

13-115 WOOD V. MOSS

DECISION BELOW: 711 F.3d 941

LOWER COURT CASE NUMBER: 10-36152, 10-36172

QUESTION PRESENTED:

Petitioners are Secret Service agents who, while protecting President George W. Bush, are alleged to have required that a group of 200 to 300 anti-Bush demonstrators be moved away from an alley next to an outdoor patio where the President was making a last-minute, unscheduled stop to dine. After they were moved, the anti-Bush demonstrators were less than one block farther from the alley than a group of pro-Bush demonstrators (who had not been adjacent to the alley at the outset). They were also two blocks farther from the route that the President's motorcade subsequently took when he left the restaurant. The court of appeals held that petitioners are not entitled to qualified immunity from a claim under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), of viewpoint discrimination in violation of the First Amendment. The questions presented are as follows:

1. Whether the court of appeals erred in denying qualified immunity to Secret Service agents protecting the President by evaluating the claim of viewpoint discrimination at a high level of generality and concluding that pro-and anti-Bush demonstrators needed to be positioned an equal distance from the President while he was dining on the outdoor patio and then while he was travelling by motorcade.

2. Whether respondents have adequately pleaded viewpoint discrimination in violation of the First Amendment when no factual allegations support their claim of discriminatory motive and there was an obvious security-based rationale for moving the nearby anti-Bush group and not the farther-away pro-Bush group.

CERT. GRANTED 11/26/2013