

LEGAL BULLETIN 1.5

Federal Tort Claims Act (FTCA)

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I. Introduction to the Federal Tort Claims Act (FTCA)

A. What Is the Federal Tort Claims Act?

The Federal Tort Claims Act (FTCA) is a statute that was passed by the United States Congress. It allows certain claims to be brought against the United States for the negligent or wrongful acts of its employees. The FTCA says that lawsuits may be brought against the United States for property damage, personal injury, or death “caused by the **negligent or wrongful act or omission** of any employee of the Government while acting within the scope of his office or employment.” You can sue under the FTCA only if you can show that you had a physical injury. 28 U.S.C. § 1346(b).

The provisions of the FTCA are found in Title 28 of the United States Code. 28 U.S.C. §§ 1346(b), 1402(b), 2401(b), and 2671 - 2680. Also, the FTCA regulations can be found in Title 28 of the Code of Federal Regulations. 28 C.F.R. §§ 14.1 - 14.11, 543.30 - 543.32. Finally, if you are a federal prisoner, you should read the Program Statement on the FTCA. P.S. 1320.06.

1. Sovereign immunity – The FTCA is an important statute because you cannot sue the United States unless it consents to be sued. The government’s freedom from being sued is called **sovereign immunity**. United States v. Sherwood, 312 U.S. 584, 586 (1941). The United States can even define the terms and conditions under which it may be sued. Honda v. Clark, 386 U.S. 484, 501 (1967); Soriano v. United States, 352 U.S. 270 (1957). The FTCA waives the federal government’s sovereign immunity when its employees are negligent or wrongful within the scope of their employment. However, the waiver of sovereign immunity is limited, and the terms of the FTCA define the boundaries of suits against the United States. United States v. Orleans, 425 U.S. 807, 814 (1976). These limits are discussed in more detail later on in this bulletin.

B. What Is a Tort?

In general, a tort is a wrong or injury that is committed against someone for which the law provides a remedy. Torts are “civil,” not criminal, in nature. The purpose of a civil lawsuit is to compensate someone for wrongful injuries or damage that they received. This is different from a criminal case, where the main purpose is to *punish* the wrongdoer.

While there are many kinds of torts, they can be generally classified into three groups: **intentional**, **negligent**, or **strict liability**. The focus of the Federal Tort Claims Act is on intentional torts and negligent torts. Each state has different laws (both in its statutes and in its court cases) that set forth what tort claims may be brought. Because the law of the state where the incident occurred will apply to your FTCA claim, you need to look at the law of that state to find out exactly what is required in order to prove your claim.

1. Intentional torts – An intentional tort is broadly defined as a deliberate act that causes harm to another.

The person must **intend** to do the act that causes the harm. Examples of intentional torts are: assault, battery, false imprisonment, false arrest, and malicious prosecution.

2. Negligence – Someone has been negligent if they have not used the amount of care that a reasonable person would have used in the same situation. There are four **essential elements** of a negligence claim: (1) the defendant owed the plaintiff a **duty of care**; (2) the defendant **breached** (or violated) this duty; (3) the breach **caused** harm to the plaintiff; and (4) the plaintiff suffered **damage** as a result.

II. SCOPE OF THE FTCA

A. When Can You Bring an FTCA Claim?

You can bring an FTCA claim if:

- (1) It is against the United States;
- (2) It is for money damages;
- (3) You have had personal injury or death;
- (4) That was caused by a negligent or wrongful act or omission;
- (5) The negligent or wrongful act or omission was committed by a federal employee;
- (6) The federal employee was acting within the scope of his or her employment;
- (7) Certain exclusions stated in the FTCA do not apply; and
- (8) The United States (if it was a private person) would be held responsible under the law of the place where the act occurred.

There are limits to bringing an FTCA claim. You cannot bring an FTCA claim in the following situations: certain named torts, due care, discretionary acts, constitutional violations, certain statutory violations, work-related injuries, strict liability claims, and a few other exceptions.

1. Certain named torts – Under 28 U.S.C. § 2680(h), you generally cannot file an FTCA claim for the following torts: assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights. However, there is a very important exception (“the law enforcement proviso”) when the act is committed by an investigative or law enforcement officer.

