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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

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WILL ET AL. *v.* HALLOCK ET AL.

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

No. 04–1332. Argued November 28, 2005—Decided January 18, 2006

In a warranted search of Susan and Richard Hallocks' residence, Customs Service agents seized computer equipment, software, and disk drives. No criminal charges were ever brought, but the equipment was returned damaged, with all of the stored data lost, forcing Susan to close her computer software business. She sued the United States under the Federal Tort Claims Act, invoking the waiver of sovereign immunity, 28 U. S. C. §1346, and alleging negligence by the customs agents in executing the search. While that suit was pending, Susan also filed this action against the individual agents under *Bivens* v. *Six Unknown Fed. Narcotics Agents,* 403 U. S. 388, alleging that the damage they caused to her computers deprived her of property in violation of the Fifth Amendment's Due Process Clause. After the District Court dismissed the first suit on the ground that the agents' activities fell within an exception to the Tort Claims Act's waiver of sovereign immunity, §2680(e), the agents moved for judgment in the *Bivens* action. They relied on the Tort Claims Act's judgment bar, §2676, which provides that "the judgment in an action under 1346(b) . . . constitute[s] a complete bar to any action . . . against the employee of the government whose act or omission gave rise to the claim." The District Court denied the motion, holding that dismissal of the Tort Claims Act suit against the Government failed to raise the Act's judgment bar. The Second Circuit affirmed, after first ruling in favor of jurisdiction under the collateral order doctrine. Under this doctrine, appellate authority to review "all final decisions of the district courts," §1291, includes jurisdiction over "a narrow class of decisions that do not terminate the litigation," but are sufficiently important and collateral to the merits that they should "nonetheless be treated as 'final,' " *Digital Equipment Corp.* v. *Desktop Direct, Inc.,* 511

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U. S. 863, 867.

Held: A refusal to apply the Federal Tort Claims Act's judgment bar is not open to collateral appeal. Pp. 4–9.

(a) Three conditions are required for collateral appeal: the order must "[1] conclusively determine the disputed question; [2] resolve an important issue completely separate from the merits . . . , and [3] be effectively unreviewable on appeal from a final judgment." *Puerto Rico Aqueduct and Sewer Authority* v. *Metcalf & Eddy, Inc.,* 506 U. S. 139, 144. Those conditions are "stringent." *Digital Equipment, supra,* at 868. Unless they are kept so, the underlying doctrine will overpower the substantial finality interests §1291 is meant to further. Pp. 3–4.

(b) Among the "small class" of orders this Court has held to be collaterally appealable are those rejecting absolute immunity, *Nixon* v. *Fitzgerald,* 457 U. S. 731, 742, qualified immunity, *Mitchell* v. *Forsyth,* 472 U. S. 511, 530, and a State's Eleventh Amendment immunity claim, *Puerto Rico Aqueduct, supra,* at 144–145. In each of these cases, the collaterally appealing party was vindicating or claiming a right to avoid trial, in satisfaction of the third condition: unless the order to stand trial was immediately appealable the right would be effectively lost. However, to accept the generalization that any order denying a claim of right to prevail without trial satisfies the third condition would leave §1291's final order requirement in tatters. See *Digital Equipment, supra,* at 872–873. Pp. 4–5.

(c) Thus, only some orders denying an asserted right to avoid the burdens of trial qualify as orders that cannot be reviewed "effectively" after a conventional final judgment. The further characteristic that merits collateral appealability is "a judgment about the value of the interests that would be lost through rigorous application of the final judgment requirement." *Digital Equipment, supra,* at 878–879. In each case finding appealability, some particular value of a high order was marshaled in support of the interest in avoiding trial, *e.g.,* honoring the separation of powers, *Nixon*, *supra*, at 749, 758, preserving the efficiency of government and the initiative of its officials, *Mitchell, supra,* at 526, and respecting a State's dignitary interests, *Puerto Rico Aqueduct, supra,* at 146. It is not mere avoidance of a trial, but avoidance of a trial that would imperil a substantial public interest that counts. *Coopers & Lybrand* v. *Livesay,* 437 U. S. 463, 468. Pp. 5–7.

(d) The customs agents' claim here does not serve a weighty public objective. This case must be distinguished from qualified immunity cases. The nub of such immunity is the need to induce government officials to show reasonable initiative when the relevant law is not "clearly established," *Harlow* v. *Fitzgerald,* 457 U. S. 800, 817; a

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quick resolution of a qualified immunity claim is essential. There is, however, no such public interest at stake simply because the judgment bar is said to be applicable. It is the avoidance of litigation for its own sake that supports the bar, and if simply abbreviating litigation troublesome to government employees were important enough, §1291 would fade out whenever the government or an official lost in an early round. Another difference between qualified immunity and the judgment bar lies in the bar's essential procedural element. While a qualified immunity claim is timely from the moment an official is served with a complaint, the judgment bar can be raised only after a case under the Tort Claims Act has been resolved in the Government's favor. The closer analogy to the judgment bar is the defense of res judicata. Both are grounded in the perceived need to avoid duplicative litigation, not in a policy of freeing a defendant from any liability. But this rule of respecting a prior judgment by giving a defense against relitigation has not been thought to protect values so important that only immediate appeal can effectively vindicate them. See *Digital Equipment, supra*, at 873. Pp. 7–9.

387 F. 3d 147, vacated and remanded.

SOUTER, J., delivered the opinion for a unanimous Court.