

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Steve Marquez v. C. Rodriguez

No. 21-55981, United States Court of Appeals for the Ninth Circuit (September 6, 2023)

SUMMARY

The Ninth Circuit declined to extend a *Bivens* remedy to a Fifth Amendment failure-to-protect claim brought by a federal pretrial detainee, holding that the claim presented a new *Bivens* context meaningfully different from the three recognized *Bivens* cases (*Bivens*, *Davis*, and *Carlson*) and that *Farmer v. Brennan* did not establish a cognizable *Bivens* context. The court further held that special factors—including the availability of alternative administrative remedies through the Bureau of Prisons and separation-of-powers principles—counseled against judicial extension of an implied damages action. The decision reversed the district court’s denial of the defendants’ motion to dismiss, emphasizing that Congress is better suited than the judiciary to weigh the costs and benefits of creating a damages remedy for federal prisoners alleging deliberate indifference to safety.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Kenneth K. Lee; William A. Fletcher; Salvador Mendoza, Jr.
JURISDICTION	Federal
DECIDED	September 6, 2023
DOCKET	21-55981
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from the denial of defendants' motion to dismiss
STANDARD OF REVIEW	accepting all facts as true per <i>Ashcroft v. Iqbal</i>
PRECEDENTIAL VALUE	Published
PARTIES	C. Rodriguez and L. Kelly v. Steve Marquez

TOPICS

- civil rights
- constitutional law
- fifth amendment
- due process
- prisoners rights
- appellate procedure

PRACTICE AREAS

- Civil Rights
- Prisoner Civil Rights
- Constitutional Law

QUESTIONS PRESENTED

1. Whether a pretrial detainee can bring a Fifth Amendment failure-to-protect claim under Bivens against federal correctional officers.

HOLDINGS

1. A Fifth Amendment failure-to-protect claim is not cognizable under Bivens because it presents a new Bivens context and special factors counsel against extending Bivens.

KEY QUOTATIONS

“Due to the nature of the alleged charges brought against him, it was imperative he be placed in protective custody to protect him from unreasonable risk of harm or from being the subject of attack by other inmates. During his interview for classification, C. Rodriguez reviewed his alleged charges and made comments towards him such as ‘what a great guy’ and ‘what an upstanding citizen.’ The official was well aware of plaintiff’s charges and failed in [his] duty to protect him from unreasonable risk or harm by refusing requests to place plaintiff into protective custody. Instead he placed the plaintiff in general population and chose to ignore plaintiff’s requests to be placed in protective custody and acted against prison policy and federal law.” (at 5-6)

“We hold that he cannot and decline to extend a Bivens action to include a Fifth Amendment failure-to-protect claim.” (at 4)

“If there is even a single ‘reason to pause before applying Bivens in a new context,’ a court may not recognize a Bivens remedy.” (at 14)

FACTUAL BACKGROUND

In 2016, Steve Marquez was a pretrial detainee at a federal corrections center in San Diego, charged with a sex offense. He requested protective custody due to the nature of his charges, but jail officials denied the request, making sarcastic comments and advising him to lie about his charges. After being placed in general population, he was harassed, forced to exercise to the point of collapse, and suffered severe medical complications including kidney failure, requiring hospitalization. Following his hospitalization, he was returned to general population for about a month before being transferred to protective custody in state prison.

PROCEDURAL HISTORY

The district court denied defendants' motion to dismiss Marquez's Bivens claim, finding that although it presented a new Bivens context, an extension could be warranted. Defendants appealed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

Remanded with instructions to dismiss the Bivens claim.

CASES CITED

- *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971)
- *Davis v. Passman*, 442 U.S. 228 (1979)
- *Carlson v. Green*, 446 U.S. 14 (1980)
- *Ziglar v. Abbasi*, 582 U.S. 120 (2017)
- *Egbert v. Boule*, 142 S. Ct. 1793 (2022)
- *Hernández v. Mesa*, 140 S. Ct. 735 (2020)
- *Farmer v. Brennan*, 511 U.S. 825 (1994)
- *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)
- *Bell v. Wolfish*, 441 U.S. 520 (1979)
- *Wilkie v. Robbins*, 551 U.S. 537 (2007)
- *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61 (2001)
- *Butz v. Economou*, 438 U.S. 478 (1978)
- *Monroe v. Pape*, 365 U.S. 167 (1961)
- *Requena v. Roberts*, 893 F.3d 1195 (10th Cir. 2018)
- *Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016)
- *Bowen v. Warden Baldwin State Prison*, 826 F.3d 1312 (11th Cir. 2016)