# Hernandez v. United States, 757 F.3d 249 (5th Cir. 2014) - Constitutional rights in a cross-border shooting.

## How was plaintiff killed?

## What was the legal status of the plaintiff?

## Where was the government employee?

## How would the case have been different if all of this had happened in Mexico?

## What were the four classes of claims?

## Was the defendant employee in course and scope of his employment?

## Which claims did the district court dismiss?

## What did plaintiffs add to their claims?

## What sort of liability were these claims based on?

## What did the district court ultimately rule?

## [22] - A. Federal Tort Claims Act

## Before the FTCA was passed, what did you have to do to get damages from the United States for a tort injury?

## How did the FTCA modify the constitutional provision of sovereign immunity?

## What is the problem with the FTCA in this case?

## Where did the injury occur?

## What is the “headquarters doctrine”?

## What jurisdiction’s law is applied in an FTCA case?

## Why is this a problem in this case?

## What happened to the headquarters doctrine?

## If the court had retained this doctrine, what would it mean for drone cases?

## How did the plaintiff argue that the injury really occurred in the US?

## What did the court rule on the FTCA claims?

## [27] - B. Alien Tort Statute

## What is the text of the ATS?

## Is the ATS sufficient to provide the law of a case?

## How is it like the FTCA?

## Where does the law come from in the ATS?

## What did plaintiff claim satisfied this standard?

## Even if this is true, does the ATS waive sovereign immunity?

## Does the court find that the US has waived sovereign immunity though any treaties?

## [32] - III. BIVENS ACTION AGAINST AGENT MESA

## What is a Bivens action?

## What is the qualified immunity defense against a Bivens action?

## What does defendant say about the constitutional claim?

## What do the Insular Cases tells us about the limits of this defense?

## How did Reid v. Covert, 354 U.S. 1 (1957) expand this doctrine?

## How was Johnson v. Eisentrager, 339 U.S. 763 (1950) distinguished by the Boumediene Court?

## What three factors did the Boumediene Court look at to determine the extraterritorial reach of constitutional rights?

## Why did the district court reject Boumediene?

## What does this court say is the reach of Boumediene?

## How did the court analyze the 3 factors in US v. Verdugo-UUrquidez?

## What did this court decide when applying the factors to plaintiff’s claims?

## What did Justice Kennedy say?

## Does plaintiff pass the “sufficient connections” test?

## What were the practical considerations?

## [60] - V. FIFTH AMENDMENT

## What is the alleged 5th Amendment violation?

## How is the coverage of the 5th Amendment different from the 4th Amendment?

## How does this affect the sufficient connections test?

## Why does citizenship matter outside the US?

## How is plaintiff different from the prisoners in Eisentrager?

## What about where the injury occurred?

## What was the test that excluded Eisentrager but allowed jurisdiction in Boumediene?

## What is the control argument on the US Mexico border?

## Is the map line really the border?

## What shows that the US has control past that line?

## Why does the court say that this case is more like Boumediene than Eisentrager?

## Why was the court unwilling to impose the reasonableness limitation on extraterritorial searches?

## How is the interest of the 5th Amendment different?

## Would enforcing the 5th Amendment interfere with Mexico’s sovereignty?

## If the US law does not apply to defendant agent, whose law would apply?

## What could be the perverse result?

## Would extending the 5th Amendment over the border change lead to confusion in what agents could do?

## Does this court find that plaintiff can state a 5th Amendment claim?

## How do you enforce a constitutional claim against an employee of the US?

## Does the court like to expand the reach of Bivens?

## Has Bivens been applied to non-citizen claims at the border?

## What is the test for whether Bivens should be expanded?

## If this is the case, what does the court then ask?

## [84] - a. Alternative Remedies

## Why not sue defendant in Mexican courts?

## Why don’t federal criminal laws provide a remedy?

## Does plaintiff have an alternative remedy?

## [89] - b. Special Factors Counseling Hesitation

## What are examples of factors that caution against the use of Bivens?

## Is this a military setting?

## Is shooting kids across the border a national security interest?

## Is this even an immigration context?

## Is this just a law enforcement case?

## Why would this, or even Bivens itself, not provide a problem for law enforcement?

## Does the court allow the Bivens claim?

## [99] - C. Qualified Immunity

## What are the standards for a violation of substantive due process?

## Did defendant’s conduct meet this test?

## [106] - D. Clearly Established Law

## Does qualified immunity apply if it is not clear, as in this case, if plaintiff had jurisdiction to bring the claim?

## What does the court look at?

## What did the court find in this case?

## What is Agent Mesa’s defense?

## What is wrong with this defense?

## Can you claim vicarious liability under Bivens?

## Were any of the supervisors who were sued actively involved in the shooting or the supervision of the agent?

## What was the final holding?