IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

JACQUELINE STEVENS,	)	
	)	
Plaintiff,	)	CIVIL ACTION FILE NO.
	)	1:12-CV-1352-ODE
vs.	)	
	)	
ERIC HOLDER, JR., Attorney General of the United States, et al.,	)	
	)	
Defendants.	)	

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

I. PROCEDURAL BACKGROUND

On January 31, 2014, this Court entered an Order on various pending motions filed, respectively, by Plaintiff, the Federal Defendants and the Private (Paragon) Defendants. A summary of the rulings which are the subject of Plaintiff's Motion for Reconsideration follows.

The Court granted in part, and denied in part, Federal Defendants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Doc 73], which challenged Plaintiff's *Bivens* claims as facially deficient. In partially granting the

Federal Defendants' Motion, the Court utilized a "motion to dismiss standard." Specifically, the Court:

-Dismissed in its entirety Plaintiff's *Bivens* claims under Count Five (Civil Conspiracy) of the First Amended and Restated Complaint ("FAC") as lacking in specific facts [Doc. 97, p. 11-12];

-Dismissed Plaintiff's *Bivens* claims against Defendant Long as time-barred, in regard to the allegations in Counts One (First Amendment), Two (Fifth Amendment-Equal Protection) and Four (Fifth Amendment-Due Process; exclusion Plaintiff), because the allegations against Defendant Long were limited to the October 7, 2009 events [Doc. 97 at 12-13];

-Dismissed Plaintiff's *Bivens* claims against Defendant Mooney because the allegation in the FAC that she was the recipient of an email sent on April 19, 2010, informing Mooney and other EOIR employees that Plaintiff was at the Immigration Court on that day [Doc. 69, ¶¶43, 44] is insufficient to show how Mooney 's actions violated the Constitution. [Doc. 97 at. 13];

-Dismissed Plaintiff's *Bivens* claims against Defendants Keller and Smith, as to Counts One, Two and Four because the FAC did not adequately show how Keller and Smith's actions were linked to the alleged constitutional violations set forth in those Counts [Doc. 97 at 14];

-Dismissed Plaintiff's *Bivens* claims against Defendants Summers and Inspector Doe because the FAC does not contain any facts "illuminating" the allegations, based on Plaintiff's information and belief, that they failed to inform or train the Paragon Guards on public access to immigration courts and chains-of-authority; failed to investigate and failed to properly report the investigation; or misrepresented facts concerning Plaintiff's removal on April 19, 2010 [Doc. 69 ¶¶12, 65].

With regard to Plaintiff's motion seeking an extension of sixty (60) days in which to serve Defendant Hayes, the Doe Defendants, and Federal Inspector Doe [Doc. 81], the Court denied Plaintiff's motion, finding that Plaintiff had not demonstrated good cause for failure to serve the Defendants and that the circumstances in this case did not justify a discretionary extension; the Court dismissed Plaintiff's claims against Defendant Hayes, the Doe Defendants and Federal Inspector Doe, without prejudice. [Doc. 97 at 22-26].

II. ARGUMENT AND CITATION OF AUTHORITY

A. The Court Should Reconsider its Partial Dismissal of Plaintiff's *Bivens* Claims Under the "Summary Judgment Standard," Rather Than Under the "Motion to Dismiss Standard."

In its January 31, 2014 Order, the Court bifurcated consideration of Federal

Defendants' motion to dismiss Plaintiff's *Bivens* claims. In disposing of Federal Defendants' assertion of quasi-judicial immunity, the Court noted that because the motion was supported by "material outside the record"--declarations submitted by the defendants explaining their respective areas of responsibility and the actions they took [Doc. 73, Exist. A through E], the motion "must be treated as a motion for summary judgment. [cit. omitted]." [Doc. 97 at 8]. However, in disposing of Federal Defendants' assertions that Plaintiffs' *Bivens* claims are facially deficient, the Court appeared to ignore Plaintiff's affidavit and appended exhibits, filed in response to the Federal Defendants' motion, and stated that it "will consider Federal Defendants' assertions concerning the sufficiency of Plaintiff's pleadings under the motion to dismiss standard." [Doc. 97 at 8].

