

ASHCROFT v. IQBAL

Supreme Court of the United States, 2009.

___ U.S. ___, 129 S.Ct. 1937, 173 L.Ed.2d 868.

Professor's Note: The following copyrighted excerpt regarding *Iqbal* precedent appears in Levine, Slomanson and Shapell, *Cases and Materials on California Civil Procedure*, 3d ed (Thomson-West, 2008), p.137–139:

Notice Pleading in Federal Court. The federal “notice” pleading standard is exemplified by FRCP 8(a)(2). It requires a “short and plain statement of the claim showing that the pleader is entitled to relief.” As a result, complaints filed in federal court have not needed the factual detail necessary in a “code” pleading jurisdiction like California. See, e.g., Federal Form 11 (Complaint for Negligence).

The U.S. Supreme Court long ago articulated the federal standard as: “[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 46-47, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957). The Court consistently adhered to this standard for the next 50 years. For example, a 2002 decision reminded the lower federal courts that imposing heightened pleading requirements in civil rights cases:

conflicts with Federal Rule of Civil Procedure 8(a)(2) * * * . Such a statement must simply “give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.” This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims.

Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512, 122 S.Ct. 992, 998, 152 L.Ed.2d 1 (2002).

Sometimes, however, the Court has enforced heightened pleading standards when specifically required by a statute or the FRCP. These situations reside in a twilight zone more akin to state “fact” pleading than federal “notice” pleading. For example, Congress raised the pleading bar in federal securities cases in the 1995 Private Securities Litigation Reform Act. 15 USC § 78u-4; *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. ___, 127 S.Ct. 2499, 168 L.Ed.2d 179 (2007) (requiring detailed sworn certification from private plaintiffs who file securities class actions. In limited circumstances, the FRCP has raised the bar as well. FRCP 9(b) is a prime example. It requires a party to state “with particularity” the circumstances constituting any fraud or mistake alleged.

Absent a statute or FRCP, exceptions to the general notice pleading standard have been rather limited. See, e.g., *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993) (rejecting a judicially imposed heightened pleading standard in a civil rights case against a municipality). Analysis of the recurring pleading issues is available in Christopher M. Fairman, *The Myth of Notice Pleading*, 45 *Ariz.L.Rev.* 987 (2003); and Richard L. Marcus, *The Revival of Fact Pleading under the Federal Rules of Civil Procedure*, 86 *Colum.L.Rev.* 433 (1986).

The 50-year reign of the generous federal approach to pleading may be in flux. Justice Souter’s majority opinion, in a 2007 antitrust conspiracy case, declared that part of *Conley*’s articulation of the federal standard—its “no set of facts” language—was “best forgotten as an incomplete, negative gloss on an accepted pleading standard.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. ___, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). The Court’s alternative articulation was that:

[w]hile a complaint * * * does not need detailed factual allegations, a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do * * * . Factual allegations must be enough to raise a right to relief above the speculative level * * * [and] "the pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action."

* * *

While, for most types of cases, the Federal Rules eliminated the cumbersome requirement that a claimant "set out *in detail* the facts upon which he bases his claim," Rule 8(a)(2) still requires a "showing," rather than a blanket assertion, of entitlement to relief. Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only "fair notice" of the nature of the claim, but also "grounds" on which the claim rests. Rule 8(a) "contemplate[s] the statement of circumstances, occurrences, and events in support of the claim presented" and does not authorize a pleader's "bare averment that he wants relief and is entitled to it."

127 S.Ct. at 1964-1965 and n.3. In sum, the Court demanded that the plaintiff cross "the line between possibility and plausibility of 'entitle[ment] to relief.'"

