Supreme Court of the United States
Charles WILKIE, et al., Petitioners,
v.
Harvey Frank ROBBINS.

No. 06-219.
Argued March 19, 2007.
Decided June 25, 2007.

Justice SOUTER delivered the opinion of the Court.

***541** Officials of the Bureau of Land Management stand accused of harassment and intimidation aimed at extracting an easement across private property. The questions here are whether the landowner has either a private action for damages of the sort recognized in *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), or a claim against the officials in their individual capacities under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968 (2000 ed. and Supp. IV). We hold that neither action is available.

I
A

Plaintiff-respondent Frank Robbins owns and operates the High Island Ranch, a commercial guest resort in Hot Springs County, Wyoming, stretching across some 40 miles of territory. The ranch is a patchwork of mostly contiguous land ***542** parcels intermingled with tracts belonging to other private owners, the State of Wyoming, and the National Government. Its natural resources include wildlife and mineral deposits, and its mountainous western portion, called the upper Rock Creek area, is a place of great natural beauty. In response to persistent requests by environmentalists and outdoor enthusiasts, the Bureau tried to induce the ranch's previous owner, George Nelson, to grant an easement for public use over South Fork Owl Creek Road, which runs through the ranch and serves as a main route to the upper Rock Creek area. For a while, Nelson refused from fear that the public would disrupt his guests' activities, but shortly after agreeing to sell the property to Robbins, in March 1994, Nelson signed a nonexclusive deed of easement giving the United States the right to use and maintain the road along a stretch of his property. In return, the Bureau agreed to rent Nelson a right-of-way to maintain a different section of the road as it runs across federal property and connects otherwise isolated parts of Robbins's holdings.

In May 1994, Nelson conveyed the ranch to Robbins, who continued to graze cattle and run guest cattle drives in reliance on grazing permits and a Special Recreation Use Permit (SRUP) issued by the Bureau. But Robbins knew nothing about Nelson's grant of the easement across South Fork Owl Creek Road, which the Bureau had failed to record, and upon recording his warranty deed in Hot Springs County, Robbins took title to the ranch free of the easement, by operation of Wyoming law. See Wyo. Stat. Ann. § 34-1-120 (2005).

When the Bureau's employee Joseph Vessels [FN1] discovered, in June 1994, that the Bureau's inaction had cost it the easement, he telephoned Robbins and demanded an easement to replace Nelson's. Robbins refused but indicated he would ***543** consider granting one in return for something. In a later meeting, Vessels allegedly told Robbins that " 'the Federal Government does not negotiate,' " and talks broke down. Brief for Respondent 5. Robbins says that over the next several years the defendant-petitioners (hereinafter defendants),****2594** who are current and former employees of the Bureau, carried on a campaign of harassment and intimidation aimed at forcing him to regrant the lost easement.

> FN1. Vessels was named as a defendant when the complaint was filed, but he has since died.

B

Robbins concedes that any single one of the offensive and sometimes illegal actions by the Bureau's officials might have been brushed aside as a small imposition, but says that in the aggregate the campaign against him amounted to coercion to extract the easement and should be redressed collectively. The substance of Robbins's claim, and the degree to

which existing remedies available to him were adequate, can be understood and assessed only by getting down to the details, which add up to a long recitation.[FN2]

> FN2. Because this case arises on interlocutory appeal from denial of defendants' motion for summary judgment, we recite the facts in the light most favorable to Robbins.

In the summer of 1994, after the fruitless telephone conversation in June, Vessels wrote to Robbins for permission to survey his land in the area of the desired easement. Robbins said no, that it would be a waste of time for the Bureau to do a survey without first reaching agreement with him. Vessels went ahead with a survey anyway, trespassed on Robbins's land, and later boasted about it to Robbins. Not surprisingly, given the lack of damage to his property, Robbins did not file a trespass complaint in response.