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d). *See, Elkins v. Elenz,* 2013 U.S. App. LEXIS 7290 (11th Cir. 2013). *See, e.g., Jones v. Auto. Ins. Co. of Hartford, Conn.*, 917 F.2d 1528, 1532 (11th Cir. 1990). ("[I]f the judge does **consider** . . . outside matters, i.e., if the judge does not **exclude** them, Rule 12(b) requires the judge to comply with the requirements of Rule 56.") (emphasis supplied).

A "judge need not convert a motion to dismiss into a motion for summary judgment as long as he or she does not consider matters outside the pleadings." According to case law, "not considering" such matters is the functional equivalent of "excluding" them - there is no more formal step required." *Harper v. Lawrence County,* 592 F.3d 1227, 1232 (11th Cir. 2010).

Plaintiff's response submitted in opposition to Federal Defendants' Motion, including her affidavit and exhibits, as well as other documents in the record, construed under the standards for a Motion for Summary Judgment, are sufficient to overcome the concerns which led to the Court's dismissals. The facts supporting allegations in the FAC which appear in the exhibits appended to Professor Stevens' Affidavit show that Defendants Cassidy, Keller, Mooney, and Smith, as well as Long, were engaged in a concerted effort--in effect--"conspiring" before and after the events of April 19, 2010, to either hinder, exclude or ban Plaintiff from hearings at the Atlanta Immigration Court.

The Affidavit of Jaqueline Stevens Pursuant to Fed. R. Civ. P. 56, declares that

> A series of emails, beginning with those dated April 13, 2010, subject-"Journalist" (sent prior to my removal on April 19, 2010), continuing with those dated April 19, 2010, subject-"Jackie Stevens is at the Atlanta Immigration Court" (sent the date of my removal) and extending to "follow-up" emails from April 23, 2010, to April 29,

> 2010, subject-"Possible banning of blogger from immigration court" (sent after my removal), attached hereto as Exhibit "E"[Doc. 74-7], which emails were sent or circulated among EOIR officials including Defendant Smith, Defendant Mooney and Defendant Keller, when read together with recorded statements by security guards to the Megacenter Operator on April 19, 2010 ("they're trying to ban her from the building"), show that contrary to defendants' declarations, the discretion allegedly being exercised concerning access to immigration hearings extended beyond closing hearings because of "confidentiality concerns" of specific respondents (e.g. Defendant Mooney's declaration, Doc. 73-2, paragraph 7). Rather, these meetings and communications show a concerted effort and conspiracy among Federal Defendants and EOIR officials to "ban" me from all immigration hearings at the Atlanta Immigration Court and the Stewart Detention Center, regardless of the underlying character of the proceedings. [Doc 74, ¶6].

Further, Professor Stevens' affidavit references an earlier email she obtained pursuant to a Freedom of Information Act request, appended as Exhibit "A" to her affidavit. [Doc. 74-3]. In that email, dated October 28, 2009, from Defendant Mooney to various officials of the Executive Office for Immigration Review (EOIR), including Defendants Keller and Smith, Defendant Mooney states:

> The bottom line is she has her own agenda and no matter what we have written to her explaining the agency's position, she has chosen to slant the story her own way. Sadly, this has been the case all along. Unfortunately, we will hear more from her down the road.
>
> Please touch base with Charles (DOJ-Public Affairs) to let him know--he is well aware of the history of Ms. Stevens and will not be surprised by any of this. Also, please close the loop with Cynthia [Long] so she is aware.

> Finally, we WILL NOT include Ms. Stevens vitriol in our clips--even if Benders picks it up.

[Doc. 74-3, p. 2]. [Parenthetical supplied for clarity].

Defendant Mooney's use of the phrase "[u]nfortunately, we will hear more from her down the road" turned out to be prophetic, as Plaintiff returned to the Immigration Court in April 2010. Another string of emails obtained by Plaintiff through FOIA and appended to her Affidavit as Exhibit "E" [Doc. 74-7] with subject lines such as "Journalist," "Jackie Stevens is at the Atlanta Immigration Court," "Possible banning of blogger from immigration court," "Journalist; Problem …," and "Ms. Jackie Stevens/Mr. Lyttle," during the period April 12 through April 29, 2010 (including the April 19 date of Plaintiff's removal), shows heightened scrutiny on the part of EOIR officials, including Defendants Mooney and Smith, concerning Plaintiff's presence at the Immigration Court, and as one email's banner suggests, consideration of the banning of Plaintiff altogether [Doc. 74-7, p. 7].