The degree to which *Bell Atlantic* will encourage lower courts to close the gap between state fact pleading and federal notice pleading standards remains to be seen. Just two weeks after *Bell Atlantic*, the Court released a per curiam opinion in a prisoner's civil rights case which specifically confirmed the "liberal pleading standards" of FRCP 8(a)(2). The Court reminded the Court of Appeals, which had found the prisoner's claims to be too conclusory:

Specific facts are not necessary; the statement need only " 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.' " *Bell Atlantic* (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). In addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint. *Bell Atlantic* (citing *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508, n.1 (2002) * * *).

This opinion added that: "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. ___, ___, 127 S.Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007). No mention as made of *Bell Atlantic*'s newly drawn line between "possibility and plausibility." As a consequence, it is not clear whether *Bell Atlantic* will ultimately govern pleading standards in general, or be limited to pleading conspiracies allegedly violating federal antitrust laws. See Allan Ides, *Bell Atlantic and the Principle of Substantive Sufficiency Under Federal Rule of Civil Procedure 8(a)(2): Toward a Structured Approach to Federal Pleading Practice*, ___ F.R.D. ___ (2007).

Fact Pleading in State Court [segment omitted].

The following case answers some of the questions posed by *Bell Atlantic*, including whether its "plausibility" standard is limited to antitrust cases—or is generally applicable to all federal cases (most citations omitted):

[Professors may delete the above intro & print copies of *Iqbal* as it appears on the next page.]

ASHCROFT v. IQBAL

Supreme Court of the United States, 2009.

___ U.S. ___, 129 S.Ct. 1937, ___ L.Ed.2d ___.

JUSTICE KENNEDY delivered the opinion of the Court.

Respondent Javid Iqbal is a citizen of Pakistan and a Muslim. In the wake of the September 11, 2001, terrorist attacks he was arrested in the United States on criminal charges and detained by federal officials. Respondent claims he was deprived of various constitutional protections while in federal custody. To redress the alleged deprivations, respondent filed a complaint against numerous federal officials, including John Ashcroft, the former Attorney General of the United States, and Robert Mueller, the Director of the Federal Bureau of Investigation (FBI). Ashcroft and Mueller are the [only] petitioners in the case now before us. As to these two petitioners, the complaint alleges that they adopted an unconstitutional policy that subjected respondent to harsh conditions of confinement on account of his race, religion, or national origin.

In the District Court petitioners raised the defense of qualified immunity and moved to dismiss the suit, contending the complaint was not sufficient to state a claim against them. The District Court denied the motion to dismiss, concluding the complaint was sufficient to state a claim despite petitioners' official status at the times in question. Petitioners brought an interlocutory appeal in the Court of Appeals for the Second Circuit. The court * * * affirmed the District Court's decision.

Respondent's account of his prison ordeal could, if proved, demonstrate unconstitutional misconduct by some governmental actors. But the allegations and pleadings with respect to these actors are not before us here. This case instead turns on a narrower question: Did respondent, as the plaintiff in the District Court, plead factual matter that, if taken as true, states a claim that petitioners deprived him of his clearly established constitutional rights. We hold respondent's pleadings are insufficient.

I

Following the 2001 attacks, the FBI and other entities within the Department of Justice began an investigation of vast reach to identify the assailants and prevent them from attacking anew. * * *

In the ensuing months the FBI questioned more than 1,000 people with suspected links to the attacks in particular or to terrorism in general. Of those individuals, some 762 were held on immigration charges; and a 184-member subset of that group was deemed to be "of 'high interest'" to the investigation. The high-interest detainees were held under restrictive conditions designed to prevent them from communicating with the general prison population or the outside world.

Respondent was one of the [high interest] detainees. According to his complaint, in November 2001 agents of the FBI and Immigration and Naturalization Service arrested him on charges of fraud in relation to identification documents and conspiracy to defraud the United States. Pending trial for those crimes, respondent was housed at the Metropolitan Detention Center (MDC) in Brooklyn, New York. * * * [He] was placed in a section of the MDC known as the Administrative Maximum Special Housing Unit (ADMAX SHU [in 2002])). As the facility's name indicates, the ADMAX SHU incorporates the maximum security conditions allowable under Federal Bureau of Prison regulations. ADMAX SHU detainees were kept in lockdown 23 hours a day, spending the remaining hour outside their cells in handcuffs and leg irons accompanied by a four-officer escort.

