

SUPREME COURT MISSES IMPORTANT OPPORTUNITY TO REAFFIRM ESSENTIAL OPENNESS OF U.S. LEGAL PROCESS

NEW YORK- Human Rights First expressed regret today at the Supreme Court's refusal to hear the appeal in the case of Mohammed K. Bellahouel, an immigrant detained in secrecy for five months following the September 11 attacks. The case raised fundamental questions about the government's authority to issue a blanket order sealing all information about Bellahouel's case. The Supreme Court's decision has the effect of affirming the lower court's decision to keep information about the case under seal.

"The Supreme Court missed a critical opportunity to correct the disconcerting trend since September 11 that sees more and more of our court proceedings conducted in secrecy," said Deborah Pearlstein, who directs the U.S. Law and Security program at Human Rights First. "This type of excessive secrecy runs counter to the basic ideals of open government on which this nation was built."

The case before the Court this week arose following Bellahouel's detention in Florida as part of the far-reaching sweeps of primarily South Asian, Muslim, and Arab men conducted by federal authorities following September 11, 2001. Bellahouel was a waiter at a restaurant frequented by two of the September 11th hijackers and was believed to have information regarding them. He is married to a U.S. citizen and merely was seeking to adjust his immigration status.

While in federal custody, Bellahouel challenged his detention in court. His challenge was sealed from the public, and the case was conducted in absolute secrecy for over a year. The case did not appear on the public docket, all documents in the case were sealed from the public, and his lawyers were barred from publicly discussing the case. In his appeal to the Court, Bellahouel and several groups seeking to intervene on his behalf contended that as media organizations, they had a separate and strong First Amendment interest of reporting on judicial proceedings.

As Human Rights First documented in its report *Assessing the New Normal*, the increasing secrecy by the executive in the aftermath of September 11th has made it difficult for the other branches of government and the American public to make informed judgments about the wisdom of government policy.

"The blanket approach to secrecy in our justice system, as illustrated by this case, is troublingly becoming more prevalent" said Pearlstein. "If the government has security-related interests in conducting certain proceedings in secret, it should be required to make some showing of the specific reasons why secrecy is necessary."

The decision today is in line with the Supreme Court's refusal last month to consider a case concerning the government's authority to withhold information generally regarding the identities of the hundreds of individuals detained in the post-September 11th sweeps.