

CORRECTED

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA**

MARK DANIEL LYTTLE,	)	CASE NO. <u>4:10-cv-142</u>
)	
Plaintiff,	)	COMPLAINT FOR VIOLATIONS OF
	)	THE FOURTH, FIFTH AND
v.	)	FOURTEENTH AMENDMENTS TO
	)	THE UNITED STATES CONSTITUTION
THE UNITED STATES OF AMERICA;	)	(<i>BIVENS V. SIX UNKNOWN NAMED</i>
DASHANTA FAUCETTE, Enforcement	)	<i>AGENTS OF FEDERAL BUREAU OF</i>
Officer, U.S. Immigration and Customs	)	<i>NARCOTICS; 42 U.S.C. § 1983); FALSE</i>
Enforcement; DEAN CAPUTO,	)	<i>IMPRISONMENT; NEGLIGENCE;</i>
Enforcement Officer, U.S. Immigration and	)	<i>NEGLIGENT INFLICTION OF</i>
Customs Enforcement; ROBERT	)	<i>EMOTIONAL DISTRESS</i>
KENDALL, Enforcement Officer, U.S.)	
Immigration and Customs Enforcement;)	
ICE DOES 1-10, Immigration and Customs	)	DEMAND FOR JURY TRIAL
Enforcement Officials and Agents; NORTH)	
CAROLINA DEPARTMENT OF)	
CORRECTION; NORTH CAROLINA)	
DOES 1-10,)	
)	
Defendants.)	

INTRODUCTION

1. This civil rights action seeks injunctive relief and compensatory and punitive damages as a result of the wrongful and illegal detention and deportation of Plaintiff Mark Daniel Lyttle, a 33-year-old mentally disabled United States citizen born and raised in Rowan County, North Carolina. Without any basis for believing Mr. Lyttle was not a U.S. citizen, and indeed, with ample evidence that Mr. Lyttle was a U.S. citizen, officials from the North Carolina Department of Correction referred him to ICE as an undocumented immigrant whose country of birth was Mexico, despite the fact that Mr. Lyttle had never been to Mexico, shared no Mexican heritage, spoke no Spanish, and did not claim to be from Mexico.

2. Between October 28, 2008 and December 18, 2008, immigration officials and agents of the Atlanta, Georgia District of the United States Immigration and Customs

Enforcement (“ICE”) Division, under the United States Department of Homeland Security (“DHS”), unlawfully detained Mr. Lyttle at the Stewart Detention Center in Lumpkin, Georgia. During two separate interrogations at which the questioning officer was aware that Mr. Lyttle had mental disabilities, ICE dismissed and failed to investigate Mr. Lyttle’s repeated claims that he was a U.S. citizen. ICE ultimately removed Mr. Lyttle to Reynosa, Mexico after an administrative removal hearing in which he received no legal assistance.

3. Mr. Lyttle’s illegal detention and deportation are the direct and foreseeable consequence of official policies, patterns, practices, and customs that manifest not only intentional discrimination based on race and ethnicity and a failure to recognize basic principles of due process, but also a reckless disregard for human life and liberty. Although the U.S. government has long been aware that its failure to implement due process protections in its immigration detention and removal procedures results in unjust detention, unfair hearings and illegal deportations, neither the Department of Justice nor the Department of Homeland Security, Immigration and Customs Enforcement have rectified the shortcomings in their procedures and policies, leaving U.S. citizens like Mr. Lyttle vulnerable to erroneous apprehension, detention and deportation.

4. The United States government lacks the authority to deport one of its citizens. The Constitution vests certain rights in every individual born within our national borders, among these the right to live in this country. It is the obligation of the government, both at the state and federal level, to protect the liberty and security of its citizens. In this case, the government failed to protect Mr. Lyttle, and individuals who lacked the proper training and oversight violated Mr. Lyttle’s constitutional rights, causing Mr. Lyttle profound physical and psychological injuries.

JURISDICTION AND VENUE

5. This civil rights action is brought pursuant to, *inter alia*, the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 2671, *et seq.* and other state and federal laws for relief from commission of tortious acts. This Court has jurisdiction over federal claims pursuant to the constitutional provisions enumerated and 28 U.S.C. § 1331 and § 1343 (3) and (4), as they are brought to redress deprivations of rights privileges and immunities secured by the United States Constitution and by law. Jurisdiction is also proper pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202. This Court has jurisdiction over the supplemental state claims pursuant to 28 U.S.C. § 1367.

6. Venue is proper in the Eastern District of North Carolina, under 28 U.S.C. § 1391(b), in that Defendants are located in this state and district, and a substantial part of the acts and/or omissions giving rise to Plaintiff’s claim occurred in this district.

PARTIES

Plaintiff Mark Daniel Lyttle

7. Mr. Lyttle is a 33-year-old United States citizen of Puerto Rican descent born on August 2, 1977 in Rowan County, North Carolina. At age 7, Mr. Lyttle was removed from an abusive environment, placed in foster care, and ultimately adopted by Thomas E. Lyttle and Jeanne T. Lyttle. Mr. Lyttle was illegally deported to Mexico in December 2008 despite numerous claims of U.S. citizenship, and forced to endure more than four months of living on the streets and in the shelters and prisons of Mexico, Honduras, Nicaragua and Guatemala. Until he was wrongfully deported, Mr. Lyttle had never traveled outside the United States. Mr. Lyttle speaks no Spanish and has significant cognitive problems, bi-polar disorder, epilepsy and is diabetic.

The United States of America, the ICE Defendants and the North Carolina Defendants

8. Defendant United States of America is sued under the Federal Tort Claims Act for the wrongful and tortious acts of its employees and agencies. The United States is implicated by and through the actions, policies, patterns, practices and customs of DHS and/or ICE and its policy-makers, agents and officers.

9. Defendant Dashanta Faucette is or was at all times mentioned herein an Immigration Enforcement Agent with ICE. Faucette is sued in her individual capacity.

10. Defendant Dean Caputo is or was at all times mentioned herein an Immigration Enforcement Agent with ICE. Caputo is sued in his individual capacity.

11. Defendant Robert Kendall is or was at all times mentioned herein an Immigration Enforcement Agent with ICE. Kendall is sued in his individual capacity.

12. In addition to the foregoing ICE agents and officials, unknown named ICE agents and officials are sued herein in their individual capacities under fictitious names as “ICE Does 1-10” because their true names, titles, capacities, and/or degree of responsibility for the acts alleged herein are unknown to Plaintiff at this time. When Plaintiff ascertains this information, he will amend this Complaint accordingly. ICE Does 1-10 include, but are not limited to, ICE Officials and Supervisors, ICE Officers, and/or Immigration Enforcement Agents with ICE (collectively, the “ICE Doe Defendants”). Plaintiff is informed and believes, and thereon alleges, that the ICE Doe Defendants are legally liable to Plaintiff in some part for the wrongful acts and omissions of which Plaintiff complains herein.

13. Defendants Faucette, Caputo, Kendall and ICE Does 1-10 are hereafter collectively referred to as the “ICE Defendants.”

14. Defendant North Carolina Department of Correction (“DOC”) is the legal entity responsible for the acts and omissions of the individuals employed at Neuse Correctional Institution (“NCI”), Greene Correctional Institution (“GCI”), and New Hanover Correctional Center (“NHCC”) (collectively, the “NC Facilities”), including the practices, policies and procedures relating to detention, intake, screening, processing for immigration status, transfer and medical care of each inmate and detainee at the NC Facilities.

