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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 Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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HARTMAN ET AL. *v.* MOORE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04–1495. Argued January 10, 2006—Decided April 26, 2006

Seeking to convince the United States Postal Service to incorporate multiline optical scanning technology, a company (REI), which manufactured multiline optical readers, commenced an extensive lobbying and public-relations campaign. In the end, the Postal Service begrudgingly embraced the multiline technology, but awarded the lucrative equipment contract to a competing firm. Subsequently, Postal Service inspectors investigated REI and its chief executive, respondent Moore, for their alleged involvement in a consulting-firm kickback scandal and for their alleged improper role in the search for a new Postmaster General. Urged at least in part by the inspectors to bring criminal charges, a federal prosecutor tried REI and its top officials. But, finding a complete lack of evidence connecting them to any wrongdoing, the District Court acquitted the defendants. Moore then filed an action under *Bivens* v. *Six Unknown Fed. Narcotics Agents,* 403 U. S. 388, against the federal prosecutor and petitioner postal inspectors, arguing, as relevant here, that they had engineered the prosecution in retaliation for his lobbying efforts. The claims against the prosecutor were dismissed in accordance with the absolute immunity for prosecutorial judgment. Ultimately, the entire suit was dismissed, but the Court of Appeals reinstated the retaliatory-prosecution claim against the inspectors. Back in District Court, the inspectors moved for summary judgment, claiming that because the underlying criminal charges were supported by probable cause they were entitled to qualified immunity. The District Court denied the motion, and the Court of Appeals affirmed.

Held: A plaintiff in a retaliatory-prosecution action must plead and show the absence of probable cause for pressing the underlying criminal charges. Pp. 5–15.

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(a) As a general matter, this Court has held that the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out. *Crawford-El* v. *Britton,* 523 U. S. 574, 592. When nonretaliatory grounds are insufficient to provoke the adverse consequences, retaliation is subject to recovery as the but-for cause of official injurious action offending the Constitution, see, *e.g., id.,* at 593, and a vengeful federal officer is subject to damages under *Bivens.* Pp. 5–6.

(b) Although a *Bivens* (or 42 U. S. C. §1983) plaintiff must show a causal connection between a defendant's retaliatory animus and subsequent injury in any retaliation action, the need to demonstrate causation in the retaliatory-prosecution context presents an additional difficulty which can be overcome by a showing of the absence of probable cause. In an ordinary retaliation case, the evidence of motive and injury are sufficient for a circumstantial demonstration that the one caused the other, and the causation is understood to be but-for causation, without which the adverse action would not have been taken. When the claimed retaliation is, however, a criminal charge, the action will differ in two ways. First, evidence showing whether there was probable cause for the criminal charge will be highly valuable circumstantial evidence to prove or disprove retaliatory causation. Demonstrating a lack of probable cause will tend to reinforce the retaliation evidence and show that retaliation was the but-for basis for instigating the prosecution, while establishing the existence of probable cause will suggest that the prosecution would have occurred even without a retaliatory motive. Second, since the defendant in a retaliatory-prosecution case will not be the prosecutor, who has immunity, but an official who allegedly influenced the prosecutorial decision, the causal connection required is not between the retaliatory animus of one person and that person's own injurious action, as it is in the ordinary retaliation case, but between the retaliatory animus of one person and the adverse action of another. Because evidence of an inspector's animus does not necessarily show that the inspector induced the prosecutor to act when he would not have pressed charges otherwise and because of the longstanding presumption of regularity accorded prosecutorial decisionmaking, a showing of the absence of probable cause is needed to bridge the gap between the nonprosecuting government agent's retaliatory motive and the prosecutor's injurious action and to rebut the presumption. Pp. 6–13.

(c) The significance of probable cause or the lack of it looms large, being a potential feature of every case, with obvious evidentiary value. Though not necessarily dispositive, the absence of probable cause along with a retaliatory motive on the part of the official urging prosecution are reasonable grounds to suspend the presumption of

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regularity behind the charging decision and enough for a prima facie inference that the unconstitutionally motivated inducement infected the prosecutor's decision to go forward. Pp. 13–15.

388 F. 3d 871, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, and THOMAS, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which BREYER, J., joined. ROBERTS, C. J., and ALITO, J., took no part in the consideration or decision of the case.