

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

MARK DANIEL LYTTLE,)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES OF AMERICA;)
DASHANTA FAUCETTE, Enforcement)
Officer, U.S. Immigration and Customs)
Enforcement; DEAN CAPUTO,)
Enforcement Officer, U.S. Immigration and)
Customs Enforcement; ROBERT)
KENDALL, Enforcement Officer, U.S.)
Immigration and Customs Enforcement;)
ICE DOES 1-10, Immigration and Customs)
Enforcement Officials and Agents;)
MARILYN STEPHENSON, Admissions)
Technician, North Carolina Department of)
Correction; MARY HINES, Case Analyst,)
North Carolina Department of Correction;)
and NORTH CAROLINA DOES 1-10,)
)
Defendants.)

CASE NO. 4:10-cv-142

MEMORANDUM OF LAW IN
SUPPORT OF UNOPPOSED MOTION
TO AMEND COMPLAINT TO
SUBSTITUTE PARTIES

Pursuant to Eastern District of North Carolina Local Rule 7.1(d) and Federal Rules of Civil Procedure 15(a)(2) and 21, Plaintiff Mark Daniel Lyttle (“Plaintiff” or “Mr. Lyttle”) hereby files this Memorandum in Support of his Unopposed Motion to Amend the Complaint to Substitute Parties, filed contemporaneously herewith. The Proposed Amended Complaint is attached as Exhibit “A” to the Unopposed Motion to Amend. In support of his Motion, Plaintiff avers:

On October 13, 2010, Plaintiff filed this civil rights action seeking injunctive relief and compensatory and punitive damages as a result of the wrongful and illegal detention and deportation of Plaintiff by officials from the North Carolina Department of Correction (“DOC”)

and United States Immigration and Customs Enforcement (“ICE”). At the time the Complaint was filed, Plaintiff could not obtain the names of the individual DOC officials who had participated in Plaintiff’s illegal detention and deportation.

Through discovery in a parallel action in the North Carolina Industrial Commission, Plaintiff recently obtained the names of those individual DOC officials, including Marilyn Stephenson, an Admissions Technician with DOC, and Mary Hines, a DOC case analyst. Consequently, Plaintiff seeks to amend his complaint to properly name Stephenson and Hines as Defendants, and to drop the North Carolina DOC as a separate Defendant. Plaintiff avers that this proposed amendment is proffered in the interest of expediency, fairness and clarity, and not for purposes of delay. Counsel for the North Carolina DOC has advised the undersigned that DOC consents to that portion of this Motion that would drop DOC as a party but takes no position on that portion of the Motion seeking to add Stephenson and Hines as individual defendants. Counsel for the Federal Defendants has advised the undersigned that the Federal Defendants take no position on the Motion.

Pursuant to Federal Rule of Civil Procedure 15(a)(2), this Court should freely give leave to amend a pleading “when justice so requires.” Fed. R. Civ. P. 15(a)(2). The rule regarding amendments is given a “liberal reading,” *Ward Elecs. Serv., Inc. v. First Commercial Bank*, 819 F.2d 496, 497 (4th Cir. 1987), and “motions to amend should be granted absent extraordinary circumstances.” *Googerdy v. N.C. A&T State Univ.*, 386 F. Supp.2d 618, 623 (M.D.N.C. 2005). Such circumstances include undue delay, bad faith or dilatory motive, a repeated failure to cure deficiencies, undue prejudice to the opposing party, and futility of amendment. *Id.* (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230 (1962)). None of these extraordinary

circumstances exist in this case, and counsel for Defendants have advised that they do not oppose the Plaintiff's Motion to Amend.

WHEREFORE, Plaintiff Mark Daniel Lyttle respectfully requests that this Court grant him leave to amend his complaint as set forth in Exhibit A to the Unopposed Motion to Amend Complaint, filed contemporaneously herewith.

Respectfully submitted this 27th day of April, 2011.

**AMERICAN CIVIL LIBERTIES UNION
OF NORTH CAROLINA LEGAL FOUNDATION**

/s/ Katherine Lewis Parker
KATHERINE LEWIS PARKER
NC Bar No. 36263
Legal Director, American Civil Liberties Of
North Carolina Legal Foundation
Post Office Box 28004
Raleigh, North Carolina 27611
Telephone: (919) 834-3466
Facsimile: (866) 511-1344
acluncklp@nc.rr.com

With Co-Counsel:

MCKINNEY & JUSTICE, P.A.

/s/ Jeremy L. McKinney
JEREMY L. MCKINNEY
N.C. Bar No. 23318
ANN MARIE DOOLEY
N.C. Bar No. 33895
jeremy@mckinneyandjustice.com
annmarie@mckinneyandjustice.com
910 North Elm Street
Post Office Box 1800
Greensboro, North Carolina 27402
Telephone 336.275.5885
Facsimile 336.275.6045
*Cooperating Attorneys for the American Civil
Liberties Union of North Carolina Legal Foundation*

TROUTMAN SANDERS LLP

/s/ Michael E. Johnson

MICHAEL E. JOHNSON

Georgia Bar No. 395039

michael.johnson@troutmansanders.com

BRIAN P. WATT

Georgia Bar No. 741841

brian.watt@troutmansanders.com

ALEXANDRIA J. REYES

Georgia Bar No. 428936

alex.reyes@troutmansanders.com

Bank of America Plaza, Suite 5200

600 Peachtree Street, N.E.

Atlanta, Georgia 30308-2216

(404) 885-3000 Tel

(404) 885-3900 Fax

AMERICAN CIVIL LIBERTIES UNION

IMMIGRANTS' RIGHTS PROJECT

/s/ Judy Rabinovitz

JUDY RABINOVITZ

American Civil Liberties Union Foundation

Immigrants' Rights Project

125 Broad Street, 18th Floor

New York, NY 10004

Telephone: (212) 549-2618

Facsimile: (212) 549-2654

jrabinovitz@aclu.org

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2011, I electronically filed the foregoing Memorandum in Support of Unopposed Motion to Amend Complaint to Substitute Parties with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

This the 27th day of April, 2011.

/s/ Katherine Lewis Parker
Katherine Lewis Parker