

BYBEE'S CIRCUIT: ASHCROFT CAN BE SUED FOR WRONGFUL DETENTION

The 9th Circuit has ruled that John Ashcroft can be sued for wrongful detention of an American citizen. From an ACLU press release:

The American Civil Liberties Union lawsuit charging that former Attorney General John Ashcroft is personally responsible for the wrongful detention of an innocent American, Abdullah al-Kidd, can go forward, the U.S. Court of Appeals for the Ninth Circuit ruled today. The ruling denies Ashcroft's request that his appeal be heard by the entire court and upheld the court's September 2009 decision that the federal material witness law cannot be used to detain or investigate suspects where no probable cause exists for criminal charges. The ruling also held that Ashcroft does not have immunity in this case and can be held personally liable for the wrongful detention of al-Kidd.

"In this country, we don't believe in arresting and imprisoning people who haven't been charged with any crime," said ACLU Immigrants' Rights Project Deputy Director Lee Gelernt. "Former Attorney General Ashcroft deliberately distorted the federal material witness law to allow the detention of innocent people. As the primary architect and overseer of this policy that so clearly circumvented the Constitution, he should be held personally liable."

Prior to 9/11, the federal material witness law was used sparingly – especially with U.S. citizens – to

ensure that witnesses would be available to testify in criminal cases. Arrests under the statute took place in rare cases to secure testimony where there was hard evidence that an individual had material information but would not testify voluntarily. After 9/11, Ashcroft retooled the law into an investigative detention statute, allowing the government to arrest and detain individuals for whom the government lacked probable cause to charge with criminal violations.

Today's ruling affirms the court's September 2009 ruling that found that the material witness law may only be used when an individual is genuinely sought as a witness and where there is a real risk of flight. The court ruled that the law does not allow an end-run around the constitutional requirements for arresting someone suspected of a crime. Ashcroft had appealed the ruling.

Al-Kidd, a U.S.-born American citizen, was on his way to Saudi Arabia to study when he was unlawfully detained and arrested in Washington's Dulles Airport on March 16, 2003 as a material witness in the trial of Sami Omar Al-Hussayen. For 16 days, al-Kidd was held in heightened-security units of various jails and shackled whenever moved. He was eventually released under onerous conditions that included confining his travel to four states, surrendering his passport and reporting to probation officers. Al-Kidd was held for more than 13 months under these conditions without ever being charged with any crime or asked to testify.

At the time of his arrest, al-Kidd had already shown that he was not a flight risk and would cooperate as a witness. He had voluntarily met with the FBI

repeatedly, never missing a scheduled appointment. For six months prior to his arrest, al-Kidd had not been contacted by the FBI, and he had never been told that he was prohibited from traveling abroad to pursue his studies.

The ACLU lawsuit names Ashcroft, the United States and several federal agents as defendants. Local, state and federal officials in Virginia, Oklahoma and Idaho already settled claims against these parties.