Plaintiff urges the Court to consider the foregoing exchanges initiated by Mooney as demonstrating that Defendant Mooney was not merely "the recipient of an email" [Doc. 97 at 13], but rather that she had a personal animus towards Plaintiff and that she intended to suppress Plaintiff's First Amendment rights based

upon point of view.

Further, Defendants' own documents[1] support Professor Stevens' allegations that Defendants Cassidy, Keller, Long, Mooney, Smith abridged her rights as a journalist based on articulated pretextual reasons, in an effort to prevent her from observing and reporting on proceedings and in retaliation for her prior publications [Doc. 69] and that prior to and during April, 2010, they were communicating and compiling material that would support thwarting her activities at the Atlanta Immigration Court.

As reiterated in Plaintiff's affidavit, "Federal Defendants discriminated against me in following up on my complaint, distributing my blog posts, preventing me from attending hearings, and 'possibly banning' me based on point of view" and "either were coordinating or had direct knowledge of the violations of my First Amendment rights." [Doc. 74, ¶¶6, 7].

The Court dismissed Defendant Long based on the fact that "the allegations against Long are limited to the October 7, 2009 events; thus, the claim against her expired on October 6, 2011, more than six months before the filing of Plaintiff' s original complaint." [Doc 97 at 13]. Federal Defendants' own filings, submitted in

[1] Plaintiff attaches as Exhibit "A" to this Motion, documents produced by the Government in response to Plaintiff's FOIA request EOIR FOIA case 2011-546.

support of Federal Defendants' recent Motion for Summary Judgment [Doc. 96], include an email dated April 14, 2010, from Defendant Long to Alder Reid at EOIR (cc'ing Defendant Smith), with the subject line "Jackie Stevens/Mark Lyttle," documenting two conversations with Plaintiff that day. The email confirms that in 2010, Defendant Long "engaged" Plaintiff regarding Plaintiff's "unannounced" appearance at hearings; that Defendant Long was still requesting that Plaintiff "check in" at the reception desk[2]; and was still in discussions with Plaintiff about why three hearings were scheduled and Plaintiff received information regarding only one. At the end of the email, Defendant Long states: "I would like to point out that Ms. Stevens has been very pushy, but she is becoming more rude and aggressive; and the presence of Mark Lyttle[3] who is somewhat threatening as well." [Doc. 96-12, p. 1.]. This e-mail, along with other FOIA documents, are further reflective of Defendant Long's ongoing efforts, in conjunction with Defendants Cassidy, Keller, Mooney, and Smith, and which span

---

[2] Exhibit "D" to Plaintiff's affidavit, includes an email dated October 9, 2009, from Susan Eastwood at EOIR to Defendants Mooney, Smith and Long. The email indicates that Defendant Long, in a conversation with Plaintiff, admitted that there was no "legal basis" for requiring Plaintiff to "check in," prior to observing hearings, but was merely "the court's way of trying to assist visitors to the court." [Doc 74-6 p. 2]. Professor Stevens appended to Exhibit "D" of her Affidavit an EOIR "Fact Sheet" dated September 9, 2010, confirming that as of 2010, the year of Plaintiff's removal, "You do not have to notify an immigration court in advance to observe an open hearing." [Doc 74-6, p. 3].

[3] As this Court noted in its January 16, 2013 Order, Mark Lyttle is a United States citizen wrongfully deported by Defendant Cassidy in 2008, who sometimes accompanied Professor Stevens to observe Atlanta Immigration Court proceedings. [Doc. 55, p. 2 and n.2].

a period including and following the April 19, 2010 incident, to create a "record" of Plaintiff's presence in the immigration courts that would support the unlawful exclusion or banning of Professor Stevens from the Atlanta Immigration Court.

Given the documentation of Defendant Long's involvement in the events that led to Plaintiff's exclusion and possible ban after the April 19, 2010 incident, and Defendant Long's own declaration, submitted in support of her assertion of quasi-judicial immunity [Doc. 73-5], in which she describes her position as the Court Administrator of the Atlanta Immigration Court, responsible for managing the daily activities of the Court under the supervision of the Assistant Chief Immigration Judge, charged with coordinating visits to the Atlanta Immigration Court by, among others, members of the general public and the media, such as Plaintiff, and assisting the immigration judge by making sure the courtroom proceedings are closed to the public when it is determined that an immigration proceeding should be closed, it cannot seriously be contended that Defendant Long was not an active participant in the actions that led to the violation of Plaintiff's constitutional rights on April 19, 2010, all within the statute of limitations.