You CAN bring an FTCA claim when an investigative or law enforcement officer commits the torts of **assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution**. Federal correctional officers are considered investigative or law enforcement officers because of the duties assigned to them by statute. 18 U.S.C. § 3050. On the other hand, officers in a corrections center run by the federal Bureau of Indian Affairs were held not to be law enforcement officers for purposes of the FTCA because they were “not authorized by law to execute searches, seize evidence, or make arrests for violations of federal law.” Vallo v. United States, 298 F. Supp. 2d 1231, 1237 (D. N.M. 2003). Recently, the U.S. Supreme Court pointedly remarked that “we express no opinion” on whether BOP correctional officers “qualify as ‘investigative or law enforcement officers’ within the meaning of the FTCA.” Millbrook v. United States, 133 S.Ct. 1441, 1445 n.3. In the absence of any court opinion to the contrary, it is safe to cite the statute, 18 U.S.C. § 3050, to show that the conduct of BOP corrections officers is covered by the FTCA’s law enforcement proviso and thus can give rise to a cause of action.

The 2013 Millbrook ruling helpfully clarified the scope of the law enforcement proviso. The proviso extends to officers’ acts or omissions that arise within the scope of their employment, regardless of whether the officers are engaged in investigative or law enforcement activity, or are executing a search, seizing evidence, or making an arrest. This overturns Pooler v. United States, 787 F. 2d 868 (3d Cir. 1986), which permitted a suit only if the officer was engaging in those specific activities when the harm was done. Thanks to Millbrook, cases that imposed that restriction because of Pooler are no longer good

law on this point.

No matter who the federal employee is, you can NEVER bring an FTCA claim for **libel, slander, misrepresentation, deceit, or interference with contract rights.**

Other torts that are not mentioned in the statute can also be pursued under the FTCA. For example, one court allowed an FTCA claim for the torts of trespass and invasion of privacy. Black v. Sheraton Corp. of America, 564 F.2d 531 (D.C. Cir. 1977).

2. Due care – You cannot bring an FTCA claim when the federal employee exercised due care in the execution of a statute or regulation (whether or not the statute or regulation is valid). 28 U.S.C. § 2680(a). When an employee acts with “due care,” he acts with at least minimal concern for the rights of others.

3. Discretionary acts – The United States cannot be held responsible under the FTCA for a federal employee’s conduct if the employee was performing (or not performing) a **discretionary** function or duty. 28 U.S.C. § 2680(a). If the statute, regulation, or policy gave the employee some leeway to decide how to do the job, then it does not matter whether the employee was acting with due care or not.

The government has the burden of proving that the “discretionary function exception” applies. S.R.P. v. United States, 676 F.3d 329, 333 (3d Cir. 2012). It does not apply when a federal statute, regulation, or policy specifically sets forth a course of action for an employee to follow. Berkovitz v. United States, 486 U.S. 531, 536 (1988); Barton v. United States, 609 F.2d 977, 979 (10th Cir. 1979) (existence of a “fixed or readily ascertainable standard” of conduct means that the official’s actions are not discretionary). In other words, an act is discretionary only if it is a matter of choice for the acting employee.

Determining when an act is discretionary (when an act is a matter of choice for an acting employee) can sometimes be a difficult task. In order to determine whether conduct falls within the discretionary function exception, the courts apply a two-part test established in Berkovitz. See, e.g., Kennewick Irrigation Dist. v. United States, 880 F.2d 1018, 1025 (9th Cir. 1989).

(1) First, the question must be asked whether the conduct involved “an element of judgment or choice.” United States v. Gaubert, 499 U.S. 315, 322 (1991). So, if there is a federal statute, regulation, or policy specifically setting forth a course of action for an employee to follow, it is not discretionary. Berkovitz, 486 U.S. at 536. But, if an acting employee performs a function using an element of judgment, it could be discretionary.

(2) Once an element of judgment or choice is established, the second question must be “whether that judgment is of the kind that the discretionary function exception was designed to shield” in that it involves considerations of public policy. Gaubert, 499 U.S. at 322-23. Simply put, even if an employee does exercise some choice in the performance of an act, the United States might still be held responsible for the employee’s actions if the employee did not exercise “policy judgment.”

The same two steps of analysis are followed by courts in the Third Circuit, after a preliminary identification of precisely what action is complained of. S.R.P. v. United States, 676 F.3d 329, 332-33 (3d Cir. 2012). Some courts require the *plaintiff* to show that the conduct complained of is *not* discretionary, but other courts (including those in the Third, Sixth, Seventh, and Ninth Circuits) make the *defendant* prove that it is. Id. Recently, when a prisoner sued after he was stabbed by a razor that prison

staff had failed to take away from his cellmate, the Third Circuit found that the government could not show that collecting razors was a discretionary action because an official document – the Inmate Handbook – provided that razors had to be collected after shower time. Gray v. United States, 486 F. App'x 976 (3d Cir. 2012) (nonprecedential).