Mutual animosity grew, however, and one Bureau employee, Edward Parodi, was told by his superiors to "look closer" and "investigate harder" for possible trespasses and other permit violations by Robbins. App. 128-129. Parodi ***544** also heard colleagues make certain disparaging remarks about Robbins, such as referring to him as "the rich SOB from Alabama [who] got [the Ranch]." *Id.,* at 121. Parodi became convinced that the Bureau had mistreated Robbins and described its conduct as "the volcanic point" in his decision to retire. *Id.,* at 133.

Vessels and his supervisor, defendant Charles Wilkie, continued to demand the easement, under threat to cancel the reciprocal maintenance right-of-way that Nelson had negotiated. When Robbins would not budge, the Bureau canceled the right-of-way, citing Robbins's refusal to grant the desired easement and failure even to pay the rental fee. Robbins did not appeal the cancellation to the Interior Board of Land Appeals (IBLA) or seek judicial review under the Administrative Procedure Act (APA), 5 U.S.C. § 702.

In August 1995, Robbins brought his cattle to a water source on property belonging to his neighbor, LaVonne Pennoyer. An altercation ensued, and Pennoyer struck Robbins with her truck while he was riding a horse. Plaintiff-Appellee's Supp.App. in No. 04-8016 (CA10), pp. 676-681 (hereinafter CA10 App.); Pl. Exh. 2, Record 164-166; Pl. Exh. 35a, *id.,* at 102-108. Defendant Gene Leone fielded a call from Pennoyer regarding the incident, encouraged her to contact the sheriff, and himself placed calls to the sheriff suggesting that Robbins be charged with trespass. After the incident, Parodi claims that Leone told him: "I think I finally got a way to get [Robbins's] permits and get him out of business." App. 125, 126.

In October 1995, the Bureau claimed various permit violations and changed the High Island Ranch's 5-year SRUP to a SRUP subject to annual renewal. According to Robbins, losing the 5-year SRUP disrupted his guest ranching business, owing to the resulting uncertainty about permission to conduct cattle drives. Robbins declined to seek administrative review, ****2595** however, in part because Bureau officials told ***545** him that the process would be lengthy and that his permit would be suspended until the IBLA reached a decision.[FN3]

> FN3. According to Robbins, Bureau officials neglected to mention his right to seek a stay of the Bureau's adverse action pending the IBLA's resolution of his appeal. See 43 CFR § 4.21 (2006). Such a stay, if granted, would have permitted Robbins to continue to operate under the 5-year SRUP.

Beginning in 1996, defendants brought administrative charges against Robbins for trespass and other land-use violations. Robbins claimed some charges were false, and others unfairly selective enforcement, and he took all of them to be an effort to retaliate for refusing the Bureau's continuing demands for the easement. He contested a number of these charges, but not all of them, administratively.

In the spring of 1997, the South Fork Owl Creek Road, the only way to reach the portions of the ranch in the Rock Creek area, became impassable. When the Bureau refused to repair the section of road across federal land, Robbins took matters into his own hands and fixed the public road himself, even though the Bureau had refused permission. The Bureau fined Robbins for trespass, but offered to settle the charge and entertain an application to renew the old maintenance right-of-way. Instead, Robbins appealed to the IBLA, which found that Robbins had admitted the

unauthorized repairs when he sent the Bureau a bill for reimbursement. The Board upheld the fine, *In re Robbins,* 146 I.B.L.A. 213 (1998), and rejected Robbins's claim that the Bureau was trying to " 'blackmail' " him into providing the easement; it said that "[t]he record effectively shows ... intransigence was the tactic of Robbins, not [the] BLM." *Id.*, at 219. Robbins did not seek judicial review of the IBLA's decision.

