



A LEGAL GUIDE FOR **INS DETAINEES**

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OVERVIEW

Welcome to A Legal Guide for INS Detainees. The American Bar Association's Immigration Pro Bono Development and Bar Activation Project created this manual. The manual is for individual detainees interested in understanding the different ways to complain and remedy problems affecting you in Immigration and Naturalization Service (INS) custody.

This manual is intended for educational and informational purposes only. Nothing contained in this book is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own attorneys. This booklet was not prepared by the Immigration and Naturalization Service (INS), or by any other part of the United States Government. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and accordingly, should not be considered as representing the official policy of the American Bar Association.

The following are possible complaint processes to pursue if and when you experience problems related specifically to the INS Detention Standards as well as other types of problems. At any time during the complaint process you should feel free to send your questions or concerns to: American Bar Association, ATT: Immigration Pro Bono Development and Bar Activation Project, 740 15th Street, NW, Washington, DC 20005-1022, tel. 202/662-1008, fax 202/638-3844, or by email at nugentc@staff.abanet.org. **PLEASE DO NOT SEND ORIGINAL DOCUMENTS. NO COLLECT CALLS PLEASE.**

HOW TO COMPLAIN EFFECTIVELY: STEP-BY-STEP

There are many ways for immigration detainees to complain about their access to attorneys and legal materials, treatment and conditions of confinement to many different parts of United States government, the legal system and society. Some types of complaints are better suited for the Immigration and Naturalization Service (INS) such as when they concern specific provisions under the INS Detention Standards. Other types of complaints are better suited for the legal system such as when they involve officer abuse and misconduct, including border patrol. Complaining to one entity or agency does not necessarily limit you from complaining to another: You are free to complain to as many people as possible and as frequently as possible to try to correct the problem provided that your complaints are true, correct and not frivolous (that is, they are serious). You will have to determine the best way to complain about your individual problem. You are encouraged to speak with a lawyer when possible in deciding how to complain.

Many times, detainees complain that their complaints go unanswered or do not bring them a solution. Sometimes this is because the complaint processes may not be perfect; other times, it is because detainees have not given enough- or the right- information for officials to fully investigate the complaint.

It is important to be as specific and detailed as possible when you complain in writing to help the reader understand what exactly occurred to you. You may think about your complaint as creating a movie about your experiences in INS detention so that the reader can fully understand what has happened to you.

Therefore, whenever and to whomever you complain, you may consider the following recommendations:

- Provide a title to each event alleged so that, like a movie, the reader understands what your complaint is exactly about from the beginning. For example, "INS failed to provide me with adequate medical treatment".
- For each event alleged, you may then provide all relevant (important) details including who, what, where, when and why and what happened step-by-step;
- Include, the time, date and location of any event(s) alleged;
- Identify any and all actors and witnesses to the event and include their names, INS A numbers, country, and witness phone numbers and addresses both inside the facility and phone number and address information once released to the U.S. or removed to their country;
- Identify what was said and what specifically was done to you, by whom (officials or others) and if you know, or think you know, why the incident occurred state the reasons clearly;

- If you do not know the names of the officials or others about whom you are reporting, describe their physical characteristics (height, weight, color of hair) and the clothing they were wearing (color of uniform and insignia);
- Describe the physical and psychological impact or effects of the actions taken on you, if appropriate, and, if injured or hurt, whether you have received medical or mental health care, if you are on medication (what kind) and what the doctor's evaluation and diagnosis is of your current situation.

If you have been injured or hurt, you should ask officials to take photographs immediately of your injury or contact an attorney for purposes of taking photographs. If you are taken to the medical unit of the detention facility or to the hospital, they may also be able to take pictures to help you document your injuries.

Make your written request specific

- Communicate to the person designated by the INS at your facility the problems that you personally are experiencing regarding the rights you have under the Detention Standards. Be sure to provide the time, date and location of the event and to identify any witnesses to the event. If you do not know the names of the officials about whom you are reporting, describe their physical characteristics (height, weight, color of hair) and the clothing they were wearing (uniform color or insignia, for example). **It is important that you give as much detail as possible.**
- In most cases, the person designated by the INS to receive your complaints is the INS Officer-in-Charge (OIC) at the facility. However, at contract facilities that do not have on-site INS staff it may be the district office. Ideally, you should make your complaint in **writing** with copies sent to the INS District Director and Assistant District Director for Detention & Removals. Attached as Appendix 1 is a list of INS Office Locations for such correspondence. **Please write LEGAL MAIL on your envelope.**
- It is highly recommended that any communication regarding compliance with Detention Standards be in **writing** in order to document such complaints. However, in the case that the communication is oral, you should then follow up in writing immediately to start the official complaint process. Always remember to keep a copy of your complaint so that you can refer to it later, if necessary.

