

## **06-219 WILKIE V. ROBBINS**

DECISION BELOW:433 F3d 755

LOWER COURT CASE NUMBER: 04-8016

### **QUESTIONS PRESENTED:**

This case involves a damages action brought against officials of the Bureau of Land Management in their individual capacities based on alleged actions taken within the individuals' official regulatory responsibilities in attempting to obtain a reciprocal right-of-way across private property intermingled with public lands. The following questions are presented:

1. Whether government officials acting pursuant to their regulatory authority can be guilty under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 et seq., of the predicate act of extortion under color of official right for attempting to obtain property for the sole benefit of the government and, if so, whether that statutory prohibition was clearly established.
2. Whether respondent's Bivens claim based on the exercise of his alleged Fifth Amendment rights is precluded by the availability of judicial review under the Administrative Procedure Act, 5 U.S.C. 701 et seq., or other statutes for the kind of administrative actions on which his claim is based.
3. Whether the Fifth Amendment protects against retaliation for exercising a "right to exclude" the government from one's property outside the eminent domain process and, if so, whether that Fifth Amendment right was clearly established.

CERT. GRANTED 12/1/2006

EXPEDITED BRIEFING SCHEDULE.