The application of the discretionary principle is difficult to understand and apply, and it has often resulted in inconsistent decisions. The following are examples of different ways courts have handled the discretionary exception:

- **Discretionary actions:**

- In Payton v. United States, 679 F.2d 475 (5th Cir. 1982), the Government was sued because a federal prisoner murdered three people after being released on parole. The court held that the decision to parole him without requiring continued treatment or supervision was discretionary because the parole statute permitted parole release in the Board's discretion and upon such terms and conditions as the Board shall prescribe. (However, the actions of the Bureau of Prisons, which had failed to provide the parole board with the prisoner's records, were not discretionary because a federal statute required it to provide these records).
- In Garza v. United States, 413 F.Supp. 23 (W.D. Okla. 1975), the court held that decisions concerning assignment of prison staff are discretionary.
- In Powell v. Lennon, 914 F.2d 1459 (11th Cir. 1990), the court held that prison officials' failure to remove the inmate from a dormitory containing an asbestos hazard was a discretionary decision.
- Ashley v. United States, 37 F.Supp.2d 1027 (W.D. Tenn. 1997), the court held that the manner in which the warden fulfills his duties with regard to inmate property in response to a riot situation is discretionary.

- **Non-discretionary actions:**

- In Jackson v. Kelly, 557 F.2d 735 (10th Cir. 1977), the court held that a doctor's exercise of medical judgment does not necessarily involve discretion for purposes of the discretion exception.
- In Payton v. United States, 679 F.2d 475 (5th Cir. 1982), a federal prisoner murdered three people after being released on parole. The court held that the actions of the Bureau of Prisons, which had failed to provide the parole board with the prisoner's records, were not discretionary because a federal statute required it to provide these records.
- In Coulthurst v. United States, 214 F.3d 106 (2d Cir. 2000), the court explained that some negligent acts are not covered by the discretionary function exception, including failure to adequately inspect weight-lifting equipment, which caused a cable to snap and let weights fall on a prisoner and injure him.
- In Gray v. United States, 486 F. App'x 976 (3d Cir. 2012) (non precedential), an inmate handbook mentioned that corrections officers must collect razors after showers, and this was enough to show that the discretionary function exception did not shield the government from liability when a prisoner was slashed by a razor that was not collected.

The discretionary exclusion principle can be difficult grasp. To determine if an employee's actions were discretionary or non-discretionary, federal statutes and documents which govern specific employee actions are good places to begin research. Also, the Bureau of Prisons Program Statements can be a helpful place to search.

4. Constitutional violations – You cannot bring an FTCA claim against the United States for a violation of your constitutional rights. Carlson v. Green, 446 U.S. 14, 23 (1980); McCullum v. Bolger, 794 F.2d 602, 606-07 (11th Cir. 1986). However, this doesn't mean that you can't bring a different kind of legal claim. You could still sue the individual federal employee for the acts or omissions that violated your constitutional rights. If you are a federal inmate, this is done in a Bivens action. Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971).

It's possible that you could file one lawsuit where you had a claim against the United States under the FTCA for a tort and a Bivens claim against the individual federal employee for a violation of your constitutional rights. But be careful. Under the judgment bar of the FTCA, 28 U.S.C. § 2676, if there is any judgment on a tort claim, that could put a stop to further litigation of the constitutional claims.

5. Statutory violations – In general, you cannot usually bring an FTCA claim just because a federal employee has violated a federal statute, regulation, or manual. Zabala Clemente v. United States, 567 F.2d 1140 (1st Cir. 1977); Leibowitz v. United States Dep't of Justice, 729 F.Supp. 556 (E.D. Mich. 1989), aff'd 914 F.2d 256 (6th Cir. 1990). For example, if a prison employee violated your rights under the Americans With Disabilities Act or the Religious Land Use and Institutionalized Persons Act, you would file a lawsuit under those statutes, rather than an FTCA claim.

However, if a federal employee violates a state or federal statute, it may *help you* to prove your FTCA claim for negligence. This can be done if you can show that the statute created a duty of care or if the violation of the statute would be considered negligence *per se* under state law. An example of this occurred in Yosuf v. United States, 642 F.Supp. 415 (M.D. Pa. 1986), where the court held that the violation of the Bureau of Prisons phone regulations breached a duty to prisoners. See the regulation, 28 C.F.R. § 540.100.

Another example where a federal statute might help you to prove part of your FTCA claim is the duty of the Bureau of Prisons under federal statute to “provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise,” and “provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States...” 18 U.S.C. § 4042. See United States v. Muniz, 374 U.S. 150 (1963) (inmate assault claim). However, the discretionary function exception (discussed above) often effectively limits claims based on a duty arising from this statute. See, e.g., Rinaldi v. United States, 460 Fed. App'x 80, 81-82 (3d Cir. 2012) (not precedential).

