

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-147

ERIK EGBERT, PETITIONER

v.

ROBERT BOULE

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

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

Pursuant to Rule 28 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 an amicus curiae supporting petitioner; that the time allowed for oral argument be enlarged to 70 minutes; and that the time for argument be allotted as follows: 20 minutes for petitioner, 15 minutes for the United States, and 35 minutes for respondent. Petitioner and respondent both consent to this motion.

This case concerns claims for damages under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), against petitioner, an agent of the U.S. Border Patrol,

arising from his allegedly unconstitutional search and seizure during an investigation of a foreign national near the international border, and from petitioner's subsequent alleged retaliation in response to a complaint made by respondent. The United States has filed a brief as amicus curiae supporting petitioner, arguing that the Bivens remedy should not be extended to the new contexts presented by those claims.

The United States has a substantial interest in this matter. Bivens suits are brought against federal officials and have the potential to affect how they perform their duties, including those involving national security and immigration. And defendants in Bivens cases are often represented by the Department of Justice.

The United States has previously presented argument in many of this Court's Bivens cases as an amicus curiae or as counsel to a party, including Hernández v. Mesa, 140 S. Ct. 735, 743 (2020) (No. 17-1678), Ziglar v. Abbasi, 137 S. Ct. 1843, 1857 (2017) (Nos. 15-1358, 15-1359, 15-1363), Minnecci v. Pollard, 565 U.S. 118 (2012) (No. 10-1104), Wilkie v. Robbins, 551 U.S. 537 (2007) (No. 06-219), and Bivens itself.

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

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

JANUARY 2022