In July 1997, defendant Teryl Shryack and a colleague entered Robbins's property, claiming the terms of a fence easement as authority. Robbins accused Shryack of unlawful ***546** entry, tore up the written instrument, and ordered her off his property. Later that month, after a meeting about trespass issues with Bureau officials, Michael Miller, a Bureau law enforcement officer, questioned Robbins without advance notice and without counsel about the incident with Shryack. The upshot was a charge with two counts of knowingly and forcibly impeding and interfering with a federal employee, in violation of 18 U.S.C. § 111 (2000 ed. and Supp. IV), a crime with a penalty of up to one year in prison. A jury acquitted Robbins in December, after deliberating less than 30 minutes. *United States v. Robbins,* 179 F.3d 1268, 1269 (C.A.10 1999). According to a news story, the jurors "were appalled at the actions of the government" and one said that "Robbins could not have been railroaded any worse ... if he worked for the Union Pacific." CA10 App. 852. Robbins then moved for attorney's fees under the Hyde Amendment, § 617, 111 Stat. 2519, note following 18 U.S.C. § 3006A, arguing that the position of the United States was vexatious, frivolous, or in bad faith. The trial judge denied the motion, and Robbins appealed too late. See 179 F.3d, at 1269-1270.

In 1998, Robbins brought the lawsuit now before us, though there was further vexation to come. In June 1999, the Bureau denied Robbins's application to renew his annual SRUP, based on an accumulation of land-use penalties levied against him. Robbins appealed, the IBLA affirmed, *In re Robbins,* 154 I.B.L.A. 93 (2000), and Robbins did not seek judicial review. Then, in August, the Bureau revoked the grazing permit for High Island ****2596** Ranch, claiming that Robbins had violated its terms when he kept Bureau officials from passing over his property to reach public lands. Robbins appealed to the IBLA, which stayed the revocation pending resolution of the appeal. Order in *Robbins v. Bureau of Land Management,* IBLA 2000-12 (Nov. 10, 1999), CA10 App. 1020.

The stay held for several years, despite periodic friction. Without a SRUP, Robbins was forced to redirect his guest ***547** cattle drives away from federal land and through a mountain pass with unmarked property boundaries. In August 2000, Vessels and defendants Darrell Barnes and Miller tried to catch Robbins trespassing in driving cattle over a corner of land administered by the Bureau. From a nearby hilltop, they videotaped ranch guests during the drive, even while the guests sought privacy to relieve themselves. That afternoon, Robbins alleges, Barnes and Miller broke into his guest lodge, left trash inside, and departed without closing the lodge gates.

The next summer, defendant David Wallace spoke with Preston Smith, an employee of the Bureau of Indian Affairs who manages lands along the High Island Ranch's southern border, and pressured him to impound Robbins's cattle. Smith told Robbins, but did nothing more.

Finally, in January 2003, tension actually cooled to the point that Robbins and the Bureau entered into a settlement agreement that, among other things, established a procedure for informal resolution of future grazing disputes and stayed 16 pending administrative appeals with a view to their ultimate dismissal, provided that Robbins did not violate certain Bureau regulations for a 2-year period. The settlement came apart, however, in January 2004, when the Bureau began formal trespass proceedings against Robbins and unilaterally voided the settlement agreement. Robbins tried to enforce the agreement in federal court, but a district court denied relief in a decision affirmed by the Court of Appeals in February 2006. *Robbins v. Bureau of Land Management,* 438 F.3d 1074 (C.A.10).

C

In this lawsuit (brought, as we said, in 1998), Robbins asks for compensatory and punitive damages as well as declaratory and injunctive relief. Although he originally included the United States as a defendant, he voluntarily dismissed the Government, and pressed forward with a RICO claim ***548** charging defendants with repeatedly trying to extort an easement from him, as well as a similarly grounded

Bivens claim that defendants violated his Fourth and Fifth Amendment rights. Defendants filed a motion to dismiss on qualified immunity and failure to state a claim, which the District Court granted, holding that Robbins inadequately pleaded damages under RICO and that the APA and the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346, were effective alternative remedies that precluded *Bivens* relief. The Court of Appeals for the Tenth Circuit reversed on both grounds, 300 F.3d 1208, 1211 (2002), although it specified that *Bivens* relief was available only for those " constitutional violations committed by individual federal employees unrelated to final agency action," 300 F.3d, at 1212.