Respondent pleaded guilty to the criminal charges, served a term of imprisonment, and was removed to his native Pakistan. He then filed a *Bivens* action in the United States District Court for the Eastern District of New York against 34 current and former federal officials and 19

“John Doe” federal corrections officers. See *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). The defendants range from the correctional officers who had day-to-day contact with respondent during the term of his confinement, to the wardens of the MDC facility, all the way to petitioners—officials who were at the highest level of the federal law enforcement hierarchy.

The 21-cause-of-action complaint does not challenge respondent’s arrest or his confinement in the MDC’s general prison population. Rather, it concentrates on his treatment while confined to the ADMAX SHU. The complaint sets forth various claims against defendants who are not before us. For instance, the complaint alleges that respondent’s jailors “kicked him in the stomach, punched him in the face, and dragged him across” his cell without justification; subjected him to serial strip and body-cavity searches when he posed no safety risk to himself or others; and refused to let him and other Muslims pray because there would be “[n]o prayers for terrorists.”

The allegations against petitioners [Ashcraft and Mueller] are the only ones relevant here. The complaint contends that petitioners designated respondent a person of high interest on account of his race, religion, or national origin, in contravention of the First and Fifth Amendments to the Constitution. The complaint alleges that “the [FBI], under the direction of Defendant MUELLER, arrested and detained thousands of Arab Muslim men ... as part of its investigation of the events of September 11.” It further alleges that “[t]he policy of holding post-September-11th detainees in highly restrictive conditions of confinement until they were ‘cleared’ by the FBI was approved by Defendants ASHCROFT and MUELLER in discussions in the weeks after September 11, 2001.” Lastly, the complaint posits that petitioners “each knew of, condoned, and willfully and maliciously agreed to subject” respondent to harsh conditions of confinement “as a matter of policy, solely on account of [his] religion, race, and/or national origin and for no legitimate penological interest.” The pleading names Ashcroft as the “principal architect” of the policy, and identifies Mueller as “instrumental in [its] adoption, promulgation, and implementation.”

Petitioners moved to dismiss the complaint for failure to state sufficient allegations to show their own involvement in clearly established unconstitutional conduct. The District Court denied their motion. Accepting all of the allegations in respondent’s complaint as true, the court held that “it cannot be said that there [is] no set of facts on which [respondent] would be entitled to relief as against” petitioners. ([R]elying on *Conley v. Gibson*. * * * [P]etitioners filed an interlocutory appeal in the United States Court of Appeals for the Second Circuit. While that appeal was pending, this Court decided *Bell Atlantic Corp. v. Twombly*, which discussed the standard for evaluating whether a complaint is sufficient to survive a motion to dismiss.

The Court of Appeals considered *Twombly’s* [aka *Bell Atlantic*] applicability to this case. Acknowledging that *Twombly* retired the *Conley* no-set-of-facts test relied upon by the District Court, the Court of Appeals’ opinion discussed at length how to apply this Court’s “standard for assessing the adequacy of pleadings.” It concluded that *Twombly* called for a “flexible ‘plausibility standard,’ which obliges a pleader to amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim *plausible*.” The court found that petitioners’ appeal did not present one of “those contexts” requiring amplification. As a consequence, it held respondent’s pleading adequate to allege petitioners’ personal involvement in discriminatory decisions which, if true, violated clearly established constitutional law.

