

10-98 ASHCROFT V. AL-KIDD

DECISION BELOW: 580 F.3d 949

LOWER COURT CASE NUMBER: 06-36059

QUESTION PRESENTED:

Respondent was arrested on a material witness warrant issued by a federal magistrate judge under 18 U.S.C. 3144 in connection with a pending prosecution. He later filed a *Bivens* action against petitioner, the former Attorney General of the United States, seeking damages for his arrest. Respondent alleged that his arrest resulted from a policy implemented by the former Attorney General of using the material witness statute as a "pretext" to investigate and preventively detain terrorism suspects. In addition, respondent alleged that the affidavit submitted in support of the warrant for his arrest contained false statements. The questions presented are:

1. Whether the court of appeals erred in denying petitioner absolute immunity from the pretext claim.

2. Whether the court of appeals erred in denying petitioner qualified immunity from the pretext claim based on the conclusions that (a) the Fourth Amendment prohibits an officer from executing a valid material witness warrant with the subjective intent of conducting further investigation or preventively detaining the subject; and (b) this Fourth Amendment rule was clearly established at the time of respondent's arrest.

3. Whether the former Attorney General may be held liable for the alleged false statements in the affidavit supporting the material witness warrant, even though the complaint does not allege that he either participated in the preparation of the affidavit or implemented any policy encouraging such alleged misconduct.

THE PETITION FOR A WRIT OF CERTIORARI IS GRANTED LIMITED TO QUESTIONS 1 AND 2 PRESENTED BY THE PETITION.

JUSTICE KAGAN TOOK NO PART
CERT. GRANTED 10/18/2010