6. Work-related injuries – If you are injured while working, you cannot sue under the FTCA. Personal injury claims by federal prisoners in the employment context are governed by the Inmate Accident Compensation System. 18 U.S.C. § 4126; 28 C.F.R. § 301.101 *et seq.* If an inmate is injured “in any industry [or] . . . in any work activity in connection with the maintenance or operation of the institution where [he is] confined,” then he may not sue the United States under the FTCA. United States v. Demko, 385 U.S. 149, 153 n.7 (1966) (internal quotes omitted); Sturgeon v. Fed. Prison Indus., 608 F.2d 1153 (8th Cir. 1979). In Aston v. United States, 625 F.2d 1210, 1211 (5th Cir. 1980), an appeals court held that “the ‘**prison compensation law**’ . . . is the exclusive remedy for a federal prisoner injured while working, regardless of allegations of governmental negligence.” Section 4126 provides “the sole remedy against the government where the injury is work related, and the cause of the injury is irrelevant so long as the injury itself occurred while the prisoner was on the job.” Id. See also Wooten v. U.S., 825 F.2d 1039, 1044 (6th Cir. 1987); Thompson v. U.S., 495 F.2d 192 (5th Cir. 1974). However, this might not rule out a civil rights action against individual staff if, for example, they were deliberately indifferent to your medical needs after the injury. Bagola v. Kindt, 39 F.3d 779, 780 (7th Cir. 1994); Wooten, 825 F.2d at 1045 (remanding because the injuries alleged included constitutional claims as well as the work-related

injury itself). But another appeals court ruled that such claims also are barred by Section 4126, even if brought against individual prison staff under the Bivens doctrine. Cooleen v. LaManna, 248 Fed. App'x 357, 362 (3d Cir. 2007) (not precedential).

7. Strict liability claims – You cannot bring an FTCA claim for a strict liability tort. Laird v. Nelms, 406 U.S. 797 (1972); Gibson v. United States, 567 F.2d 1237 (3d Cir. 1977). A strict liability tort is one where it is not necessary to show that the person causing the harm was at fault. A common strict liability tort is a product liability action where a seller of a defective product is held responsible even if the seller wasn't careless and didn't know the product was defective.

8. Other exclusions – There are several other situations where you are unable to bring an FTCA claim. Most of these will not apply to your situation. The FTCA does not allow you to bring a tort claim for claims arising from the following areas:

- loss, miscarriage, or negligent transmission of **postal matter** (28 U.S.C. § 2680(b));
- assessment of collection of **taxes or customs**, under most circumstances (28 U.S.C. § 2680(c));
- **admiralty** (28 U.S.C. § 2680(d));
- arising from administration of the **war and national defense title of the U.S. Code** (28 U.S.C. § 2680(e));
- a **quarantine** by the United States (28 U.S.C. § 2680(f));
- **fiscal operations** of the Treasury or regulation of the monetary system (28 U.S.C. § 2680(i));
- **wartime combat activities** (28 U.S.C. § 2680(j));
- in a **foreign country** (28 U.S.C. § 2680(k));
- activities of the Tennessee Valley Authority or the Panama Canal Company (28 U.S.C. § 2680(l) and (m)); and
- activities of a **federal bank** (28 U.S.C. § 2680(n)).

B. Federal Employees

The United States is liable under the FTCA for harm done by a federal employee while acting within the scope of his or her employment. 28 U.S.C. § 2679(b)(1). Because the FTCA makes the United States liable only when the federal employee is acting within the scope of his or her employment, it is important to find out if the person who caused the damage or injury is a federal employee under the FTCA.

1. Who is a federal employee? – **Federal employees** are defined as “officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty . . . and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States whether with or without compensation.” Also included is “any officer or employee of a federal public defender organization” under certain limited conditions. 28 U.S.C. § 2671.

2. Scope of employment – Another important issue closely related to the existence of a legal duty is whether the acts of the federal employee were within the **scope of his/her employment**. In other words, a plaintiff must show that the federal employee performed a non-discretionary duty while acting within the scope of his or her employment. In general, an employee acts within the scope of his employment when he is doing something to further the duties he owes to his employer and the conduct is of the type that he was hired to perform. Under the FTCA, the Attorney General can certify that the challenged action was within the scope of employment. 28 U.S.C. § 2679(d)(1). See Hui v. Castaneda, 130 S. Ct.

