

No. 15-888

In the Supreme Court of the United States

ALEJANDRO GARCIA DE LA PAZ, ET AL., PETITIONERS

v.

JASON COY, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Petitioners are undocumented aliens who are not lawfully in the United States. In separate incidents, petitioners were arrested by U.S. Customs and Border Protection agents and were detained in order to commence removal proceedings against them. Petitioners sued the agents in their personal capacities under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), alleging that the agents, in stopping and arresting petitioners, violated petitioners' rights under the Fourth Amendment.

The question presented here is:

Whether an undocumented alien is entitled to judicial creation of a damages remedy under *Bivens* to challenge his or her allegedly unconstitutional stop and arrest by U.S. Border Patrol agents enforcing the immigration laws.

(1)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is reported at 786 F.3d 367. The opinion of the district court in the *Garcia* case (Pet. App. 25a-62a) is reported at 954 F. Supp. 2d 532. The opinion of the district court in the *Frias* case denying a motion to dismiss (Pet. App. 63a-81a) is not published in the *Federal Supplement*. The other opinion of the district court in the *Frias* case, denying a motion for summary judgment, is also not published in the *Federal Supplement*. The order of the court of appeals denying rehearing (Pet. App. 82a-88a) is reported at 804 F.3d 1200.

JURISDICTION

The judgment of the court of appeals was entered on May 14, 2015. A petition for rehearing was denied on October 14, 2015. A petition for a writ of certiorari

was filed on January 12, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners in these consolidated cases are aliens who are not lawfully in the United States. Pet. App. 2a. They are attempting to sue U.S. Border Patrol agents under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for violations of their Fourth Amendment rights that allegedly occurred when the agents stopped and arrested them in connection with their lack of immigration status. The district court allowed both cases to proceed, but the court of appeals rejected the creation of a new *Bivens* remedy in these circumstances and ordered the cases dismissed. See Pet. App. 2a, 32a-49a, 70a-72a.

1. a. Petitioner Alejandro Garcia de la Paz alleges that on October 11, 2010, he was a passenger in the front seat of a red Ford F-150 truck with an extended cab. The driver and three others were also in the truck. The four men had been working near Vanderpool, Texas, and in the late afternoon, they were traveling back to San Antonio, going north on Ranch Road 187, a two-lane road, and then east on Ranch Road 337, another two-lane road, heading toward San Antonio. Pet. App. 4a.

Respondents in this case are two Border Patrol agents, Jason Coy and Mario Vega. The agents were traveling south in separate U.S. Customs and Border Protection (CBP) vehicles on Ranch Road 187 when they noticed Garcia's truck turn east onto Road 337. Pet. App. 4a. After following the truck on Road 337, the agents pulled over the truck to interrogate the occupants about their immigration status. *Id.* at 27a.

Garcia alleges that the agents decided to pull them over “[b]ased principally upon their perception that the Truck had a Hispanic driver and other Hispanics inside.” *Ibid.* (quoting *Garcia* Compl. ¶ 42).

After the truck had stopped, Agent Vega asked Garcia whether he was a U.S. citizen. Pet. App. 4a. Garcia replied that he was not a citizen. *Garcia* D. Ct. Doc. 33-1, Tab A, ¶ 19 (Feb. 14, 2013) (*Garcia* Decl.); see Pet. App. 4a.¹ Garcia was then detained. Pet. App. 4a.

The Department of Homeland Security (DHS) subsequently initiated removal proceedings against Garcia. Those proceedings have now been administratively closed, at Garcia’s request. Pet. App. 4a-5a; see A200-889-127, Order of the Immigration Judge (Sept. 12, 2013) (not part of record in this case). In accordance with agency enforcement priorities, DHS does not currently plan to continue removal proceedings against Garcia.

