AMERICAN IMMIGRATION LAW FOUNDATION

PRACTICE ADVISORY[1]
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WHOM TO SUE AND WHOM TO SERVE IN IMMIGRATION-RELATED DISTRICT COURT LITIGATION

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INTRODUCTION

This Practice Advisory addresses who is**,** or who may be**,** the proper respondent-defendant and recipient for service of process in immigration-related litigation in district court.[3] In light of the dramatic organizational changes enactment by the Homeland Security Act of 2002 (HSA) and the government's subsequent restructuring, identifying whom to sue and whom to serve can be difficult.

Part I of the advisory contains a general overview of potential officials and entities that might be proper respondents-defendants in district court. Part I also addresses whom to sue in specific types of immigration-related actions, including habeas corpus petitions, mandamus actions, Federal Tort Claims Act actions, and *Bivens* actions. Part II discusses the Federal Rules of Civil Procedure that govern service of process in most immigration-related district court actions. Part III covers adding and substituting respondents after the initial habeas petition or complaint is filed.

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[3] The terms petitioner-plaintiff and respondents-defendants are used throughout this advisory to refer to the person filing the action and the person/entity being sued, respectively. In habeas actions, the person who files the action is the petitioner and each person/entity being sued is a respondent. In other cases, for example, civil suits or mandamus actions, the person who files the action is the plaintiff and each person/entity sued is a defendant.

A list of addresses for service is attached as Appendix A and sample certificate of service is attached as Appendix B.

The information in this document is current as of November 12, 2003. The advisory discusses some local practice and procedures. Local practices may vary. Always check your local court rules and procedures. As will be explained below, the law on whom to sue in a habeas corpus action is currently being litigated. As future court decisions may change the existing law or create new law on this issue, counsel are advised to independently confirm whether the law in their circuit has changed since the date of this advisory.

PART I: WHOM TO SUE

A. General Overview of Potential Respondents-Defendants

District court actions are generally brought against the officer/s or entity/entities responsible for the alleged wrongdoing and capable of providing the relief sought unless otherwise specified by statute or case law as discussed below. As the government's reorganization has shifted the responsibilities of the former Immigration and Naturalization Service (INS),[4] it is important to identify all the officials, entities or even executive departments (often there is more than one) that may be able to grant the requested relief when filing an action in district court.

In general, most immigration-related actions in district court likely will name one or more of the following:

* The United States
* DHS Secretary, Tom Ridge, or the Attorney General, John Ashcroft
* DHS and ICE/USCIS (depending on the nature of the suit)
* ICE Assistant Secretary, Michael Garcia, or CIS Director, Eduardo Aguirre
* The USCIS District Director or the ICE Field Office Director for Detention and Removal or the ICE Special Agent-in-Charge of Investigations

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[4] The Homeland Security Act of 2002 (HSA), Pub. L 107-296, 116 Stat. 2135 (Nov. 25, 2002) abolished the Immigration and Nationality Service and transferred its responsibilities to bureaus within the newly established Department of Homeland Security (DHS), which is headed by the Secretary of Homeland Security (Tom Ridge). Within DHS, Immigration and Customs Enforcement (ICE) is responsible for the detention and removal of non-citizens; U.S. Citizenship and Immigration Services (USCIS) is responsible for adjudications of applications for immigration and citizenship benefits; and Customs and Border Protection (BCBP) is responsible for immigration and customs inspections and border patrol. The Executive Office for Immigration Review (EOIR), which includes the Board of Immigration Appeals (BIA) and the immigration courts, remains under the direction of the Attorney General within the Department of Justice.

Suing more than one official or entity is often necessary and also is advisable when the petitioner-plaintiff is unsure whom to sue. If a court determines that it lacks either personal or subject-matter jurisdiction over a respondent-defendant, the court will dismiss the action against that respondent-defendant. However, as long as the court has jurisdiction over *at least one* respondent-defendant, the court may reach the merits of the case.

B. Whom to Sue in Specific Types of District Court Actions

1. Petitions for Writs of Habeas Corpus

In general, a petition for a writ of habeas corpus under 28 U.S.C. § 2241 may be filed in district court when petitioner is statutorily barred from judicial review in the court of appeals under INA § 242 or when a detained petitioner seeks review of the DHS's decision to detain him or review of the conditions of such detention. The habeas statute states that a writ of habeas corpus must "be directed to the person having custody of the person detained." 28 U.S.C. § 2243. Thus, determining whom to sue in a habeas action is enmeshed with the determination of who has "custody" of the petitioner.