On remand, defendants again moved to dismiss on qualified immunity. As to the RICO claim, the District Court denied the motion; as to *Bivens,* it dismissed what Robbins called the Fourth Amendment claim for malicious prosecution and those under the Fifth Amendment for due process violations, but it declined to dismiss the Fifth Amendment claim of retaliation for the exercise of Robbins's right to exclude the Government from his property ****2597** and to refuse any grant of a property interest without compensation. After limited discovery, defendants again moved for summary judgment on qualified immunity. The District Court adhered to its earlier denial.

This time, the Court of Appeals affirmed, after dealing with collateral order jurisdiction to consider an interlocutory appeal of the denial of qualified immunity, 433 F.3d 755, 761 (2006) (citing *Mitchell v. Forsyth,* 472 U.S. 511, 530, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985)). It held that Robbins had a clearly established right to be free from retaliation for exercising his Fifth Amendment right to exclude the Government from his private property, 433 F.3d, at 765-767, and it explained that Robbins could go forward with the RICO claim because Government employees who ***549** "engag[e] in lawful actions with an intent to extort a right-of-way from [a landowner] rather than with an intent to merely carry out their regulatory duties" commit extortion under Wyoming law and within the meaning of the Hobbs Act, 18 U.S.C. § 1951. 433 F.3d, at 768. The Court of Appeals rejected the defense based on a claim of the Government's legal entitlement to demand the disputed easement: "if an official obtains property that he has lawful authority to obtain, but does so in a wrongful manner, his conduct constitutes extortion under the Hobbs Act." *Id.*, at 769. Finally, the Court of Appeals said again that "Robbins'[s] allegations involving individual action unrelated to final agency action are permitted under *Bivens.*" *Id.*, at 772. The appeals court declined defendants' request "to determine which allegations remain and which are precluded," however, because defendants had not asked the District Court to sort them out. *Ibid.*

We granted certiorari, 549 U.S. 1075, 127 S.Ct. 722, 166 L.Ed.2d 559 (2006), and now reverse.

* * * *

***563** III

Robbins's other claim is under RICO, which gives civil remedies to "[a]ny person injured in his business or property by reason of a violation of [18 U.S.C. § 1962]." 18 U.S.C. § 1964(c). Section 1962(c) makes it a crime for "any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." RICO defines "racketeering activity" to include "any act which is indictable under" the Hobbs Act as well as "any act or threat involving ... extortion ..., which is chargeable under State law and punishable by imprisonment for more than one year." §§ 1961(1)(A)-(B) (2000 ed., Supp. IV). The Hobbs Act, finally, criminalizes interference with interstate commerce by extortion, along with attempts or conspiracies, § 1951(a), extortion being defined as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right," § 1951(b)(2).

Robbins charges defendants with violating the Hobbs Act by wrongfully trying to get the easement under color of official right, to which defendants reply with a call to dismiss the RICO claim for two independent reasons: the Hobbs Act does not apply when the National Government is the intended beneficiary of the allegedly extortionate acts; and a valid claim of entitlement to the disputed property is a complete defense against extortion. Because we agree with the first contention, we do not reach the second.

The Hobbs Act does not speak explicitly to efforts to obtain property for the Government rather

than a private party, and that leaves defendants' contention to turn on the common law conception of "extortion," which we presume Congress meant to incorporate when it passed the Hobbs Act in 1946. See *Scheidler v. National Organization for Women, Inc.*, 537 U.S. 393, 402, 123 S.Ct. 1057, 154 L.Ed.2d 991 (2003) (construing the term ***564** " extortion" in the Hobbs Act by reference to its common law meaning); *Evans v. United States*, 504 U.S. 255, 259, 112 S.Ct. 1881, 119 L.Ed.2d 57 (1992) (same); see also *Morissette v. United States*, 342 U.S. 246, 263, 72 S.Ct. 240, 96 L.Ed. 288 (1952) ("[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken").

