

**Defending the Essence of America:  
Did the Government Violate Constitutional Rights of Muslim Prisoners?**

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A group of eight Muslim men detained in the aftermath of 9/11 filed claims against a number of government officials in a case called *Turkmen v. Ashcroft*, including then-Attorney General John Ashcroft from the Department of Justice (DOJ), the Director of the FBI, the Commissioner of the Immigration and Naturalization Service (INS), and personnel at the detention center where they were held. Ultimately, the Muslim men were charged with immigration violations, but not terrorism.

An order out of the Eastern District of New York, issued Jan. 15, 2013, evaluated the plaintiffs' claims after all the defendants moved to dismiss. The order is long and complicated, about 60 pages, and dismisses some of the claims, but lets some claims move forward.

The men claimed the following. Their confinement was harsh. They were kept in tiny cells 23 hours a day, given poor food, denied exercise, and frequently harassed with noise and abusive language. They were physically abused, including frequent, intrusive strip searches for no reason. They were denied requests for a copy of the Koran, for halal food, and for the opportunity to pray. They were not allowed to contact relatives or attorneys, and officials listened in on attorney-client privileged conversations.

The court first considered the harsh conditions of confinement and the strip searches. It held that the DOJ, FBI and INS could not be held liable for an unconstitutional implementation of their policies, but the detention center officials could.

Likewise, the court denied the equal protection claim with respect to the DOJ, FBI, and INS, concluding that in the wake of 9/11, investigation would create some legitimate incidental impact on Arab Muslims. But the equal protection claim could go forward against the detention center officials for the harsh treatment given because of race, religion, or national origin.

The court concluded the communications blackout did not allow for a claim against anyone, because the need for security after 9/11 would have let prison officials believe that the actions were justified in the interests of national security.

The court allowed the prisoners' free exercise claim, which was based on actions that were specifically intended to deny the men the right to freely practice their religion—depriving them of their scriptures and the proper food, refusing to tell them the correct time of the day so they could pray, and screaming profanities and anti-Muslim epithets. The right of prisoners to have a reasonable opportunity to worship is well-established.

Finally, the court allowed the unreasonable strip search claim to go forward. The Muslim men alleged that they were often searched multiple times in a row, including their body cavities, when they had had no opportunity to acquire any contraband, and that the searches were videotaped and included verbal sexual abuse. As the searches may not have been related to a reasonable penological interest, the court allowed a claim that the officials violated the Fourth Amendment.

Such treatment of prisoners is troubling, and it will be interesting to see how this case gets resolved as it moves forward. The right to free exercise of religion and to be treated with human dignity is supposed to distinguish our country. As we defend America, we need to keep it worth defending.