1845, 1853-54 (2010). Whether an employee was acting within the scope of his employment will be determined by the law of the state where the conduct occurred, so it is important to research the law of your own state. See Rodriguez v. Sarabyn, 129 F.3d 760, 766 (5th Cir. 1997).

3. Can you ever bring an FTCA claim directly against the federal employee who caused the damage or injury? – When filing an FTCA claim, the only proper, named party defendant is the **United States**. Therefore, if an FTCA claim arises, liability is against the United States, not against individual defendants. However, it is possible to file different non-FTCA claims against individuals. This is discussed further below.

4. Are independent contractors federal employees? – No. The United States is not responsible under the FTCA for the negligent or wrongful acts or omissions of **private contractors**. A person is a contractor and not a federal employee if the United States does not exercise physical day-to-day control over her activities. This is true even if the person receives money and guidance from the United States. United States v. Orleans, 425 U.S. 807, 814 (1976); Logue v. United States, 412 U.S. 521, 527-28 (1973). This is also true even if the contractor uses government property. Borquez v. United States, 773 F.2d 1050 (9th Cir. 1985); Watson v. Marsh, 689 F.2d 604 (5th Cir. 1982). Courts differ as to whether the United States is liable when it owns the building or land where a contractor works. Norman v. United States, 111 F.3d 356, 358 (3d Cir. 1997). Federal law will decide whether an individual is an employee or independent contractor. United States v. Orleans, 425 U.S. 807 (1976).

5. What about a federal inmate in a non-federal facility? – A legal duty may also exist if an inmate sustains injuries in a **local jail** when placed in the local jail by federal officials. The United States has a duty to use reasonable care in providing for the safety of federal prisoners confined in non-federal prisons. It might be possible to hold the United States responsible if it negligently placed a federal prisoner in an unsafe non-federal prison. Logue v. United States, 412 U.S. 521, 532-33 (1973) (suggesting liability because a federal officer chose the unsafe prison placement); Cline v. United States Department of Justice, 525 F.Supp. 825 (D. S.D. 1981); Brown v. United States, 374 F.Supp. 723 (E.D. Ark. 1974).

But proving that a federal official was negligent in this instance may be difficult. Thus, you may also wish to consider bringing a § 1983 claim or state law tort suit against any local jail officials (not federal officials) who were directly responsible for any injury. If a prisoner files a § 1983 claim, then he or she is asserting that the local jail personnel, not the federal government, is liable for the negligent act.

One court held that the United States has no duty to inspect or supervise local jails. Harper v. United States, 515 F.2d 576, 578-79 (5th Cir. 1975).

C. What Law Applies?

Under 28 U.S.C. § 1346(b), the law that applies to an FTCA claim is the law of the place where the negligent or wrongful act or omission occurred. What this means is that all FTCA claims are based on the **law of the state** where the tort occurred. Neither federal statutes nor the United States Constitution create a cause of action under the FTCA. Thus, even though a federal inmate is filing a Federal Tort Claim for actions committed by federal employees, the federal inmate must research the tort law of the state where the conduct took place. Molzof v. United States, 502 U.S. 301, 305 (1992); Kruchten v. United States, 914 F.2d 1106 (8th Cir. 1990). The only exception is 18 U.S.C. § 4042 (duties of the Bureau of Prisons). Violations of duty under this federal statute are actionable under the FTCA even if state law would not permit suit. United States v. Muniz, 374 U.S. 150, 164-65 (1963).

D. Are There Time Limits for Bringing an FTCA Claim?

Yes. A tort claim against the United States “shall be forever barred unless it is presented in writing to the

appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing” of the agency’s final notice of denial of the claim. 28 U.S.C. § 2401(b). These requirements will be discussed further below.

III. Administrative Claim Requirement

A. Do I Have to File an Administrative Claim?

Yes, you must first file an administrative claim if you plan to file a lawsuit under the FTCA. (**See attached form.**) Before an FTCA lawsuit may be filed in federal court, you must file an administrative claim with the federal agency. 28 U.S.C. § 2675(a). The regulations governing administrative tort claims can be found at 28 C.F.R. §§ 14.1 to 14.11. A failure to present an administrative claim before filing a lawsuit will result in your lawsuit being dismissed. The dismissal will be “without prejudice,” meaning that you can re-file the lawsuit once you have finished the administrative claim process (also called exhausting your administrative remedies). However, if the claim is untimely under 28 U.S.C. § 2401(b), you will not be able to re-file your lawsuit.