Contact the American Bar Association (ABA)

If you receive no response or a negative response to your complaint you are dissatisfied, please send the ABA a copy of the Detention Standards Complaint Form attached as Appendix 2 and all relevant documentation for our reference. The ABA gathers such documentation for our understanding of situations confronting individual detainees. Please understand that the ABA however cannot provide you with individualized legal assistance, representation, or referral in your complaint. **Please write LEGAL MAIL on your envelope.**

You may also fill out and return the ABA's Confidential Questionnaire regarding Conditions in INS Custody also attached as Appendix 2. **Please write LEGAL MAIL on your envelope.**

**A BRIEF SUMMARY OF THE
INS DETENTION STANDARD
DETAINEE GRIEVANCE (COMPLAINT) PROCEDURES**

The following is a summary of the procedure recommended by the Immigration and Naturalization Service (INS) to address detainee grievances (complaints). The INS' Detention Standards' Detainee Grievance Procedure is attached for your reference as Appendix 3. If this procedure proves unsuccessful, you are free to choose other remedies outlined in "Other Remedies under Administrative and Federal Law."

INFORMAL OR ORAL GRIEVANCE

The informal grievance procedure allows you the opportunity to try to resolve your problem before proceeding with the more time-consuming formal procedure, which requires that all communication between you and the facility to be in written form. For this grievance process:

- The Officer-in-Charge (OIC) will establish procedures for you to orally (verbally) present the issue of concern informally to *any* staff member;
- **You must present your complaint at any time within five days of the event;**
- You may have an interpreter or translator assist you if you ask for language assistance; and
- At any time you are free to terminate the informal grievance process, and proceed directly to the formal grievance stage.

FORMAL OR WRITTEN GRIEVANCE (DETAINEE GRIEVANCE FORM)

The OIC must allow you to submit a formal, written grievance to the facility's grievance committee. See Appendix 3 Detainee Grievance Form as a model (before filing this form, please see if your facility uses this form or another specialized form). You may take this step because you are not satisfied with the outcome of the informal process, or because you have decided not to proceed with the informal procedures. For the grievance process:

- You may be assisted by a detainee in preparing the written grievance if you so desire;
- You may file a formal written grievance;
- **You must file the grievance no later than five days after the event or after the unsuccessful conclusion of an informal grievance;**
- It is best to file a complaint or grievance as soon as possible after the incident.

THE DECISION ON YOUR GRIEVANCE:

The department head will offer a decision on your grievance. If you do not accept the decision as a reasonable solution, you must appeal to a Detainee Grievance Committee (DGC).

If you decide to appeal to the DGC:

- The DGC will convene to study the grievance within five working days of your “appeal”; and
- You have the opportunity to appear before the DGC to present your case, answer questions and respond to conflicting evidence or testimony;
- The DGC must provide you with a response to the grievance in writing within five working days; and
- The written response will state the decision and the reasons for making the decision.

If you do not accept the grievance committee’s decision, you may “appeal” the decision to the Officer In Charge (OIC).

If you appeal the DGC’s decision to the OIC:

- The OIC will provide a written decision within five days of receiving the appeal;
- The decision will explain the reasoning involved in making the decision; and
- The OIC may uphold the grievance committee’s decision, modify the decision or reverse it.

The OIC’s decision is final and cannot be appealed.

EMERGENCY GRIEVANCES

An emergency grievance involves an **immediate threat to your safety or welfare**.

You may present your emergency grievance directly to the INS Supervisory Detention Enforcement Officer (SDEO) or an equivalent official.

APPEAL

If you do not accept the Detainee Grievance Committee’s decision, you may appeal it to the OIC.

The OIC will provide the detainee a written decision within five days of receiving the appeal.

The decision will be in writing and will contain a discussion of the decision and the facts upon which it is based.

The OIC's decision is final; it cannot be appealed.

DETAINEE HANDBOOK

The facility shall provide each detainee, upon admittance, a copy of the detainee handbook or equivalent. If you are being detained in a facility under an Inter-Governmental Service Agreement (IGSA Facility), for example a county jail, such a handbook is not necessarily provided. However, the facility should have its grievance policy and procedures available upon your request.

