

Supreme Court to Review *Bivens* Suit Against Employees of Federal Prison Contractor

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On May 16, The Supreme Court agreed to hear an appeal that could lead to significant personal liability for federal contractors' employees. In deciding *Minneci v. Pollard*, the Court will determine whether so-called *Bivens* actions can be pursued against contract guards at federal penitentiaries. In a *Bivens* action, created 40 years ago in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, plaintiffs allege that federal officials violated their federal constitutional rights while acting under color of governmental authority. The Ninth Circuit, in the opinion to be reviewed in *Minneci*, held that such suits can be asserted against contract prison guards—a decision that conflicts with opinions of the Fourth and Eleventh Circuits. As the Ninth Circuit noted, the Supreme Court has not squarely addressed this question, although the Court held a decade ago, in *Correctional Services Corp. v. Malesko*, that private companies operating federal prisons cannot be subject to a *Bivens* action.

If the Supreme Court affirms the Ninth Circuit, many employees of federal contractors could be exposed to significant personal liability for their on-the-job actions. To start, private security guards who help operate federal prisons could be subject to suit under *Bivens*. This liability could extend to contract employees who provide similar security services—at courthouses, hospitals, office buildings, or even the Smithsonian—because courts might find no reason to limit *Bivens* actions to contractors' employees who work in prisons. And unlike federal employees and officials who are subject to *Bivens* suits, employees of federal contractors (whether working in prisons or elsewhere) might not ever be able to shield themselves from *Bivens* actions with the doctrine of qualified immunity.

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Minneeci will be heard in the Court's term that begins this October. The docket number is 10-1104.