Furthermore, you cannot file a lawsuit until you have filed your administrative claim and either the agency has denied it or six months have passed without the agency acting on your claim. If you file the lawsuit before either one of these things has happened, the court cannot hold your case and wait for you to send in your administrative claim or let the six months pass. Your lawsuit will be dismissed. McNeil v. United States, 508 U.S. 106 (1993).

Filing a lawsuit in state or federal court before you have exhausted your administrative remedies does not relieve you of your obligation to first file an administrative claim. Livera v. First Nat’l Bank of New Jersey, 879 F.2d 1186, 1195 (3d Cir. 1989).

B. How Do I File an Administrative Claim?

1. What must be included in an administrative claim? – According to the Code of Federal Regulations (C.F.R.), an administrative claim must (a) be in **writing**, (b) state a claim for money damages in a **sum certain**, and (c) provide **sufficient information** to enable the agency to investigate. 28 C.F.R. §§ 14.2, 14.4; see also 28 U.S.C. § 2675.

If an inmate wishes to file an administrative claim, the first task is to put the claim in writing. The inmate can fill out a Standard Form 95, which can be provided by the prison. The form is attached to this Bulletin, or you can also get it from the Regional or Central Office of the Bureau of Prisons. 28 C.F.R. § 543.31(b). If an inmate cannot get a Form 95, then he can present “other written notification,” such as a letter. 28 C.F.R. § 14.2(a). See Crow v. United States, 631 F.2d 28 (5th Cir. 1980).

Second, the claim must ask for a specific amount of damages. 28 C.F.R. § 14.2(a); 28 U.S.C. § 2675(b). For example, avoid language such as “at least \$100.” Instead, use specific language such as “\$100.” Failure to supply specific information about the injury or to ask for a specific amount of damages may result in your FTCA lawsuit being dismissed. Miles v. Bell, 621 F.Supp. 51, 72 (D. Conn. 1985); Keene Corp. v. United States, 700 F.2d 836, 842 (2d Cir. 1983) (claim dismissed for failure to state a sum certain in damages); Jordan v. United States, 333 F.Supp. 987, 990 (E.D. Pa. 1971), aff’d 474 F.2d 1340 (3d Cir. 1973).

Finally, the information provided to the agency should include sufficient details or background about the injury and incident. You should be sure to claim that there has been a wrongful act or omission and that there has been property damage, personal injury, or death. For instance, the claim should state a date, time, place of injury, and the kind of injuries sustained. Remember, the investigative agency needs as much information as possible in order to determine whether a settlement is justified. See Tidd v. United

States, 786 F.2d 1565 (11th Cir. 1986); Bialowas v. United States, 443 F.2d 1047, 1050 (3d Cir. 1971) (failure to state a sum certain is fatal).

2. Where and how do I file an administrative claim? – For federal prisoners, you will usually file your claim with the federal Bureau of Prisons. You should file your administrative claim with the regional office in the region where the injury happened. 28 C.F.R. § 543.31(c). Prison staff will not accept claims submitted at the institution. There are six Regional Offices (Northeast, Mid-Atlantic, Southeast, North Central, South Central, and Western). If you do not know what the region of the prison where you were injured, you can find out by contacting the BOP Central Office at 320 First Street, NW., Washington, DC 20534.

In order for your claim to be properly filed, the agency actually must receive the claim. 28 C.F.R. § 14.2(a). If the agency states that it never received your claim, it is not enough to say that you mailed the claim. Vacek v. United States Postal Serv., 447 F.3d 1248, 1252 (9th Cir. 2006); Lightfoot v. United States, 564 F.3d 625, 628, 2009 U.S. App. LEXIS 9817 (3d Cir. Pa. 2009). It is wise to send the claim by registered or certified mail.

What if the claim is filed with the wrong agency? That agency must transfer the claim to the appropriate agency (if the proper agency can be identified from the claim) and advise you of the transfer; otherwise, the claim must be returned to you. The claim is not considered to be presented until it is received by the appropriate agency. 28 C.F.R. § 14.2(b)(1).

3. Who can file an administrative claim? – The administrative claim can be filed by the injured person, his authorized agent, or legal representative. 28 C.F.R. § 14.3(a), (b). If the claim is presented by someone other than the inmate, there should be evidence presented with the claim of that person's authority to act on the inmate's behalf. 28 C.F.R. § 14.2(a).

If the FTCA claim is for wrongful death, the claim can be presented by the executor or administrator of the decedent's (dead person's) estate or by any other person legally entitled to assert such a claim under applicable state law. 28 C.F.R. § 14.3(c).

C. Are There Any Time Limits?

The FTCA includes time limits. You must present your administrative claim within two years after it accrues or else you will be forever barred from doing so. 28 U.S.C. § 2401(b). Remember, the agency must actually *receive* your claim in order for it to be properly filed.