In its Order, the Court noted that although the Counts in Plaintiff's Amended Complaint did not "specifically identify each individual Federal Defendant's actions and their relationship to the alleged violation, paragraphs 1 through 65

contain additional factual context linking several Federal Defendants to the constitutional violations set forth in Counts One through Four. [Doc 97, p. 11]. Plaintiff urges the Court to consider, in conjunction with Plaintiff's factual allegations, the referenced materials outside the pleadings to support her *Bivens* claims against Defendants Mooney, Long, Keller, and Smith, as to Counts One, Two, Three, Four, and Five.

In regard to the Court's dismissal of Defendants Summers and Inspector Doe, Plaintiff points to a declaration submitted in support of Defendant Summers' assertion of quasi-judicial immunity, filed in support of Federal Defendants' Motion to Dismiss or in the Alternative, Motion for Summary Judgment. [Doc. 76]. In that declaration, Defendant Summers states the following:

-That he was the Central District Commander with Federal Protective Service ("FPS"), the federal law enforcement agency within the U.S. Department of Homeland Security responsible for enforcing federal laws and regulations in federal buildings. [Doc. 76-3, p. 2];

-That he is aware of the lawsuit filed by Plaintiff and that he was the Central District Commander with FPS during the time giving rise to the events alleged in the FAC. [Doc. 76-3 at 3];

-That, as the Central District Commander, he is responsible for supervising

FPS employees who provide law enforcement services at the federal building which houses the immigration court located at 180 Spring Street, S.W., Atlanta, Georgia and providing security oversight for the contract security guards employed by Paragon Systems, Inc. at that building. [Doc. 76-3 at 2-3].

-That as part of his duties as an FPS employee, he is responsible for ensuring that all orders of immigration judges that relate to the safe operation of the building where the immigration court is located are carried out pursuant to the judges' orders. [Doc 76-3 at 3].

In a recently-received response to Plaintiff's Request for Production of Documents to Defendant Summers, and specifically in response to the request for any "3155 reports" written for incidents occurring at the Atlanta Immigration Court during the period immediately preceding Plaintiff's removal from the courthouse on April 19, 2010, a report dated April 19, 2010 was produced. (Attached as Exhibit "B" hereto). Although the produced report has every name redacted except that of Inspector David Picciolo, now believed to be "Federal Inspector Doe" (*See* Section B, below), the report, in conjunction with Defendant Summers' own declaration of his responsibilities for "supervising FPS employees" and "providing security oversight for the contract security guards

employed by Paragon Systems, Inc. at that building" demonstrates the plausibility of Plaintiff's allegations in the FAC against Defendant Summers and Inspector Doe[4]. Plaintiff urges the Court to consider these facts in reinstating Plaintiff's *Bivens* claims against these defendants.

B. Because Plaintiff Had Identified and Served Paragon Defendant Hayes and Federal Inspector Doe (David Picciolo) with the FAC Prior to the Entry of the Court's January 31, 2014 Order, the Court Should Reconsider Its Denial of Plaintiff's Motion for Extension of Time in Which to Serve These Defendants.

Subsequent to the filing of Plaintiff's Motion for Extension of Time in which to serve the Doe Defendants, through in-house efforts of her counsel, assistance of a private investigator and disclosures contained in pleadings filed by Federal Government defendants in litigation in the Middle District of Georgia asserting unlawful exclusion of a citizen from the Atlanta Immigration Court,[5] Plaintiff was able to identify the whereabouts of Paragon Defendant Nathanael Hayes and the identity and location of David Picciolo ("Federal Inspector Doe"). As shown by the proofs of service attached as Exhibits "C" and "D" hereto, Hayes

[4] Plaintiff published a blog in which she relates a conversation with Defendant Summers, during which Summers told Plaintiff that he had been alerted on the afternoon of April 19, 2010, to her forced removal from 180 Spring St., SW., Atlanta and that he understood that this was at the order of a "federal judge."(http://stateswithoutnations.blogspot.com/2010/04/atlanta-immigration-judge-sics-guards.html; excerpt attached as Exhibit "E" hereto).

[5] *Bloodworth v. United States*, M.D. Ga. (No. 5:13cv112 (MTT)). [Doc. 39-1. p. 2].

and Picciolo were subsequently served with copies of the First Amended Complaint by a private process server on December 22, 2013, and January 17. 2014, respectively.[6] Plaintiff asks the Court to reconsider the denial of her motion for extension of time to serve these defendants.

