

1 28 U.S.C. § 2679(d)(1). The United States has not been substituted as the party defendant in this
2 action.

3 White and Miller presume that the Attorney General has refused to certify that they were
4 acting within the scope of their employment during the incidents from which Plaintiff's claims arose.
5 Thus, White and Miller request relief under Section 2679(d)(3), which provides for judicial review
6 of the Attorney General's refusal to certify that the incidents in question occurred when White and
7 Miller were acting within the scope of their employment.

8 White and Miller's motion is flawed. The substitution and certification provisions of Section
9 2679(d) apply to tort claims brought against federal officials under the Federal Tort Claims Act. The
10 only claims brought by Plaintiff are claims for constitutional violations under Bivens. The
11 substitution provisions of Section 2679(d) do not apply to claims brought against a federal employee
12 for violations of the Constitution. See 28 U.S.C. § 2679(b)(2) and (d)(4). Since the Federal Tort
13 Claims Act does not apply to claims brought under Bivens, the Court cannot substitute the United
14 States as the party defendant for Defendants White and Miller.

15 Accordingly, it is HEREBY ORDERED that Defendants' motions, filed on April 21, 2010,
16 are DENIED.

17
18 IT IS SO ORDERED.

19 **Dated:** August 27, 2010

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE