CASE BRIEF

Lebron v. Rumsfeld, 670 F.3d 540 (4th Cir. 2012)

Richard A. Crudo[*]

SUMMARY OF HOLDING

The United States Court of Appeals for the Fourth Circuit unanimously affirmed the district court's dismissal of the plaintiff's Bivens *and Religious Freedom Restoration Act ("RFRA") claims, where the plaintiff—an American citizen captured on American soil—was held in military custody as a presidentially declared enemy combatant for more than three years. The court found that there were two special factors counseling against extending the* Bivens *cause of action: (1) general separation of powers principles that prevent the judiciary from considering issues that are within the purview of the Legislature and the Executive; and (2) problems of administrability that would cause military personnel to be diverted from their primary responsibilities. The court further held that, because there is no evidence that RFRA applies to enemy combatants in military custody, the defendants were entitled to qualified immunity with respect to that claim. Lastly, the court affirmed the lower court's finding that the plaintiff's continual fear of redetainment and the stigma attached to the enemy combatant designation are insufficient to support standing for injunctive relief.*

I. FACTS AND PROCEDURAL HISTORY

This case arose from the three-year detainment of American citizen and al-Qaida operative José Padilla for his role in a plan to detonate a radiological weapon, or "dirty bomb," in the United States, following the terrorist attacks of September 11, 2001.[1] On June 9,

---

* J.D., May 2012, The George Washington University Law School.

1 Lebron v. Rumsfeld, 764 F. Supp. 2d 787, 790–91 (D.S.C. 2011), *aff'd*, 670 F.3d

2002, President George W. Bush, acting under the authority of the newly enacted Authorization for Use of Military Force Act ("AUMF"),[2] directed defendant Donald Rumsfeld, then Secretary of Defense, to detain Padilla as an enemy combatant.[3] Padilla—the first American citizen detained on American soil to be so designated[4]—was promptly transported to the Naval Consolidated Brig at Charleston, South Carolina, where he alleged that he was subject to repeated abuse, threatened with torture, and held incommunicado.[5] Padilla ultimately spent more than three years in military custody.[6]

By the time the present decision was issued, Padilla had been trying to redress his alleged injuries for ten years. He first filed a petition for a writ of habeas corpus on June 11, 2002, which became moot after he was transferred to civilian authorities and convicted of terrorism crimes, for which he is currently serving a seventeen-year prison sentence.[7] Padilla then brought the *Bivens* action—the subject of the appeal in the present case—on February 9, 2007.[8] On February 17, 2011, the United States District Court for the District of South Carolina dismissed Padilla's *Bivens* action, as well as his claim under the Religious Freedom Restoration Act ("RFRA")[9] against various present and former government officials for monetary and equitable relief.[10] The present appeal followed shortly thereafter.

---

540 (4th Cir. 2012). For a more detailed account of the facts and procedural history of this case, see Richard A. Crudo, Case Brief, *Lebron v. Rumsfeld, 764 F. Supp. 2d 787 (D.S.C. 2011)*, 80 GEO. WASH. L. REV. ARGUENDO (2012), http://www.nsldigest.org/Crudo_casebrief_clean.pdf.

2 Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001).

3 *Lebron*, 670 F.3d at 545.

4 *Lebron*, 764 F. Supp. 2d at 798.

5 *See Lebron*, 670 F.3d at 545.

6 *Id.* at 545–46.

7 *See id.*; *see also* Crudo, *supra* note 1, at 3 & n.11.

8 *Lebron*, 670 F.3d at 546–47. The present action is one of two *Bivens* suits brought by Padilla. The other was recently decided by the Ninth Circuit. *See* Padilla v. Yoo, No. 09-16478, 2012 WL 1526156 (9th Cir. May 2, 2012) (holding that complaint failed to establish a violation of clearly established law and defendant was thus entitled to qualified immunity).

9 42 U.S.C. § 2000bb (2006).

10 *Lebron*, 670 F.3d at 546–47. *See generally* Crudo, *supra* note 1.

II. ANALYSIS

A. Padilla's Bivens *Claim*

The court began its analysis by noting that the doctrine embodied by *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*,[11] which provides a cause of action implied by the Constitution for monetary relief against federal officials, is not an automatic entitlement to plaintiffs who allege constitutional injuries.[12] Rather, the availability of the cause of action is contingent on the court's determination that a remedy is more appropriately provided by the courts rather than Congress.[13] Because courts have generally refused to extend *Bivens* to new scenarios, the Fourth Circuit adopted a presumption against extending *Bivens* in the military and national security contexts and required Padilla to rebut that presumption by showing (1) that there are no "special factors" counseling against extending *Bivens* in this particular case and (2) that Congress had not already provided an exclusive remedy for the alleged injuries.[14]

1. Special Factors Counseling Against Extending the Bivens *Action to Padilla*

With regard to the first inquiry,[15] the court relied heavily on separation of powers principles to articulate two special factors that precluded extending the *Bivens* cause of action to Padilla. First, the Constitution explicitly delegates authority over military affairs to Congress through several enumerated powers and gives Congress supplemental powers through the Necessary and Proper Clause.[16] For this reason, courts have historically given great deference to Congress in military matters, and the Fourth Circuit declined to diverge from this approach in the present case.[17] The court, relying on Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*,[18] found that

---

11 Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971).