In general, there are two legal approaches to determining the proper custodian/s-respondent/s in an immigration habeas action. The first approach designates the single individual with daily physical control over the petitioner as the custodian-respondent and is known as the "immediate custodian" rule. Under this approach, the proper respondent may be the warden / superintendent of the jail where petitioner is being held or the ICE Field Office Director for Detention and Removal with jurisdiction over the detention facility. The second approach permits designating any individual or entity that has the "power to release" the petitioner from the action he or she contends is unlawful and will be called the "functional approach" for purposes of this advisory. Under this approach, the proper respondent may be the Attorney General or the Secretary of the Department of Homeland Security no matter where the action is filed. As the "immediate custodian" rule severely restricts where the action can be filed, AILF advocates in amicus briefs that courts should adopt the functional approach.[5]

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[5] The "immediate custodian" rule is troubling for several reasons. Under the "immediate custodian" rule, an action can be brought only in the district where the petitioner is detained. Because DHS routinely transfers immigration detainees to remote detention centers, permitting suit only in the district of confinement gives the government complete control over where the action can be filed and, thus, the corresponding circuit court law that will govern the action. Moreover, potential habeas petitioners face enormous obstacles in obtaining pro bono as well as paid counsel in remote and unfamiliar areas. In addition, filing habeas petitions primarily in districts where detention facilities are located leads to docket overcrowding in those districts and places a disproportionately large number of immigration habeas decisions in the control of judges in those districts.

The issue of which approach applies in immigration habeas actions and whom to sue is complicated and is certainly not resolved. The chart below sets forth the current state of the law in the circuit courts as of the date of this advisory. As the circuit courts are split on this issue, the Supreme Court ultimately may resolve it.

CIRCUIT CASE LAW REGARDING WHOM TO SUE IN A HABEAS ACTION

CIRCUIT COURT	CASE DECIDING OR ADDRESSING ISSUE	APPROACH ADOPTED OR FAVORED	PROPER RESPONDENT	FINAL DECISION?
FIRST	Issue decided in *Vasquez v. Reno*, 233 F.3d 688 (1st Cir. 2000)	Immediate Custodian Rule Adopted	Superintendent of the detention facility	**YES**, final decision as to detained habeas petitioners unless overturned by Supreme Court.
SECOND	Issue addressed in detail, but not decided in *Henderson v. Reno*, 157 F.3d 106 (2d Cir. 1998) *cert. denied sub. nom, Reno v. Navas*, 526 U.S. 1004 (1999).	Decision contains a lengthy discussion of both the immediate custodian rule and the functional approach.	The decision contains arguments for and against the AG being a respondent. The Court certified the question of whether the NY Long-Arm statute conveys personal jurisdiction over the New Orleans District Director to the NY Court of Appeals.	**NO**, the Second Circuit expressly declined to decide the issue. The INS offered to resolve the case on the merits before the personal jurisdiction issue came before the Second Circuit again after the NY Court of Appeals declined to decide the personal jurisdiction issue.
THIRD	Issue addressed in *dicta* in *Yi v. Maugans*, 24 F.3d 500, 507 (3rd Cir. 1994). Note, however, that some debate whether the Court's discussion of this issue is *dicta* or an alternative holding.	Immediate Custodian Rule Favored	*Suggests* that the warden of the detention facility is the respondent.	**NO**, arguably *dicta* because the Court had already found that the district court lacked subject-matter jurisdiction.
FOURTH	---	---	---	---
FIFTH	---	---	---	---

SIXTH	Issue decided in *Roman v. Ashcroft*, 340 F.3d 314 (6th Cir. 2003). A rehearing petition is pending.	Immediate Custodian Rule Adopted	INS District Director[6] with jurisdiction over the district of confinement. Note: the Court remanded the issue of whether the INS Commissioner and District Director of Cleveland could be proper respondents.	**NO**, as of 11/12/03, the mandate has not issued. The Sixth Circuit has ordered the government to respond to the rehearing petition by 11/12/2003.
SEVENTH	Issue addressed in *dicta* in *Robledo-Gonzales v. Ashcroft*, 342 F.3d 667 (7th Cir. 2003).	Immediate Custodian Rule Favored	*Suggests* that warden of the detention facility is the respondent.	**NO**, Court's discussion was arguably *dicta* because the Court had already found that petitioner was not "in custody" for habeas purposes.
EIGHTH	---	---	---	---
NINTH	Issue decided in *Armentero v. INS*, 340 F.3d 1058 (9th Cir. 2003).	Functional Approach Adopted	Secretary of the Department of Homeland Security and the Attorney General	**NO,** as of 11/12/03, the mandate has not issued. The government's deadline for filing a rehearing petition is 11/24/03 unless extended.
TENTH	---	---	---	---
ELEVENTH	---	---	---	---
D.C.	---	---	---	---

