

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMIR MESHAL,

Plaintiff,

v.

CHRIS HIGGENBOTHAM, *et. al.*,

Defendants.

No. 09-cv-2178 (EGS)

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

Plaintiff Amir Meshal respectfully submits this Notice to alert the Court to two recent decisions relevant to the Court's consideration of the Defendants' Motion to Dismiss Plaintiff's Amended Complaint on *Bivens* special factors and qualified immunity grounds: *Vance v. Rumsfeld*, Nos. 10-1687, 10-2442, 2011 WL 3437511 (7th Cir. Aug. 8, 2011), and *Doe v. Rumsfeld*, No. 1:08-CV-1902, 2011 WL 3319439 (D.D.C. Aug. 2, 2011).

In *Vance*, the United States Court of Appeals for the Seventh Circuit held that special factors did not preclude a *Bivens* action against the Secretary of Defense by two civilian U.S. citizens allegedly imprisoned, coercively interrogated, and abused in an Iraqi war zone in violation of their Fifth Amendment right to substantive due process. *Vance*, 2011 WL 3437511, at *1, *29. In *Doe v. Rumsfeld*, a factually similar case, a judge of this Court reached the same result. *Doe*, 2011 WL 3319439, at *8, *12. Both opinions reject the Secretary of Defense's arguments that national security or foreign policy concerns, or the possibility that litigation would involve sensitive or classified information preclude a *Bivens* remedy for American

citizens detained and abused by U.S. officials abroad, even where that treatment occurs in an active war zone. *See Vance*, 2011 WL 3437511, at *23-27; *Doe*, 2011 WL 3319439, at *9-12.

This Court should similarly reject Defendants' attempt to invoke these special factors to preclude a damages remedy for Mr. Meshal, a civilian U.S. citizen who challenges his abuse by federal law enforcement agents far from any battlefield.

Vance and *Doe* also denied Secretary Rumsfeld's assertion of qualified immunity against the constitutional claims by U.S. citizens. In *Vance*, the Seventh Circuit held that it was clearly established in 2006 that a "civilian U.S. citizen detainee" was protected by substantive due process from cruel conditions of confinement and coercive interrogations involving threats and other abuse by U.S. officials, notwithstanding being located in a "foreign war zone." *Vance* 2011 WL 3437511, at *15-16. Similarly, in *Doe*, the district court concluded that in 2005-2006, it was clearly established that a U.S. citizen detained in an overseas military zone had a substantive due process right to be free from interrogations and detention involving "conscience-shocking physical and psychological mistreatment" at the hands of his own government. *Doe*, 2011 WL 3319439, at *19-20. The district court also recognized that a plaintiff may allege a violation of this substantive due process right by pleading sufficient facts to support a theory of "deliberate indifference" as recognized in *Butera v. District of Columbia*, 235 F.3d 637, 651-52 (D.C. Cir. 2001). *See Doe*, 2011 WL 3319439 at *17-18. Both cases support Mr. Meshal's argument that Defendants are not entitled to qualified immunity with respect to their conduct leading to his unlawful detention, rendition, and abusive interrogation in 2007.

For the foregoing reasons, and those expressed previously, Defendants' motion to dismiss should be denied. A copy of each decision is attached as an exhibit to this Notice.

Respectfully submitted,

/s/ Nusrat J. Choudhury

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