[Second Circuit] Judge Cabranes concurred. He agreed that the majority’s “discussion of the relevant pleading standards reflect[ed] the uneasy compromise ... between a qualified immunity privilege rooted in the need to preserve the effectiveness of government as contemplated by our constitutional structure and the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure.” Judge Cabranes nonetheless expressed concern at the prospect of subjecting high-ranking Government officials—entitled to assert the defense of qualified immunity and charged with responding to “a national and international security emergency

unprecedented in the history of the American Republic”—to the burdens of discovery on the basis of a complaint as nonspecific as respondent’s. Reluctant to vindicate that concern as a member of the Court of Appeals Judge Cabranes urged this Court to address the appropriate pleading standard “at the earliest opportunity.” We granted certiorari, and now reverse.

* * *

III

* * * [W]e begin by taking note of the elements a plaintiff must plead to state a claim of unconstitutional discrimination against officials entitled to assert the defense of qualified immunity.

* * *

In the limited settings where *Bivens* does apply, the implied cause of action is the “federal analog to suits brought against state officials under 42 U.S.C. § 1983.” Based on the rules our precedents establish, respondent correctly concedes that Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*. (“[I]t is undisputed that supervisory *Bivens* liability cannot be established solely on a theory of *respondeat superior*.”) * * * Because vicarious liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.

* * * Where the claim is invidious discrimination in contravention of the First and Fifth Amendments, our decisions make clear that the plaintiff must plead and prove that the defendant acted with discriminatory purpose. * * * It follows that, to state a claim based on a violation of a clearly established right, respondent must plead sufficient factual matter to show that petitioners adopted and implemented the detention policies at issue not for a neutral, investigative reason but for the purpose of discriminating on account of race, religion, or national origin.

* * * Absent [unchangeable] vicarious liability, each Government official, his or her title notwithstanding, is only liable for his or her own misconduct. * * *

IV

A

We turn to respondent’s complaint. Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” As the Court held in *Twombly*, the pleading standard Rule 8 announces does not require “detailed factual allegations,” but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” Nor does a complaint suffice if it tenders “naked assertion[s]” devoid of “further factual enhancement.”

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of the line between possibility and plausibility of ‘entitlement to relief.’ ”

Two working principles underlie our decision in *Twombly*. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. * * * Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that

states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not “show[n]”—“that the pleader is entitled to relief.”

In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Our decision in *Twombly* illustrates the [above] two-pronged approach. There, we considered the sufficiency of a complaint alleging that incumbent telecommunications providers had entered an agreement not to compete and to forestall competitive entry, in violation of the Sherman Act, 15 U.S.C. § 1. Recognizing that § 1 enjoins only anticompetitive conduct “effected by a contract, combination, or conspiracy,” the plaintiffs in *Twombly* flatly pleaded that the defendants “ha[d] entered into a contract, combination or conspiracy to prevent competitive entry ... and ha[d] agreed not to compete with one another.” The complaint also alleged that the defendants’ “parallel course of conduct ... to prevent competition” and inflate prices was indicative of the unlawful agreement alleged.

The Court held the [*Twombly*] plaintiffs’ complaint deficient under Rule 8. In doing so it first noted that the plaintiffs’ assertion of an unlawful agreement was a “ ‘legal conclusion’ ” and, as such, was not entitled to the assumption of truth. Had the Court simply credited the allegation of a conspiracy, the plaintiffs would have stated a claim for relief and been entitled to proceed perforce. The Court next addressed the “nub” of the plaintiffs’ complaint—the well-pleaded, nonconclusory factual allegation of parallel behavior—to determine whether it gave rise to a “plausible suggestion of conspiracy.” Acknowledging that parallel conduct was consistent with an unlawful agreement, the Court nevertheless concluded that it did not plausibly suggest an illicit accord because it was not only compatible with, but indeed was more likely explained by, lawful, unchoreographed free-market behavior. Because the well-pleaded fact of parallel conduct, accepted as true, did not plausibly suggest an unlawful agreement, the Court held the plaintiffs’ complaint must be dismissed.

B

Under *Twombly*’s construction of Rule 8, we conclude that respondent [Iqbal]’s complaint has not “nudged [his] claims” of invidious discrimination “across the line from conceivable to plausible.”

