Holland & Hart

Christopher Jackson

Partner
303.295.8305
Denver
cmjackson@hollandhart.com

Jessica Smith

Partner
303.295.8374
Denver
jjsmith@hollandhart.com

Tenth Circuit Tosses 'Bivens' Lawsuit Against U.S. Marshals, Offers Candid Assessment of Supreme Court Precedent

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In *Logsdon v. U.S. Marshal Service*, the U.S. Court of Appeals for the Tenth Circuit made the seemingly all-but-inevitable decision to refuse to recognize a *Bivens* claim in a new context. But in doing so, the appellate court offered a surprisingly candid assessment of the current state of the law—and on where the Supreme Court is headed.

Case Background

In *Logsdon v. U.S. Marshal Service*, 91 F.4th 1352 (10th Cir. 2024), the Tenth Circuit took up a case involving a civil claim against the Marshal Service and several of its deputies for alleged excessive use of force.

Because the case was at the pleadings stage, the appellate court took the allegations in the complaint as true. In 2020, the defendants, who were deputy U.S. Marshals, executed a state-court warrant for Logsdon's arrest on a charge of assault with a dangerous weapon. According to the complaint, the deputies approached Logsdon in the dark, and one deputy ran up behind him and kicked him in the face. Logsdon lost consciousness, and the other defendants "stomped on him for two minutes."

Appearing pro se, Logsdon asserted a *Bivens* claim against the deputies, alleging an excessive use of force in violation of the U.S. Constitution. The defendants filed a motion to dismiss, and the district court originally sided with Logsdon. But on a motion to reconsider, the trial court reversed course and dismissed the case. Logsdon then filed his appeal.

Background on 'Bivens' Actions

When government officials violate a federal right and inflict an injury in the course of performing their duties, they may sometimes be held liable for damages in their individual capacities. See *Pahls v. Thomas*, 718 F.3d 1210, 1225 (10th Cir. 2013). When the official is a state actor, the avenue for recovery is straightforward: 42 U.S.C. Section 1983 provides for a private right of action against state officials who violate a federally protected right. When the injury is caused by a federal officer, a plaintiff

must rely on a so-called *Bivens* action, “the federal analogue to a Section 1983 suit.” But because Congress did not enact a statute formally creating a private right of action against federal officers, courts have historically been reluctant to expand the scope of *Bivens*. The Supreme Court has recognized *Bivens* actions in just a handful of situations: *Bivens* itself, “a congressional staffer's Fifth Amendment due process sex-discrimination claim against a member of Congress,” and “a claim against federal prison officials under the Eighth Amendment for inadequate care of an inmate.” Slip op. at 2 (citing *Davis v. Passman*, 442 U.S. 228 (1979); *Carlson v. Green*, 466 U.S. 14 (1980)).

Formally speaking, when a court is called on to decide whether it will recognize a new proposed *Bivens* claim, it conducts a two-step analysis. First, the court must “ask whether the case presents a new *Bivens* context—i.e., is it meaningfully different from the three cases in which the court has implied a damages action.” If the context is new, “a *Bivens* remedy is unavailable if there are special factors indicating that the Judiciary is at least arguably less equipped than Congress to weigh the costs and benefits of allowing a damages action to proceed.” Only if the judiciary is not arguably less equipped than Congress may a court recognize the action and allow the case to move forward.

The Tenth Circuit's Decision

In this appeal, the Tenth Circuit was confronted with the question of whether *Bivens* provides a remedy for the conduct outlined in Logsdon's complaint. Agreeing with the lower court, the Tenth Circuit answered with an emphatic no.

The court began by laying out the two-step inquiry described above. It noted that “it is hard to see the difference between the analyses conducted in the two steps.” As the Supreme Court explained in a recent case, “While our cases described two steps, those steps often resolve to a single question: whether there is any reason to think that Congress might be better equipped to create a damages remedy.” See *Egbert v. Boule*, 596 U.S. 482, 492 (2022). Thus, the Tenth Circuit determined that it “should focus on that single question.” To do so, it reviewed three features of the case that were not considered by the Supreme Court in *Bivens*.

First, the nature of the law enforcement conduct. *Bivens* itself involved a warrantless entry into a home; Logdson's lawsuit involved deputies executing an arrest warrant outside the house of a friend. Logsdon argued that the warrant and location of the arrest have no legal significance, and the appellate court agreed—though at the same time it noted that “there is substantial authority to the contrary,” and cited opinions in the Fourth, Fifth, Sixth and Ninth Circuits.

Second, the category of defendant. While Logsdon argued that the involvement of a different agency does not create a new *Bivens* context where the defendants are “rank-and-file” officers, the court disagreed, relying on *Egbert* and several sister circuit court decisions that rejected Logsdon's argument.

Third and finally, the existence of other remedies for misconduct. In *Egbert*, the Supreme Court held that as "long as Congress or the Executive has created a remedial process that it finds sufficient to secure an adequate level of deterrence, the courts cannot second-guess that calibration by superimposing a *Bivens* remedy." Applying that rule to this case, the Tenth Circuit held that "the internal USMS grievance procured and the Department of Justice's Officer of the Inspector General [] investigation procedure are adequate alternative remedies." As a result, the appellate court had no trouble concluding that Logsdon's claim failed as a matter of law.

A Notable Feature

The Tenth Circuit's bottom-line disposition of this case isn't much of a surprise. But one part of the opinion is worth highlighting: the introduction, where the court gave a candid assessment about not only the state of the current law, but also the direction the Supreme Court is taking with *Bivens*. Acknowledging that Bivens formally remains good law, the Tenth Circuit nevertheless indicated that, "at least in the view of the Supreme Court in recent decades, that opinion has not worn well." The circuit court went on, noting the Supreme Court "is on course to treating *Bivens* as a relic of the 20th century," that "[t]his development has been gradual, but relentless," and that "the circumstances in which" a court might expand *Bivens* "appears to comprise a null set." In doing so, the panel expanded on commentary in another recent opinion, *Silva v. United States*, 45 F.4th 1134, 1136 (10th Cir. 2022) ("The Supreme Court's message could not be clearer—lower courts expand *Bivens* claims at their own peril. We heed the Supreme Court's warning and decline the plaintiff's invitation to curry the Supreme Court's disfavor … ."). In doing so, the Tenth Circuit gave credence not just to the Supreme Court's formal holdings, but also to the broader direction the court's decisions are pointing.

Conclusion

While the ultimate disposition in *Logsdon* was almost foreordained, the Tenth Circuit's frank assessment of the current state of the law is worth noting. For decades, the Supreme Court has continued to cut back the scope of *Bivens* actions, and the Tenth Circuit's opinion acknowledged that when it comes to *Bivens* actions, the writing on the wall.

Christopher Jackson and Jessica Smith are attorneys at Holland & Hart, specializing in complex commercial litigation. Jackson is an experienced appellate advocate with a strong background in complex civil trials and state government investigations. Smith leads the firm's religious institutions and First Amendment practice and handles a wide range of state and federal appeals.

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