15. In addition to DOC, unknown named employees of the NC Facilities are sued herein in their individual and official capacities under fictitious names as “North Carolina Does 1-10” because their true names, capacities and/or degree of responsibility for the acts alleged herein are unknown to Plaintiff at this time. When Plaintiff ascertains this information, he will amend this Complaint accordingly. North Carolina Does 1-10 are or were at all times mentioned herein employees of the NC Facilities. In this capacity, they are or were responsible for the intake and processing of inmates upon arrival at the NC Facilities, and the welfare and administration of medical care to detainees while they were incarcerated in the NC Facilities. Thus, North Carolina Does 1-10 were the custodian(s) of Mr. Lyttle and responsible for his care and well-being while an inmate at the NC Facilities. Plaintiff is informed and believes, and thereon alleges, that North Carolina Does 1-10 are legally liable to Plaintiff in some part for the wrongful acts and omissions of which Plaintiff complains herein.

16. Defendants DOC and North Carolina Does 1-10, which include, but are not limited to, NCI employees, GCI employees, NHCC employees, or North Carolina DOC employees and officials, are hereafter collectively referred to as the “North Carolina Defendants.”

17. All of the Defendants acted in bad faith and contrary to established law and principles of constitutional and statutory law.

18. Plaintiff is informed and believes and thereon alleges that each of the Defendants caused, and is liable for the unconstitutional and unlawful conduct and resulting injuries by, among other things, personally participating in said conduct or acting jointly with others who did so; by authorizing, acquiescing or setting in motion policies, plans or actions that led to the unlawful conduct; by failing or refusing with deliberate indifference to maintain adequate supervision; and/or by ratifying the unlawful conduct taken by employees under their direction and control. Defendants' actions were taken pursuant to policies, customs or usages of ICE and/or the North Carolina DOC.

FACTUAL ALLEGATIONS

Mark Lyttle's Background

19. Mark Daniel Lyttle was born in Salisbury, North Carolina on August 2, 1977. [See Exhibit A, attached hereto (Birth Certificate of Mr. Lyttle).] Mr. Lyttle spent the first seven years of his life in an abusive foster home environment before he was adopted by Tom and Jeanne Lyttle on October 31, 1985. [See Exhibit B, attached hereto (adoption records).]

20. Tom and Jeanne Lyttle initially raised Mark Lyttle in Rowan County, North Carolina along with Mr. Lyttle's three adopted siblings, later moving to and living briefly in Florida and Virginia before settling again in North Carolina.

21. Mr. Lyttle attended elementary school, but his mental and cognitive disorders led to multiple and frequent commitments at various psychiatric hospitals. As a result of Mr. Lyttle's near constant institutionalization during his teenage years, Mr. Lyttle did not receive the benefit of a high school education.

22. As a result of his limited education and significant cognitive problems, Mr. Lyttle's reading comprehension and writing skills are severely limited. Mr. Lyttle speaks no Spanish or any other second language. Mr. Lyttle is barely literate and continues to struggle with basic reading and writing, visual processing, conceptualization skills and memory.

23. Mr. Lyttle's significant cognitive impairment has contributed to a diminished capacity to comprehend everyday events. Mr. Lyttle has repeatedly been diagnosed with bipolar disorder. He has been taking medication to regulate his bi-polar disorder and control the seizures connected to his chemical imbalance since he was an adolescent.

24. During his teenage years, Mr. Lyttle became unable to obtain gainful employment due to the limitations of his cognitive and psychological disorders.

25. In the summer of 2008, Mr. Lyttle was a patient of Cherry Hospital in Goldsboro, North Carolina – a psychiatric hospital operated by the State of North Carolina, Department of Health and Human Services.

Mark Lyttle's Arrest and Detention in North Carolina

26. While a patient at Cherry Hospital for psychiatric treatment, Mr. Lyttle was charged with inappropriately touching a female orderly. In 2008, Mr. Lyttle was arrested on the charge of misdemeanor assault on a female under N.C. Gen. Stat. § 14-33. On or about August 14, 2008, Mr. Lyttle was sentenced to spend 100 days at NCI in Goldsboro, Wayne County, North Carolina.

27. On or about August 22, 2008, Mr. Lyttle was booked into NCI to begin serving his sentence for the misdemeanor crime. Due to Mr. Lyttle's obvious cognitive disorder, Mr. Lyttle was housed in NCI's mental health ward.

28. Pursuant to a memorandum drafted by the North Carolina Director of Prisons, Boyd Bennett, dated June 6, 2007, certain NC Facilities, including NCI, were cooperating with

ICE enforcement agents by identifying inmates “believed to be foreign born and non-US citizens.”

29. Working in conjunction with ICE’s Criminal Alien Program (“CAP”), NCI intake employees identified certain inmates for further investigation by ICE, utilizing their contacts with CAP to notify ICE whenever an NCI employee determined that an inmate was or possibly could be an undocumented immigrant.

30. During his booking process, Mr. Lyttle was asked a series of biographical questions by an employee at NCI, one of the North Carolina Defendants, including a question regarding his birthplace. Mr. Lyttle responded that he was born in North Carolina.

31. However, the North Carolina Defendant noted on the intake form that Mr. Lyttle was “Oriental” and that his citizenship was “Alien.” The North Carolina Defendant listed Mr. Lyttle’s birth country as “Mexico” despite the fact that Mr. Lyttle had never been to Mexico, shared no Mexican heritage, and did not claim to be from Mexico.

32. As a direct and proximate result of the North Carolina Defendant’s false, unfounded and unlawful misidentification of Mr. Lyttle, the Raleigh unit of CAP was notified and an investigation into Mr. Lyttle’s citizenship was initiated.

33. Mr. Lyttle was selected for interview by ICE under the CAP program solely on the basis of his perceived race, ethnicity and national origin.

ICE Agents Interrogated Mr. Lyttle and Coerced Him Into Signing Documents That Waived Important Legal Rights

34. On or about August 25, 2008, Mr. Lyttle was given a form entitled “Non-Mandatory Consular Notification” by which Mr. Lyttle was informed that “as a non-U.S. citizen who has been committed to the North Carolina Department of Correction,” he was entitled to have the consular office of his native country notified if he so elected.

35. A few days later, on or about September 2, 2008, Mr. Lyttle was apprehended by Defendant Robert Kendall while Mr. Lyttle was in the custody of the North Carolina DOC. That same day, Mr. Lyttle was interrogated by Defendant Dashanta Faucette, an Immigration Enforcement Agent with ICE. At the time of the interrogation, Defendant Faucette was aware that Mr. Lyttle was cognitively impaired and that he had, among other things, bipolar disorder.

36. Defendant Faucette's handwritten notes indicate that Mr. Lyttle's name was assumed to be "Jose Thomas" and that Mr. Lyttle's true name, Mark Daniel Lyttle, was simply an alias. Defendant Faucette's notes also erroneously stated that Mr. Lyttle's country of citizenship was "Mexico."

37. Defendant Faucette's handwritten entries state that Mr. Lyttle's home address was 100 Timberman Drive [*sic.*], Elizabeth City, N.C., 27909, which is the address for an assisted living facility named Heritage Care, which caters to the elderly and individuals with mental and cognitive disabilities.

38. Defendant Faucette's notes also state erroneously that Mr. Lyttle entered the United States without permission at age 3.