12 *Lebron*, 670 F.3d at 547.

13 *Id.* at 547–48.

14 *Id.* at 548.

15 For a brief discussion of this requirement in light of the Supreme Court's original decision in *Bivens*, see Crudo, *supra* note 1, at 3.

16 *Lebron*, 670 F.3d at 548–49.

17 *Id.* at 549.

18 Youngstown Sheet & Tube Co. v. Sawyer (*Steel Seizure*), 343 U.S. 579, 634–55 (1952) (Jackson, J., concurring).

because the President issued the directive designating Padilla as an "enemy combatant" pursuant to the AUMF—a statute lawfully passed by Congress—the two political branches were acting in concert, and therefore substantial deference should be given to the defendants' actions in this case.[19]

Moreover, the court noted that at the time Padilla was detained, the government was embroiled in a heated debate over the lawfulness of interrogation techniques and the defendants in this case requested and received multiple memoranda concerning proposed detainment policies from the Department of Justice and the Federal Bureau of Investigation.[20] The court reasoned that government officials carefully considered and extensively debated competing values when they fashioned the policy under which Padilla was detained and that a court should not review such policies, as this would have a harmful effect on future decisions by military officials.[21]

Second, the court emphasized that problems of administrability would counsel against extending *Bivens* in the present case, noting that "practical concerns" of administrability in this context "illustrate the wisdom of the constitutional design," which delegates military affairs to the political branches of government.[22] Allowing the case to proceed to trial would interrupt established chains of military command and could lead to inadvertent disclosure of sensitive information, which would impair intelligence gathering.[23] In so ruling, the court rejected Padilla's argument that qualified immunity and the state secrets privilege would ameliorate concerns regarding disclosure of sensitive information if the *Bivens* action were to be extended.[24] Instead, the court found that litigation would divert military and government officials from their primary obligations despite those procedural safeguards.[25]

Thus, the court found that special factors relating to separation of powers and administrability precluded extending *Bivens* in the present context. Before leaving the inquiry, however, the court reiterated that "courts should not proceed down this highly problematic road in the

19 *Lebron*, 670 F.3d at 549.

20 *Id.* at 550–51.

21 *Id.* at 551.

22 *Id.* at 552–53, 556.

23 *Id.* at 553–54.

24 *See id.* at 555.

25 *Id.*

absence of affirmative action by Congress."[26]

2. Congressionally Enacted Alternatives to Extending the Bivens *Action*

The court next demonstrated that there were alternative vehicles through which Padilla could, and did, have his legal rights ascertained.[27] Padilla had the merits of the present case adjudicated through his habeas claim in two federal district courts and two courts of appeal.[28] And even though he was no longer able to pursue habeas relief given that he had been transferred out of military custody, the court noted that he could pursue such relief if he were again detained by the military.[29] Thus, the court refused to "regard the legislative failure to provide Padilla with the monetary damages he seeks from each defendant as an invitation to design some preferred remedial regime."[30] In so reasoning, the court affirmed the district court's decision granting the defendants' motion to dismiss Padilla's *Bivens* claim.[31] But unlike the district court, which analyzed in detail whether the defendants were entitled to qualified immunity even after refusing to extend *Bivens*, the Fourth Circuit declined to reach the question of qualified immunity with respect to Padilla's *Bivens* claim,[32] thereby leaving the issue unresolved.

B. Padilla's RFRA Claim

Next, the court proceeded to determine the viability of Padilla's RFRA claim, which Padilla argued permitted him to recover monetary relief by suing the individual defendants in their personal capacities for depriving him of his ability to exercise his religion when they took his Koran and denied him a watch to determine the time so that he could properly pray.[33] In an analysis considerably more detailed than that of the district court, the Fourth Circuit found that it was unlikely

---

26 *Id.*

27 *Id.* at 556.

28 *Id.*

29 *Id.*.

30 *Id.*

31 *Id.*

32 *Id.*

33 *See id.* at 556–57; Lebron v. Rumsfeld, 764 F. Supp. 2d 787, 804 (D.S.C. 2011), *aff'd*, 670 F.3d 540.

that Congress intended for RFRA to be applied in such a manner.[34]

