

By Joe Patrice

After lighting into the federal judiciary's treatment of pro se litigants in his first brief in *Bond v. United States*, Judge Richard Posner finds an opportunity to sharply criticize the government and a federal district judge in his reply brief, filed with the assistance of attorney Matthew Dowd of Dowd Scheffel PLLC.



Judge Richard Posner (screenshot via Public Affairs TV / YouTube)

Perhaps worse yet, the district court's opinion dismissing Bond's original complaint was little more than copying and pasting from the Government's motion. The district court's laziness leaves a pro se litigant with the perception that the judge did not independently analyze Bond's complaint. The district court's actions create the impression of plagiarism and an abdication of its independent judicial duties.

The most damning thing about this paragraph is how unsurprising it is. Judges lift analysis from briefs all the time — and it's usually flattering — but in a case against a pro se litigant who is unlikely to be fastidious about countering every argument raised by the seasoned attorneys on the other side, copying a brief only reinscribes the inherent power imbalances at play. When this is the case, extensive quotation says less about the substance of an argument than its form.

And lest you think he's exaggerating about the copying, Judge Posner offers up one extended example in a side-by-side comparison:

| Government Motion (JA041-051) | Dismissal Opinion (JA079-106) |
|---|---|
| <p>Here, Plaintiff has not stated a <i>Bivens</i> claim against any of the Defendants. SAC Perkins and Marshal Hughes are not identified in the body of the Complaint, and there is no factual content in the Complaint explaining how either of these Defendants violated Plaintiff's constitutional rights. To the extent that they are named as supervisors of the federal agents discussed in the Complaint, <i>Bivens</i> does not permit respondeat superior liability. <i>See Trulock v. Freeh</i>, 275 F.3d 391, 402 (4th Cir. 2001). Thus, Plaintiff has failed to state a <i>Bivens</i> claim as to SAC Perkins and Marshal Hughes.</p> | <p>Here, Plaintiff has not stated a <i>Bivens</i> claim against any of the Defendants. The body of the Complaint fails to identify SAC Perkins and Marshal Hughes. The Complaint contains no content explaining how either of these Defendants may have violated Plaintiff's constitutional rights. To the extent that they are named as supervisors of the federal agents discussed in the Complaint, <i>Bivens</i> does not permit respondeat superior liability. <i>See Trulock v. Freeh</i>, 275 F.3d 391, 402 (4th Cir. 2001) ("In a <i>Bivens</i> suit, there is no respondeat superior liability."); Thus, Plaintiff plainly has failed to state a <i>Bivens</i> claim as to SAC Perkins and Marshal Hughes.</p> |

And that example goes on for another paragraph.

The government addresses this charge in a roundabout manner by claiming that Bond's status as a pro se litigant — and the attendant power imbalance — shouldn't be relevant in evaluating the case because Bond knew enough to include numbered paragraphs in his complaint. Judge Posner... disagrees:

The Government now takes the extraordinary position that Bond does not deserve the protections given to other pro se litigants. The Government's position both astounds and offends. Citing not one case to support its position, the Government ignores controlling precedent, both from this Court and the Supreme Court....

The Government seems to believe that, because Bond understood a few court rules, then he should not be treated as a pro se litigant. That is an absurd position.

While this conduct draws the most attention because it's the most glaring, the rest of the brief takes aim at some of the warrantless claims made by the government and repeated by the district court. Just using the paragraph cited above, the brief and opinion both claim the complaint offers no explanation of how the defendants violated Bond's rights.

Except... the complaint does that over and over again. As Judge Posner points out, the government appears to have led the district court into making repeated negative inferences regarding Bond's allegations — a mistake under any interpretation of the law, let alone under the relaxed standards that apply to pro se litigants.

Simply put, Posner's putting on a clinic down there. Kind of makes you wonder if the Fourth Circuit screwed up in forcing him to enter the case.

(Check out the full brief on the next page...)

Earlier: Judge Posner Files First Brief Since Leaving The Bench, Lights Into Federal Judiciary
Judge Posner Taking On Pro Se Case After Fourth Circuit Did Something Incredibly Stupid

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