III. CONCLUSION

Plaintiff understands that motions for reconsideration are not to be filed as a matter of routine practice. The case at bar, however, represents significant issues regarding the manner in which Plaintiff's constitutional rights, as a journalist, scholar and observer concerned about the administration of justice in the Immigration Court system, and in particular that of the Atlanta Immigration Court, have been infringed upon, as documented in particularity in pleadings filed with this Court for all Defendants through April 19, 2010 . For this reason, Plaintiff finds it "absolutely necessary" (L.R. 7.2) to file her motion urging this Court to reconsider its rulings. Plaintiff respectfully requests that the Court grant Plaintiff's motion, reconsider its prior ruling concerning the standard by which Plaintiff's *Bivens* claims were dismissed, and reinstate the dismissed *Bivens* claims; likewise

[6] Plaintiff acknowledges that in utilizing a subpoena form, the private process server may not have used the appropriate summons and proof-of-service forms for a Complaint. If the Court reconsiders its prior ruling and grants Plaintiff's motion for an extension of time and determines that the proof of service forms are not adequate, Plaintiff will request that the server utilize the proper forms and process to effect service of the FAC.

that the Court reconsider its ruling disallowing additional time to effect service upon Defendant Hayes and Federal Inspector Doe, and authorize service of the FAC upon them.

This 28th day of February 2014.

Respectfully submitted,

THE FEDERAL FIRM, LLC

/s/R. O. Lerer
R. Keegan Federal, Jr.
Georgia Bar No. 257200
R. O. Lerer
Georgia Bar No. 446962
Attorneys for Plaintiff

Two Ravinia Drive
Suite 1776
Atlanta, Georgia 30346
Tel: (678) 443-4044
Fax: (678) 443-4081
keegan@fedfirm.com
ray@fedfirm.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JACQUELINE STEVENS, Plaintiff, vs. ERIC HOLDER, JR. Attorney General of the United States, et al. Defendants.	)	CIVIL ACTION NO.: 1:12-CV-1352-ODE

CERTIFICATION OF FONT

Counsel for Plaintiff certifies that this document has been prepared in a Times New Roman, 14 point font and otherwise complies with Local Rule 5.1C.

This 28th day of February 2014.

Respectfully submitted,

THE FEDERAL FIRM, LLC

/s/R. O. Lerer
R. Keegan Federal, Jr.
Georgia Bar No. 257200
R. O. Lerer
Georgia Bar No. 446962

Attorneys for Plaintiff

Two Ravinia Drive
Suite 1776
Atlanta, Georgia 30346
Tel: (678) 443-4044
Fax: (678) 443-4081
keegan@fedfirm.com
ray@fedfirm.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JACQUELINE STEVENS, Plaintiff, vs. ERIC HOLDER, JR. Attorney General of the United States, et al. Defendants.	)	CIVIL ACTION NO.: 1:12-CV-1352-ODE

CERTIFICATE OF SERVICE

I hereby certify that I have, this date, filed electronically the foregoing ***Plaintiff's Memorandum in Support of Motion for Reconsideration*** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification to the following attorneys of record:

Sally Quillian Yates
United States Attorney
Aileen Bell Hughes
Assistant U.S. Attorney
600 U.S. Courthouse
75 Spring Street, S.W.
Atlanta, GA 30335

Stuart F. Delery
Acting Assistant Attorney General
David J. Kline
Director, Office of Immigration Litigation
District Court Section
Victor M. Lawrence
Assistant Director
Christopher W. Hollis
Trial Attorney
Office of Immigration Litigation
District Court Section
U.S. Department of Justice
P.O. Box 868 Ben Franklin Station
Washington, DC 20044

Hall F. McKinley, III
Drew, Eckl & Farnham, LLP
P.O. Box 7600
Atlanta, GA 30357-0600

This 28th day of February, 2014.

Respectfully submitted,
THE FEDERAL FIRM, LLC
/s/R. O. Lerer
R. Keegan Federal, Jr.
Georgia Bar No. 257200
R. O. Lerer
Georgia Bar No. 446962
Attorneys for Plaintiff

Two Ravinia Drive
Suite 1776
Atlanta, Georgia 30346
Tel: (678) 443-4044
Fax: (678) 443-4081
keegan@fedfirm.com
ray@fedfirm.com