1. When does a claim accrue? – To **accrue** generally means to happen or to come into existence. In other words, a claim accrues at the time that a plaintiff is injured. Yet, what if the injured party is not aware of the injury at the time the injury occurs? In that situation, the claim will be said to accrue when the person knew or should have known of the existence of the wrongful act. United States v. Kubrick, 444 U.S. 111 (1979). For the purposes of an FTCA claim, federal law governs the determination of when a claim accrues. Zeleznik v. United States, 770 F.2d 20, 22 (3d Cir. 1985).

2. What law determines when a claim is timely filed? - Federal law will determine whether a claim is timely filed.

D. Can I Amend My Claim?

You may amend (or change) your claim in writing before the agency's final action. 28 C.F.R. § 14.2(c). Amendments should be submitted in writing and signed by the claimant (or by his authorized agent or legal representative). If you choose to amend your claim, the agency has six months from the filing of the amended claim in order to make a final decision.

E. Agency Response

1. When is the agency required to reply? – After you file a claim, the **agency has six months** to settle or deny the claim. 28 U.S.C. § 2675(a).

2. What if the agency doesn't reply? – If the agency does not make a final decision within six months, then you can consider the **non-response as a denial** and proceed to file an FTCA lawsuit in the federal district court. 28 U.S.C. § 2675(a). However, the claimant must wait for the end of the six-month period after the claim was filed. A federal district court may not hold the case pending until the six months expires. McNeil v. United States, 964 F.2d 647, 648 (7th Cir. 1992), aff'd, 508 U.S. 106 (1993).

3. What sort of investigation takes place, and how much money can I get? – Once an administrative claim is filed, the regional office will usually refer the claim to the institution or office for investigation. In most cases, it will be the prison. 28 C.F.R. § 543.32(c). Also, the agency may request additional information about the claim from you. 28 C.F.R. § 14.4. Responding to a request for additional information is very important, because a failure to respond might result in the dismissal of the claim. See Surratt v. United States, 582 F.Supp. 692, 696-99 (N.D. Ill. 1984).

The Regional Counsel will review the investigation and supporting evidence and will make a decision. The Regional Counsel can either deny the claim, settle the claim (unless it is for medical malpractice), or send it to the Central Office with a recommendation. The Regional Counsel can offer a **settlement** only up to \$50,000. See BOP Program Statement 1320.06 § 8(g). To settle the claim for more than \$50,000, the Regional Counsel must get approval of the General Counsel's Office at the Bureau of Prisons' Central Office in Washington, D.C. The General Counsel can approve medical malpractice settlements up to \$50,000. Any higher amount requires the approval of the Department of Justice. 28 C.F.R. §§ 0.172, 14.6.

If you accept a settlement of your claim, it will be final and act as a complete release of any claim you have against the United States or a federal employee as a result of the subject matter of your claim. 28 U.S.C. § 2672; 28 C.F.R. § 543.32.

4. If my claim is denied, then what? – You can ask for reconsideration or file a lawsuit. If you choose to ask for reconsideration, you can file a written request with the BOP's Regional Counsel for **reconsideration** of their final decision. 28 C.F.R. § 14.9(b). You should provide a reason that the claim should be reconsidered. For example, you could include additional evidence of injury or loss in order to support your request for reconsideration. If you choose to use this option, you must file the request within six months after your claim was denied. If you file a request for reconsideration, the agency has another six months to make a final decision. You cannot file a lawsuit during that time.

If your claim is denied and you do not want to file a request for reconsideration, you can file a lawsuit in a United States District Court within six months of the date the denial of your claim was mailed. This is explained further below.

IV. Filing a Lawsuit

A. Where Do I File the Lawsuit?

You can file an FTCA claim only in federal district court. 28 U.S.C. § 1346(b). If you attempt to file an FTCA suit in a state court, it will be dismissed. Lambert Run Coal Co. v. Baltimore & Ohio R.R. Co., 258 U.S. 377, 382 (1922); Bradshaw v. General Motors Corp., Fisher Body Div., 805 F.2d 110, 112 (3d Cir. 1986) (“Long-standing authority holds that a removed case may not be adjudicated in a federal court if the state court did not have subject matter jurisdiction over the suit when it was initially filed there.”).

As far as which federal district court to file in (this is referred to as which “venue” you will file the lawsuit), you can file the lawsuit in the federal district court where: (1) you (the plaintiff) reside; or (2) where the act or omission occurred. 28 U.S.C. § 1402(b).

