

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-1678

JESUS C. HERNÁNDEZ, ET AL., PETITIONERS

v.

JESUS MESA, JR.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting respondent and that the United States be allowed ten minutes of argument time. Respondent has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

1. Petitioners brought a civil action under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), seeking damages from respondent, a U.S. Border Patrol agent who, while standing in the United States, shot a Mexican citizen who was in Mexico. This case presents the question whether the remedy recognized in Bivens should be extended to petitioners' claims here.

2. The United States has a substantial interest in the resolution of the question presented. Among other reasons, a ruling permitting aliens injured abroad to bring damages claims against federal officials would implicate the federal government's oversight of foreign policy and its ongoing dialogue with other nations. In addition, such a ruling could interfere with federal officials' performance of important national-security functions.

At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case, and it has since filed an amicus brief supporting respondent at the merits stage. At an earlier phase of this litigation, the United States was a party to petitioners' lawsuit, and it previously presented oral argument as a party. See Hernandez v. Mesa, 137 S. Ct. 2003 (2017) (per curiam). Because claims against the United States were severed from those against respondent, the United States now participates only as an amicus curiae.

In light of the substantial federal interests in the question presented, the United States' participation at oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

SEPTEMBER 2019