We begin our analysis by identifying the allegations in the complaint that are not entitled to the assumption of truth. Respondent pleads that petitioners “knew of, condoned, and willfully and maliciously agreed to subject [him]” to harsh conditions of confinement “as a matter of policy, solely on account of [his] religion, race, and/or national origin and for no legitimate penological interest.” The complaint alleges that Ashcroft was the “principal architect” of this invidious policy, and that Mueller was “instrumental” in adopting and executing it. These bare assertions, much like the pleading of [an antitrust] conspiracy in *Twombly*, amount to nothing more than a “formulaic recitation of the elements” of a constitutional discrimination claim, namely, that petitioners adopted a policy [intentionally] “ ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” As such, the allegations are conclusory and not entitled to be assumed true. To be clear, we do not reject these bald allegations on the ground that they are unrealistic or nonsensical. * * * It is the conclusory nature of respondent’s allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth.

We next consider the factual allegations in respondent’s complaint to determine if they

plausibly suggest an entitlement to relief. The complaint alleges that “the [FBI], under the direction of Defendant MUELLER, arrested and detained thousands of Arab Muslim men ... as part of its investigation of the events of September 11.” It further claims that “[t]he policy of holding post-September-11th detainees in highly restrictive conditions of confinement until they were ‘cleared’ by the FBI was approved by Defendants ASHCROFT and MUELLER in discussions in the weeks after September 11, 2001.” Taken as true, these allegations are consistent with petitioners’ purposefully designating detainees “of high interest” because of their race, religion, or national origin. But given more likely explanations, they do not plausibly establish this purpose.

The September 11 attacks were perpetrated by 19 Arab Muslim hijackers who counted themselves members in good standing of al Qaeda, an Islamic fundamentalist group. Al Qaeda was headed by another Arab Muslim—Osama bin Laden—and composed in large part of his Arab Muslim disciples. It should come as no surprise that a legitimate policy directing law enforcement to arrest and detain individuals because of their suspected link to the attacks would produce a disparate, incidental impact on Arab Muslims, even though the purpose of the policy was to target neither Arabs nor Muslims. On the facts respondent alleges the arrests Mueller oversaw were likely lawful and justified by his nondiscriminatory intent to detain aliens who were illegally present in the United States and who had potential connections to those who committed terrorist acts. As between that “obvious alternative explanation” for the arrests, and the purposeful, invidious discrimination respondent asks us to infer, discrimination is not a plausible conclusion.

But even if the complaint’s well-pleaded facts give rise to a plausible inference that respondent’s arrest was the result of unconstitutional discrimination, that inference alone would not entitle respondent to relief. It is important to recall that respondent’s complaint challenges neither the constitutionality of his arrest nor his initial detention in the MDC. Respondent’s constitutional claims against petitioners rest solely on their ostensible “policy of holding post-September-11th detainees” in the ADMAX SHU once they were categorized as “of high interest.” To prevail on that theory, the complaint must contain facts plausibly showing that petitioners purposefully adopted a policy of classifying post-September-11 detainees as “of high interest” because of their race, religion, or national origin.

This the complaint fails to do. Though respondent alleges that various other defendants, who are not before us, may have labeled him a person of “of high interest” for impermissible reasons, his only factual allegation against petitioners accuses them of adopting a policy approving “restrictive conditions of confinement” for post-September-11 detainees until they were “‘cleared’ by the FBI.” Accepting the truth of that allegation, the complaint does not show, or even intimate, that petitioners purposefully housed detainees in the ADMAX SHU due to their race, religion, or national origin. All it plausibly suggests is that the Nation’s top law enforcement officers, in the aftermath of a devastating terrorist attack, sought to keep suspected terrorists in the most secure conditions available until the suspects could be cleared of terrorist activity. Respondent does not argue, nor can he, that such a motive would violate petitioners’ constitutional obligations. He would need to allege more by way of factual content to “nudg[e]” his claim of purposeful discrimination “across the line from conceivable to plausible.”

