

From [The NY Times](#) | Original article

In a courageous decision last week, a federal appellate court ruled that two Americans who say they were tortured by American military forces in Iraq in 2006 can sue former Secretary of Defense Donald Rumsfeld and others for violating their constitutional rights.

The case involves Donald Vance and Nathan Ertel, who went to Iraq to work for an American security firm and became whistleblowers when Mr. Vance grew suspicious that the company was involved in illegal activity, including weapons trafficking. They were detained by the military for three months and six weeks, respectively.

The [opinion](#) by Judge David Hamilton of the United States Court of Appeals for the Seventh Circuit recounted their “well-pled allegations” that while in custody they were “physically threatened, abused, and assaulted by the anonymous U.S. officials working as guards.” The government eventually released them, without explanation or charging them with any crime.

The case is important because it makes clear — for the first time — that government officials can be held accountable for the intentional mistreatment of American citizens, even if that conduct happens in a war zone. (Sadly, there remains no accountability for the abuse, and torture, of foreigners by American jailers and interrogators, which Mr. Rumsfeld and President George W. Bush personally sanctioned.)

In allowing the suit to go forward, the court said the plaintiffs had alleged facts showing “that it is plausible, and not merely speculative, that Secretary Rumsfeld was personally responsible for creating the policies that caused the alleged unconstitutional torture,” and that he “acted with deliberate indifference by not ensuring that the detainees were treated in a humane manner despite his knowledge of widespread detainee mistreatment.”

The court rejected what it called the “unprecedented breadth” of the argument put forward by Mr. Rumsfeld and other defendants — that no government or military employee could ever be sued by American civilians for torture or even murder in a war zone. The court made plain that the wrongdoing alleged “violates the most basic terms of the constitutional compact between

our government and the citizens of this country.”

Judge Hamilton said further that granting Mr. Rumsfeld and others immunity from lawsuits “would amount to an extraordinary abdication of our government’s checks and balances that preserve Americans’ liberty.”

The ruling relies on the landmark Bivens case, which allows citizens to sue officials for damages for violating their constitutional rights and is a powerful, though limited, remedy against government wrongdoing. This decision gives Mr. Vance and Mr. Ertel a chance to prove their case and vindicate their rights.