

# *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 have a right to recover damages against the official in federal court despite the absence of any statute conferring such a right.<sup>1</sup> So *Bivens* trumps the idea of sovereign immunity.

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.<sup>2</sup>

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.<sup>3</sup>

A *Bivens* action is the federal counterpart of a civil-rights action brought under 42 U.S.C. § 1983.<sup>4</sup>

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 cops!



*I can't make out what that yellow plastic tape says. Is it "Fourth Amendment Line - Do Not Cross"?* (Photo: FBI)

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

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

<sup>3</sup> See *Carlson*, 446 U.S. at 14.

<sup>4</sup> See *Ellis v. Blum*, 643 F.2d 68, 84 (2d Cir. 1981).