* * * [R]espondent’s complaint does not contain any factual allegation sufficient to plausibly suggest petitioners’ discriminatory state of mind. His pleadings thus do not meet the standard necessary to comply with Rule 8.

It is important to note, however, that we express no opinion concerning the sufficiency of respondent’s complaint against the defendants who are not before us. Respondent’s account of his prison ordeal alleges serious official misconduct that we need not address here. Our decision is limited to the determination that respondent’s complaint does not entitle him to relief from petitioners [Ashcroft and Mueller].

C

Respondent offers three arguments that bear on our disposition of his case, but none is persuasive.

1

Respondent first says that our decision in *Twombly* should be limited to pleadings made in the context of an antitrust dispute. This argument is not supported by *Twombly* and is incompatible with the Federal Rules of Civil Procedure. Though *Twombly* determined the sufficiency of a complaint sounding in antitrust, the decision was based on our interpretation and application of Rule 8. That Rule in turn governs the pleading standard “in all civil actions and proceedings in the United States district courts.” Fed. Rule Civ. Proc. 1. Our decision in *Twombly* expounded the pleading standard for “all civil actions,” and it applies to antitrust and discrimination suits alike.

2

Respondent next implies that our construction of Rule 8 should be tempered where, as here, the Court of Appeals has “instructed the district court to cabin discovery in such a way as to preserve” petitioners’ defense of qualified immunity “as much as possible in anticipation of a summary judgment motion.” We have held, however, that the question presented by a motion to dismiss a complaint for insufficient pleadings does not turn on the controls placed upon the discovery process. (“It is no answer to say that a claim just shy of a plausible entitlement to relief can, if groundless, be weeded out early in the discovery process through careful case management given the common lament that the success of judicial supervision in checking discovery abuse has been on the modest side.”

* * *

We decline respondent’s invitation to relax the pleading requirements on the ground that the Court of Appeals promises petitioners minimally intrusive discovery. That promise provides especially cold comfort in this pleading context, where we are impelled to give real content to the concept of qualified immunity for high-level officials who must be neither deterred nor detracted from the vigorous performance of their duties. Because respondent’s complaint is deficient under Rule 8, he is not entitled to discovery, cabined [confined] or otherwise.

3

Respondent finally maintains that the Federal Rules expressly allow him to allege petitioners’ discriminatory intent “generally,” which he equates with a conclusory allegation (citing Fed. Rule Civ. Proc. 9 [’s inapplicable heightened pleading requirement]). It follows, respondent says, that his complaint is sufficiently well pleaded because it claims that petitioners discriminated against him “on account of [his] religion, race, and/or national origin and for no legitimate penological interest.” Were we required to accept this allegation as true, respondent’s complaint would survive petitioners’ motion to dismiss. But the Federal Rules do not require courts to credit a complaint’s conclusory statements without reference to its factual context.

* * *

V

We hold that respondent’s complaint fails to plead sufficient facts to state a claim for purposeful and unlawful discrimination against petitioners. The Court of Appeals should decide in the first instance whether to remand to the District Court so that respondent can seek leave to amend his deficient complaint.

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JUSTICE SOUTER, with whom JUSTICE STEVENS, JUSTICE GINSBURG, AND JUSTICE BREYER join, dissenting.

* * * The majority then misapplies the pleading standard under *Bell Atlantic Corp. v. Twombly*, to conclude that the complaint fails to state a claim. I respectfully dissent * * * from the holding that the complaint fails to satisfy Rule 8(a)(2) of the Federal Rules of Civil Procedure.

