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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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WILKIE ET AL. *v.* ROBBINS

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

No. 06–219. Argued March 19, 2007—Decided June 25, 2007

Plaintiff-respondent Robbins's Wyoming guest ranch is a patchwork of land parcels intermingled with tracts belonging to other private owners, the State of Wyoming, and the National Government. The previous owner granted the United States an easement to use and maintain a road running through the ranch to federal land in return for a right-of-way to maintain a section of road running across federal land to otherwise isolated parts of the ranch. When Robbins bought the ranch, he took title free of the easement, which the Bureau had not recorded. Robbins continued to graze cattle and run guest cattle drives under grazing permits and a Special Recreation Use Permit (SRUP) issued by the Bureau of Land Management. Upon learning that the easement was never recorded, a Bureau official demanded that Robbins regrant it, but Robbins declined. Robbins claims that after negotiations broke down, defendant-petitioners (defendants) began a campaign of harassment and intimidation to force him to regrant the lost easement.

Robbins's suit for damages and declaratory and injunctive relief now includes a Racketeer Influenced and Corrupt Organizations Act (RICO) claim that defendants repeatedly tried to extort an easement from him and a similarly grounded *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, claim that defendants violated his Fourth and Fifth Amendment rights. Ultimately, the District Court denied defendants' motion to dismiss the RICO claim based on qualified immunity. As to the *Bivens* claims, it dismissed what Robbins called his Fourth Amendment malicious prosecution claim and his Fifth Amendment due process claims, but declined to dismiss a Fifth Amendment claim of retaliation for the exercise of Robbins's rights to exclude the Government from his property and to refuse to grant a

property interest without compensation. It adhered to this denial on summary judgment. The Tenth Circuit affirmed.

Held:

1. Robbins does not have a private action for damages of the sort recognized in *Bivens*. Pp. 9–23.

(a) In deciding whether to devise a *Bivens* remedy for retaliation against the exercise of ownership rights, the Court's first step is to ask whether any alternative, existing process for protecting the interest amounts to a convincing reason for the Judicial Branch to refrain from providing a new and freestanding damages remedy. *Bush* v. *Lucas*, 462 U. S. 367, 378. But even absent an alternative, a *Bivens* remedy is a subject of judgment: "the federal courts must make the kind of remedial determination that is appropriate for a common-law tribunal, paying particular heed . . . to any special factors counselling hesitation before authorizing a new kind of federal litigation." *Ibid*. Pp. 9–11.

(b) For purposes of step one, Robbins's difficulties with the Bureau can be divided into four categories. The first, torts or tort-like injuries, includes an unauthorized survey of the desired easement's terrain and an illegal entry into Robbins's lodge. In each instance, he had a civil damages remedy for trespass, which he did not pursue. The second category, charges brought against Robbins, includes administrative claims for trespass and other land-use violations, a fine for an unauthorized road repair, and two criminal charges. Robbins had the opportunity to contest all of the administrative charges; he fought some of the land-use and trespass citations, and challenged the road repair fine as far as the Interior Board of Land Appeals (IBLA), but did not seek judicial review after losing there. He exercised his right to jury trial on the criminal complaints. The fact that the jury took 30 minutes to acquit him tends to support his baseless-prosecution charge; but the federal trial judge did not find the Government's case thin enough to justify attorney's fees, and Robbins appealed that ruling late. The third category, unfavorable agency actions, involved a 1995 cancellation of the right-of-way given to Robbins's predecessor in return for the Government's unrecorded easement, a 1995 decision to reduce the SRUP from five years to one, and in 1999, the SRUP's termination and a grazing permit's revocation. Administrative review was available for each claim, subject to ultimate judicial review under the Administrative Procedure Act. Robbins did not appeal the 1995 decisions, stopped after an IBLA appeal of the SRUP denial, and obtained an IBLA stay of the grazing permit revocation. The fourth category includes three events that elude classification. An altercation between Robbins and his neighbor did not implicate the Bureau, and no criminal charges were filed. Bu-

reau employees' videotaping of ranch guests during a cattle drive, though annoying and possibly bad for business, may not have been unlawful, depending, *e.g.,* on whether the guests were on public or private land. Also, the guests might be the proper plaintiffs in any tort action, and any tort might be chargeable against the Government, not its employees. Likewise up in the air is the significance of an attempt to pressure a Bureau of Indian Affairs employee to impound Robbins's cattle. An impoundment's legitimacy would have depended on whether the cattle were on private or public land, and no impoundment actually occurred. Thus, Robbins has an administrative, and ultimately a judicial, process for vindicating virtually all of his complaints. This state of law gives him no intuitively meritorious case for a new constitutional cause of action, but neither does it plainly answer no to the question whether he should have it. Pp. 11–14.

