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Bush Regime Attorney General can be held personally responsible for misuse of material witness law

In an important development, a federal court has ruled that a Bush regime official can be held civilly accountable for his abuse of the law in the U.S. war of terror. This ruling may send chills down the spine of many Bush administration officials that conspired to misuse their powers to violate the rights of their victims during the eight years of the Bush administration. There is even the possibility that more civil lawsuits against Bush regime officials could lead to later criminal prosecutions.

On September 4th, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit ruled that Bush regime former Attorney General John Ashcroft can be held personally responsible for the illegal detention of Abdullah al-Kidd. He was

rounded up, along with many others who were primarily Muslim men and those of Arab decent, after 9/11 by the Bush regime.

The U.S. Department of Justice decided to misuse the material witness law to hold him and others in order to circumvent the rights he would otherwise have had if he had been charged with a crime. They used that federal statute because they did not have any evidence that he or others had committed an actual crime.

In addition to ruling that Ashcroft can be held personally liable, the court ruled that the federal material witness law cannot be used to "preventively" detain or investigate suspects. The American Civil Liberties Union (ACLU) represents al-Kidd in the case, ***al-Kidd v. Ashcroft***.

ACLU Immigrants' Rights Project Deputy Director Lee Gelernt stated, "The court made it very clear today that former Attorney General Ashcroft's use of the federal material witness law circumvented the Constitution. Regardless of your rank or title, you can't escape liability if you

personally created and oversaw a policy that deliberately violates the law." He went on to say, "" The use of the material witness statute as a post-9/11 detention tool is one of the least understood parts of the post 9/11 landscape, but it has enormous implications because it was done in secret and the government has never renounced the policy. Our hope is that we can now begin the process of uncovering the full contours of this illegal national policy."

The ACLU can now proceed with fully discovering what led to the decisions of the Justice Department to abuse this statute and also uncover who else in the Bush administration was responsible beside Ashcroft. Revelations in the civil case could possibly lead to enough evidence to justify criminal prosecutions. This is one of the reasons this case is so important in holding the Bush regime officials accountable for their conduct...

Before 9/11, the federal material witness law was used to ensure that witnesses would be available to testify in criminal cases. Under the statute, arrest only took place in rare cases to secure testimony where there was hard evidence that an individual had material information but would not testify voluntarily. But the Bush regime twisted the law into a "preventive" detention statute which allowed the government to arrest and detain individuals for whom the government lacked probable cause to charge with any criminal violations. This abuse of the law was consistent with many other abuses of the law and the Constitution under the Bush administration.

Previously in 2006 a U.S. District Court 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 district court also ruled that the law does not allow an end-run around the constitutional requirements for arresting someone suspected of a crime. Ashcroft appealed that ruling and argued for complete immunity from personal liability.

Writing for the majority in the court's decision, Judge Milan D. Smith, Jr., repudiated the Bush regime's actions when he wrote, "Framers of our Constitution would have disapproved of the arrest, detention, and harsh confinement of a United States citizen as a 'material witness' under the circumstances, and for the immediate purpose alleged, in al-Kidd's complaint. Sadly, however, even now, more than 217 years after the ratification of the Fourth Amendment to the Constitution, some confidently assert that the government has the power to arrest and detain or restrict American citizens for months on end, in sometimes primitive conditions, not because there is evidence that they have committed a crime, but merely because the government wishes to investigate them for possible wrongdoing, or to prevent them from having contact with others in the outside world. We find this to be repugnant to the Constitution, and a painful reminder of some of the most ignominious chapters of our national history."

Al-Kidd, a U.S.-born 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. He was never charged with any crime or asked to testify.

The ACLU lawsuit names former Attorney General John Ashcroft, the United States and several federal agents. Local, state and federal officials in Virginia, Oklahoma, and Idaho already settled civil claims against them. While the court's ruling does not hold Ashcroft criminally liable it does set an important precedent and may lead to more civil lawsuits against other Bush regime officials for their various actions. The possibility of criminal actions against Bush regime officials is heightened by this ruling. Such civil actions may uncover facts that could further lead to criminal prosecution as they are tried in the civil courts. Civil law also allows extensive discovery and for the calling of witnesses that may have relevant information regarding the case.

This case is only one of many cases where top Bush regime officials have been sued civilly for their illegal actions while in office. Others include Bush, Cheney, Rumsfeld, Yoo, Rove, Libby, and Richard Armitage. Let us hope that it encourages further such lawsuits and uncovers more of the dirty secrets of the regime.

The court's ruling is available online at: www.aclu.org/safefree/detention/40926lgl20090904.html

More information about the case, including the ACLU's complaint and other legal documents, is online at: www.aclu.org/safefree/detention/40511res20051118.html

Witness to Abuse, the 2005 report on the misuse of the material witness statute, is online at: www.aclu.org/safefree/detention/17616prs20050627.html