

Torture and Abuse of 9/11 Detainees: Court Reinstates Case Against Former Attorney General, FBI Director and INS Commissioner

By [Global Research News](#)

Global Research, June 22, 2015

[The Real News](#) 21 June 2015

Region: [USA](#)

Theme: [Crimes against Humanity](#), [Law and Justice](#), [Terrorism](#)

SHARMINI PERIES, EXEC. PRODUCER, TRNN: Welcome to the Michael Ratner report on The Real News Network. I'm Sharmini Peries coming to you from Baltimore.

On June 17, a U.S. appeals court reinstated a long-running lawsuit against several Justice Department officials for violating the Constitution with abuse of 9/11 detainees. The claim was brought forth by several people who said they were subject to solitary confinement and strip searches in a Brooklyn detention center. Justice Department officials have been accused of putting in place policies that facilitated the abuse, and of knowing that the detainees were not terrorism suspects.

This is the topic of our next discussion with Michael Ratner. Michael is the President Emeritus of the Center for Constitutional Rights in New York, and he's also a board member of The Real News Network.

Michael, as always, thank you for joining us.

MICHAEL RATNER, PRESIDENT EMERITUS, CENTER FOR CONSTITUTIONAL RIGHTS: Sharmini, thank you for having me on The Real News.

PERIES: So Michael, tell us more about the case. Why was it reinstated?

RATNER: Sharmini, it's unusual that I'm on the show with you or Real News, and we actually have really good news to announce. This is one of those occasions. It's a big victory. It's a Center for Constitutional Rights case called *Turkmen v. Ashcroft*. Ashcroft was of course the attorney general during the initial period of 9/11. The litigation concerned abuse of immigration detainees post-9/11. And what we have won is an interim victory. It's been a 13-year struggle to get it there. This case was filed in April 2002. You have to have a long life and a long litigation life to win these cases, but we're on our way.

When I say an interim victory, what it means is that the case will now be remanded to the district court for trial, or the Justice Department could appeal to the Supreme Court and try to overturn it. We don't yet know which one.

But here's what it said. The appeals court in the second circuit, which is the court right underneath the Supreme Court, said that high-level Bush officials, including Ashcroft who was attorney general, Mueller who was head of the FBI, and Ziglar who was the commissioner of immigration, could be sued for post-9/11 abuse of immigration detainees at

the Metropolitan Detention Center in Brooklyn. The abuse, and what we alleged at the Center was from the policy decisions to target and punitively detain Arab, South-Asian men, and Muslim men post-9/11, despite the fact they were innocent of any claims of terrorism. As the court said, there was no reason except race and religion to consider them dangerous. That's what we alleged, and of course that has to be found as true at this point. They were detained from three to eight months. So not only were those three high-level policy officials subject to suit, but the court also said the people, the warden at the prison and others who actually did the abuse to these prisoners could be subject to suit as well.

Let me just give you an example of the type of conduct—and I'll talk a bit more about it. But the eight plaintiffs in this case and many others, when they walked into, they were arrested and taken into the prison, they 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 men were slammed against the t-shirt on their entrance to the prison, and told, welcome to America. The t-shirt was smeared with blood, yet it stayed up on the walls of the prison for months.

It's important to understand the context of this case. Until now there's been little, really no accountability, for what happened post-9/11. This may be the first victory on accountability if we can hold it. And just recall, we've had torture, indefinite detention at Guantanamo, abuses, arrest without probable cause, and yet no accountability.

I want to step back and take us to the days immediately after 9/11. Center for Constitutional Rights is located in New York. I was actually down on the street at the time the planes went in to the buildings. The office was very close to the buildings, and of course everybody was traumatized by it. But soon at the Center we started getting calls from relatives of people, Muslims, that people could—and Arab people, that they could not find, they couldn't find their relatives. And what they did is they were picked up and they were checkerboarded around to various prisons, and we could never really get a hold of them. Finally we did find some of them. CCR people and others paid visits to them. And of course, what they saw was appalling.



The CCR, unlike a lot of other organizations, decided at that point to take an important and major role in litigating both those 9/11 abuses of people picked up as well as Guantanamo. So we were out on those front lines immediately. We had an Arabic speaker at the office, and we began to represent people very quickly.

Subsequently, we learned that this policy was actually authorized at the highest level. Arab or Muslim men were arrested if they were out of immigration status. And the rule was not that they could be held until their status was adjusted or be deported because of that, but they couldn't be released from prison until they were cleared by the FBI of being terrorists. So think about it. A complete reversal of what should be normal in this country. You're picked up on probable cause and the government has to prove it. In this case you're picked up and you're innocent, but you somehow have to prove that you're innocent rather than the government have to prove that there's probable cause for terrorism. And there were some 762 people picked up in this way, and they remained in prison until they were cleared by the FBI [rather] than have any evidence against them, of which there was none.

While they were in prison, I described their entrance into prison, but their contacts with the outside world were restricted, the word was spread through the prison system that these people were terrorists. They were put in what's called a special housing unit, which is solitary, but this was an AD-MAX special housing unit. Terrible conditions, 23 hours a day without going out. Strip searched every time they went out of their cell. Strip searched every time they're out of their cell. They were given barely edible food. Their doors were kicked every 20 minutes so they couldn't sleep. There was a bright light on in the cells 24 hours a day. No phone, no hygiene instruments, toothbrushes, toilet paper, et cetera. As I said, physical and verbal abuse. When they came out they were slammed into the walls, their arms were twisted. They were in leg restraints and the leg restraints were stepped on. As I said, referred to as terrorists. Sometimes they were referred to as camels or Arabic assholes, and much worse.

