UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JUANA VILLEGAS,	)	
	)	
Plaintiff,	)	**Civil Action No. 3:09-0219**
	)	
v.	)	**JUDGE HAYNES**
	)	
METROPOLITAN GOVERNMENT OF DAVIDSON COUNTY/NASHVILLE – DAVIDSON COUNTY SHERIFF'S OFFICE, JANET NAPOLITANO, in her official capacity as SECRETARY OF DEPARTMENT OF HOMELAND SECURITY, JOHN DOE 1 JOHN DOE 2, JOHN DOE 3, AND JOHN DOE 4,	)	**JURY TRIAL DEMANDED**
Defendants.	)	

UNITED STATES' MOTION TO DISMISS[1]

COMES NOW THE UNITED STATES OF AMERICA, through the United States Attorney for the Middle District of Tennessee, and moves to dismiss Plaintiff's Complaint with prejudice for failure to state a claim and for lack of subject matter jurisdiction, pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1).

Plaintiff Juana Villegas de la Paz is a citizen of Mexico who has entered the United States illegally at least twice. She is now suing the United States and various state actors for violating her

[1] Janet Napolitano is sued solely in her official capacity as Secretary of the Department of Homeland Security. "Official-capacity suits ... `generally represent only another way of pleading an action against an entity of which an officer is an agent.'" Kentucky v. Graham, 473 U.S. 159, 165 (1985) (quoting Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 690, n.55 (1978)). See also Fox v. Van Oosterum, 176 F.3d 342, 347 (6th Cir. 1999); Bush v. Rauch, 38 F.3d 842, 848-49 (6th Cir. 1994). In an official capacity suit, the United States not the official is the real party in interest. See Graham, 473 U.S. at 166-67. Therefore, the United States should be substituted for Janet Napolitano as the appropriate federal defendant.

constitutional rights. As to the United States, Mrs. Villegas' claims are barred by sovereign immunity, the Administrative Procedures Act ("APA"), and the REAL ID Act. She also lacks standing to pursue her claims for injunctive and declaratory relief. Therefore, since Mrs. Villegas has no actionable claims against it, the United States respectfully requests that the Court dismiss her complaint as to it with prejudice.

The United States supports this motion with a memorandum of points and authorities, the attached exhibits, and such other and further evidence as the Court will consider.

Respectfully submitted,
EDWARD M. YARBROUGH
UNITED STATES ATTORNEY
MIDDLE DISTRICT OF TENNESSEE

BY: s/Mark H. Wildasin

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing pleading has been served, by electronic means, via the U.S. District Court's system, if registered, otherwise by First Class Mail postage prepaid, this 30th day of April 2009, on:

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