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High Court Hitching Post Win Leads to Loss in Alabama

By [Scott Simonson](#)
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Larry Hope and his lawyers discovered last week that winning a battle at the U.S. Supreme Court does not guarantee victory in the war.

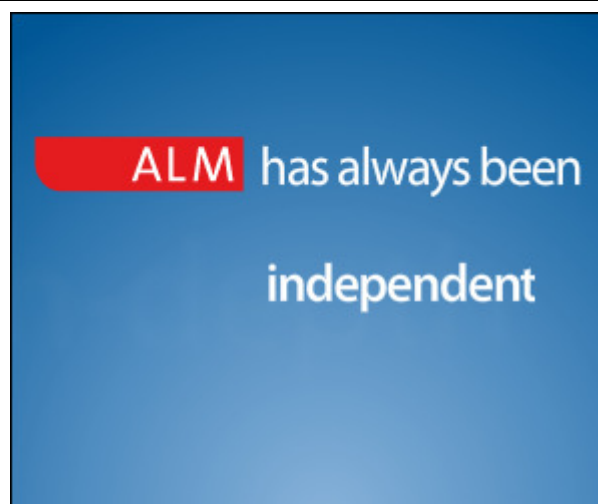
Hope was the Alabama prison inmate in the 2002 case of *Hope v. Pelzer*, 536 U.S. 730, in which a 6-3 majority cleared the way for him to sue guards who left him handcuffed to a hitching post for seven hours.

Justice John Paul Stevens wrote that evidence indicated guards "were fully aware of the wrongful character of their conduct."

"The obvious cruelty inherent in this practice should have provided respondents with some notice that their alleged conduct violated Hope's constitutional protection," Stevens added.

But on Nov. 8, Judge Karon O. Bowdre of the U.S. District Court for the Northern District of Alabama granted the state's motion to dismiss the suit after Hope's lawyer finished presenting Hope's case to a jury.

"Plaintiff offered no evidence to prove that any of the individual defendants acted with deliberate indifference or were aware of a substantial risk of serious harm," Bowdre wrote. "Merely showing that an Eighth Amendment violation occurred, without more, is not sufficient to impose liability on the defendants in this case." *Hope v. Pelzer*, No. CV-96-BE-2968-S.



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The hitching post is a horizontal bar with a chain that holds prisoners' hands slightly above their heads. Hope suffered no serious, lasting physical injuries, but he claimed that the handcuffs hurt his wrists, that he was forced to stand in summer heat, with little water, no chance to use a bathroom and a prison guard occasionally taunting him about his thirst.

A RETURN TO 11TH CIRCUIT

Hope's legal team is considering an appeal, but Bowdre's decision could mark an ironic end to a case that transformed case law in the 11th U.S. Circuit Court of Appeals for when government officials are entitled to immunity from suits even though they have violated a citizen's constitutional rights.

Hope's high court win prompted settlements for nine other Alabama inmates claiming cruel and unusual punishment for being shackled to a hitching post. But Hope has collected nothing.

Eight of the nine settlements were for less than \$10,000, said Craig Jones, the Atlanta attorney who argued Hope's case at the high court. Hope's attorneys in a court filing in October estimated a jury might award compensatory damages of \$20,000 to Hope, who also sought punitive damages.

Birmingham lawyer James A. Mendelsohn, who represented Hope before Bowdre, said Alabama's attorneys insisted on a trial in Hope's case.

"They were not interested in a settlement whatsoever and would not entertain a discussion," said Mendelsohn, a former member of the State Bar of Georgia who worked in Athens and Atlanta.

Keith Miller, the Alabama chief deputy AG, declined to discuss Alabama's settlement positions.

"We think this is the appropriate resolution to this case," he allowed. "We're glad this has occurred."

Ellen R. Leonard of the Alabama Attorney General's Office, who tried the *Hope* case, was on vacation last week and could not be reached for comment.

Jones said the judge missed the signals given by the high court.

"If you look at the road map the Supreme Court gave us, she should have ended up in the same place," he said.