

Detainees go after officials

- Suit blames Ashcroft, Mueller for treatment
- Claim pair's instructions 'led to myriad abuses'

BY JOHN RILEY
 john.riley@newsday.com

In 2001, Anser Mehmood ran a small trucking business in Bayonne, N.J. But Sept. 11 turned his life upside down.

A Pakistani who had overstayed his visa, he was soon caught up in the post-attack terror scare. Arrested for his immigration violation, he said he was held incommunicado for months under high security in a Brooklyn federal jail, beaten and thrown against walls, and kept in a cell with the window painted over.

"It was like a grave," he recalled last week in a phone interview from Pakistan, where he returned after being cleared of terror charges.

As the 10th anniversary of Sept. 11, 2001, approaches, the battle over legal responsibility for one of its most controversial legacies — the treatment of scores of detainees like Mehmood — still rages in Brooklyn federal court, where a lawsuit first filed in 2002 alleges that top officials including former Attorney General John Ashcroft and FBI Director Robert Mueller should be held liable.

Complaint: Abuse fostered

In a new complaint filed last fall and at a recent hearing before U.S. District Judge John Gleeson, detainees claim Ashcroft and Mueller set the prison abuse in motion by spreading the word that immigration violators thought to be Muslims or Arabs were possible terrorists, and that the officials encouraged "maximum pressure" to

get detainees to tell what they knew "by any means possible."

"Government officials, no matter what exalted position they hold, cannot get away with ordering abuse and profiling," said Rachel Meeropol of New York's Center for Constitutional Rights, the detainees' lawyer.



NEWSDAY FILE PHOTO

U.S. District Judge John Gleeson is hearing the case.

Justice Department lawyers representing both Mueller and Ashcroft argue that top policymakers deserve a lot of leeway responding to an unprecedented crisis like Sept. 11, and that any abuses during confinement of the detainees were not their responsibility.

"Nothing that he was involved in got to the level of what was going on on the ground in the prison," Mueller's government lawyer, Craig Lawrence, told Gleeson.

A 2003 Justice Department inspector general's report documented the post-Sept. 11 detention policy, in which the FBI

was directed to detain even minor immigration violators as they followed up on thousands of tips. And the report said the confinement was harsh, including a pattern of "verbal and physical abuse," and a lack of contact with family, lawyers or consuls at Brooklyn's Metropolitan Detention Center.

Since then, 11 prison guards have been convicted in the abuse of prisoners, and the government paid more than \$1 million in damages to five of the original plaintiffs.

Higher-ups, however, can't be sued for everything that happens on their watch, and a 2009 Supreme Court ruling restricted "supervisory liability" suits to claims targeting an official's own actions rather than just bad supervision of others.

That ruling has become the latest battleground in Brooklyn. To meet the new standard, the Detention Center says, in part on access to still-undisclosed working papers of the inspector general — filed their new complaint last fall alleging that in a series of 2001 meetings Ashcroft and Mueller mapped out a plan to delay immigration hearings, hold detainees incommunicado and encourage subordinates to employ "maximum pressure."

"That led to myriad abuses," Meeropol said.

Suit faces uphill climb

But the government has moved to dismiss, arguing that even that claim, if proven, is insufficient. In one exchange, Ashcroft's lawyer, Dennis Baragha, told Gleeson — who



was skeptical — that even “deliberate indifference” to constitutional violations was no longer enough to sue top officials.

An attorney general should not be required to micromanage how subordinates carry out their orders, Barragha argued. “Leaders have to be able to make general pronouncements and rely on others to live up to

the constitutional oath,” he said.

Gleeson has given no indication of when or how he will rule. Although the suit also involves claims against lower-level officials, Meeropol says keeping Ashcroft and Mueller in will allow the detainees to obtain more evidence and hold policymakers accountable.

Her clients share that hope.

The lawsuit is about money, but also about justice, Mehmood said.

“This happened because of the policy of a few high officials,” he said. “That’s why we are struggling, that these people be found to have done something wrong for human rights . . . so that this thing will never happen again in a country like the U.S.”