

No. 21-184

IN THE
Supreme Court of the United States

KEVIN BYRD,

Petitioner,

v.

RAY LAMB,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Fifth Circuit

**SECOND SUPPLEMENTAL BRIEF IN
OPPOSITION**

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ARGUMENT

The Court's recent decision in *Egbert v. Boule*, No. 21-147 (June 8, 2022), confirms that the Petition in this case should be denied.

First, in *Egbert*, this Court held that a *Bivens* action cannot proceed where “there is *any* rational reason (even one) to think that *Congress* is better suited to ‘weigh the costs and benefits of allowing a damages action to proceed.’” Slip Op. at 11 (emphases in original). As demonstrated by the parties’ briefing at this Court and in the Fifth Circuit’s decision below, there are numerous such reasons here, including that this case arises out of a personal dispute. *See* BIO14; Pet.App.6a–7a.

Second, *Egbert* held that “Congress has provided alternative remedies for aggrieved parties in Boule’s position that independently foreclose a *Bivens* action.” Slip Op. at 12. In particular, Agent Egbert—a Border Patrol agent within the Department of Homeland Security—was governed by an internal investigation process pursuant to: (1) a statute stating that the Secretary of Homeland Security “shall have control, direction, and supervision of all employees and of all the files and records of the Service,” 8 U.S.C. § 1103(a)(2); and (2) a regulation stating that “[a]lleged violations of the standards for enforcement activities ... shall be investigated expeditiously consistent with the policies and procedures of the Department of Homeland Security,” and “[a]ny persons wishing to lodge a complaint pertaining to violations of enforcement standards ... may contact

the Department of Homeland Security, Office of the Inspector General,” 8 C.F.R. § 287.10(a)–(b); *see* Slip Op. at 12–13.

Those same two provisions apply to Respondent Lamb, who was a Special Agent who enforced immigration law at the Department of Homeland Security at the time of the incident giving rise to this suit. *See* Pet.App.1a; *see also* 8 U.S.C. § 1103(a)(2) (referring to “all employees” of DHS); 8 C.F.R. §§ 287.8 (noting that “every immigration officer” is subject to § 287.10’s complaint process), 1.2 (defining “immigration officer” as including “special agent[s]” and “immigration agent[s]”). The existence of those provisions “afforded [Petitioner Byrd] an alternative remedy” and therefore independently forecloses any *Bivens* action. Slip Op. at 14.

Because the Fifth Circuit’s decision below correctly held that the *Bivens* claims in this case must be dismissed, this Court should deny Byrd’s Petition.

CONCLUSION

The petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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