# UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NORTH CAROLINA

CASE NO. 4:10-CV-142-D

MARK DANIEL LYTTLE,	)
Plaintiff,	) ) PLAINTIFF'S RESPONSE TO ) FEDERAL DEFENDANTS' NOTICE OF
v.	) SUPPLEMENTAL AUTHORITY
THE UNITED STATES OF AMERICA, et al.,	) Local Civil Rule 7.2(e)
Defendants.	) )

Federal Defendants have filed notice of the decision in *Mirmehdi v. United States*, ---F.3d ----, No. 09-55846, 2011 WL 5222884 (9th Cir. Nov. 3, 2011) and asserted that it is "directly relevant to the issues presented by their currently pending motions to dismiss." On the contrary, the issue in *Mirmehdi* was whether **non-U.S. citizens** could assert claims under *Bivens* and the Federal Tort Claims Act, among other claims. Id. at \*1, 3, 5. The plaintiffs in Mirmehdi were citizens of Iran who were detained pending proceedings related to the merits of their asylum applications. *Id.* at \*1-2. The fact that the *Mirmehdi* plaintiffs were not U.S. citizens can be fairly characterized as the entire basis for the *Mirmehdi* decision. "It is well established that immigrants' remedies for vindicating the rights which they possess under the Constitution are not coextensive with those offered to citizens." Id. at \*3. The entire discussion of deportation proceedings in that case referred to the deportation of non-U.S. citizens, not the deportation of a U.S. citizen, which is never permissible. The *Mirmehdi* court expressly acknowledged this very distinction, stating "because Congress has the ability to 'make rules as to aliens that would be unacceptable if applied to citizens,' we must consider whether an immigrant may bring a Bivens claim to vindicate certain constitutional rights separately from whether a citizen may bring such

a *Bivens* claim." *Id.* at \*3, n.3 (internal cits. omitted). Unlike the consideration of an asylum petition, the "decision" whether to deport a U.S. citizen is not a matter of "diplomacy, foreign policy, and the security of the nation." *Id.* at \*4. Given what happened to Plaintiff Mark Lyttle, and given the submissions already made in the instant case, Plaintiff should not need to point out, once again, that **he is and always has been a United States Citizen**. Whether or not the Ninth Circuit recognizes the right of Iranian citizens to sue the U.S. government for their detention during asylum proceedings, Plaintiff already has demonstrated in its briefing that U.S. citizens absolutely do have legal recourse for their wrongful detention and deportation.

Respectfully submitted this 7<sup>th</sup> day of November, 2011.

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## **CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2011, I electronically filed the preceding

## PLAINTIFF'S RESPONSE TO FEDERAL DEFENDANTS' NOTICE OF

**SUPPLEMENTAL AUTHORITY** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all parties of record.

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