

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 11 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MARCELLAS HOFFMAN,

No. 20-15396

Plaintiff-Appellant,

D.C. No.

1:16-cv-01617-LJO-SAB

v.

PRESTON,

MEMORANDUM\*

Defendant-Appellee,

and

D. COYLE; et al.,

Defendants.

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence J. O'Neill, District Judge, Presiding

Argued and Submitted February 8, 2021  
San Francisco, California

Before: WARDLAW and BEA, Circuit Judges, and ROSENTHAL,\*\* District  
Judge.

---

\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Lee H. Rosenthal, Chief United States District Judge  
for the Southern District of Texas, sitting by designation.

Marcellas Hoffman, a federal prisoner, alleges that a correctional officer, Timothy Preston, labeled him a snitch to other prisoners, offered those prisoners a bounty to assault him, and failed to protect him from a predictable assault by another prisoner. Hoffman sued Preston for violating his Eighth Amendment rights and sought damages under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The district court dismissed Hoffman's action with prejudice. We have jurisdiction over the district court's final judgment under 28 U.S.C. § 1291. Reviewing de novo the district court's dismissal of Hoffman's complaint, *Dougherty v. City of Covina*, 654 F.3d 892, 897 (9th Cir. 2011), we affirm.

In *Bivens*, the Supreme Court recognized an implied cause of action arising directly under the Constitution for damages against federal officers alleged to have violated a plaintiff's constitutional rights. 403 U.S. at 389. The *Bivens* Court held that damages were recoverable against federal officers who violated the Fourth Amendment's prohibition against unreasonable search and seizures. *Id.* at 397. The Supreme Court subsequently approved a *Bivens* remedy under the Fifth Amendment's due process clause for gender discrimination by a member of the United States Congress. *Davis v. Passman*, 442 U.S. 228 (1979). The Supreme Court also approved a *Bivens* remedy for prison officials' failure to provide adequate medical care, in violation of the Eighth Amendment. *Carlson v. Green*, 446 U.S. 14

(1980). Since *Bivens*, these are the only contexts in which the Supreme Court has recognized *Bivens* claims.

The Supreme Court has recently and repeatedly “made clear that expanding the *Bivens* remedy is now a ‘disfavored’ judicial activity.” *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1857 (2017) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009)). In *Egbert v. Boule*, 142 S. Ct. 1793 (2022), the Supreme Court emphasized that “[t]he *Bivens* inquiry does not invite federal courts to independently assess the costs and benefits of implying a cause of action.” *Id.* at 1805. Rather, “[a] court faces only one question: whether there is *any* rational reason (even one) to think that *Congress* is better suited to ‘weigh the costs and benefits of allowing a damages action to proceed.’” *Id.* (emphases in original) (quoting *Ziglar*, 137 S. Ct. at 1858). That question is answered affirmatively if “Congress has provided alternative remedies for aggrieved parties in [the plaintiff’s] position.” *Id.* at 1806. The nature of an alternative remedy is of no moment: “[s]o long as Congress or the Executive has created a remedial process that it finds sufficient to secure an adequate level of deterrence, the courts cannot second-guess that calibration by superimposing a *Bivens* remedy.” *Id.* at 1807.

The plaintiff in *Carlson* alleged that prison officials kept him in an inadequate medical facility, gave him the wrong treatments, and failed to provide competent medical attention for hours after an asthma attack. 446 U.S. at 16 n.1. Hoffman’s

complaint alleges that a prison correctional officer intentionally created the risk that another prisoner would assault Hoffman by publicly labeling him as a snitch and offering prisoners rewards. The Supreme Court's decision in *Egbert v. Boule* precludes recognizing a *Bivens* remedy for these allegations. Congress has not authorized a damages remedy in this context, and there are "rational reason[s]," *Egbert*, 142 S. Ct. at 1803, why it might not, for example, the existence of the Bureau of Prisons' formal review process for inmate complaints.

**AFFIRMED.**