

Bivens actions

A *Bivens* action is a claim against federal officials, sued in their individual capacities, for a violation of a person's constitutional rights. It comes from Justice Brennan's opinion in *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).

Bivens established that the victims of a constitutional violation by a federal agent may have a right to recover damages against the official in federal court despite the absence of any statute conferring such a right.¹

To state a claim under *Bivens*, a plaintiff must allege that he

- was deprived of a constitutional right
- by a federal agent
- acting under color of federal authority.²



(Photo: FBI)

While the *Bivens* case was about a Fourth Amendment search-and-seizure violation, later cases held that a *Bivens* action can be used for most constitutional violations.³ Then still later cases indicated that *Bivens* actions are only available in a relatively narrow range of situations.⁴ Lately, *Bivens* seems to have lost its luster in front of the U.S. Supreme Court. A *Bivens* action is especially likely to be doomed if there's an alternative remedy under state or federal law.

A *Bivens* action is the federal counterpart of a civil-rights action brought under 42 U.S.C. § 1983.⁵

So if you had your constitutional rights violated by **federal agents, bring a *Bivens* action**. If you had your constitutional rights violated by **state or local police, bring a § 1983 action**.

If you've had your constitutional rights violated by all of the above, stop mouthing off to people with badges!

¹ That sentence is quoted directly from *Carlson v. Green*, 446 U.S. 14, 17 (1980).

² That incorporates a direct quote from *Ali v. Cassanta*, 2007 U.S. Dist. LEXIS 37298 (D. Conn. May 21, 2007).

³ See *Carlson*, 446 U.S. at 14.

⁴ See *Minneci v. Pollard*, 132 S.Ct. 617 (2012).

⁵ See *Ellis v. Blum*, 643 F.2d 68, 84 (2d Cir. 1981).