"At common law, extortion was a property offense committed by a public official ****2606** who took any money or thing of value that was not due to him under the pretense that he was entitled to such property by virtue of his office." *Scheidler, supra*, at 402, 123 S.Ct. 1057 (quoting 4 W. Blackstone, Commentaries on the Laws of England 141 (1769), and citing 3 R. Anderson, Wharton's Criminal Law and Procedure § 1393, pp. 790-791 (1957); internal quotation marks omitted). In short, "[e]xtortion by the public official was the rough equivalent of what we would now describe as 'taking a bribe.' " *Evans, supra*, at 260, 112 S.Ct. 1881. Thus, while Robbins is certainly correct that public officials were not immune from charges of extortion at common law, see Brief for Respondent 43, the crime of extortion focused on the harm of public corruption, by the sale of public favors for private gain, not on the harm caused by overzealous efforts to obtain property on behalf of the Government.[FN12]

> FN12. Although the legislative history of the Hobbs Act is generally "sparse and unilluminating with respect to the offense of extortion," *Evans*, 504 U.S., at 264, 112 S.Ct. 1881, we know that Congress patterned the Act after two sources of law: "the Penal Code of New York and the Field Code, a 19th-century model penal code," *Scheidler*, 537 U.S., at 403, 123 S.Ct. 1057. In borrowing from these sources, the Hobbs Act expanded the scope of common law extortion to include private perpetrators while retaining the core idea of extortion as a species of corruption, akin to bribery. But Robbins provides no basis for believing that Congress thought of broadening the definition of extortion under color of official right beyond its common law meaning.

The importance of the line between public and private beneficiaries for common law and Hobbs Act extortion is confirmed***565** by our own case law, which is completely barren of an example of extortion under color of official right undertaken for the sole benefit of the Government. See, *e.g.*, *McCormick v. United States*, 500 U.S. 257, 273, 111 S.Ct. 1807, 114 L.Ed.2d 307 (1991) (discussing circumstances in which public official's receipt of campaign contributions constitutes extortion under color of official right); *Evans, supra*, at 257, 112 S.Ct. 1881 (Hobbs Act prosecution for extortion under color of official right, where public official accepted cash in exchange for favorable votes on a rezoning application); *United States v. Gillock*, 445 U.S. 360, 362, 100 S.Ct. 1185, 63 L.Ed.2d 454 (1980) (Hobbs Act prosecution for extortion under color of official right, where state senator accepted money in exchange for blocking a defendant's extradition and agreeing to introduce legislation); cf. *United States v. Deaver*, 14 F. 595, 597 (W.D.N.C.1882) (under the "technical meaning [of extortion] in the common law, ... [t]he officer must unlawfully and corruptly receive such money or article of value for *his own benefit* or *advantage* "). More tellingly even, Robbins has cited no decision by any court, much less this one, from the entire 60-year period of the Hobbs Act that found extortion in efforts of Government employees to get property for the exclusive benefit of the Government.

Of course, there is usually a case somewhere that provides comfort for just about any claim. Robbins musters two for his understanding of extortion under color of official right, neither of which, however, addressed the beneficiary question with any care: *People v. Whaley*, 6 Cow. 661, 1827 WL 2284 (N.Y.1827), and *Willett v. Devoy*, 170 App. Div. 203, 155 N.Y.S. 920 (1915). *Whaley* was about a charge of extortion against a justice of the peace who wrongfully ordered a litigant to pay compensation to the other party as well as a small administrative fee to the court. Because the case involved illegally obtaining property for the benefit of a private third party, it does not stand for the proposition that an act for the

