Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ASHCROFT *v.* AL-KIDD

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10–98. Argued March 2, 2011—Decided May 31, 2011

Respondent al-Kidd alleges that, after the September 11th terrorist attacks, then-Attorney General Ashcroft authorized federal officials to detain terrorism suspects using the federal material-witness statute, 18 U. S. C. §3144. He claims that this pretextual detention policy led to his material-witness arrest as he was boarding a plane to Saudi Arabia. To secure the warrant, federal officials had told a Magistrate Judge that information "crucial" to Sami Omar al-Hussayen's prosecution would be lost if al-Kidd boarded his flight. Prosecutors never called al-Kidd as a witness, and (as he alleges) never meant to do so. Al-Kidd filed suit pursuant to *Bivens* v. *Six Unknown Fed. Narcotics Agents,* 403 U. S. 388, challenging the constitutionality of Ashcroft's alleged policy. The District Court denied Ashcroft's motion to dismiss on absolute and qualified immunity grounds. The Ninth Circuit affirmed, holding that the Fourth Amendment prohibits pretextual arrests absent probable cause of criminal wrongdoing, and that Ashcroft could not claim qualified or absolute immunity.

Held:

1. The objectively reasonable arrest and detention of a material witness pursuant to a validly obtained warrant cannot be challenged as unconstitutional on the basis of allegations that the arresting authority had an improper motive. Pp. 3–9.

(a) Qualified immunity shields a government official from money damages unless (1) the official violated a statutory or constitutional right, and (2) that right was "clearly established" at the time of the challenged conduct. *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818. Where, as here, a court considers both prongs of this inquiry, this

Syllabus

Court has the discretion to correct the lower court's errors at each step. P. 3.

(b) Whether a detention is reasonable under the Fourth Amendment "is predominantly an objective inquiry." *Indianapolis* v. *Edmond*, 531 U. S. 32, 47. Courts ask whether "the circumstances, viewed objectively, justify [the challenged] action." *Scott* v. *United States*, 436 U. S. 128, 138. Except for cases that involve special-needs, *e.g., Vernonia School Dist. 47J* v. *Acton*, 515 U. S. 646, 653, or administrative searches, *e.g., Michigan* v. *Clifford*, 464 U. S. 287, 294, this Court has almost uniformly rejected invitations to probe subjective intent. The Court of Appeals was mistaken in believing that *Edmond* established that "'programmatic purpose' is relevant to Fourth Amendment analysis of programs of seizures without probable cause." 580 F. 3d 949, 968. It was not the absence of probable cause that triggered *Edmond*'s invalidating-purpose inquiry, but the checkpoints' failure to be based on "individualized suspicion." 531 U. S., at 47. Here a neutral Magistrate Judge issued a warrant authorizing al-Kidd's arrest, and the affidavit accompanying the warrant application gave individualized reasons to believe that he was a material witness who would soon disappear. A warrant based on individualized suspicion grants more protection than existed in most of this Court's cases eschewing inquiries into intent, *e.g., Whren* v. *United States*, 517 U. S. 806, 813, and *Terry* v. *Ohio*, 392 U. S. 1, 21–22. Al-Kidd's contrary, narrow reading of those cases is rejected. Because he concedes that individualized suspicion supported the issuance of the material-witness arrest warrant; and does not assert that his arrest would have been unconstitutional absent the alleged pretext; there is no Fourth Amendment violation here. Pp. 3–9.

2. Ashcroft did not violate clearly established law and thus is entitled to qualified immunity. A Government official's conduct violates clearly established law when, at the time of the challenged conduct, "[t]he contours of [a] right [are] sufficiently clear" that every "reasonable official would have understood that what he is doing violates that right." *Anderson* v. *Creighton*, 483 U. S. 635, 640. Here, the asserted constitutional right falls far short of that threshold. At the time of al-Kidd's arrest, not a single judicial opinion had held that pretext could render an objectively reasonable arrest pursuant to a material-witness warrant unconstitutional. The Ninth Circuit's reliance on a District Court's footnoted dictum, irrelevant cases from this Court, and the Fourth Amendment's broad purposes and history is rejected. Because Ashcroft did not violate clearly established law, the question whether he enjoys absolute immunity need not be addressed. Pp. 9–12.

580 F. 3d 949, reversed and remanded.

Syllabus

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined. KENNEDY, J., filed a concurring opinion, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined as to Part I. GINSBURG, J., filed an opinion concurring in the judgment, in which BREYER and SOTOMAYOR, JJ., joined. SOTOMAYOR, J., filed an opinion concurring in the judgment, in which GINSBURG and BREYER, JJ., joined. KAGAN, J., took no part in the consideration or decision of the case.