NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

FEDERAL DEPOSIT INSURANCE CORPORATION *v.* MEYER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 92–741. Argued October 4, 1993—Decided February 23, 1994

After the Federal Savings and Loan Insurance Corporation (FSLIC), as receiver for a failing thrift institution, terminated respondent Meyer from his job as a senior officer of that institution, he filed this suit in the District Court, claiming that his summary discharge deprived him of his property without due process of law in violation of the Fifth Amendment. In making this claim, he relied on *Bivens* v. *Six Unknown Fed. Narcotics Agents,* 403 U. S. 388, 397, in which the Court implied a cause of action for damages against federal agents who allegedly violated the Fourth Amendment. The jury returned a verdict against FSLIC, whose statutory successor, petitioner Federal Deposit Insurance Corporation (FDIC), appealed. The Court of Appeals affirmed, holding that, although the Federal Tort Claims Act (FTCA) provides the exclusive remedy against the United States for all ``claims which are cognizable under [28 U. S. C. §]1346(b),'' Meyer's claim was not so cognizable; that the ``sue-and-be-sued'' clause contained in FSLIC's organic statute constituted a waiver of sovereign immunity for Meyer's claim and entitled him to maintain an action against FSLIC; and that he had been deprived of due process when he was summarily discharged without notice and a hearing.

Held:

1. FSLIC's sovereign immunity has been waived. Pp. 3–12.

(a) Meyer's constitutional tort claim is not ``cognizable'' under §1346(b) because that section does not provide a cause of action for such a claim. A claim is actionable under the section if it alleges, *inter alia,* that the United States would be

liable as ``a private person'' ``in accordance with the law of the place where the act or omission occurred.'' A claim such as Meyer's could not contain such an allegation because the reference to the ``law of the place'' means law of the State, see, *e.g., Miree* v. *DeKalb County,* 433 U. S. 25, 29, n. 4, and, by definition, federal law, not state law, provides the source of liability for a claim alleging the deprivation of a federal constitutional right. Thus, the FTCA does not constitute Meyer's exclusive remedy, and his claim was properly brought against FSLIC. There simply is no basis in the statutory language for the interpretation suggested by FDIC, which would deem all claims ``sounding in tort''—including constitutional torts—``cognizable'' under §1346(b). Pp. 3–8.

Syllabus

(b) FSLIC's sue-and-be-sued clause waives sovereign immunity for Meyer's constitutional tort claim. The clause's terms are simple and broad: FSLIC ``shall have power . . . [t]o sue and be sued, complain and defend, in any court of competent jurisdiction in the United States.'' FDIC does not attempt to make the ``clear'' showing of congressional intent that is necessary to overcome the presumption that such a clause fully waives immunity. See, *e.g., Federal Housing Admin.* v. *Burr,* 309 U. S. 242, 245, *International Primate Protection League* v. *Administrators of Tulane Ed. Fund,* 500 U. S. 72, 86, n. 8. Instead, FDIC argues that the statutory waiver's scope should be limited to cases in which FSLIC would be subjected to liability as a private entity. This category would not include instances of constitutional tort. The cases on which FDIC relies, *Burr, supra, Loeffler* v. *Frank,* 486 U. S. 549, and *Franchise Tax Bd. of California* v. *United States Postal Service,* 467 U. S. 512, do not support the limitation suggested by FDIC. Pp. 8–12.

2. A *Bivens* cause of action cannot be implied directly against FSLIC. The logic of *Bivens* itself does not support the extension of *Bivens* from federal *agents* to federal *agencies.* In *Bivens,* the petitioner sued the agents of the Federal Bureau of Narcotics who allegedly violated his rights, not the Bureau itself, 403 U. S., at 389–390, and the Court implied a cause of action against the agents in part *because* a direct action against the Government was not available, *id.,* at 410 (Harlan, J., concurring in judgment). In essence, Meyer asks the Court to imply a damages action based on a decision that presumed the *absence* of that very action. Moreover, if the Court were to imply such an action directly against federal agencies, thereby permitting claimants to bypass the qualified immunity protection invoked by many *Bivens* defendants, there would no longer be any reason for aggrieved parties to bring damages actions against individual officers, and the deterrent effects of the *Bivens* remedy would be lost. Finally, there are ``special factors counselling hesitation'' in the creation of a damages remedy against federal agencies. Such a remedy would create a potentially enormous financial burden for the Federal Government, a matter affecting fiscal policy that is better left to Congress. Pp. 12–16.

944 F. 2d 562, reversed.

THOMAS, J., delivered the opinion for a unanimous Court.