39. Defendant Faucette failed and refused to have a witness present at the interrogation of Mr. Lyttle; thus, the signature block for the witness who should have been present during Mr. Lyttle's interrogation on September 2, 2008 was left blank on the "Record of Sworn Statement in Affidavit Form."

40. When Defendant Faucette's interview was concluded, Mr. Lyttle was not offered an opportunity to review the contents of the entries written on the form by Defendant Faucette, nor was Mr. Lyttle informed of what Defendant Faucette had written. Instead, Mr. Lyttle was simply instructed to sign his name on a certain line. Despite Defendant Faucette's unfounded

and erroneous assumption that Mr. Lyttle's name was "Jose Thomas," Mr. Lyttle signed his true name, "Mark Lyttle."

41. Another handwritten form filled out by Defendant Faucette on or about September 2, 2008 notes that Mr. Lyttle's mother, "Jennie [*sic.*] Lyttle" was from Kentucky. The same form contains a block labeled, "Narrative: Include details not shown above and whether or not eligible for special status program," in which Defendant Faucette wrote the words "Mental Illness – Bipolar."

42. On or about September 4, 2008, Defendant Faucette or an ICE Defendant acting on behalf of or at her direction, performed a search of the United States Department of Justice Federal Bureau of Investigation Criminal Justice Information Services Division (the "CJISD") and other databases. Numerous records produced as a result of these computerized database searches revealed that Mr. Lyttle was a U.S. citizen with a valid Social Security number. Nowhere in the records produced as a result of the CJISD database search was there any mention of "Jose Thomas" or Mr. Lyttle ever having used or been known by that name previously.

43. The following day, on or about September 5, 2008, Defendants Faucette, ICE Defendants Dean Caputo, Robert Kendall and/or other individual ICE Doe Defendants performed computer database searches on Mr. Lyttle's criminal history, revealing numerous entries and notations indicating that Mr. Lyttle was a U.S. citizen with a valid Social Security number affiliated with several minor variants of the name "Mark Lyttle" having been used, but no mention of the name "Jose Thomas."

44. On or about September 5, 2008, ICE Defendant Dean Caputo signed a "Warrant for Arrest of Alien" authorizing any officer delegated authority pursuant to Section 287 of the

Immigration and Nationality Act to take Mr. Lyttle into custody so that he might be processed for removal as “an alien in the country in violation of the immigration laws.”

45. Also on or about September 5, 2008, ICE Defendant Caputo signed a “Notice of Intent to Issue Final Administrative Removal Order” in order to commence “removal proceedings under section 238(b) of the Immigration and Nationality Act.” According to Defendant Caputo’s Notice of Intent to Issue Final Administrative Removal Order, it had already been determined that Mr. Lyttle was “not a citizen or national of the United States” but rather “a native of Mexico and a citizen of Mexico.” Under this Notice, Defendants Caputo and Faucette had determined that Mr. Lyttle was “deportable under section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. 1227(a)(2)(A)(iii), as amended, because [he had] been convicted of an aggravated felony.”

46. Ignoring the evidence of Mr. Lyttle’s citizenship, Defendant Caputo signed a Notice of Custody Determination on or about September 5, 2008, whereby Mr. Caputo had determined that Mr. Lyttle “shall be detained in the custody of the Department of Homeland Security” pending a final determination by the immigration judge assigned to Mr. Lyttle’s case. Defendant Caputo further noted on the Notice of Custody Determination that “[Mr. Lyttle] may not request a review of this determination by an immigration judge because the Immigration and Nationality Act prohibits [Mr. Lyttle’s] release from custody.”

47. Also on September 5, 2008, Defendant Kendall signed a Form I-247 Immigration Detainer, notifying North Carolina DOC that Mr. Lyttle was not to be released from custody because ICE had determined that Mr. Lyttle was of Mexican nationality.

48. Three days later, on September 8, 2008, ICE Defendant Faucette personally served copies of the Notice of Intent to Issue Final Administrative Removal Order and Warrant

for Arrest of Alien on Mr. Lyttle at 12:05 p.m. and 12:10 p.m., respectively. Defendant Faucette signed a portion of the Certificate of Service for the Notice of Intent stating that she served the Notice on Mr. Lyttle personally, and likewise executed a Certificate of Service for the Warrant for Arrest of Alien indicating personal service on Mr. Lyttle.

49. Disregarding Mr. Lyttle's mental disabilities and the substantial evidence of his U.S. citizenship, Defendant Faucette coerced and manipulated Mr. Lyttle into signing a statement admitting the allegations in the Notice of Intent to Issue Final Administrative Removal Order, thereby waiving his legal rights to a removal hearing before an immigration judge. By signing the waiver, Mr. Lyttle incorrectly acknowledged that he was a citizen of Mexico and that he agreed to be voluntarily deported to Mexico, despite the fact that Mr. Lyttle was and is a United States citizen. Mr. Lyttle did not understand what he was signing or that he unknowingly consented to being deported to Mexico. Despite his serious and acknowledged mental disabilities, Mr. Lyttle received no assistance from ICE agents -- or anyone else -- in attempting to read or understand the form that he was coerced and manipulated into signing.

50. Also on September 8, 2008, Defendant Faucette coerced Mr. Lyttle, whom she knew to have cognitively disabilities, including bipolar disorder, into signing an acknowledgment of the "Notice of Custody Determination" issued by Defendant Caputo on September 5, 2008.

51. Even where Mr. Lyttle was coerced, intimidated or deceived into signing a form acknowledging that his name was "Jose Thomas," Mr. Lyttle signed his name, "Mark Lyttle."

52. No reasonable basis existed to suspect or otherwise conclude that Mr. Lyttle was not a United States citizen. In fact, the records available to the ICE Defendants contained numerous references to Mr. Lyttle's social security number, which could have easily been

verified against the Social Security Administration's database, as well as numerous references to Mr. Lyttle being an American citizen by birth.

53. On information and belief, no ICE Agent made any effort to confirm the information contained in the documents produced as a result of the database searches with the Social Security Administration, the Department of Corrections, or any other public agency that could verify Mr. Lyttle's citizenship.

54. Due to Mr. Lyttle's obvious cognitive and developmental limitations, Mr. Lyttle was barely able to read, much less comprehend, the documents presented to him by ICE Defendants Faucette and Caputo. Mr. Lyttle had no knowledge or understanding of the consequences of signing the forms presented to him by these ICE Defendants.

55. Even though Mr. Lyttle responded to questions during his initial processing by the North Carolina Defendants by stating that he was born in North Carolina, which he continued to tell ICE Defendants Faucette and Caputo, neither the North Carolina Defendants nor the ICE Defendants made any attempt to verify his citizenship. When efforts were made to search records and databases, the information and personal data retrieved contained numerous references to Mr. Lyttle's U.S. citizenship.

56. No attempt was made by any of the North Carolina Defendants nor any of the ICE Defendants to contact Mr. Lyttle's family, and no attempt was made to obtain Mr. Lyttle's birth certificate from North Carolina Vital Records. No effort was made by any Defendant to put Mr. Lyttle in touch with a legal representative familiar with deportation proceedings to protect Mr. Lyttle's rights.

Mr. Lyttle's Transfer To Stewart Detention Center To Await Removal

57. Mr. Lyttle spent just over a month at NCI before being transferred to NHCC on or about September 23, 2008. Mr. Lyttle spent approximately one week at the NHCC before being transferred again to GCI, where he would serve the remainder of his term in the custody of the NC DOC.