The grievance section of the detainee handbook will provide notice of the following:

1. The opportunity to file a grievance, both informal and formal.
 2. The procedures for filing a grievance and appeal, including the availability of assistance in preparing a grievance.
 3. The procedures for resolving a grievance or appeal, including the right to have the grievance referred to higher levels if you are not satisfied that the grievance has been adequately resolved.
- The opportunity to file a complaint about officer misconduct directly with the Justice Department by calling 1-800-869-4499 or by writing to **Department of Justice, P.O. Box 27606, Washington, DC 20038-7606. Please write LEGAL MAIL on your envelope.** See also below Other Remedies Under Administrative and Federal Law.

RETALIATION

The INS Detention Standards' Detainee Grievance Procedures (Appendix 3) clearly states that staff will not harass, discipline, punish, or otherwise retaliate against any detainee lodging a complaint. See page 4 of Appendix 3.

However, if an individual establishes a pattern of filing nuisance complaints or otherwise abusing the grievance system, staff may refuse to process subsequent complaints.

COMPLAINT PROCESSES UNDER THE INS DETENTION STANDARDS

The INS complaint process described above is a vehicle detainees and their advocates can use to seek correction of specific violations under the INS Detention Standards. To make effective use of this complaint process, detainees should be familiar with their limited rights under the INS Detention Standards. The following provides you with background on the Detention Standards.

I. BACKGROUND ON THE INS DETENTION STANDARDS

In November, 2000, the Immigration and Naturalization Service (INS) announced the creation of Detention Standards to provide safe, secure and humane conditions for all people in INS custody. There are 36 Detention Standards, covering areas from legal access to religious and medical services, marriage requests to recreation.

Highlights of the standards include:

*Attorneys can call ahead to a facility to ascertain whether an actual or prospective client is detained at the facility;

*There will be eight hours of uninterrupted legal visitation with privacy for confidentiality seven days a week and meals provided to detainees meeting during meal times;

*Detainees will not be strip-searched after attorney-visitation absent reasonable suspicion for contraband with the caveat that at the few non-INS facilities which has blanket strip-search policies, the client has the option of requesting a non-contact visit with his/her attorney to be exempted from a strip-search;

*Detainees can make free, unmonitored phone calls with privacy for pro bono representation and to confer with consular officials through preprogrammed phone technology with the recognition that this technology must still be implemented at the majority of non-INS facilities (in the interim, you may request to use the phone for permitted calls- see Appendix 4);

*Detainees have access for at least one hour per day to law libraries with relevant immigrant materials and typewriters. Forms and copying are available to detainees to help prepare their cases. Detainees are further allowed to assist one another in preparing their cases gratis;

*Attorneys can provide Know Your Rights presentations to groups of detainees of at least one hour duration every day of the week to educate them about their legal rights and remedies in their cases;

*Family and friends can visit with detainees for at least thirty minutes per visit on weekends and holidays and detainees will be able to see their children;

*Detainees may exercise their religion free from harassment and participate in group religious activities. There will be a chaplain program first implemented at INS Service Processing Centers to provide access to religious services and individual counseling.

The Standards are taking effect as of January 2001 at the following 18 INS-owned and operated Service Processing Centers (SPCs) and contract detention facilities (CDCs), e.g., Corrections Corporation of America and Wackenhut facilities and 10 county jails:

1. Aguadilla Service Processing Center (SPC), Aguadilla, PR
2. Krome SPC, Miami, FL
3. Batavia SPC, Batavia, NY (Buffalo)
4. Port Isabel SPC, Los Fresnos, TX (Harlingen)
5. El Centro SPC, El Centro, CA
6. San Pedro SPC, Los Angeles, CA
7. El Paso SPC, El Paso, TX
8. Varick St. SPC, New York, NY
9. Florence SPC, Florence, AZ (Phoenix/Tucson)
10. Wackenhut, Aurora, CO
11. Wackenhut, Jamaica, NY (New York City)
12. Corrections Corporation of America, Houston, TX
13. Corrections Corporation of America, Elizabeth, NY
15. Corrections Corporation of America, San Diego, CA
16. Seattle Contract Detention Facility, Seattle, WA
17. Federal Detention Center, Oakdale, LA
18. Corrections Corporation of America, Eloy, AZ (Phoenix/Tucson)
19. Turner Guilford Corrections, Miami, FL
20. York County Jail, PA
21. Mira Loma, CA
22. DeKalb County Jail, DeKalb, GA
23. Bradenton Detention Center (Manatee County), FL
24. Kern County Jail, Lerdo, CA (Bakersfield)
25. Hudson County Jail, NJ
26. Berks County Jail, PA
27. Dallas County Jail, Dallas, TX
28. Yuba County Jail, CA

The INS is phasing in implementation of the Detention Standards at all other facilities holding detainees in 2002. Other facilities may adopt these Standards as written or create their own procedures that meet or exceed the objective represented by each Standard.

