# IN THE UNITED STATES DISTRICT COURT <br> FOR THE EASTERN DISTRICT OF VIRGINIA <br> Richmond Division 

## AARON TOBEY,

Plaintiff,
v.

Civil Action No. 3:11cv154-HEH
JANET NAPOLITANO, et al., Defendants.

## FEDERAL DEFENDANTS' MOTION TO DISMISS

Pursuant to Rule 12(b)(1), the federal defendants move to dismiss plaintiff's First Amended Complaint for lack of subject matter jurisdiction over the official capacity claims for relief under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). Pursuant to Federal Rule of Civil Procedure 12(b)(6), the federal defendants move to dismiss the remainder of the official capacity and individual capacity claims on the grounds that the First Amended Complaint fails to state a claim on which relief can be granted.

WHEREFORE, for the reasons stated herein and in the accompanying memorandum, the federal defendants respectfully request the Court to grant the Federal Defendants' Motion to Dismiss.

Dated this 27th day of June, 2011
Respectfully submitted,
NEIL H. MACBRIDE
UNITED STATES ATTORNEY

By:
/s/
Robin P. Meier
Virginia State Bar No. 65825

Assistant United States Attorney<br>United States Attorney's Office<br>600 East Main Street, Suite 1800<br>Richmond, Virginia 23219<br>Telephone: (804) 819-5400<br>Facsimile: (804) 819-7417<br>Email: Robin.Perrin2@usdoj.gov<br>TONY WEST<br>Assistant Attorney General<br>SANDRA M. SCHRAIBMAN<br>Assistant Branch Director<br>CARLOTTA P. WELLS<br>Senior Trial Counsel<br>U.S. Department of Justice<br>Civil Division, Federal Programs Branch<br>P.O. Box 883<br>Washington, D.C. 20044<br>(202) 514-4522 (telephone)

Attorneys for Federal Defendants

