IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Richmond Division

AARON TOBEY,)
Plaintiff,)
v.	Civil Action No. 3:11cv154-HEH
JANET NAPOLITANO, et al.,)
Defendants.)
)

FEDERAL DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

Pursuant to Rule 12(b)(1), the federal defendants move to dismiss plaintiff's Second 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 Second 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 Plaintiff's Second Amended Complaint.

Respectfully submitted,

/s/

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By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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