The Standards may be available in your law library or summarized or incorporated into your detainee handbook. In Appendix 4, you will find summaries of the most relevant Standards as background information for you.

While the Standards provide for a grievance procedure, you may be in a facility where the Standards have not gone into effect. Or you may wish to complain about an issue that is not covered by the Standards. Or you may have not had success using the Standards grievance procedure. In such cases, you may consider filing complaints with state or local authorities or utilizing alternate remedies under administrative and federal law. **Some states have their own commissions or bodies to monitor the treatment of prisoners; for example, the Texas Commission on Jail Standards; where you may also complain if the Standards do not apply to your facility.**

II. ADMINISTRATIVE COMPLAINTS

The purpose of filing an administrative complaint is to establish a record of abuses by the agency. In some instances, such complaints can result in disciplinary action against the officer including a reprimand or punishment. Complaints may also result in more careful supervision and/or closer adherence by agents to legal policies and practices. Please be advised that no money damages are awarded in administrative complaints.

There are three different types of administrative complaints that can be filed against government employees involved in immigration issues:

A. COMPLAINTS WITH THE OFFICE OF THE INSPECTOR GENERAL

Any misconduct or abuse conducted by an INS, border patrol and/or jail official involving a violation of a constitutional, civil, or statutory right, as well as issues of common courtesy (e.g. rude behavior by an officer), can be addressed by filing a complaint with the Department of Justice's Office of the Inspector General (OIG).

The OIG deals with detainees' complaints in one of four ways:

- 1) initiates a full investigation;
- 2) initiates a preliminary investigation;
- 3) refers the matter to the INS (Office of Internal Audit [OIA]) "for appropriate investigation, inquiry, or managerial oversight," with a requirement that the INS provide OIG with a follow-up report; or
- 4) refers the matter to the INS for information (in this case no investigation follows the referral to INS).²

(1) Where to file the complaint to the OIG?

An OIG complaint should be filed in writing and may be presented to OIG headquarters at:

Office of the Inspector General
Investigations Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Suite 4706
Washington, D.C. 20536-0001
Please write LEGAL MAIL on your envelope.

² Bill Ong Hing, Border Patrol Abuse: Evaluating Complaint Procedures Available to Victims, Georgetown Immigration Law Journal, Fall, 1995.

An OIG complaint pertaining to violation of INS or Border Patrol Enforcement Standards (e.g., 8 C.F.R. 287.8) can be filed at:

Office of the Inspector General
U.S. Department of Justice
P.O. Box 27606
Washington, D.C. 20038-7606
Please write LEGAL MAIL on your envelope.

Note: You may have an outside person file a complaint on your behalf, i.e. an attorney, family member, non-governmental organization (NGO) or other outside source.

The Office of the Inspector General also has a toll-free complaint telephone line. The message is in both English and Spanish. The OIG toll free hotline number is 1-800-869-4499.

Tip: This line is usually busy and if you do get through, it is an automated line that directs you to file your complaint to the above mailing address. When filing your written complaint, you may explain that you did attempt to call the hotline but that you were unable to speak with anyone about your complaint.

If you have access to computers and the internet, you may also try to email OIG at oig.hotline@usdoj.gov or inspector.general@usdoj.gov

(2) How to File?

No specific forms are necessary to file a complaint with the OIG. The written complaint can be filed by mail at the address listed above; by fax at 202/616-9898 or by email at oig.hotline@usdoj.gov or inspector.general@usdoj.gov

If the complaint is for conduct that may result in criminal prosecution or in a civil rights violation, the case will be referred to the Civil Rights Division (CRD) of the Department of Justice.

After receipt of the complaint, it is reviewed by the Investigations Division of the Office of the Inspector General. During the investigation of the complaint, the Office of the Inspector General will sometimes attempt to interview the detainee. If the detainee is considering further legal action such as a lawsuit, he or she should talk with an attorney before the interview.

(3) How to follow-up?

It is the policy of the Office of Inspector General not to give out any information about a case that is under investigation. However,

a final decision on the case should be sent to the detainee when the investigation has been completed.

