

# Supreme Court to review “war on terror” claim against Ashcroft

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On Monday, the United States Supreme Court accepted review in its first “war on terror” case of the 2010 term, a suit brought against former Attorney General John Ashcroft by an American-born convert to Islam who was jailed as a “material witness” in 2003. Plaintiff Abdullah al-Kidd was held in inhumane conditions for more than 2 weeks and then confined under virtual house arrest for the next 15 months.

Obama administration lawyers filed a petition for certiorari on Ashcroft’s behalf to set aside a ruling by two judges on the United States Court of Appeals for the Ninth Circuit, which cleared the way for a trial seeking money damages from the Bush administration official for these civil-rights violations. The White House is working to protect Ashcroft and defend the anti-democratic policies established under President George W. Bush.

Al-Kidd, born Lavoni T. Kidd in Kansas, converted to Islam while attending the University of Idaho, where he was a highly regarded football player. On March 16, 2003, federal agents arrested him at Dulles International Airport as he was leaving for Saudi Arabia to attend a well-known university on a scholarship.

Federal agents interrogated al-Kidd and confined him in high security cells lit 24 hours a day—first in Virginia, then Oklahoma, and finally Idaho. He was frequently handcuffed, shackled and strip-searched. After 16 days, he was released on the conditions that he live with his wife and in-laws in Nevada, limit his travel to three other states, surrender his travel documents, report to a probation officer, and consent to home searches.

During the ensuing months, al-Kidd lost his job as an employee of a government contractor, because he was denied a security clearance, and separated from his wife. He also lost the opportunity to study abroad on the scholarship.

The only purported basis for al-Kidd’s arrest and detention was a warrant deeming him a “material witness” in a case brought against a University of Idaho doctoral student, Sami Omar al-Hussayen, who had been indicted for violating a provision of the recently enacted Patriot Act. Al-Hussayen had been setting up web sites on behalf of the Islamic

Association of North America (IANA), which publishes and distributes Islamic religious books in various languages.

The IANA had not been designated a terrorist organization. According to the indictment, however, its web sites sometimes posted links to other sites that sought to recruit and raise funds for Chechen and Palestinian groups.

The al-Kidd warrant was issued on an FBI agent’s affidavit describing his contacts with al-Hussayen and the IANA. It also stated that al-Kidd was “scheduled to take a one-way, first-class flight (costing approximately \$5,000) to Saudi Arabia.” In fact, al-Kidd had a round-trip, coach-class ticket, costing \$1,700. The affidavit omitted the facts that al-Kidd was a US resident and citizen, that his parents, wife, and two children were likewise residents and citizens, and that he had cooperated with the FBI on several occasions over the past year.

The Patriot Act case against al-Hussayen went to trial in the United District Court for Idaho 15 months after al-Kidd’s arrest. On June 10, 2004, the jury returned not guilty verdicts on all the terrorism-related charges, after hearing six weeks of testimony and deliberating for another week (See: US jury acquits Idaho webmaster of terrorism charges).

Because he was also accused of violating immigration laws by working while in the country on a student visa, al-Hussayen accepted deportation to his native Saudi Arabia following his acquittal on the terrorism charges.

Although held under virtual house arrest for 15 months, al-Kidd was never asked to testify in the al-Hussayen case. In fact, he was not called by the government as a witness in any proceeding, and was never alleged to have been involved in any illegal conduct. He described himself in a 2004 interview as “anti-bin Laden, anti-Taliban, anti-suicide bombing, anti-terrorism,” according to the *New York Times*.

Al-Kidd filed his civil rights lawsuit in Idaho federal district court against Ashcroft and a number of other federal officials, alleging that the Bush administration misused the material witness statute as a pretext for his illegal preventative detention. He charged that the conditions of his confinement were not appropriate for someone not accused

of a crime, and that the warrant for his detention was procured by fraud.

Al-Kidd used the Attorney General's own statement to the media "announcing several steps that we are taking to enhance our ability to protect the United States from the threat of terrorist aliens" as a basis for his claim against Ashcroft. Making clear his intention to use pretexts, Ashcroft proclaimed his "strategy to prevent terrorist attacks by taking suspected terrorists off the street" through "aggressive detention of lawbreakers and material witnesses," "vital to preventing, disrupting or delaying new attacks."

Al-Kidd also cited testimony by former FBI director Robert Mueller that identified his arrest "en route to Saudi Arabia" as one of five "major successes" in the

FBI's efforts toward "identifying and dismantling terrorist networks."

After the district judge denied Ashcroft immunity for authorizing the misuse of the material witness statute, the Attorney General appealed to the Ninth Circuit. Over the opposition of Obama administration attorneys, the panel affirmed that ruling by a vote of 2-1. The decision drew on democratic principles from the foundation of Anglo-American jurisprudence.

"Almost two and a half centuries ago, William Blackstone, considered by many to be the preeminent pre-Revolutionary War authority on the common law, wrote:

To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole kingdom. But confinement of the person, by secretly hurrying him to gaol, where his sufferings are unknown or forgotten; is a less public, a less striking, and therefore a more dangerous engine of arbitrary government.

"The Fourth Amendment was written and ratified, in part, to deny the government of our then-new nation such an engine of potential tyranny. And yet, if the facts alleged in al-Kidd's complaint are actually true, the government has recently exercised such a 'dangerous engine of arbitrary government' against a significant number of its citizens, and given good reason for disfavored minorities (whoever they may be from time to time) to fear the application of such arbitrary power to them.

"We are confident that, in light of the experience of the American colonists with the abuses of the British Crown, the Framers of our Constitution would have disapproved of the arrest, detention, and harsh confinement of a United States citizen as a 'material witness' under the circumstances, and for the immediate purpose alleged, in al-Kidd's complaint. Sadly, however, even now, more than 217 years after the

ratification of the Fourth Amendment to the Constitution, some confidently assert that the government has the power to arrest and detain or restrict American citizens for months on end, in sometimes primitive conditions, not because there is evidence that they have committed a crime, but merely because the government wishes to investigate them for possible wrongdoing, or to prevent them from having contact with others in the outside world. We find this to be repugnant to the Constitution, and a painful reminder of some of the most ignominious chapters of our national history."

The Obama administration asked the Supreme Court to accept the case in order to block suits against Ashcroft and all other government figures implicated in the crimes of the Bush administration. In doing so, the White House asserts the very right that the Ninth Circuit court ruled unconstitutional—"that the government has the power to arrest and detain or restrict American citizens for months on end...to prevent them from having contact with others." It does so because it fully intends to exercise these powers in its own persecution of the population.

In a recent sign of this, on September 24, FBI agents raided the homes of members and supporters of the Freedom Road Socialist Organization on trumped-up terrorism charges, in a blatant effort to intimidate all those critical of the government.

The author also recommends:

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