benefit of the Government alone can be extortion. The **2607 second case, *Willett,* again from New York, construed a provision of the *566 State's Public Officers Law. That statute addressed the problem of overcharging by public officers, see 4Birdseye's Consol. Laws of N.Y. Ann., Art. V, § 67, p. 4640 (1909), and the court's opinion on it said that common law extortion did not draw any distinction "on the ground that the official keeps the fee himself," 170 App. Div., at 204, 155 N.Y.S., at 921. But a single, two-page opinion from a state intermediate appellate court issued in 1915 is not much indication that the Hobbs Act was adopted in 1946 subject to the understanding that common law extortion was spacious enough to cover the case Robbins states. There is a reason he is plumbing obscurity.

Robbins points to what we said in *United States v. Green,* 350 U.S. 415, 420, 76 S.Ct. 522, 100 L.Ed. 494 (1956), that "extortion as defined in the [Hobbs Act] in no way depends upon having a direct benefit conferred on the person who obtains the property." He infers that Congress could not have meant to prohibit extortionate acts in the interest of private entities like unions, but ignore them when the intended beneficiary is the Government. See Brief for Respondent 47-48. But Congress could very well have meant just that; drawing a line between private and public beneficiaries prevents suits (not just recoveries) against public officers whose jobs are to obtain property owed to the Government. So, without some other indication from Congress, it is not reasonable to assume that the Hobbs Act (let alone RICO) was intended to expose all federal employees, whether in the Bureau of Land Management, the Internal Revenue Service, the Office of the Comptroller of the Currency (OCC), or any other agency, to extortion charges whenever they stretch in trying to enforce Government property claims. See *Sinclair v. Hawke,* 314 F.3d 934, 944 (C.A.8 2003) (OCC employees "do not become racketeers by acting like aggressive regulators"). As we just suggested, Robbins does not face up to the real problem when he says that requiring proof of a wrongful intent to extort would shield well-intentioned Government employees *567 from liability. It is not just final judgments, but the fear of criminal charges or civil claims for treble damages that could well take the starch out of regulators who are supposed to bargain and press demands vigorously on behalf of the Government and the public. This is the reason we would want to see some text in the Hobbs Act before we could say that Congress meant to go beyond the common law preoccupation with official corruption, to embrace the expansive notion of extortion Robbins urges on us.

He falls back to the argument that defendants violated Wyoming's blackmail statute, see Wyo. Stat. Ann. § 6-2-402 (1977-2005),[FN13] which he says is a separate predicate offense for purposes of RICO liability. But even assuming that defendants' conduct would be "chargeable under State law and punishable by imprisonment for more than one year," 18 U.S.C. § 1961(1)(A), it cannot qualify as a predicate offense for a RICO suit unless it is **2608 "capable of being generically classified as extortionate," *Scheidler,* 537 U.S., at 409, 410, 123 S.Ct. 1057; accord, *United States v. Nardello,* 393 U.S. 286, 296, 89 S.Ct. 534, 21 L.Ed.2d 487 (1969). For the reasons just given, the conduct alleged does not fit the traditional definition of extortion, so Robbins's RICO claim does not survive on a theory of state-law derivation.

FN13. Section 6-2-402 provides:

> "(a) A person commits blackmail if, with the intent to obtain property of another or to compel action or inaction by any person against his will, the person:
>
> . . . . .
>
> "(ii) Accuses or threatens to accuse a person of a crime or immoral conduct which would tend to degrade or disgrace the person or subject him to the ridicule or contempt of society."

* * *

Because neither *Bivens* nor RICO gives Robbins a cause of action, there is no reason to enquire further into the merits of his claim or the asserted defense of qualified immunity. The judgment of the Court of Appeals for the Tenth Circuit *568 is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice THOMAS, with whom Justice SCALIA joins, concurring. * * * * *

SEPARATE OPINIONS OMITTED.