58. Mr. Lyttle had been scheduled to be released from GCI on or before October 26, 2008. Instead, on or about October 28, 2008, Mr. Lyttle's detention was continued, and he was delivered into ICE custody for transport to the Stewart Detention Center ("SDC") in Lumpkin, Georgia.

59. SDC is a detention center operated by ICE Detention & Removal Operations ("DRO") pursuant an Inter-governmental Services Agreement ("IGSA") with Stewart County, Georgia, with whom ICE works to administer the SDC. ICE and Stewart County have contracted with Corrections Corporation of America ("CCA") to provide staffing and personnel to house individuals who are waiting for their immigration status to be determined or who are awaiting repatriation.

60. On or about November 3, 2008, Mr. Lyttle was interrogated by ICE Agent David Collado. Agent Collado recorded Mr. Lyttle's sworn responses to the questions on the "Record of Sworn Statement in Affidavit Form." In that interrogation, Mr. Lyttle stated unequivocally that he was a United States citizen, born on "08/02/1977 [in] Rowann [sic.] County NC," and repeatedly denied being a Mexican citizen.

61. An un-served Notice of Intent to Issue Final Administrative Removal Order accompanied Agent Collado's interrogation form of Mr. Lyttle. Agent Collado's Notice accurately reflected that Mr. Lyttle was "a native of United States and a citizen of United States,"

but Agent Collado nonetheless proceeded to charge that Mr. Lyttle was deportable from the United States on account of his criminal convictions.

62. Agent Collado filled out an I-213 “Record of Deportable/Inadmissible Alien” dated November 5, 2008, recounting the recent history of Mr. Lyttle’s misfortune, including the events in North Carolina and a notation that Mr. Lyttle suffered from “a bipolar mental illness condition.” Mr. Lyttle was never presented with a copy of this I-213, nor afforded an opportunity to review its contents or have the entries in the form read to him.

63. In light of the now documented sworn statements of Mr. Lyttle’s United States citizenship, Agent Collado reclassified Mr. Lyttle’s case from an administrative removal to a Notice to Appear (“NTA”).

64. On or about November 5, 2008, ICE Agent Tracy Moten issued a formal Notice to Appear to Mr. Lyttle. Despite the unequivocal claims of U.S. citizenship and the complete lack of independent evidence supporting the charge that Mr. Lyttle was an undocumented immigrant, Agent Moten charged Mr. Lyttle that he was “not a citizen or national of the United States” but rather “a native of Mexico and a citizen of Mexico [who] arrived in the United States at or near UNKNOWN PLACE, on or about 1980.”

The Hayes Memo

65. On November 6, 2008, James T. Hayes, then-Director of DRO, issued a memorandum to all ICE Field Office Directors, the subject line of which read, “Superseding Guidance on Reporting and Investigating Claims to United States Citizenship” (the “Hayes Memo”). As noted on its face, the Hayes Memo was issued in order to address ongoing problems and deficiencies within ICE in its agents’ handling affirmative claims to U.S. citizenship.

66. The Hayes Memo commands “[a]ll officers who encounter an individual who they have reason to believe is in the United States in violation of law . . . but who claims U.S. citizenship, shall immediately notify the Field Office Director (‘FOD’) through their chain of command. The FOD shall make the appropriate notification to DRO headquarters.”

67. The Hayes Memo further requires that all “[i]nterviews with detainees making claims to U.S. citizenship . . . will be recorded as sworn statements and include all questions needed to complete all fields on a Form I-213. In addition, the sworn statement must include probative questions designed to elicit information sufficient to allow an investigation of the person’s claim of citizenship [including] vital records, family interviews, and other appropriate investigative measures.”

68. With regard to claims of U.S. citizenship made prior to the commencement of formal removal proceedings, the FOD must consult with DRO headquarters and local Office of Chief Counsel (“OCC”) to assess the sufficiency of the evidence supporting removal. Where a claim of citizenship is made after the issuance of an NTA, “each OCC, in consultation with the FOD, who where necessary, should consult with HQ DRO, will determine the most appropriate course of action with respect to the disposition of the NTA and termination of the case, while providing any necessary advice to the FOD as to changes to the individual’s custody conditions.”

69. Under the Hayes Memo, each ICE FOD “shall ensure that all DRO employees in their area of responsibility (inclusive of those state, local or tribal cross-trained 287(g) officers) who are under their control, understand and adhere to this policy.”

70. The Hayes Memo was superseded by a subsequent memorandum issued on November 19, 2009 by Assistant Secretary John Morton (the “Morton Memo”), who circulated

the superseding guidance to not only all ICE FOD, but also all ICE Special Agents in Charge and Chief Counsels.

71. The Morton Memo substantially revised and expanded the obligations of ICE agents and officers who learn of a claim to U.S. citizenship by a suspected alien, including, for instance, involving Office of Investigations and Office of Principal Legal Advisor's personnel to evaluate the evidence in support of the claim to U.S. citizenship and to assess the evidence of alienage. "In all cases, any uncertainty about whether the evidence is probative of U.S. citizenship should weigh against detention."

***ICE Agents Disregarded Mr. Lyttle's Claim Of U.S. Citizenship
And Violated The Clear Directives Of The Hayes Memo By
Coercing and Manipulating Mr. Lyttle Into Signing Additional Conflicting Statements***

72. On or about November 12, 2008, Mr. Lyttle was subjected to yet another interrogation, this time by ICE Agent Marco Mondragon. Agent Mondragon recorded Mr. Lyttle's sworn responses to the questions on the "Record of Sworn Statement in Affidavit Form."

73. During Agent Mondragon's interrogation, Mr. Lyttle informed Agent Mondragon that he was a U.S. citizen. Mr. Lyttle also provided answers to Agent Mondragon's questions that Agent Mondragon struck through and replaced with different answers, creating a conflicting, inconsistent and factually inaccurate record.

74. Agent Mondragon disregarded Mr. Lyttle's claim of citizenship, the apparent mental disabilities limiting Mr. Lyttle's capacity to comprehend the gravity of the situation, and the independent evidence of Mr. Lyttle's citizenship.

75. Agent Mondragon coerced and manipulated Mr. Lyttle into signing and initialing the Affidavit affirming that his name was “Jose Thomas,” and that Mr. Lyttle’s father was a citizen of Mexico who was also named “Jose Thomas.”

76. On or about November 17, 2008, while in the custody of ICE and under the supervision of the CCA as operators of SDC, Mr. Lyttle attempted to commit suicide by ingesting 60 tablets of Glucophage, a medication provided to Mr. Lyttle by the SDC as treatment for type 2 diabetes milletus. Mr. Lyttle was treated for toxic drug overdose at Doctors Hospital Columbus, in Columbus, Georgia, and released after several days of monitoring and close observation.

The Removal of Mr. Lyttle From The United States

77. After his discharge from Doctors Hospital, Mr. Lyttle was transferred back to SDC to await a hearing before Immigration Judge William A. Cassidy.

78. On or about December 9, 2008, without any opportunity given to Mr. Lyttle to present evidence on his own behalf, nor any opportunity given to Mr. Lyttle to review or challenge the evidence purportedly proving his Mexican citizenship, Judge Cassidy issued an “Order of the Immigration Judge” ordering that Mr. Lyttle, a United States citizen, be removed to Mexico.

