

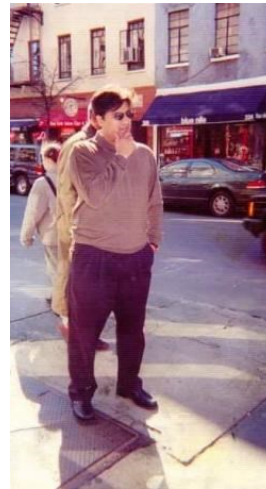
Ziglar v. Abbasi is a case that was filed in April 2002 on behalf of a class of Muslim, South Asian, and Arab non-citizens swept up in connection with the 9/11 investigation, and is part of the Center for Constitutional Rights' (CCR) broader efforts to challenge illegal detentions and prisoner abuse, discriminatory policing, and anti-Muslim profiling. The Supreme Court recaptioned the case *Ziglar v. Abbasi* from *Turkmen v. Ashcroft* after agreeing to hear the case in the fall of 2016. Oral argument took place on January 18, 2017, and we are waiting for a decision.

Abbasi 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.

Who are the Defendants in this case?

Defendants in this case include high-level Bush administration officials: former Attorney General John Ashcroft, FBI director Robert Mueller, and commissioner of the Immigration and Naturalization Service James Ziglar; as well as the former warden and other Metropolitan Detention Center officials who oversaw the abuse.

After CCR filed the case, information was made public about the government's secret roundup of more than 700 Muslim and Arab noncitizens after 9/11 on the pretext of immigration violations. In April 2003, the Department of Justice Office of Inspector General (OIG) released a report, describing the government's application of a blanket policy of denying these men release on bond, even when the government lacked evidence that they posed a danger or a flight risk, and of continuing to hold them for criminal investigatory purposes even after they could have been deported.



"The days I spent behind bars were the worst days of my life. I was absolutely unaware of the charges. I know they knew from the first day that they got a wrong guy, but they kept me in custody long after that."

Ahmer Iqbal Abbasi
Plaintiff in
Ziglar v. Abbasi

Defendants 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.

In December 2003, OIG released a supplemental report, documenting 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. For example, upon entering MDC, many of the men had their faces smashed into a wall, where guards had pinned a t-shirt with a picture of an American flag and the words "These colors don't run." The bloodied t-shirt hung on the wall at MDC for months. Throughout their detention, our clients 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.

This treatment violated our clients' rights under the Fourth and Fifth Amendments. Defendants assert that even if this is true, noncitizens shouldn't be able to sue high-level officials who make unconstitutional policy. They are also arguing that plaintiffs have not adequately alleged that they were directly responsible for their months in punishing conditions, and that it was not clearly established in 2001 that noncitizens suspected of involvement in terrorism couldn't be held in extremely harsh conditions, even when that suspicion was based only on race or religion.



Abbasi legal team with Benamar Benatta, a plaintiff in the case

What issues are before the Supreme Court?

There are three separate questions for the Court to review:

- ◇ Whether non-citizens discriminated against and abused in the name of national security can sue high-level government officials in what is known as a *Bivens* action. *Bivens* was a Supreme Court case from the 1970s that first gave people the right to sue federal officials for money damages for violating the Constitution (in that case the 4th Amendment).
- ◇ Whether the plaintiffs in this case have adequately pled that the high-level government defendants were responsible for violating their rights. Specifically, the Court will have to decide if plaintiffs' allegations sufficiently demonstrate that Ashcroft, Mueller, and Ziglar devised a plan to hold Muslim, South Asian, and Arab noncitizens in restrictive conditions while they were investigated for ties to terrorism, while knowing there was no non-discriminatory reason to suspect them of such ties.
- ◇ Whether the high-level government officials in this case should receive "qualified immunity." The legal doctrine of qualified immunity protects government officials from liability when they act in good faith, but nevertheless break the law. Defendants are arguing that it wasn't clearly established in 2001 that the Constitution forbids placing people in ultra-restrictive conditions of confinement based on their religion and race.

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. 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.

Now more than ever, it is crucial — when profiling based on race, religion, and immigration status, and torture are being considered legitimate policy options — to ensure that the courts are open to victims of unlawful discrimination. By ensuring that our clients have access to justice for the discrimination and abuse they experienced at the hands of the Bush administration, future leaders may pause before ordering profiling and abuse again.

Why has this case gone on for so long?

CCR first filed the case as *Turkmen v. Ashcroft* 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.

"I was targeted by the U.S. government because I was Muslim. From day one, they knew I was innocent." — Anser Mehmood
Plaintiff in *Ziglar v. Abbasi*