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**United States Supreme Court Raises  
Significant Issues with respect to  
Supervisory Liability**



**By Jack Ryan, J.D.**

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**Continue to the end of this article for important commentary by author Jack Ryan, J.D.**

On May 18, 2009, the United States Supreme Court issued its 5/4 decision in *Ashcroft v. Iqbal*.<sup>1</sup> While at first glance this case had little or nothing to do with local law enforcement and claims brought against law enforcement, the decision may have far reaching implications on supervisory liability in civil rights claims brought under 42 U.S.C. §1983 against supervisors.

The *Iqbal* case was brought by Javaid Iqbal against government officials, including United States Attorney General John Ashcroft and Federal Bureau of Investigation Director Robert Mueller. Iqbal had been arrested after the September 11<sup>th</sup> attacks on the United States and was held for a period of time as a person of "high interest." Iqbal, as one of 184 persons of high interest was held at the Metropolitan Detention Center in Brooklyn, New York in the Administrative Maximum Special Housing Unit. (ADMAX SHU) During his detention at ADMAX SHU Iqbal was locked in his cell for 23 hours per day and was allowed out for one hour in which he was shackled and escorted by 4 officers. Ultimately Iqbal pled guilty and served a sentence relating to fraud in relation to identification documents and conspiracy to defraud the United States. After serving his sentence he was removed from the United States to his native Pakistan. Iqbal then filed a *Bivens* action. With respect to claims brought against the Attorney General and the F.B.I. Director, he alleged that the two had adopted an unconstitutional policy which subjected him to harsh treatment while incarcerated at the ADMAX SHU due to his religion, race, or national origin. Iqbal was a native of

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Pakistan and a Muslim. John Ashcroft and Robert Mueller sought to have the lawsuit dismissed on qualified immunity grounds asserting that Iqbal had not pled sufficient facts in his complaint to show their own involvement in clearly established unconstitutional conduct. Both the trial court and the United States Court of Appeals for the Second Circuit rejected Ashcroft's and Mueller's defense setting off the appeal to the United States Supreme Court.

The application of the majority's decision to supervisory liability in local law enforcement cases is best evidenced by Justice Souter's opening paragraph in dissent of the Court's holding in the case. Justice Souter asserted: "This case is here on the uncontested assumption that *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), allows personal liability based on a federal officer's violation of an individual's rights under the First and Fifth Amendments, and it comes to us with the explicit concession of petitioners Ashcroft and Mueller that an officer may be subject to *Bivens* liability as a supervisor on grounds other than *respondeat superior*. **The Court apparently rejects this concession and, although it has no bearing on the majority's opinion in this case, does away with supervisory liability under *Bivens*.**" (emphasis added)

At the outset of the majority's holding the Court noted that a *Bivens* action is the "federal analog" to suits brought against state and local officials under §1983. Additionally the Court asserted the clearly established precedent that supervisors cannot be held liable under §1983 or *Bivens* based upon *respondeat superior* liability, in other words, simply because they supervise the person who committed the wrongful act. The Court went on to assert: "**Because vicarious liability is inapplicable to *Bivens* and §1983 suits, a plaintiff must plead that each Government –official defendant, through the official's own individual actions, has violated the Constitution.**" (emphasis added) "The factors necessary to establish a *Bivens* [or §1983] violation [against the supervisor] will vary depending on the constitutional provision at issue. Where the claim is invidious discrimination in contravention of the First and Fifth Amendments, our decisions make clear that the plaintiff must plead and prove that the defendant [supervisor] acted with a discriminatory purpose."

The Court went on to hold that in this particular case, the plaintiff would have to plead sufficient facts to show that Director Mueller and Attorney General Ashcroft "implemented the detention policies at issue not for a neutral, investigative reason but for the purpose of discriminating on account of race, religion, or national origin."

In rejecting Iqbal's theory of supervisory liability the Court stated: Plaintiff "argues that, under a theory of 'supervisory liability,' [Ashcroft and Mueller] can be liable for 'knowledge and acquiescence in their subordinates use of discriminatory criteria to make classification decisions among detainees'...That is to say, respondent believes a supervisor's mere knowledge of his subordinate's discriminatory purpose amounts to the supervisor's violating the Constitution. We reject this argument. [Iqbal's] conception of 'supervisor liability' is inconsistent with his accurate stipulation that petitioners may not be held accountable for the misdeeds of their agents. In a

§1983 suit or a *Bivens* action-where masters do not answer for the torts of their servants-the term 'supervisory liability' is a misnomer. Absent vicarious liability, **each Government official, his or her title notwithstanding, is only liable for his or her own misconduct.**"

The Court held: "In the context of determining whether there is a violation of clearly established right to overcome qualified immunity, purpose rather than knowledge is required to impose *Bivens* liability on the subordinate for unconstitutional discrimination; the same holds true for an official charged with violations arising from his or her superintendant responsibilities."

### **Commentary:**

While it will take some cases from our federal courts to determine the reach of this decision on supervisory liability for local law enforcement, it is clear that this case will have a dramatic impact on the manner in which supervisory liability will be pled by plaintiffs and defended by defendant supervisors.

### **Some possible applications:**

In cases involving allegations of discrimination, such as racial profiling allegations, it will not be enough for a plaintiff to show that a supervisor knew of and acquiesced in the racial profiling but instead will have to show that the supervisor had a purpose to discriminate.

The case will likely have an impact where there is some state of mind requirement such as use of force in jails and prisons. It may not in those cases be enough to show that the supervisor knew of and acquiesced to the force, a plaintiff may be required to prove that the supervisor had the requisite malicious and sadistic intention related to the use of force.

**Any agency or attorney having a case involving supervisory liability for individual supervisors should read this case and determine how this decision changes the manner in which the claim is handled.**

### **CITATIONS:**

<sup>i</sup> *Ashcroft v. Iqbal*, 556 U.S. \_\_\_, slip op. 07-1015 (2009).