I

A

* * *

The District Court denied Ashcroft and Mueller’s motion to dismiss Iqbal’s discrimination claim, and the Court of Appeals affirmed. Ashcroft and Mueller then asked this Court to grant certiorari on two questions:

1. Whether a conclusory allegation that a cabinet-level officer or other high-ranking official knew of, condoned, or agreed to subject a plaintiff to allegedly unconstitutional acts purportedly committed by subordinate officials is sufficient to state individual-capacity claims against those officials under *Bivens*.

* * *

In the first question, Ashcroft and Mueller did not ask whether “a cabinet-level officer or other high-ranking official” who “knew of, condoned, or agreed to subject a plaintiff to allegedly unconstitutional acts committed by subordinate officials” was subject to liability under *Bivens*. In fact, they conceded in their petition for certiorari that they would be liable if they had “actual knowledge” of discrimination by their subordinates and exhibited “ ‘deliberate indifference’ ” to that discrimination. Instead, they asked the Court to address whether Iqbal’s allegations against them (which they call conclusory) were sufficient to satisfy Rule 8(a)(2), and in particular whether the Court of Appeals misapplied our decision in *Twombly* construing that rule.

* * *

First, Ashcroft and Mueller have, as noted, made the critical concession that a supervisor’s knowledge of a subordinate’s unconstitutional conduct and deliberate indifference to that conduct are grounds for *Bivens* liability. Iqbal seeks to recover on a theory that Ashcroft and Mueller at least knowingly acquiesced (and maybe more than acquiesced) in the discriminatory acts of their subordinates; if he can show this, he will satisfy Ashcroft and Mueller’s own test for supervisory liability. We do not normally override a party’s concession, [because our precedent establishes that] (“[i]t would be inappropriate for us to [e]xamine in this case, without the benefit of the parties’ briefing,” an issue the Government had conceded), and doing so is especially inappropriate when, as here, the issue is unnecessary to decide the case. I would therefore accept Ashcroft and Mueller’s concession for purposes of this case and proceed to consider whether the complaint alleges at least knowledge and deliberate indifference.

* * *

II

Given petitioners’ concession, the complaint satisfies Rule 8(a)(2). Ashcroft and Mueller admit they are liable for their subordinates’ conduct if they “had actual knowledge of the assertedly discriminatory nature of the classification of suspects as being ‘of high interest’ and they were deliberately indifferent to that discrimination.” *** The complaint thus alleges, at a bare minimum, that Ashcroft and Mueller knew of and condoned the discriminatory policy their subordinates carried out. Actually, the complaint goes further in alleging that Ashcroft and Muller affirmatively acted to create the discriminatory detention policy. If these factual allegations are true, Ashcroft and Mueller were, at the very least, aware of the discriminatory policy being implemented and deliberately indifferent to it.

Ashcroft and Mueller argue that these allegations fail to satisfy the “plausibility standard”

of *Twombly*. They contend that Iqbal’s claims are implausible because such high-ranking officials “tend not to be personally involved in the specific actions of lower-level officers down the bureaucratic chain of command.” But this response bespeaks a fundamental misunderstanding of the enquiry that *Twombly* demands. *Twombly* does not require a court at the motion-to-dismiss stage to consider whether the factual allegations are probably true. We made it clear, on the contrary, that a court must take the allegations as true, no matter how skeptical the court may be. The sole exception to this rule lies with allegations that are sufficiently fantastic to defy reality as we know it: claims about little green men, or the plaintiff’s recent trip to Pluto, or experiences in time travel. That is not what we have here.

* * * The complaint alleges that FBI officials discriminated against Iqbal solely on account of his race, religion, and national origin, and it alleges the knowledge and deliberate indifference that, by Ashcroft and Mueller’s own admission, are sufficient to make them liable for the illegal action. Iqbal’s complaint therefore contains “enough facts to state a claim to relief that is plausible on its face.”