In sum, six circuits have not decided or addressed the issue of whom to sue in an immigration habeas action. Of the six circuit courts that have addressed the issue, only the First Circuit's decision *Vasquez,* which requires suing the superintendent of the detention facility, is final. However, *Vasquez* arguably is only final as to habeas petitioners who are currently detained. The Second Circuit in *Henderson* did not decide the issue. The Third and Seventh Circuits in *Yi* and *Robledo-Garcia,* respectively, arguably addressed the question in *dicta* only. The Sixth Circuit ordered the government to respond to petitioner's rehearing petition in *Roman* by November 12, 2003. In *Armentero*, the Ninth Circuit granted the government's request to extend their deadline for filing a petition for rehearing until November 24, 2003.

[6] The current functional counterpart of the INS District Director is presumably the ICE Field Office Director for Detention & Removal.

Suggested Respondents In Circuits Where The Issue of Whom To Sue In A Habeas Action Has Not Been Decided Or Where The Decision is Not Final

Due to the uncertainty surrounding whom to sue in an immigration habeas action, in circuits where the issue has not been decided or is not final, it is advisable to sue more than one respondent. Because the district court must only have personal jurisdiction over one custodian-respondent to decide the merits of the case, suing more than one respondent increases the petitioner's chances of having the merits of his or her case decided. This advisory suggests individuals who may be appropriate respondents in three circumstances.

Caveat: The suggested respondents to a habeas action set forth in the three circumstances below are general suggestions and may vary depending on the facts of a particular case or developing circuit case law.

Circumstance #1: Where the individual is detained *and* the action is brought in the district of confinement, appropriate respondents may include:

(1) Secretary of the Department of Homeland Security;
(2) Attorney General;
(3) ICE Director; and
(4) ICE Field Office Director for Detention & Removal with jurisdiction over the detention facility.
(5) Warden/superintendent of the detention facility (see issue discussed below).

Circumstance #2: Where petitioner is detained and the habeas petition is filed in a district other than the district of confinement, appropriate respondents may include:

(1) Secretary of the Department of Homeland Security;
(2) Attorney General;
(3) ICE Director;
(4) ICE Field Office Director for Detention & Removal with jurisdiction over the detention facility; and
(5) ICE Field Office Director for Detention & Removal with jurisdiction over the district where the habeas action is filed.
(6) Warden /superintendent of the detention facility (see issue discussed below).

In this situation, we would advocate the functional approach, i.e. that each respondent has the power to release petitioner from the custody he or she contends is unlawful. In addition, counsel may be required to demonstrate that the district court has personal jurisdiction over the ICE Field Office Director for Detention & Removal with jurisdiction over the detention facility (and/or the warden/superintendent) under the long-arm statute of the state where the habeas action is filed.

Example: If petitioner is detained within the Eastern District of Louisiana, the ICE Field Office Director for Detention & Removal with jurisdiction over the detention facility is

the New Orleans ICE Field Office Director for Detention & Removal. If the habeas petition is filed in the Southern District of New York, the district court will examine whether it has personal jurisdiction over the New Orleans ICE Field Office Director for Detention & Removal under the New York long-arm statute. If the district court (or the Second Circuit) adopts the immediate custodian rule, a failure to demonstrate that personal jurisdiction exists over the out-of-state respondent, i.e. the New Orleans ICE Field Office Director for Detention & Removal, could result in dismissal of the petition. In the alternative, the Southern District of New York could transfer the habeas petition to the Eastern District of Louisiana, which has personal jurisdiction over the New Orleans ICE Field Office Director for Detention & Removal based on his presence within that jurisdiction.

Issue: **Suing the warden/ superintendent in habeas actions outside the First Circuit.** The First Circuit has adopted the immediate custodian rule and has held that the superintendent of the detention facility is the proper respondent to an immigration habeas action. The Third and Seventh Circuits, in *dicta*, have implicitly expressed approval of the immediate custodian rule and *suggested* that the proper respondent is the warden of the detention facility. AILF disagrees with applying the immediate custodian rule in the immigration context (see n. 7, *infra*), but recognizes that practitioners within *or* outside of the First Circuit may decide to sue and serve the warden/superintendent of the detention facility out of an abundance of caution.

