

# THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

FOR IMMEDIATE RELEASE - July 7, 2016

Contact: Larry Akey, Director of Communications, (202)580-6922 [o] or (202)580-9313 [c]  
[lakey@constitutionproject.org](mailto:lakey@constitutionproject.org)

## Supreme Court Should Allow American to Sue FBI Over Abuse Claims, TCP Argues

WASHINGTON, D.C. -- The U.S. Supreme Court must consider the case of a New Jersey man who says the FBI violated his constitutional rights during his arrest and detention overseas, The Constitution Project argued in a [friend-of-the-court brief](#) filed late on Wednesday.

Without consideration of the case by the Supreme Court, "American citizens abroad will have no effective remedy against unconstitutional mistreatment by their own government where 'national security' is broadly invoked," TCP argued in its brief.

Amir Meshal, an American citizen, was a student in Somalia when hostilities forced him to flee to Kenya in December 2006. After he was captured in January 2007, Meshal was imprisoned in secret, first in Somalia and then in Ethiopia, where he was held without an attorney and interrogated by FBI agents more than 30 times. He was released four months later without any charges.

In 2009, the ACLU filed a lawsuit on Meshal's behalf against four FBI agents, alleging the agents had violated his Fourth and Fifth Amendment rights. In 1971, the Supreme Court found that a citizen has a private right of action for monetary damages where no other federal remedy exists for the vindication of a constitutional right, unless Congress has expressly curtailed that right of recovery, or there were other "special factors counseling hesitation."

Although a district court ruled that Meshal's claims of constitutional violations were clearly plausible, and called his treatment at the hands of U.S. officials "appalling" and "embarrassing," the judge nonetheless found Meshal did not have any basis for his lawsuit because the U.S. government claimed he had been held overseas for national security purposes. An appeals court upheld the lower court's decision and, in May, the ACLU asked the Supreme Court to take the case.

The judiciary has an "historical responsibility to safeguard constitutional rights that would otherwise go unprotected," TCP wrote in its brief. "The Court should reverse the lower court's ruling that the Executive can turn off the judiciary's ability to enforce the Constitution's protections simply by shifting its constitutional violations offshore."

The case is [Meshal v. Higgenbotham](#) (No. 15-1461). TCP's friend-of-the-court brief was prepared with the pro bono assistance of attorneys at Wilmer Cutler Pickering Hale and Dorr LLP and at Cohen Millstein Sellers & Toll PLLC.

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### [About The Constitution Project](#)

*Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.*