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June 19, 2017

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In Victory for WLF, Supreme Court Protects Senior U.S. Officials from Tort Claims Seeking Damages

(Ziglar v. Abbasi; Ashcroft v. Abbasi; Hasty v. Abbasi)

“The Supreme Court appropriately deferred to Congress’s decision not to authorize lawsuits against senior officials by aliens detained during the 9/11 investigation. Lawsuits seeking to hold officials personally liable for their official conduct would be highly disruptive and likely to impair their ability to perform their duties.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The Supreme Court today ruled that senior federal officials—including former Attorney-General John Ashcroft and former FBI Director Robert Mueller—are not subject to damages claims based on how they conducted their investigation into the 9/11 terrorist attacks. The *Ziglar v. Abbasi* decision was a victory for WLF and its clients, five former Attorneys-General (William Barr, Alberto Gonzales, Edwin Meese, Michael Mukasey, and Dick Thornburgh) and two former FBI Directors (William Sessions and William Webster). The Court agreed with WLF’s briefs—which were the only *amicus* briefs filed on the winning side of the case—that Congress should decide whether to authorize suits alleging violations of the Constitution. Congress did not do so in this instance, and, the Court ruled, the courts should not “imply” the existence of a cause of action in national-security cases of this sort.

Several Arab/Muslim aliens filed the lawsuit following their 2001 arrests for being in the U.S. illegally. After law enforcement officials designated them as “of interest” or “of high interest” in the 9/11 investigation, they were held under highly restrictive conditions for several months until they were cleared. The plaintiffs contend that the harsh conditions of confinement violated their constitutional rights because: (1) the defendants (including Ashcroft and Mueller) knew all along that the plaintiffs lacked any connection to terrorism; and (2) they were subjected to harsh conditions (rather than being placed in the general prison population) because the defendants intended to discriminate against them on the basis of their religion and ethnic background. The appeals court held that the complaint stated valid claims and that the defendants should be required to respond and thus subjected to pre-trial proceedings. The Supreme Court reversed 4-2.

Although the Court in its 1971 *Bivens* decision held that, in some limited instances, courts may permit individuals to assert constitutional claims even in the absence of congressional authorization, it held today that *Bivens* is a very limited doctrine and should not apply here. Among the reasons for not applying *Bivens*: national-security matters are largely the province of Congress and the President; and if Congress had intended to permit damages claims against senior officials, it likely would have said so explicitly. The Court also ruled that senior officials are entitled to qualified immunity from claims of this sort. Six justices participated in this case, as Justices Sotomayor and Kagan were recused and Justice Gorsuch had not yet joined the Court.

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