When an administrative complaint is filed with the OIG, it is often forwarded to the INS Office of Internal Audit (OIA) within one week, however some cases can take up to 30 days or several months, when a preliminary investigation is taking place.

The INS Office of Internal Audit and Office of Inspector General share the responsibility for investigating complaints. The INS and OIG divide up which division will be the investigating agency for a particular complaint.

To obtain information about the status of the case or to find out which branch of the Department of Justice is handling the case, a detainee must file a request under the Freedom of Information Act, by sending the request to the following address:

Paralegal Specialist
Attn: FOIA Requests
Office of the Inspector General
950 Pennsylvania Avenue, N.W., Room 4261
Washington, D.C. 20530-0001
Please write LEGAL MAIL on your envelope.

Requests may be made in any written form. The request should adequately describe the specific information sought.

Detainees are also welcome to request copies of their A# immigration files including records pertaining to their detention from the INS FOIA/PA Unit through Form G-639 attached hereto as Appendix 5 and list of FOIA/PA Units. INS will conduct a search for the requested records with a reasonable amount of effort. A requester may be required to pay fees for searching, reviewing, and copying records. A requester will be notified beforehand if fees will exceed \$25.00.

B. OFFICE OF INTERNAL AUDIT (OIA)

Internal investigations are handled by the INS Office of Internal Audit (OIA) which is responsible for processing and investigating complaints of misconduct or abuse made against INS employees. OIA's phone number in Washington, DC is 202/514-5765. However, all complaints must be submitted in writing.

(1) How to file?

The INS Office of Internal Audit has its own form for filing complaints - FORM I-847 – (see Appendix 6). This form comes with a pre-printed address for the INS office of the Internal Audit and needs only to be filled out and mailed.

Once a complaint is received, the INS Office of Internal Investigations reviews it.

Depending upon the seriousness of the matter, OIA will investigate the complaint; refer it to another agency for investigation if appropriate; or referred to field management for inquiry (with the requirement to report the results to the OIA).

Complaints lacking viable investigative leads or which represent matter appropriately addressed by local management will be referred for information or any action deemed appropriate.

More serious or potentially criminal matters are referred to the Department of Justice's Office of the Inspector General (OIG). The OIG in fact returns the majority of such cases to INS for further action.

To be sure that a complaint is received and handled appropriately, it is a good idea to file it with both offices (OIA and OIG). Always follow-up to find out which office will be handling it.

C. WHAT SHOULD BE INCLUDED IN THE COMPLAINT?

Please consider the following when preparing a complaint to the OIG or OIA:

- The complaint should provide a full and accurate statement of what happened to you;
- Describe in detail the behavior of the agent(s) or officers who you think were particularly offensive;
- Describe the officer involved if the name and badge number is not known;
- Be particularly careful on facts such as the time of the day, the exact location, date, the number of other officers who were there, etc.;
- Include documents and statements from witnesses when possible and when they support your complaint; and
- Be strategic about deciding whether to include sworn statements, so that there will be no risk of conflicting testimony if a lawsuit is later brought.

In cases of people providing written statements who face imminent removal, a sworn statement is stronger evidence than an un-sworn statement to establish and/or corroborate an instance of abuse of misconduct.

D. OFFICE OF PROFESSIONAL RESPONSIBILITY

The Office of Professional Responsibility (OPR) reviews allegations of misconduct made against Department of Justice attorneys and judges, including INS trial attorneys and Immigration Judges. OPR's phone number in Washington, DC is 202/514-3365.

(1) **Where to file?**

The complaint and supporting information should be mailed to the following address:

Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Room 4304
Washington, D.C. 20530
Please write LEGAL MAIL on your envelope.

(2) **How to file?**

No particular forms are required to file a complaint with OPR. You must, however, include names and titles of the individuals who carried out the misconduct, the details of the allegations including case names, and any other relevant information. The complaint should also include copies of any documentation pertaining to the matter.

II. ACTIONS BROUGHT AGAINST FEDERAL OR STATE OFFICIALS

In cases where there are significant injuries, a lawsuit for money damages may be appropriate. If a violation is particularly outrageous, or results in serious harm, the individual should speak with an attorney about the possibility of filing a lawsuit. **IN CASES WHERE SERIOUS INJURIES HAVE RESULTED, DO NOT FILE AN ADMINISTRATIVE COMPLAINT UNTIL YOU HAVE SPOKEN TO AN ATTORNEY.**

A. FEDERAL TORTS CLAIMS ACT

The Federal Torts Claims Act (FTCA), 28 U.S.C. § 2671 et seq., provides a judicial remedy for tortious actions of the employees of the United States.

