

**08-1547 HENNEFORD V. CASTANEDA**

DECISION BELOW:546 F.3 682

LOWER COURT CASE NUMBER: 08-55684

**QUESTIONS PRESENTED:**

Does 42 U.S.C. § 233(a) make an action against the United States under the Federal Tort Claims Act the exclusive remedy for damage claims arising out of medical and related care provided by United States Public Health Service officers and employees in the course and scope of their federal employment, precluding the cause of action recognized in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971)? The Second Circuit Court of Appeals in *Cuoco v. Moritsugu*, 222 F.3d 99 (2d Cir. 2000), answered "yes," while the Ninth Circuit Court of Appeals in this action, *Castaneda v. United States*, 546 F.3d 682 (9th Cir. 2008), answered "no."

CERT. GRANTED 9/30/2009

CONSOLIDATED WITH 08-1529 FOR ONE HOUR ORAL ARGUMENT  
08-1547 DISMISSED PURSUANT TO RULE 46