79. Despite Mr. Lyttle’s acknowledged mental disabilities, the immigration judge made no attempt to assess whether Mr. Lyttle was competent to proceed in his removal proceedings unrepresented, or whether he was competent to waive his right to seek counsel to represent him.

80. On or about December 12, 2008, ICE Field Office Director Raymond Simonse or an ICE official acting at Mr. Simonse’s direction performed an additional criminal background search of Mr. Lyttle’s state records from North Carolina and Virginia and pulled electronic

records from various federal agencies. The December 12, 2008 database search once again uncovered numerous references to Mr. Lyttle's United States citizenship and his Social Security Number.

81. Three days later, in disregard of consistent and overwhelming record evidence of Mr. Lyttle's U.S. citizenship, ICE Director Simonse issued a Warrant of Removal/Deportation declaring that Mr. Lyttle "[was] subject to removal/deportation from the United States, based upon a final order by: an immigration judge."

82. The actions of the above-referenced ICE officials, including but not limited to Defendants Kendall, Faucette and Caputo, in concert with the actions of Agents Collado, Moten, and Mondragon and Director Simonse were taken pursuant to policies, patterns, practices or customs of the DOC and/or ICE to:

- Select inmates to detain, interrogate and deport based on their race and/or ethnicity;
- Unreasonably and unlawfully deny inmates who suffer from mental illness and/or cognitive impairments adequate assistance to (1) understand the nature of their rights during an interrogation; (2) prevent coercive and manipulative tactics, and (3) ensure that any waiver of rights made by these individuals is knowing, intelligent and voluntary, in violation of applicable federal laws and regulations; and/or
- Unreasonably and unlawfully detain, interrogate, transport and deport individuals in violation of due process.

83. The practices and procedures implemented by both ICE and the North Carolina Defendants to process Mr. Lyttle, to determine that he was unlawfully present in the United States, and to coerce him into signing documents containing inaccurate and contradictory statements are part of a pattern, custom and habit by ICE and the North Carolina Defendants and

their personnel to presume foreign citizenship of inmates based on their race, ethnicity, appearance and/or surname. These policies, patterns, practices and customs were knowingly designed and implemented by supervisory and policy-making officers throughout ICE and the North Carolina Defendants to target individuals based on their presumed alienage and race.

84. Despite their knowledge of these illegal policies, patterns, practices and customs, the supervisory and policy-making officers have not effectively disciplined, trained or otherwise properly supervised the individuals who engaged in and furthered these policies, patterns, practices and customs; have not effectively trained the North Carolina Defendants and ICE agents with regard to the proper constitutional and statutory limits of the exercise of their authority; and have endorsed the policies, patterns, practices and customs of same.

85. The supervisory and policy-making officers have taken no effective action to ensure that (1) the selection of inmates and detainees subject to interrogation, extended detention and removal is not unreasonably and unlawfully based on their race and/or ethnicity; (2) individuals who have cognitive impairment or mental illness(es) received adequate protection and assistance to understand the nature of the situation, the scope of their rights during an interrogation, and the gravity of the situation in order to prevent coercive and manipulative interrogation tactics, and ensure that any waiver of rights made by such individuals is knowing, informed and voluntary; and (3) individuals are not unreasonably and unlawfully interrogated, detained, transported and deported in violation of due process.

86. As a consequence of the aforementioned acts and omissions, ICE, the ICE Defendants, and the North Carolina Defendants failed to undertake a reasonable and diligent inquiry into the citizenship of Mr. Lyttle based upon readily available documentation. Instead,

ICE Defendants and the North Carolina Defendants deliberately discriminated against Mr. Lyttle on the basis of his perceived race and/or ethnicity in violation of his constitutional rights.

87. ICE personnel failed to adequately train and supervise the North Carolina Defendants. ICE personnel failed to review records in the possession of the North Carolina Defendants and ICE which clearly identify Mr. Lyttle as being born in the United States.

88. Mr. Lyttle's medical and criminal records show that he was unable to execute a knowing, voluntary and intelligent waiver of his legal rights so as to admit that he was a Mexican national, in effect consenting to removal to Mexico. The failure to examine and appreciate the significance of official records reflects an indifference by ICE, the ICE Defendants, and the North Carolina Defendants to the rights and well-being of Mr. Lyttle and is a further example of intentional racial discrimination by these individuals which has become so commonplace under the policies, patterns, practices and customs implemented by Defendants.

89. Even if Mr. Lyttle had not been lawfully present in the United States -- which he was -- the individuals who encountered, interrogated and processed Mr. Lyttle failed to make even the slightest effort to confirm Mr. Lyttle's claim to U.S. citizenship. Mr. Lyttle's criminal history and other readily-available records, some already in ICE's possession, confirmed that Mr. Lyttle was a U.S. citizen. The ICE Defendants' and North Carolina Defendants' failure to adequately examine these records was a direct consequence of their intentional discrimination and patently inadequate training and supervision that reflects a deliberate indifference by ICE and the North Carolina Defendants to the rights and well-being of inmates who are of Latino or Hispanic origin or are perceived to be racially/ethnically Latino, or as the North Carolina Defendants noted, "Oriental."

90. As a direct and foreseeable consequence of the practices and procedures utilized, Mr. Lyttle was placed by ICE personnel on a plane to Hidalgo, Texas on or about December 18, 2008. When the plane touched down, Mr. Lyttle was transported to the Mexican border, forced to disembark and sent off on foot into Mexico, still wearing the prison-issued jumpsuit from Stewart Detention Center.

Mr. Lyttle In Central America

91. From the date of his illegal deportation, Mr. Lyttle spent the next four months in Central America, alternatively homeless, staying in shelters, or imprisoned by national authorities for lack of proper identification.

92. When Mr. Lyttle was unlawfully removed from the United States and deported to Mexico against his will, he spoke no Spanish, was completely unfamiliar with Mexico and had approximately three dollars in his pocket.

93. After eight days of begging, sleeping in the streets and trying to find shelter, Mr. Lyttle attempted to cross back into the United States at the Hidalgo, Texas border crossing.

94. On or about December 29, 2008, Mr. Lyttle was detained by ICE Agents at the Hidalgo, Texas port of entry ("POE").

95. Mr. Lyttle repeatedly informed the ICE agents at the Hidalgo POE that he was a U.S. citizen from North Carolina.

96. While in ICE custody, ICE agents interrogated Mr. Lyttle in Spanish. Traumatized and unable to understand any Spanish, Mr. Lyttle did not respond to the ICE Defendants' questioning.

97. ICE agents then searched a computerized ICE database and found record of Mr. Lyttle's deportation earlier that month. ICE agents noted on the Form I-213 that Mr. Lyttle was

a “prior deported alien” and was to be “processed for expedited removal[,] returned to Mexico in the custody of Mexican Immigration.”

98. Mr. Lyttle was never provided a copy of the I-213 form, nor was he allowed to review its contents or have the entries read to him.

99. Having discounted and disregarded Mr. Lyttle’s claims to U.S. citizenship, ICE agents transported Mr. Lyttle back to the custody of the Mexican Immigration officials.

100. Mr. Lyttle spent the next 115 days wandering in Central America.

101. In Mexico, Mr. Lyttle was eventually picked up by missionaries who arranged for transportation to Mexico City and attempted to assist Mr. Lyttle by instructing him to find the American embassy. Instead, upon arriving in Mexico City, Mexican Immigration officials arrested Mr. Lyttle who, unable to prove his Mexican citizenship, deported Mr. Lyttle to Honduras.