Circumstance 3#: Where petitioner is *not detained,* appropriate respondents may include:

(1) Secretary of the Department of Homeland Security;
(2) Attorney General;
(3) ICE Director;
(4) ICE Field Office Director for Detention & Removal who is compelling, or will compel, petitioner to surrender for removal; and
(5) ICE Field Office Director for Detention & Removal with jurisdiction over the district where the habeas action is filed (if not the same as the ICE Field Office Director for Detention & Removal compelling surrender).

In this situation too, we would advocate the functional approach, i.e. that each respondent has the power to release petitioner from the custody he or she contends is unlawful. In addition, counsel may be required to demonstrate that the district court has personal jurisdiction over the ICE Field Office Director for Detention & Removal who is compelling, or will compel, petitioner to surrender for removal under the long-arm statute of the state where the habeas action is filed.

Example: Petitioner has been ordered removed while detained within the Western District of Louisiana. He is subsequently released from detention and returns to his home in the Northern District of Illinois. The ICE Field Office Director for Detention & Removal that is compelling (or will compel) his surrender is the New Orleans ICE Field Office Director for Detention & Removal. If the habeas petition is filed in the Northern

District of Illinois, the district court will examine whether it has personal jurisdiction over the New Orleans ICE Field Office Director for Detention & Removal under the Illinois long-arm statute. If the district court (or the Seventh Circuit) adopts the immediate custodian rule, a failure to demonstrate that personal jurisdiction exists over the out-of-state respondent, i.e. the New Orleans ICE Field Office Director for Detention & Removal, could result in dismissal of the petition. In the alternative, the district court could transfer the petition to the Western District of Louisiana, which has personal jurisdiction over the New Orleans ICE Field Office Director for Detention & Removal based on his presence within that jurisdiction.

2. Mandamus Actions

The Mandamus Act, 28 U.S.C. § 1361, authorizes actions in district court "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." In the immigration context, mandamus actions generally seek to force DHS to adjudicate an application for an immigration benefit, for example, a visa petition, adjustment of status application, or naturalization application.

The named defendant depends on the type of action the mandamus suit seeks to compel. For example, a mandamus action to compel adjudication of an application for a benefit pending at a USCIS district office, should name the DHS Secretary, the USCIS Director, and the USCIS District Director as defendants. A mandamus action to compel adjudication of an application for a benefit pending at a USCIS service center, should name the DHS Secretary, USCIS Director, and the Service Center Director as defendants.

The procedure for how to file a mandamus action and summary of relevant case law are discussed in greater detail in AILF's Practice Advisory entitled, *Mandamus Actions: "How To" and Summary of Relevant Case Law* (http://www.ailf.org/lac/lac_pa_071803.asp).

3. Actions under the Federal Tort Claims Act

The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680 authorizes monetary recovery for damages, loss of property, personal injury or death in suits where damages occurred as a result of the "negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1326(b). Section 2680(h) of the FTCA permits suits for assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights committed by "investigative or law enforcement officers of the United States Government." An investigative or law enforcement officer is defined as an individual "empowered by law to execute searches, seize evidence, or make arrests for violation of Federal law." *Id.* This definition includes DHS officers. INA § 287(a)(2) (authorizing warrantless arrests by DHS officers).

Before an FTCA action may be filed in district court based on the actions or omissions of DHS officers, the claimant must present a written claim to DHS within two years after the claim accrues. 28 U.S.C. § 2401(b). To AILF's knowledge, there are currently no regulations or written guidance for public distribution regarding where immigration-related FTCA administrative claims should be sent. Therefore, we suggest sending administrative claims to the Office of General Counsel and the DHS agency employing the officer at the time of the act or omission that forms the basis of the claim. Addresses are provided in Appendix A. In addition, because of the ambiguity surrounding this issue, counsel may decide to also send copies of the administrative claim to the agency's regional/local counsel. As compliance with the statute of limitations is jurisdictional, it is advisable to serve the administrative complaint on all appropriate offices.

Mailing the claim via certified or registered mail provides independent evidence of proof of compliance with the two-year statute of limitations for administrative claims.

If DHS denies the written claim, the claimant must file suit in district court within six months after DHS mails the notice of denial. 28 U.S.C. § 2675(a). DHS' failure to respond to the claim within six months may be deemed a constructive denial of the claim under 28 U.S.C. § 2675(a).

A complaint under the FTCA must name the United States as the defendant, not DHS or any of its component entities. 28 U.S.C. § 1326(b).

