



United States Supreme Court Issues Landmark Decision on Inmates' Rights

On Wednesday, March 27, 2013, the United States Supreme Court issued its ruling in *Millbrook v. United States*, and held that the Federal Torts Claims Act (FTCA) waives sovereign immunity for correctional officers who commit intentional torts against inmates while acting within the scope of their employment. This unanimous decision, written by Justice Clarence Thomas, will have a major impact on inmates' ability to file lawsuits against federal correctional officers for acts of sexual abuse that occur in federal custodial facilities.

The petitioner, Kim Millbrook, an inmate at the United States Penitentiary in Lewisburg Pennsylvania, filed suit against the United States under the FTCA in the District Court for the Middle District of Pennsylvania. In his complaint, Mr. Millbrook alleged that a Bureau of Prisons (BOP) correctional officer forced him to perform oral sex, while a second officer held him in a choke hold, and a third officer stood watch nearby. The Department of Justice (DOJ), representing BOP, requested that the court dismiss Mr. Millbrook's claim, as the FTCA only waives sovereign immunity when a law enforcement officer commits an intentional tort while engaged in an arrest, search, or seizure, and the officers in this case were not engaged in any of these activities when the alleged assault occurred. The District Court agreed with the government's interpretation of the FTCA, and granted the defendants' motion for summary judgment, and the Third Circuit affirmed.

Mr. Millbrook filed a hand-written petition to the Supreme Court, and the Court granted certiorari. While the Court prepared to hear arguments, the DOJ changed its position, and instead argued that the Court should overturn the Third Circuit's verdict. Several advocacy organizations authored amicus briefs on Mr. Millbrook's behalf, which included extensive discussions of the Prison Rape Elimination Act.

In its decision, the Supreme Court explained that the United States is generally immune to lawsuits that result from the intentional torts of federal employees, but that Congress has waived sovereign immunity in specific circumstances. Under the FTCA, the United States can be held liable for intentional torts committed by investigative or law enforcement officers. Many district courts, including the court that heard Mr. Millbrook's claim, limited this waiver to cases in which a law enforcement officer committed an intentional tort while executing a search, seizing evidence, or making an arrest. The Court rejected this reading of the FTCA, instead finding that, "this provision focuses on the status of persons whose conduct may be actionable, not the types of activities that may give rise to a tort claim against the United States." Thus the Court held that the FTCA waives immunity for intentional torts committed by any law enforcement officer with the authority to conduct searches, seize evidence or make an arrest, including correctional officers. The Court reversed the Third Circuit and remanded Mr. Millbrook's case to the lower courts for a hearing of the case on the merits.

Prior to the *Millbrook* decision, relief for inmates claiming sexual assault at the hands of federal corrections officers was limited to constitutional claims under the Eighth Amendment for cruel and unusual punishment. The high burden of proof in such constitutional claims prevented many inmates from receiving meaningful recovery. Post-*Millbrook*, inmates in federal facilities will be able to pursue claims for intentional torts, such as assault and battery, against federal correctional officers, potentially offering a greater opportunity for legal relief to those who suffered sexual abuse while in custody.

For more information concerning *Millbrook v. United States*, please visit:
<http://www.scotusblog.com/case-files/cases/millbrook-v-united-states/>.

For more information regarding federal and state case law on sexual abuse in custodial settings, please visit:
<http://www.prearesourcecenter.org/sites/default/files/library/sexualabusecasescaselawsurvey.pdf>.

Please e-mail mloomis@wcl.american.edu with any questions.