102. Mr. Lyttle was placed in handcuffs and transported by bus to Honduras. In Honduras, immigration officials arrested Mr. Lyttle and placed Mr. Lyttle in an immigration camp. Ultimately, Mr. Lyttle was transferred from the Honduran immigration camp to a jail housing criminals, where he suffered severe physical and mental abuse by the guards of the prison.

103. Mr. Lyttle was released from the Honduran jail only after public pressure and a media campaign in Honduras exposed the harsh and inhumane treatment of Mr. Lyttle.

104. Throughout his four-month odyssey, Mr. Lyttle would be arrested and incarcerated in Mexico, Honduras, and Nicaragua on the grounds that he could not produce evidence of his identity or citizenship.

105. Ultimately, Mr. Lyttle found his way to Guatemala, where he managed to locate the U.S. Embassy in Guatemala City. At the U.S. Embassy in Guatemala, Mr. Lyttle met with an embassy employee who listened to Mr. Lyttle's story.

106. For the first time since he was initially misidentified as a Mexican national more than six months earlier, an employee of the U.S. Embassy in Guatemala made the effort to verify Mr. Lyttle's claim to U.S. citizenship. Based on nothing more than the names of his brothers and his birthplace, the embassy employee was able to locate Mr. Lyttle's brothers, both of whom serve in the U.S. military. Mr. Lyttle's family arranged for copies of his adoption records to be sent to the U.S. Embassy in Guatemala, and a passport was issued and printed to Mr. Lyttle within 24 hours.

Mr. Lyttle's Return Home To The United States

107. Mr. Lyttle's family scrambled to coordinate his return to the United States, wiring funds to Mr. Lyttle and purchasing an airline ticket for his flight home. On April 22, 2009, more than 4 months after being illegally deported, Mr. Lyttle boarded a plane in Guatemala City bound for Nashville, Tennessee.

108. Upon landing in Atlanta, Georgia to pass through customs, Mr. Lyttle was stopped and again detained by ICE agents. Relying on records database search that identified Mr. Lyttle as an alien with "a lengthy criminal history," ICE Agents Charles Johnston and Brian Keys detained and interrogated Mr. Lyttle.

109. Mr. Lyttle repeatedly proclaimed his U.S. citizenship to ICE Agents Johnston and Keys, recounting his ordeal in Mexico, Honduras, Nicaragua, and Guatemala -- all of which was noted by Agent Johnston and/or Keys in the Form I-213, Record of Deportable/Inadmissible Alien.

110. Mr. Lyttle informed Agents Johnston and/or Keys that his brother had sent copies of his adoption papers to the U.S. Embassy in Guatemala in order to verify Mr. Lyttle's citizenship and secure Mr. Lyttle a passport.

111. During his interrogation, Agent Johnston asked Mr. Lyttle what documents he presented to gain entry into the United States, and Mr. Lyttle replied, "I showed them my American citizen passport and my ticket."

112. Agent Johnston discredited Mr. Lyttle's passport stating that "You do not appear to be admissible or have the required papers authorizing your admission to the United States."

113. That same day, April 22, 2009, copies of Mr. Lyttle's adoption records and passport were faxed to the ICE Defendants detaining Mr. Lyttle in Atlanta, including Agents Johnston and Keys.

114. On April 23, 2009, without taking any steps to verify Mr. Lyttle's claims to U.S. citizenship and without making any effort to locate Mr. Lyttle's family members or independently substantiate the validity of the adoption records or the passport issued by the embassy in Guatemala, ICE Agents Johnston and Keys commenced new deportation proceedings against Mr. Lyttle, seeking to have him removed from the United States once again.

115. In filling out the form entitled "Notice and Order of Expedited Removal," Agents Johnston and Keys alleged that Mr. Lyttle was "not a citizen or national of the United States; You are a native of Mexico and a citizen of Mexico." ICE Agents Johnston and Keys further alleged that Mr. Lyttle falsely presented himself as a U.S. citizen by using the passport issued by the U.S. Embassy in Guatemala.

116. Mr. Lyttle was detained for six days in Atlanta, faced with deportation and removal from the United States for the third time in five months. During this time, Mr. Lyttle's

family members became worried after Mr. Lyttle failed to arrive in Tennessee as planned. Mr. Lyttle's family contacted an attorney who located Mr. Lyttle and demanded his immediate release.

117. Mr. Lyttle was released from ICE custody on April 24, 2009.

118. On April 28, 2009, the Department of Homeland Security filed a two-page motion seeking to terminate the deportation efforts aimed at Mr. Lyttle, stating that "it was determined that Respondent [Mr. Lyttle] was not a Mexican citizen, and, in fact, is a citizen of the United States." [See Department of Homeland Security's Motion to Terminate Removal Proceedings at 2, attached hereto as Exhibit C.]

119. To date, no government official has ever offered any explanation or apology to Mr. Lyttle.

120. As a direct and foreseeable consequence of his illegal detention and deportation, Mr. Lyttle suffered and continues to suffer grievous physical and psychological injury.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**(Fifth Amendment to the U.S. Constitution / Due Process)
(*Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*)
(Against Defendants Robert Kendall, Dashanta Faucette, and Dean Caputo and ICE Doe
Defendants 1-10)**

121. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 120 of this Complaint.

122. By illegally, arbitrarily, and capriciously deporting Mr. Lyttle, a United States citizen, to Mexico, ICE Defendants Kendall, Faucette, and Caputo deprived Mr. Lyttle of his constitutional right to liberty without due process of law in violation of the Fifth Amendment to the United States Constitution.

123. ICE Defendants Kendall, Faucette, and Caputo knowingly and intentionally denied Mr. Lyttle his constitutional right to due process by coercing him into signing false statements, by intimidating Mr. Lyttle during the interrogation process, and by willfully disregarding or covering up Mr. Lyttle's mental disabilities.

124. Defendants Kendall, Faucette and Caputo violated Mr. Lyttle's constitutional rights when they deported or caused Mr. Lyttle to be deported without reasonable basis or lawful authority.

125. ICE Defendants Kendall, Faucette, and Caputo acted under color of law and acted or purported to act in the performance of official duties under federal, state, county, or municipal laws, ordinances, or regulations.

126. The conduct of each of the ICE Defendants -- Robert Kendall, Dashanta Faucette, and Dean Caputo, and each ICE Doe Defendant -- violated clearly established constitutional or other rights of which these ICE Defendants knew, or of which a reasonable public official should have known.

127. These ICE Defendants' actions, omissions, policies, patterns, practices and customs, as complained of herein, were intentional and reckless and demonstrate a callous disregard for, or deliberate indifference to, Mr. Lyttle's personal safety, security, freedom and civil and constitutional rights.

128. These violations are compensable under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). As a direct and proximate result of the unlawful actions of these Defendants, Mr. Lyttle has suffered economic damages and significant physical and emotional harm.

SECOND CLAIM FOR RELIEF

**(Fifth Amendment to the U.S. Constitution / Equal Protection)
(*Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*)
(Against Defendants Robert Kendall, Dashanta Faucette, and Dean Caputo and ICE Doe
Defendants 1-10)**

129. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 120 of this Complaint.