For further information on FTCA claims, *see Obtaining Remedies for INS Misconduct*, by Lee J. Teran, Immigration Briefings (May 1996).

4. *Bivens* Actions

In *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), the Supreme Court held that petitioners are entitled to recover damages for injuries resulting from Fourth Amendment violations by federal officials. In *Davis v. Passman*, 442 U.S. 228 (1979), the Court extended such right to recover damages to violations of the Due Process Clause of the Fifth Amendment. Actions based on the tort theory set forth in *Bivens* and its progeny are filed in district court under 28 U.S.C. § 1331 (federal question jurisdiction).

A *Bivens* action can only be brought against a government officer in his/her individual capacity, and not against the United States, a government agency, or an officer acting in their official capacity. Superior or supervisory officers may also be named in the complaint where liability for the alleged injury can be linked to the actions or inactions of the senior officer.

For further information on FTCA claims, *see Obtaining Remedies for INS Misconduct*, by Lee J. Teran, Immigration Briefings (May 1996).

PART II: WHOM TO SERVE

A. Service of the Summons and Complaint

Once the summons and complaint have been filed with the district court, the clerk should issue a case number. The clerk usually stamps the case number on the summons and returns the summons to counsel. The file-stamped summons is then copied for service.

Federal Rule of Civil Procedure 4(i) sets forth the requirements and manner of service of the summons and complaint in suits against the US and its agencies and officers sued in their official capacity. The rule also allows for reasonable time to cure deficiencies in service provided that the United States attorney *or* the Attorney General has been served. Fed. Rule. Civ. Proc. 4(i)(3).

1. Service on the United States

In suits against the United States, Fed. Rule. Civ. Proc. 4(i)(1)(A)-(C) provides that counsel must serve the summons and complaint on the:

* local US Attorneys Office either by in person delivery to the US Attorney, an Assistant US Attorney or clerical employee designated to accept service *or* by registered or certified mail to the civil process clerk; and

* US Attorney General by registered or certified mail (to the address in Appendix A); and

* if the action is attacking the validity of an order of an officer or agency *not named as a party to the action*, the US Agency or Officer by registered or certified mail. S*ee* Part II, section A.2 below for information on how to serve US Agencies and Officers.

  Habeas petitions are often attack the validity of a final removal order issued by the Board of Immigration Appeals although the Board is not usually a named respondent-defendant. To serve the Board, send a copy of the summons and complaint by registered or certified mail to the Executive Office for Immigration Review at the address in Appendix A.

2. Service on an Agency or Officer of the United States

To serve a US Agency or officer, Federal Rule Civil Procedure 4(i)(2) provides that counsel must serve the summons and complaint on the:

* the United States as explained above in Part II, section A.1 above; and

* US Agency or Officer by registered or certified mail. To serve DHS, USCIS, ICE, or any DHS employee in their official capacity, including Secretary Ridge,

the regulations state that the summons and complaint should be sent to the Office of the General Counsel at the address in Appendix A. [7]

3. Service on Individuals Within a Judicial District of the United States

To serve an individual within a judicial district of the United States, Federal Rule of Civil Procedure 4(e) provides:

"Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, . . ., may be effected in any judicial district of the United States:

(1) pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State; or

(2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process."

Unlike other litigation against the government, because *Bivens* actions are filed against individuals and not against a government agency, counsel is required to serve each individual defendant to a *Bivens* action. If the individual defendant is within the judicial district of the court where the action is filed, Federal Rule of Civil Procedure 4(e) applies.

The regulations say that "summonses or complaints directed to Department employees in connection with legal proceedings arising out of the performance of official duties may. . . be served upon the Office of the General Counsel." 6 C.F.R. § 5.42(c).[8] As *Bivens* actions are "legal proceedings arising out of the performance of official duties," service on the Office of General Counsel is also advisable.

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[7] 6 C.F.R. § 5.42(a) provides that "[o]nly the Office of the General Counsel is authorized to receive and accept on behalf of the Department summonses or complaints sought to be served upon the Department, the Secretary, or Department employees."

[8] 6 C.F.R. § 5.42(c) reads as follows:

> The Except as otherwise provided § § 5.42(d) and 5.43(c), the Department is not an authorized agent for service of process with respect to civil litigation against Department employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to Department employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon the Office of the General Counsel.

B. Return of Service and Serving Future Pleadings

After the summons and complaint has been served, generally, counsel will complete the section on the back of the summons entitled "return of service" by filling in the names, positions and addresses of the parties served and the method of service. Generally, the original summons (with the return of service section on the back completed) is then filed with the district court and constitutes proof of service.