Without examining the legislative history of RFRA, the court found that there is no evidence that the statute applies to enemy combatants detained by the military and that holding otherwise would "run counter to basic notions of notice and fair warning" to military officials.[35] Instead, analogizing to the way in which the Supreme Court has narrowly interpreted the Federal Tort Claims Act[36] not to authorize tort suits by members of the military for injuries sustained while engaged in military service, the court concluded that it should not interpret RFRA in a way that would allow Padilla to interfere with the military's mission.[37] It also noted that when Congress intends for a law to apply to military personnel, it "does so both unmistakably and typically in those sections of the U.S. Code that apply to military affairs," namely, the Uniform Code of Military Justice.[38] By contrast, RFRA is located in Title 42 of the United States Code, where other provisions affecting *civilians*' rights are located.[39] Thus, the court found that Padilla could not offer evidence to support his argument that RFRA supplies a cause of action to enemy combatants in military detention.[40] Yet, rather than categorically holding that RFRA could never apply in a military context, the court affirmed the district court's finding that there was no violation of clearly established law; therefore the defendants were entitled to qualified immunity with respect to Padilla's RFRA claim under Supreme Court precedent.[41]

C. Standing for Declaratory and Injunctive Relief

Lastly, the court addressed Padilla's argument that the district court erred in finding that he lacked standing for equitable relief.[42] Padilla specifically argued that he suffered a concrete and particularized injury sufficient to support standing, because he feared that he would be redetained as an enemy combatant at some indefinite

---

34 *See Lebron*, 670 F.3d at 557–60; *see also* Crudo, *supra* note 1, at 6.

35 *Lebron*, 670 F.3d at 557.

36 28 U.S.C. § 1346(b) (2006).

37 *Lebron*, 670 F.3d at 558 (citing Feres v. United States, 340 U.S. 135 (1950)).

38 *Id.*

39 *Id.* at 559.

40 *Id.*

41 *Id.* at 560 (citing Pearson v. Callahan, 555 U.S. 223 (2009)); *c.f.* Crudo, *supra* note 1, at 5–6 (describing the qualified immunity analysis with respect to Padilla's *Bivens* claim conducted by the district court).

42 *Lebron*, 670 F.3d at 560.

time in the future and because he was continuing to suffer reputational harm from the stigma attached to his enemy combatant designation.[43] The court rejected both of these arguments.

First, although the government acknowledged Padilla could be detained again in the future, the court found that the mere possibility of redetainment was too speculative and remote to establish an injury-in-fact.[44] Moreover, the court pointed out that Padilla is currently serving a seventeen-year prison sentence and any number of intervening events could occur during that time to cause the President to refrain from redesignating Padilla as an enemy combatant.[45] In so finding, the court rejected Padilla's argument that the district court improperly considered his criminal conviction, which occurred *after* the original complaint was filed, because the conviction is relevant only to the issue of mootness and not standing.[46] The court found that the distinction is irrelevant insofar as both doctrines address the "actuality, and hence the justiciability" of Padilla's claim, regardless of what label the court gives them.[47]

The Fourth Circuit also affirmed the district court's finding that any reputational harm suffered by Padilla's "enemy combatant" designation was slight compared to his designation as a convicted terrorist.[48]

For these reasons, the court held that Padilla's injuries were not sufficient to support standing for declaratory and injunctive relief and therefore affirmed the district court's dismissal of Padilla's suit in its entirety.[49]

CONCLUSION

Having found special factors relating to separation of powers and administrability that counseled against extending *Bivens* to redress injuries stemming from the detainment of an American enemy combatant, the Fourth Circuit affirmed the district court's dismissal of Padilla's *Bivens* claims against all defendants without addressing the issue of qualified immunity. The court spent considerable time

43 *Id.* at 560, 562.
44 *Id.* at 560–62.
45 *Id.* at 561.
46 *Id.* at 561–62.
47 *Id.* at 561.
48 *Id.* at 562.
49 *Id.*

analyzing Padilla's RFRA claim and found that it was unlikely that Congress intended for RFRA to apply to enemy combatants and that any rights allegedly derived therefrom could not be clearly established to deprive the defendants of qualified immunity with respect to that claim. Lastly, the court affirmed the district court's finding that Padilla had not alleged a sufficiently particularized injury to support standing for declaratory and injunctive relief.

The court's analysis relied heavily on the fact that there was a statute that could be interpreted as authorizing the President to designate an American citizen as an enemy combatant and that the President ostensibly acted pursuant to that statute. It remains unclear, however, whether the President's directive would have been upheld in the absence of the AUMF. Nevertheless, under the Fourth Circuit's analysis, it is unlikely that a detainee's *Bivens* suit would ever succeed under the newly enacted National Defense Authorization Act for Fiscal Year 2012,[50] which explicitly states that "the authority of the President to use all necessary and appropriate force pursuant to the [AUMF] includes the authority for the Armed Forces of the United States to detain . . . persons . . . pending disposition under the law of war."[51]

Moreover, the court, in rejecting Padilla's argument that his subsequent criminal conviction was relevant only to the issue of mootness, regarded the mootness and standing doctrines as interchangeable. The Supreme Court has recently backed away from this position, however, noting that the understanding of mootness as merely a "doctrine of standing set in a time frame" is not comprehensive and has led courts to conflate the two issues.[52] It seems that perhaps the Fourth Circuit conflated the two doctrines in the present case.

50 National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, 125 Stat. 1298 (2011).

51 *Id.* § 1021, 125 Stat. at 1562.

52 Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189–90 (2000) (internal quotation marks omitted).