130. By erroneously classifying Mr. Lyttle as an alien, and by coercing Mr. Lyttle into making false admissions to being of Mexican descent, ICE Defendants Kendall, Faucette and Caputo deliberately and unconstitutionally discriminated against Mr. Lyttle on the basis of his race and ethnicity so as to deny him equal protection of the law in violation of the Fifth Amendment to the United States Constitution.

131. ICE Defendants Kendall, Faucette, and Caputo and certain other named unknown ICE Doe Defendants acted under color of law and acted or purported to act in the performance of official duties under federal, state, county, or municipal laws, ordinances, or regulations. ICE Defendants acted with the intent or purpose to discriminate against Mr. Lyttle.

132. These ICE Defendants' conduct violated clearly established constitutional or other rights of which these ICE Defendants knew, or of which a reasonable public official should have known.

133. These ICE Defendants' actions, omissions, policies, patterns, practices and customs, as complained of herein, were intentional and reckless and demonstrate a callous disregard for, or deliberate indifference to, Mr. Lyttle's personal safety, security, freedom and civil and constitutional rights.

134. These violations are compensable under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). As a direct and proximate result of the

unlawful actions of these Defendants, Mr. Lyttle has suffered economic damages and significant physical and emotional harm.

THIRD CLAIM FOR RELIEF

(Fourth Amendment to the U.S. Constitution)

(Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics)

(Against Defendants Robert Kendall, Dashanta Faucette, and Dean Caputo and ICE Doe Defendants 1-10)

135. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 120 of this Complaint.

136. By October 26, 2008, Mr. Lyttle had completed his entire sentence for the misdemeanor crime that resulted in his incarceration in the NC Facilities. As a direct and proximate result of the unlawful and unconstitutional conduct of ICE Defendants Kendall, Faucette and Caputo, Mr. Lyttle's detention was continued well beyond the scheduled release date of October 26, 2008.

137. ICE Defendants Kendall, Faucette and Caputo intentionally and unlawfully detained Mr. Lyttle in violation of his constitutional right to be free from unreasonable seizures, as guaranteed by the Fourth Amendment to the United States Constitution.

138. These ICE Defendants acted under color of law and acted or purported to act in the performance of official duties under federal, state, county, or municipal laws, ordinances, or regulations.

139. These ICE Defendants' conduct violated clearly established constitutional or other rights of which ICE Defendants knew, or of which a reasonable public official should have known.

140. These ICE Defendants' actions, omissions, policies, patterns, practices and customs, as complained of herein, were intentional and reckless and demonstrate a callous disregard for, or deliberate indifference to, Mr. Lyttle's personal safety, security, freedom and civil and constitutional rights.

141. These violations are compensable under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). As a direct and proximate result of the unlawful actions of these Defendants, Mr. Lyttle has suffered economic damages and significant physical and emotional harm.

FOURTH CLAIM FOR RELIEF
(False Imprisonment)
(Federal Torts Claim Act)
(Against Defendant United States of America)

142. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 120 of this Complaint.

143. ICE Defendants Kendall, Faucette and Caputo, individually and as agents of the United States of America, intentionally and unlawfully deprived Mr. Lyttle of his liberty by (1) obtaining custody of Mr. Lyttle from the North Carolina Defendants, (2) holding and detaining Mr. Lyttle, a United States citizen, in ICE custody for an appreciable period of time, and (3) physically expelling Mr. Lyttle from the national borders of the United States.

144. These ICE Defendants were acting as agents for ICE and the Department of Homeland Security, and as agents of the United States of America when they committed these acts.

145. Mr. Lyttle never consented to ICE's arrest, detention or deportation of him.

146. As a direct and proximate result of these Defendants' conduct, Mr. Lyttle has suffered and continues to suffer damages in an amount to be proven at trial.

147. Mr. Lyttle filed a claim with the Department of Homeland Security based on these injuries in accordance with the Federal Tort Claims Act. More than six (6) months has passed since Mr. Lyttle filed his FTCA claim with the Department of Homeland Security, and, to date, Mr. Lyttle has received no response.

FIFTH CLAIM FOR RELIEF
(Negligence)
(Federal Torts Claim Act)
(Against Defendant United States of America)

148. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 120 of this Complaint.

149. ICE Defendants Kendall, Faucette and Caputo, individually and as agents of the United States of America, breached their duty of reasonable care by negligently acting or failing to act in such a way that resulted in Mr. Lyttle's wrongful detention and deportation by ICE, which these Defendants knew or should have known posed a substantial risk of grave harm to Mr. Lyttle.

150. ICE Defendants Kendall, Faucette and Caputo were negligent in performing their duties and failed, neglected and/or refused to properly and fully discharge their responsibilities by, among other things:

- Failing to review readily available documentation, which stated that Mr. Lyttle was born in the United States and possessed a valid Social Security Number;
- Failing to investigate Mr. Lyttle's claims that he was born in Rowan County, North Carolina;
- Coercing and manipulating Mr. Lyttle into signing Form I-826, without providing him an adequate opportunity to read the form or have the form read to him;

- Failing to provide Mr. Lyttle, who has mental illness and/or mental deficiencies, with assistance to (1) understand his rights, (2) read and understand Form 1-826, and (3) protect him from coercive interrogation tactics;
- Creating and/or sanctioning policies, patterns, practices and customs of selecting inmates to detain, interrogate and deport based on their race and/or ethnicity;
- Failing to adequately train and supervise personnel performing immigration duties; and
- Detaining, holding and deporting a United States citizen.

151. These ICE Defendants were acting as agents for ICE and the Department of Homeland Security, and as agents of the United States of America when they committed these acts.

152. As a direct and proximate result of ICE Defendants' conduct, Mr. Lyttle has suffered and continues to suffer damages in an amount to be proven at trial.

153. Mr. Lyttle filed a claim with the Department of Homeland Security based on these injuries in accordance with the Federal Tort Claims Act. More than six (6) months have passed since Mr. Lyttle filed his FTCA claim with the Department of Homeland Security, and, to date, Mr. Lyttle has received no response.

SIXTH CLAIM FOR RELIEF
(Intentional Infliction of Emotional Distress)
(Federal Torts Claim Act)
(Against Defendant United States of America)

154. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 120 of this Complaint.

155. ICE Defendants Kendall's, Faucette's and Caputo's willful acts constitute outrageous conduct insofar as they were intended to cause Mr. Lyttle to be held in ICE custody, interrogated without regard for his mental disabilities, and expelled from the national borders of the United States.

156. ICE Defendants Kendall, Faucette and Caputo intended to cause Mr. Lyttle emotional distress, and/or acted in reckless disregard of the likelihood of causing Mr. Lyttle emotional distress, in committing these acts.

157. These ICE Defendants were acting as agents for ICE and the Department of Homeland Security, and as agents of the United States of America when they committed these acts.

158. As a direct and proximate result of ICE Defendants' acts, Mr. Lyttle suffered and continues to suffer severe mental anguish and emotional and physical distress.

159. Mr. Lyttle has incurred and continues to incur medical expenses and other damages in an amount to be proven at trial.

160. Mr. Lyttle filed a claim with the Department of Homeland Security based on these injuries in accordance with the Federal Tort Claims Act. More than six (6) months have passed since Mr. Lyttle filed his FTCA claim with the Department of Homeland Security, and, to date, Mr. Lyttle has received no response.

SEVENTH CLAIM FOR RELIEF

(Fifth and Fourteenth Amendments to the United States Constitution)

(42 U.S.C. § 1983)

(Against the North Carolina Defendants)

161. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 120 of this Complaint.

