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Judge Rules That U.S. Has Broad Powers to Detain Noncitizens Indefinitely

By NINA BERNSTEIN

A federal judge in Brooklyn ruled yesterday that the government has wide latitude under immigration law to detain noncitizens on the basis of religion, race or national origin, and to hold them indefinitely without explanation.

The ruling came in a class-action lawsuit by Muslim immigrants detained after 9/11, and it dismissed several key claims the detainees had made against the government. But the judge, John Gleeson of United States District Court for the Eastern District of New York, allowed the lawsuit to continue on other claims, mostly that the conditions of confinement were abusive and unconstitutional. Judge Gleeson's decision requires top federal officials, including former Attorney General John Ashcroft and Robert S. Mueller III, the F.B.I. director, to answer to those accusations under oath.

This is the first time a federal judge has addressed the issue of discrimination in the treatment of hundreds of Muslim immigrants who were swept up in the weeks after the 2001 terror attacks and held for months before they were cleared of links to terrorism and deported. The roundups drew intense criticism, not only from immigrant rights advocates, but also from the inspector general of the Justice Department, who issued reports saying that the government had made little or no effort to distinguish between genuine suspects and Muslim immigrants with minor visa violations.

Lawyers in the suit, who vowed to appeal yesterday's decision, said parts of the ruling could potentially be used far more broadly, to detain any noncitizen in the United States for any reason.

"This decision is a green light to racial profiling and prolonged detention of noncitizens at the whim of the president," said Rachel Meeropol, a lawyer for the Center for Constitutional Rights, which represented the detainees. "The decision is profoundly disturbing because it legitimizes the fact that the Bush administration rounded up and imprisoned our clients because of their religion and race."

A spokesman for the government, Charles S. Miller, would not respond to those assertions, saying only that the Justice Department was "very pleased that the court upheld the decision to detain plaintiffs, all of whom were illegal aliens, until national security investigations were completed and plaintiffs were removed from the country." He said the government was reviewing the rest of the opinion to decide whether to appeal the rulings Judge Gleeson made to allow the plaintiffs' other claims to proceed.

In his 99-page ruling, Judge Gleeson rejected the government's argument that the events of Sept. 11 justified extraordinary measures to confine noncitizens who fell under suspicion, or that the attacks heightened top officials' need for government immunity to combat future threats to national security without fear of being sued.

But his interpretation of immigration law gave the government broad discretion to enforce the law selectively against noncitizens of a particular religion, race or national origin, and to detain them indefinitely, for any unspecified reason, after an immigration judge had ordered them removed from the country.

"The executive is free to single out 'nationals of a particular country' and focus enforcement efforts on them," the judge wrote. "This is, of course, an extraordinarily rough and overbroad sort of distinction of which, if applied to citizens, our courts would be highly suspicious."

Yet, he continued, the Supreme Court has repeatedly held that Congress and the executive branch, in exercising their broad power over naturalization and immigration, can make rules that would be unacceptable if applied to American citizens.

In the judge's view, the government has the right to detain people indefinitely as long as their eventual removal is "reasonably foreseeable." If that interpretation stands, it could apply to millions of noncitizens, including tourists removable for visa violations, said Gerald L. Neuman, a law professor at Columbia who is an expert in human rights law and was not involved in the case.

"It doesn't seem to limit the motives the government has to have in being slow in removing them; it could even be just basic neglect," he said.

But Professor Neuman cautioned that "it's only a district judge's decision."

"The decision encourages the government to behave this way without fear of financial liability," he said, but it does not carry the weight of a ruling by an appellate court. "This interpretation is attackable even among other judges in Brooklyn, let alone Lower Manhattan."

But David Cole, a law professor at Georgetown University and a co-counsel in the lawsuit, said the ruling was the only one of its kind and made New York "an equal protection-free zone" because the government can detain immigrants wherever it chooses.

"What this decision says is the next time there is a terror attack, the government is free to round up every Muslim immigrant in the U.S., based solely on their ethnic and religious identity, and hold them on immigration pretexts for as long as it desires," he said. "We saw after 9/11 what the government did in an era of uncertainty about how far it can go. Judge Gleeson has essentially given them a green light to go much further."

The class-action lawsuit, *Turkmen v. Ashcroft*, is the first and largest of several brought by immigrants held after 9/11. The named plaintiffs in the case include former detainees who came back to the United States this year for depositions and were required to be in the custody of federal marshals at all times. Among them were Hany Ibrahim, a deli worker, and his brother, Yasser, a Web designer, Egyptian Muslims who said then that putting themselves back in the hands of the government they were suing was an act of faith in America.

Yesterday, Yasser Ibrahim, who had lived in New York for three or four years on an expired tourist visa and was delivered in shackles to the Metropolitan Detention Center in Brooklyn soon after Sept. 11, said through his lawyers that he was shocked and very disappointed by the judge's decision.

"I can't believe the court would allow this to happen," he said. "I am frightened for other Muslims in the United States, who could face the same discrimination and abuse that I suffered."