When we brought this lawsuit in April 2002, our office figured, this is a slam dunk. This is ridiculous. One, you can't treat people like that, and secondly, how can you under the 4th Amendment hold people without any evidence of committing a crime? But of course it took this long to finally convince a court that that could be the case. And of course it was because it was in the context of 9/11.

I'm sorry, go ahead, Sharmini.

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PERIES: So Michael, just some clarification here. So was the case dismissed initially, that it was now reinstated?

RATNER: Yes. The case was dismissed by the lower court, saying essentially there's no right to sue high-level officials for these policies. Somehow they didn't know what was happening in the prisons. Which of course, the evidence now that we put in was that there were constant reports up to those three people of what was happening in the prisons to people, and therefore they were responsible. And of course the people carrying out the abuse were responsible. But of course they, their claim, I believe was that somehow it was authorized by the higher level. They sort of tried to blame each other, the lower-level officials and the higher-level officials.

So it's a really important reinstatement of a case. And you know, we lost a case like this earlier in this court, and that was the Arar case. People may not recall, but Arar was taken off a plane at Kennedy, a Canadian citizen, and sent to be tortured in Syria. We brought a case in the same appeals court and ultimately lost it 6-5, on the issue that it wasn't necessarily clearly established law that it was illegal to send someone or render them to Syria for torture. A ridiculous decision. So in this case actually it has turned out better so far. It was a 2-1 decision. We'll have to see what the government does, but it's a really important victory.

And the court really, in language that I want to repeat, says if there's one guiding principle to our nation it's the rule of law. You know, that should only be my [aside] case in all of our cases that we brought. But in this case the judge who wrote it said that. It protects the unpopular view, it restrains fear-based responses in times of trouble, and it sanctifies individual liberty.

And it goes on, and the court goes on and it says, the Constitution defines the limit of the defendant's authority, and the court in very strong language says, detaining individuals as if they were terrorists in the most restrictive conditions of confinement available because they were or appear to be Arab or Muslim exceeds the limit of the Constitution.

PERIES: And Michael, tell us about why it was reinstated at this time. What is it that you argued to have it reinstated? Just tell us about the process.

RATNER: Well, the argument for reinstatement was that it was clearly established law that you couldn't pick up people without any necessity, without any charges, without any allegations. And that the context of 9/11 didn't make any difference to that. And you certainly couldn't treat people in prison like this, and the defendants knew they couldn't treat people in prison like this. And the higher-ups knew how people were being treated.

PERIES: And why are you successful now, as opposed to then?

RATNER: I mean, I think one, we—I think obviously the times. This is 13 years later. And what looked okay to people back then, or at least looked—I wouldn't say it ever looked okay to anybody. But they weren't willing to touch it in the middle of the so-called war on terror in the United States. The courts just stayed away from it. Whereas now it's 13 years later, and what they wanted to stay away from before looks like a terrible precedent for the future. Terrible. If you can pick up people, hold them as alleged terrorists and force them to prove they're not terrorists, and beat the heck out of them in a prison, I mean, what kind of a country are we talking about.

So they're slowly, ever so slowly, trying to turn what you would have to call the ship of torture and unconstitutional violations around a little bit. We'll see if the Supreme Court we have currently allows that turning to happen. We'll see if an [on-bank] decision, the decision that government could go to first and say everybody on the middle court hear this case, turn it around, we'll see if that can hold up.

But you know, when you read through the allegations of the complaint, they're so egregious that you could do this to a human being sitting in a Brooklyn prison that it's hard for me to believe that this case isn't ultimately going to go forward and there isn't going to be some kind of a trial, if not a settlement, on behalf of these defendants.

So the next steps are really waiting to see, is the government going to appeal this case in some fashion? I want to say, the Center for Constitutional Rights did a great job on this case. The key attorney who argued the case, Rachel Meeropol from the Center, and the former legal director Bill Goodman who said right off the bat, they can't do this. The 4th Amendment says you can't just pick people up and toss them in prison. You know, and as we talked about last week, the 800th anniversary of the Magna Carta which says the same thing. Executive detention is anathema in a country like ours, and that's exactly what has happened here, executive detention.

PERIES: Michael, congratulations, and congratulations to the Center for Constitutional Rights on behalf of all of our viewer, and thank you also for joining us today.

RATNER: Thank you for having me on The Real News.

PERIES: And thank you for joining us on The Real News Network.

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Michael Ratner is President Emeritus of the Center for Constitutional Rights (CCR) in New York and Chair of the European Center for Constitutional and Human Rights in Berlin. He is currently a legal adviser to Wikileaks and Julian Assange. He and CCR brought the first case challenging the Guantanamo detentions and continue in their efforts to close Guantanamo. He taught at Yale Law School, and Columbia Law School, and was President of the National Lawyers Guild. His current books include Hell No: Your Right to Dissent in the Twenty-First Century America, and Who Killed Che? How the CIA Got Away With Murder.

NOTE: Mr. Ratner speaks on his own behalf and not for any organization with which he is affiliated.

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