Please consider the following facts about FTCAs:

- An FTCA complaint is a suit against the United States for the wrongful conduct of its employees;
- The individual government employees are not named as defendants;
- The FTCA includes claims of negligence, as well as the intentional torts of assault and battery, false imprisonment, false arrest, abuse of process, and malicious prosecution when the conduct is committed by investigative or law enforcement officers, including INS and Border Patrol agents;
- State law determines whether a cause of action for one of these torts exists;
- The FTCA provides for a specific waiver of sovereign immunity for personal injury caused by the negligence or wrongful act of omission of any employee of the government while within the scope of his office or employment. The government may be liable for failing to prevent the intentional tort of a non-employee under its supervision. *U.S. v. Shearer* 473 U.S. 52, 56 (1985); and
- The United States is not liable for the negligence of an independent contractor operating a detention facility, but may be liable for the negligent placement of an inmate at the contract facility. *Logue v. U.S.*, 412 U.S. 521, 530-33 (1973).

Prior to filing a lawsuit in federal court, you must file a written claim against the United States.

The claim is filed with the governmental agency whose employees or officers were engaged in the conduct. No particular form is required.

The claim should state the relevant facts and each legal theory. The administrative complaint should further state the amount of damages sought. Any subsequent suit is limited to this amount.

The claim must be submitted within two (2) years of the time the action accrues. The claimant must bring an action in federal court within six months after the claim is denied. If the agency does not decide the claim within six months, the claimant may treat the claim as denied and file suit.

B. CIVIL RIGHTS STATUTES

The civil rights statutes, 42 U.S.C. 1981, 1983, 1985 and 1986, cover actions against federal and state officials for violation of civil rights (principally equal protection, due process rights and unreasonable search and seizure).

A civil rights suit is filed against a state or federal officer or employee individually for acts committed in his or her official capacity. Municipalities are also liable under sections 1983 and 1985.

A plaintiff can recover actual and punitive damages from an individual defendant but may only recover actual damages from a municipality.

A plaintiff does not have to file an administrative complaint before filing a civil rights lawsuit.

Attorneys should always be aware of qualified immunity doctrine, which may shield a state or federal official from liability when they act in "good faith." *Scheuer v. Rhodes*, 416 U.S. 232, 94 S. Ct. 1683.

- (1) Section 1981.** Section 1981 protects the right to contract, to sue, and to the equal benefit of the law. Many courts have held that section 1981 as amended extends to private discrimination on the basis of citizenship.
- (2) Section 1985 (3).** Section 1985(3) prohibits two or more persons from conspiring to deprive a person or class of persons of equal protection or from exercising any rights or privileges. This section includes both conspiracies under color of law and purely private actions. A plaintiff must prove discriminatory animus based on race or other class-based discrimination.
- (3) Section 1983.** Section 1983 prohibits persons acting under color of law from depriving a person of rights secured by the Constitution or other federal laws. Unlike section 1981 and section 1985, section 1983 requires state action. There are occasions when federal officers working with state or local officials may be liable under section 1983. *Knights of Klu Klux Klan v. East Baton Rouge Parish School Board*, 735 F.2d 895, 900 (5th Cir. 1984).

C. BIVENS CLAIM

A *Bivens* claim is an implied action against individual federal officials for violating the plaintiff's constitutional rights. *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

Unlike the FTCA, where the suit is against the United States, a *Bivens* action is brought only against the federal official in his or her individual capacity.

Bivens claims may be brought to redress Fourth, Fifth, and Eighth amendment violations.

Bivens is available if Congress has not provided an alternate legal remedy and if no special factors exist that would counsel against implying a remedy.

Bivens actions against immigration officials have been filed to challenge illegal search and seizure, equal protection, due process and the right to interstate travel.

In a *Bivens* action, there is no requirement to first file an administrative complaint.

Plaintiffs can seek punitive damages and can request a trial by jury, neither of which is available in an FTCA case. Furthermore, a *Bivens* claim does not restrict the contingency fee that an attorney may charge. Fees under the Equal Access to Justice Act are not available in a *Bivens* action.

A plaintiff can file both an FTCA and a *Bivens* claim in the same lawsuit. However, the plaintiff cannot recover a monetary judgement against both the United States and the individual officers. Thus, a plaintiff who succeeds on both claims must elect between the two remedies before the entry of judgement.