162. The North Carolina Defendants deprived Mr. Lyttle of his constitutional right to liberty and deprived him of this liberty without due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution by causing and/or participating in the illegal, arbitrary, and capricious deportation of Mr. Lyttle, a United States citizen, to Mexico. Defendants caused and/or participated in Mr. Lyttle's deportation without reasonable basis or lawful authority.

163. The North Carolina Defendants acted under color of law and acted or purported to act in the performance of official duties under federal, state, county or municipal laws, ordinances or regulations.

164. The conduct of The North Carolina Defendants violated clearly established constitutional or other rights, of which Defendants knew, or of which a reasonable public official should have known.

165. The actions, omissions, policies, patterns, practices and customs of these Defendants, complained of herein, were intentional, reckless, and show a callous disregard for, or deliberate indifference to Mr. Lyttle's personal safety, security, freedom and civil and constitutional rights.

166. These violations are compensable pursuant to 42 U.S.C. § 1983. As a direct and proximate result of these Defendants' conduct, Mr. Lyttle has suffered economic damages and significant physical and emotional harm.

EIGHTH CLAIM FOR RELIEF

(Fourteenth Amendment to the United States Constitution)

(42 U.S.C. § 1983)

(Against The North Carolina Defendants)

167. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 120 of this Complaint.

168. The North Carolina Defendants unconstitutionally discriminated against Mr. Lyttle on the basis of his race and ethnicity so as to deny him equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and his liberty by causing or participating in the illegal deportation of Mr. Lyttle.

169. The North Carolina Defendants acted under color of law and acted or purported to act in the performance of official duties under federal, state, county or municipal laws, ordinances or regulations. The North Carolina Defendants acted with the intent or purpose to discriminate against Mr. Lyttle.

170. The conduct of these Defendants violated clearly established constitutional or other rights, of which Defendants knew, or of which a reasonable public official should have known.

171. The acts, omissions, policies, patterns, practices and customs of these Defendants complained of herein were intentional, reckless, and show a callous disregard for, or deliberate indifference to Mr. Lyttle's personal safety, security, freedom and civil and constitutional rights.

172. These violations are compensable pursuant to 42 U.S.C. § 1983. As a direct and proximate result of these Defendants' conduct, Mr. Lyttle has suffered economic damages and significant physical and emotional harm.

NINTH CLAIM FOR RELIEF
(False Arrest and Imprisonment)
(North Carolina Torts Claim Act)
(Against The North Carolina Defendants)

173. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 120 of this Complaint.

174. The North Carolina Defendants unlawfully deprived Mr. Lyttle of his liberty by (1) placing him in an Immigration Hold without a legal basis to do so and (2) physically

delivering Mr. Lyttle into the custody of ICE at the expiration of Mr. Lyttle's sentence. Mr. Lyttle never consented to the immigration hold or detention by ICE.

175. The North Carolina Defendants were acting within the scope of their employment when they committed these acts.

176. As a direct and proximate result of the North Carolina Defendants' conduct, Mr. Lyttle has suffered and continue to suffer damages in an amount to be proven at trial.

TENTH CLAIM FOR RELIEF
(Negligence)
(North Carolina Torts Claim Act)
(Against The North Carolina Defendants)

177. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 120 of this Complaint.

178. The North Carolina Defendants breached their duty of reasonable care by negligently acting or omitting to act in such a way that resulted in Mr. Lyttle's wrongful detention and deportation by ICE, which these Defendants knew or should have known posed a substantial risk of grave harm to Mr. Lyttle.

179. The North Carolina Defendants were negligent in performing their duties and failed, neglected and/or refused to properly and fully discharge their responsibilities by, among other things:

- Failing to review readily available documentation provided to ICE by the North Carolina Defendants, which stated that Mr. Lyttle was born in the United States and possessed a valid Social Security Number;
- Failing to investigate Mr. Lyttle's claims that he was born in Rowan County, North Carolina;
- Coercing and manipulating Mr. Lyttle to sign Form 1-826;
- Failing to provide Mr. Lyttle, who has a mental illness and/or mental

deficiencies, with assistance to (1) understand his rights, (2) read and understand Form 1-826, and (3) protect him from coercive interrogation tactics;

- Creating and/or sanctioning policies, patterns, practices and customs of selecting inmates to detain, interrogate and deport based on their race and/or ethnicity;
- Failing to adequately train and supervise North Carolina personnel performing immigrations duties; and
- Detaining, holding and assisting in the deportation of a United States citizen.

180. The North Carolina Defendants were acting within the scope of their employment when they committed these acts.

181. As a direct and proximate result of the North Carolina Defendants' conduct, Plaintiffs have suffered and continue to suffer damages in an amount to be proven at trial.

182. Mr. Lyttle has filed a claim with the North Carolina Industrial Commission based on these injuries in accordance with the North Carolina Tort Claims Act. The North Carolina Industrial Commission has yet to respond to Mr. Lyttle's claims. If the claim is denied, or if the North Carolina Industrial Commission fails to respond within the time allowed by law, Plaintiff will amend this Complaint to seek monetary damages from the North Carolina Department of Correction for various torts committed.

ELEVENTH CLAIM FOR RELIEF

**(Negligent Infliction of Emotional Distress)
(North Carolina Torts Claim Act)
(Against The North Carolina Defendants)**

183. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 120 of this Complaint.

184. The North Carolina Defendants' actions constitute outrageous conduct insofar as they were without any basis in fact and likely to cause Mr. Lyttle to be selected for questioning because of his race and/or ethnicity, be placed on an immigration hold and be transferred to ICE custody.

185. The North Carolina Defendants negligently caused Mr. Lyttle emotional distress, and/or acted in disregard of the probability of causing Mr. Lyttle emotional distress in committing these acts.

186. As a direct and proximate result of the actions of the North Carolina Defendants, Mr. Lyttle suffered and continues to suffer economic damages, severe mental and emotional anguish, which has caused Mr. Lyttle to be institutionalized on at least one occasion, as well as physical distress.

187. Mr. Lyttle has filed a claim with the North Carolina Industrial Commission based on these injuries in accordance with the North Carolina Tort Claims Act. The North Carolina Industrial Commission has yet to respond to Mr. Lyttle's claims. If the claim is denied, or if the North Carolina Industrial Commission fails to respond within the time allowed by law, Plaintiff will amend this Complaint to seek monetary damages from the North Carolina Department of Correction for various torts committed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against all Defendants, and each of them, as follows:

1. For general damages against the United States, ICE Defendants, and the North Carolina Defendants, inclusive of each ICE Doe Defendant and DOC Doe Defendants, jointly and severally, in an amount to be proven at trial;
2. For special damages against the United States, ICE Defendants, and the North Carolina Defendants, inclusive of each ICE Doe Defendant and DOC Doe Defendants, jointly and severally, in an amount to be proven at trial;
3. For punitive and exemplary damages against the individual ICE Defendants, and the individual North Carolina Defendants, inclusive of each ICE Doe Defendant and DOC Doe Defendants, jointly and severally, in an amount to be proven at trial;
4. For reasonable costs, expenses, and attorneys' fees pursuant to 42 U.S.C. § 1988 and any other applicable law;
6. For injunctive relief that the Court deems just and proper; and
7. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on any and all issues triable by a jury.

Respectfully submitted this 13th day of October, 2010.

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

With Co-Counsel:

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

And:

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

/s/ Katherine L. 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

**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