* * *

But these allegations do not stand alone as the only significant, nonconclusory statements in the complaint, for the complaint contains many allegations linking Ashcroft and Mueller to the discriminatory practices of their subordinates. * * *

The majority says that these are “bare assertions” that, “much like the pleading of conspiracy in *Twombly*, amount to nothing more than a ‘formulaic recitation of the elements’ of a constitutional discrimination claim” and therefore are “not entitled to be assumed true.” The fallacy of the majority’s position, however, lies in looking at the relevant assertions in isolation. The complaint contains specific allegations that, in the aftermath of the September 11 attacks, the Chief of the FBI’s International Terrorism Operations Section and the Assistant Special Agent in Charge for the FBI’s New York Field Office implemented a policy that discriminated against Arab Muslim men, including Iqbal, solely on account of their race, religion, or national origin. Viewed in light of these subsidiary allegations, the allegations singled out by the majority as “conclusory” are no such thing. Iqbal’s claim is not that Ashcroft and Mueller “knew of, condoned, and willfully and maliciously agreed to subject” him to a discriminatory practice that is left undefined; his allegation is that “they knew of, condoned, and willfully and maliciously agreed to subject” him to a particular, discrete, discriminatory policy detailed in the complaint. Iqbal does not say merely that Ashcroft was the architect of some amorphous discrimination, or that Mueller was instrumental in an ill-defined constitutional violation; he alleges that they helped to create the discriminatory policy he has described. Taking the complaint as a whole, it gives Ashcroft and Mueller “ ‘fair notice of what the ... claim is and the grounds upon which it rests.’ ”

* * *

JUSTICE BREYER, dissenting.

I agree with Justice SOUTER and join his dissent. I write separately to point out that, like the Court, I believe it important to prevent unwarranted litigation from interfering with “the proper execution of the work of the Government.” But I cannot find in that need adequate justification for the Court’s interpretation of *Bell Atlantic Corp. v. Twombly*, and Federal Rule of Civil Procedure 8. The law, after all, provides trial courts with other legal weapons designed to prevent unwarranted interference. As the Second Circuit explained, where a Government defendant asserts a qualified immunity defense, a trial court, responsible for managing a case and “mindful of the need to vindicate the purpose of the qualified immunity defense,” can structure discovery in ways that diminish the risk of imposing unwarranted burdens upon public officials.

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Questions

1. What is the federal pleading standard under the FRCP, as interpreted by the U.S. Supreme Court in *Iqbal*? Do FRCP 8(a)(2) and *Bell (Twombly)-Iqbal* offer the same standard? Alternatively, do the Federal Rule, *Bell* and *Iqbal* each differ? How did *Iqbal* impact *Bell*?

2. What is the federal pleading relevance of “plausibility,” “probability,” and “possibility?”

3. Are legal conclusions of law irrelevant to the resulting federal pleading standard?

4. The majority opinion describes *Iqbal*’s complaint as “extravagantly fanciful.” Do you agree?

5. Should FRCP 8 be revised in the aftermath of *Iqbal*’s explanation of *Bell (Twombly)*? If so, how should FRCP 8(a)(2) be reworded? For details on pending legislation that would overrule *Iqbal*, see Notice Pleading Restoration Act of 2009, seeking the restoration of *Conley*, at <http://prawfsblawg.blogs.com/files/coe09974_xml.pdf>.

6. An April 2009 analysis by the American College of Trial Lawyers and Institute for the Advancement of the American Legal System urges the rule makers to adopt fact pleading (and very limited discovery in both federal and state courts). Its Principle 2 provides that:

Notice pleading should be replaced by fact-based pleading. Pleadings should set forth with particularity all of the material facts that are known to the pleading party to establish the pleading party’s claims or affirmative defenses. Notice pleading should be replaced by fact-based pleading. Pleadings should set forth with particularity all of the material facts that are known to the pleading party to establish the pleading party’s claims or affirmative defenses.

For the complete report, see

<<http://www.actl.com/AM/Template.cfm?Section=Home&template=/CM/ContentDisplay.cfm&ContentID=4053>>.