of governmental profiling and overreach.

The abuse our clients suffered was documented in two Department of Justice Office of Inspector General (OIG) reports. The [first report](#) released in April 2003, showed that the former high-level officials ordered the 9/11 detainees' placement in ultra-restrictive solitary confinement knowing that there was no reason to suspect them of wrongdoing, or dangerousness, beyond their religion, ethnicity, and immigration status. [A supplemental report](#), released in December 2003, documented in graphic detail the physical and verbal abuse that detainees held at the MDC suffered at the hands of MDC guards and the inhuman conditions in which they were confined.

Though the detentions were roundly criticized by Congress, the media, and the public, they have never been held unlawful. Hundreds of families were torn apart and lives destroyed; these individuals deserve compensation for their losses. The Supreme Courts refusal to allow for claims against former-Bush administration officials sets a dangerous precedent and may embolden the Trump administration officials toward even more despicable acts of discrimination. This is why it is important to now ensure that our clients have the ability to sue the Warden who oversaw their abuse, otherwise thousands of other immigration detainees will be vulnerable at a time when racist and anti-immigrant violence demands our attention.

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