(c) This, then, is a case for *Bivens* step two, for weighing reasons for and against creating a new cause of action, as common law judges have always done. Robbins concedes that any single action might have been brushed aside as a small imposition, but says that in the aggregate the campaign against him amounted to coercion to extract the easement and should be redressed collectively. On the other side of the ledger is the difficulty in defining a workable cause of action. Robbins's claim of retaliation for exercising his property right to exclude the Government does not fit this Court's retaliation cases, which involve an allegation of impermissible purpose and motivation—*e.g.,* an employee is fired after speaking out on matters of public concern, *Board of Comm'rs, Wabaunsee Cty.* v. *Umbehr*, 518 U. S. 668, 675—and whose outcome turns on "what for" questions—what was the Government's purpose in firing the employee and would he have been fired anyway. Such questions have definite answers, and this Court has established methods to identify the presence of an illicit reason. Robbins alleges not that the Government's means were illegitimate but that the defendants simply demanded too much and went too far. However, a "too much" kind of liability standard can never be as reliable as a "what for" one. Most of the offending actions are legitimate tactics designed to improve the Government's negotiating position. Although the Government is no ordinary landowner, in many ways it deals with its neighbors as one owner among the rest. So long as defendants had authority to withhold or withdraw Robbins's permission to use Government land and to enforce the trespass and land-use rules, they were within their rights to make it plain that Robbins's willingness to give an easement would determine how complaisant they would be about his trespasses on public land. As for Robbins's more abstract claim, recognizing a *Bivens* action for re-

taliation against those who resist Government impositions on their property rights would invite claims in every sphere of legitimate governmental action affecting property interests, from negotiating tax claim settlements to enforcing Occupational Safety and Health Administration regulations. Pp. 14–23.

2. RICO does not give Robbins a claim against defendants in their individual capacities. Robbins argues that the predicate act for his RICO claim is a violation of the Hobbs Act, which criminalizes interference with interstate commerce by extortion, along with attempts or conspiracies, 18 U. S. C. §1951(a), and defines extortion as "the obtaining of property from another, with his consent . . . under color of official right," §1951(b)(2). Robbins's claim fails because the Hobbs Act does not apply when the National Government is the intended beneficiary of allegedly extortionate acts. That Act does not speak explicitly to efforts to obtain property for the Government rather than a private party, so the question turns on the common law conception of "extortion," which Congress is presumed to have incorporated into the Act in 1946, see, *e.g., Scheidler* v. *National Organization for Women, Inc.*, 537 U. S. 393, 402. At common law, extortion "by the public official was the rough equivalent of what [is] now describe[d] as 'taking a bribe.' " *Evans* v. *United States*, 504 U. S. 255, 260. While public officials were not immune from extortion charges at common law, that crime focused on the harm of public corruption, by selling public favors for private gain, not on the harm caused by overzealous efforts to obtain property on the Government's behalf. The importance of the line between public and private beneficiaries is confirmed by this Court's case law, which is completely barren of an example of extortion under color of official right undertaken for the sole benefit of the Government. More tellingly, Robbins cites no decision by any court, much less this one, in the Hobbs Act's entire 60-year history finding extortion in Government employees' efforts to get property for the Government's exclusive benefit. *United States* v. *Green*, 350 U. S. 415, 420, which held that "extortion as defined in the [Hobbs Act] in no way depends upon having a direct benefit conferred on the person who obtains the property," does not support Robbins's claim that Congress could not have meant to prohibit extortionate acts in the interest of private entities like unions, but ignore them when the intended beneficiary is the Government. Without some other indication from Congress, it is not reasonable to assume that the Hobbs Act (let alone RICO) was intended to expose all federal employees to extortion charges whenever they stretch in trying to enforce Government property claims. Because defendants' conduct does not fit the traditional definition of extortion, it also does not survive as a RICO predicate offense on the theory that it is

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"chargeable under [Wyoming] law and punishable by imprisonment for more than one year," 18 U. S. C. §1961(1)(A). Pp. 23–28.

433 F. 3d 755, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, BREYER, and ALITO, JJ., joined, and in which STEVENS and GINSBURG, JJ., joined as to Part III. THOMAS, J., filed a concurring opinion, in which SCALIA, J., joined. GINSBURG, J., filed an opinion concurring in part and dissenting in part, in which STEVENS, J., joined.