

The Supreme Court – June 8, 2022

by Ian Blodger

Today the Supreme Court of the United States issued one decision:

Egbert v. Boule, No. 21-147: In this case, Robert Boule sued a border patrol agent arguing the agent violated his Fourth and First Amendment rights by using excessive force during a search and retaliating against Boule when he complained about the excessive force. In bringing his case, Boule asked the court to recognize causes of action for these alleged constitutional violations under the Supreme Court's decision in *Bivens v. Six Unknown Federal Narcotics Agents*, where the Supreme Court held it had authority to create a cause of action for damages under the Fourth Amendment without Congressional action. 403 U. S. 388 (1971). The district court declined to recognize damages actions for these alleged constitutional violations, but the Ninth Circuit reversed. The Supreme Court, in a decision authored by Justice Thomas, held that *Bivens* does not extend to create causes of action for Boule's Fourth Amendment excessive-force claim and First Amendment retaliation claim. The Court reasoned that, among other things, Congress was better equipped to determine whether such claims were appropriate. Justice Gorsuch concurred in judgment, writing separately to note his belief that the Court should reconsider its decision in *Bivens*. Justice Sotomayor concurred in part and dissented in part, joined by Justices Breyer and Kagan, arguing that Boule's Fourth Amendment claim is functionally identical to the claim in *Bivens* and that the Court's decision improperly narrows *Bivens*' scope.

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