¹ According to the Border Patrol agents, Garcia also admitted that he was not lawfully in the United States. See *Garcia* D. Ct. Doc. 12-1, Ex. 1, ¶ 13 (Jan. 14, 2013) (*Vega* Decl.); *Garcia* D. Ct. Doc. 12-1, Ex. 2, ¶¶ 9, 11 (*Coy* Decl.); but see *Garcia* D. Ct. Doc. 33-1, Tab A, ¶¶ 19-20 (*Garcia* Decl.) (denying that he made this statement). In the district court, Garcia’s counsel directly conceded that Garcia was an “undocumented alien.” *Garcia* D. Ct. Doc. 47, at 3 (Sept. 12, 2013). And at oral argument in the court of appeals, petitioners’ counsel acknowledged that his clients did not have lawful status in the United States. See *Garcia* C.A. Oral Arg. Recording (17:40-19:00), http://www.ca5.uscourts.gov/OralArg-Recordings/13/13-50768_9-3-2014.mp3. The court of appeals subsequently described petitioners as “illegal aliens,” Pet. App. 2a, and petitioners do not dispute that characterization in their petition to this Court.

b. Garcia sued Agents Coy and Vega in the United States District Court for the Western District of Texas seeking damages for violations of the Fourth Amendment under *Bivens*. Garcia alleged that the agents had unlawfully stopped him because he is Hispanic. Pet. App. 2a. The agents moved to dismiss or, in the alternative, for summary judgment, arguing that they were entitled to qualified immunity and that the district court should not extend the *Bivens* remedy to situations in which plaintiffs can raise their constitutional claims in the deportation process under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.* Pet. App. 34a, 41a.²

The district court denied the motion in relevant part. Pet. App. 32a-49a. The court held that the alternative process available to Garcia under the INA did not foreclose a *Bivens* remedy, *id.* at 32a-35a, distinguishing the Ninth Circuit's decision in *Mirmehdi v. United States*, 689 F.3d 975 (2012), cert. denied, 133 S. Ct. 2336 (2013). The court also held that certain provisions of the immigration laws did not deprive the court of jurisdiction, Pet. App. 35a-41a, and that the agents were not entitled to qualified immunity on the claim of unlawful stop and arrest. *Id.* at 41a-49a. The court declined to address the summary-judgment portion of the motion without first allowing discovery. *Id.* at 50a.

² Garcia also sued the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671-2680, and all three defendants under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, seeking a declaratory judgment that they were violating two provisions of the immigration laws. Pet. App. 5a. Those claims are not at issue here.

2. a. Petitioner Daniel Frias alleges that on April 28, 2010, he was driving a flat-bed four-door Dodge truck west on Interstate Highway 20 (I-20), just outside Abilene, Texas, with his colleague George Taylor as a passenger. Respondent Arturo Torrez, a Border Patrol agent, was on duty in his CBP vehicle, driving eastward on I-20. According to his deposition testimony, when Agent Torrez was about fifty yards away, he observed what he (incorrectly) believed to be bodies lying in the backseat of the truck in which Frias was riding. Pet. App. 3a; see *Frias* C.A. ROA 390 (Torrez Dep.). In Agent Torrez’s experience as a Border Patrol agent, undocumented aliens often lie down in vehicles in an attempt to hide, and he later testified that the bags in the back seat “looked like bodies based on prior experience[,] what I’ve seen before.” *Frias* C.A. ROA 390 (Torrez Dep.).³

Agent Torrez stopped the truck and questioned Frias and Taylor. Frias alleges that Agent Torrez’s decision to stop the truck was based on Frias’s “Hispanic appearance.” Pet. App. 64a. Frias has conceded that when Agent Torrez inquired about his immigration status, Frias informed him that Frias was not lawfully in the United States. *Frias* C.A. ROA 241 (*Frias* Compl. ¶ 86). On the basis of this admission, Agent Torrez arrested Frias.

DHS subsequently initiated removal proceedings against Frias. Pet. App. 3a. Those proceedings were

³ Agent Torrez’s recollection that there were bags in the back seat was consistent with that of the passenger in the car, see *Frias* C.A. ROA at 358-359 (Taylor Decl. ¶ 5) (stating that there were bags in the back seat of the truck), but was in conflict with that of Frias, see *id.* at 826 (Frias Decl. ¶¶ 16-18) (stating that back seat was empty).

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