

# Justices Broaden Immunity for Officers

**THE NEW YORK TIMES**

January 23, 2008

By LINDA GREENHOUSE

WASHINGTON — Federal law enforcement officers are immune from lawsuits for mishandling, losing or even stealing personal property that comes under their control in the course of their official duties, the Supreme Court ruled on Tuesday in a 5-to-4 decision.

The case was brought by a federal prison inmate, but the ruling was not limited to the prison context. It was an interpretation of the Federal Tort Claims Act, which applies to federal employees' liability for damages and generally waives immunity from being sued.

The statute has numerous exceptions that preserve immunity in particular situations, however. The exception at issue in the case provides that "any officer of customs or excise or any other law enforcement officer" will be immune from suit for "any claim arising in respect of the assessment or collection of any tax or customs duty or the detention of any goods, merchandise or other property."

The question was the meaning of the phrase "any other law enforcement officer." Did Congress mean to confer blanket immunity for property-related offenses on the part of any federal law enforcement officer? Or was the immunity limited to officers engaged in tax or customs work?

The answer was sufficiently ambiguous that of the 11 federal circuits of appeals to address the issue, six had interpreted the exception as applying broadly to all officers, and five had read it narrowly to apply only to property seizures connected to revenue or customs enforcement.

The Supreme Court majority, in an opinion by Justice Clarence Thomas, chose the broad interpretation. When Congress enacted the law in 1946, "it could easily have written 'any other law enforcement officer acting in a customs or excise capacity,'" Justice Thomas wrote, adding, "We are not at liberty to rewrite the statute to reflect a meaning we deem more desirable."

Beyond the holding in the case, *Ali v. Federal Bureau of Prisons*, No. 06-9130, this first 5-to-4 decision of the current term was notable in several respects.

Justice Anthony M. Kennedy wrote a dissent that was signed by the three other dissenters, John Paul Stevens, David H. Souter and Stephen G. Breyer. In the court's last term, Justice Kennedy voted with the majority in all 24 of the 5-to-4 decisions.

His position on Tuesday meant that the swing vote was cast by Justice Ruth Bader Ginsburg, who in closely divided cases can almost always be found with Justices Stevens, Souter and Breyer. She did not write separately to explain her position.

Justice Kennedy said the majority had failed to adhere to longstanding principles of statutory interpretation, including the rule that “a single word must not be read in isolation, but instead defined by reference to its statutory context.”

He said the majority had mistakenly focused on the word “any” in the phrase “any other law enforcement officer,” when it was clear from the context that Congress was discussing only customs and revenue seizures.

Justice Breyer made a similar point in a dissenting opinion of his own. “It is context, not a dictionary” that matters the most, he said.

The plaintiff, Abdus-Shahid M. S. Ali, was being transferred from a federal prison in Atlanta to one in Inez, Ky., and left two duffle bags of personal property to be shipped. When he received the bags, religious articles, including two copies of the Koran, were missing.

Valuing the missing items at \$177, Mr. Ali filed suit, appealing to the Supreme Court after the federal appeals court in Atlanta had dismissed his case in the decision that the justices affirmed.