Attorneys from the local US Attorneys Office or the Office of Immigration (a division within the Civil Division of the Department of Justice) generally represent the government. Where counsel represents a party, including the government, future pleadings must be served on counsel "unless service upon the party is ordered by the court." Fed. R. Civ. Proc. 5(b).[9] All future pleadings after the filing of the complaint must be filed with a certificate of service. Fed. R. Civ. Proc. 5(d). A sample certificate of service is attached as Appendix B.

PART III: PROCEDURAL ISSUES

A. Adding or Removing Respondents-Defendants After The Initial Filing

Federal Rule of Civil Procedure 21 governs adding or removing a respondent-defendant after a habeas petition or a complaint is filed. The need to add or remove respondents may arise in the First Circuit and other circuits that may adopt the immediate custodian rule after this advisory is issued. Under the immediate custodian rule, if a habeas petitioner has been transferred to different detention facility after the initial habeas petition was filed, the ICE Field Office Director for Detention & Removal of the new district of confinement and/or the warden of the new detention facility may need to be added in place of the original respondents.

Federal Rule of Civil Procedure 21 states that "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." Thus, to add or remove a respondent, counsel should make a motion for leave to amend the petition to add the appropriate party.

B. Substituting Respondents-Defendants After The Initial Filing

Under Federal Rule of Civil Procedure 25(d), when a public officer is sued in their official capacity and subsequently dies, resigns, or otherwise ceases to hold office, the officer's successor is automatically substituted as a party. Future pleadings should name the officer's successor, however, any misnomer will be disregarded unless it affects substantial rights.

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[9] Fed. R. Civ. Proc. 5(b) further provides that service of future pleadings on opposing counsel may be completed by delivery, as defined under the rule, or mail. Service by mail is complete upon mailing.

Although Federal Rule of Civil Procedure 25(d) provides for substitution as a matter of law, counsel may wish to notify the court of the change by inserting a footnote after the change in the case caption and briefly explaining the change.

APPENDIX A: List of Service Addresses

Attorney General:

John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Office of the General Counsel:

Office of the General Counsel
U.S. Department of Homeland Security
Washington, DC 20258

Board of Immigration Appeals:

United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Clerk
Board of Immigration Appeals
5201 Leesburg Pike, Suite 1300
Falls Church, VA 22041

Administrative Claims under the Federal Tort Claims Act: *In addition to sending the administrative claim to the Office of General Counsel at the above address*, send a copy of the administrative claim to the appropriate agency employing the officer at the time of the act or omission at the following addresses: [10]

If ICE employed the officer, send the claim to:
Michael K. Cameron, Chief of Commercial and Administrative Law Division
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
United States Department of Homeland Security
425 I Street NW, Room 6100
Washington, DC 20536

If USCIS employed the officer, send the claim to:
Peter Gregory, Chief of Commercial and Administrative Law Division

[10] Because of the ambiguity surrounding the issue of where to file an administrative claim under the Federal Tort Claims Act, it may be worthwhile to also send copies of the administrative claim to the agency's regional/local counsel.

Office of the Principal Legal Advisor
Bureau of Citizenship and Immigration Services
United States Department of Homeland Security
425 I Street NW, Room 6100
Washington, DC 20536

If CBP employed the officer and

(1) The amount of the claim is $10,000 or less, send the claim to:
Assistant Chief Counsel
Office of Chief Counsel
U.S. Customs and Border Protection
P.O. Box 68914
Indianapolis, IN 46278

(2) The amount of the claim is greater than $10,000, send the claim to U.S. Customs and Border Protection at the local port, land border, or airport where, or in connection with the activities of which, the incident occurred.

APPENDIX B: **Sample Certificate of Service***

CERTIFICATE OF SERVICE

On **[Date]**, I, **[Name]**, the undersigned, served the within:

[Title of Document/s]

on each person/entity listed below addressed as follows:

[Manner of Service]
For example: (by regular mail/ by overnight mail/ by hand delivery)
[Name]
[Name of Entity]
[Address]

I declare under penalty of perjury that the foregoing is true and correct. Executed on **[Date]** at **[City]**, **[State]**.

_____
[Name]
[Title]

***Note:**
In district court, a certificate of service may be attached to a pleading or it may be filed as a separate document. In addition, many district courts require pleading format. Counsel should check local district court rules regarding the format and contents of a certificate of service.