B. What Should I Include in the Complaint?

Your complaint must make three statements: the jurisdiction, the claim, and the demand for relief. Fed. R. Civ. P. 8(a). Include a statement in your complaint that an administrative claim has been presented to the federal agency and that it either was denied or was left without action by the agency for six months. If you fail to mention this, then the court may dismiss the complaint. Gillespie v. Civiletti, 629 F.2d 637, 640 (9th Cir. 1980).

To state your claim, you must set forth facts that satisfy all the elements of the particular tort you are claiming. It can be negligence, or it can be “assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution” if done by a law enforcement officer, including a prison guard. 28 U.S.C. § 2680(h). However, the elements that must be proved for each of those courts are determined by the law of the place where the injury occurred, not by federal law. 28 U.S.C. § 1346(b)(1). Your complaint must include facts covering all the elements of the tort that you allege, as viewed by local courts. While the elements of any tort are roughly similar in every state, **the courts of each state have defined the benchmarks that you must meet**. So, while you can start with the elements listed in the last section of this Bulletin, **you must also research the law of the state where the injury occurred**. Otherwise, you might leave out some detail that is required for “stating a claim” for that tort in that location.

You must make a short and plain statement of facts that show that you are entitled to relief. Fed. R. Civ. P. 8. Include the same information you put in your administrative claim, including names, dates, the wrongful act, and the damage or injury. Your account must be plausible. Recently, the U.S. Supreme Court explained that “a complaint must contain sufficient factual matter . . . to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007) (internal quotations omitted). Plausibility requires “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. (quoting Twombly at 556.) While this is not “a probability requirement,” you must show “more than a sheer possibility that a defendant has acted unlawfully.” Id. See the discussion below about what sort of damages you can ask for.

C. Whom Do I Sue?

You can sue only the United States, not individuals, under the FTCA. Mars v. Hanberry, 752 F.2d 254 (6th Cir. 1985). Generally, when you sue the federal government, you are not allowed to bring any other civil action for money damages based on the same subject matter against the individual federal employees involved. 28 U.S.C. § 2679(b)(1). This is why the FTCA is called an “exclusive” remedy. But there are two exceptions. Along with your FTCA claim, you can (1) bring a claim for a violation of the United States Constitution; and/or (2) bring a claim for violation of a federal statute that authorizes suit against an individual. 28 U.S.C. § 2679(b)(2) Thus, you may be able to bring non-FTCA claims against individuals and FTCA claims against the United States in the same lawsuit.

1. Constitutional claims – While the FTCA is a limited waiver of sovereign immunity from suit for common-law torts, the United States does not waive sovereign immunity from suit for violations of constitutional rights. See Jaffee v. United States, 592 F.2d 712, 718 (3d Cir. 1979), cert. denied, 441 U.S. 961 (1979). In other words, if a federal employee violates the constitutional rights of a prisoner, the United States cannot be held responsible in an FTCA lawsuit. However, a federal prisoner can file a suit against federal employees in their individual capacity for acts or omissions that constitute constitutional

deprivations. These suits, where a prisoner names as a defendant a particular federal employee, may be pursued under 28 U.S.C. § 1331. See Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388, 390-91 (1971). In a Bivens claim, you can ask for punitive damages in addition to compensatory damages. But a court will hear a claim under Bivens only if there is no federal statute covering the facts and providing an alternative path to relief.

You can bring both an **FTCA** claim and a **Bivens** claim in the same lawsuit. The United States would be named as defendant for counts under the FTCA claim, and the specific federal employee who violated your constitutional rights would be named as defendant for counts under the Bivens or constitutional claim. See Carlson v. Green, 446 U.S. 14 (1980); Sanchez v. Rowe, 870 F.2d 291 (5th Cir. 1989). But there is a procedural danger in using this approach. The court can decide the FTCA claim first, then go on to dismiss the Bivens claim because of the judgment bar imposed by 28 U.S.C. § 2676. A federal district court recently explained how this can happen. See Sanchez v. Felts, 867 F. Supp. 2d 813, 816-17 (S.D. W. Va. 2011) aff'd Sanchez v. McLain, 474 F. App'x 908 (4th Cir. 2012). Thus, you could get a favorable judgment on the FTCA component of your suit that would lead to dismissal of the Bivens component.

On the other hand, the court might decide the Bivens claim first, or else it might render judgment on the FTCA claim and the Bivens claim at the same time. There is some case law suggesting that the plaintiff can collect on the Bivens claim regardless of a contrary verdict or lower award in the FTCA claim. See Kreines v. United States, 959 F.2d 834 (9th Cir. 1992). But see Serra v. Pichardo, 786 F.2d 237 (6th Cir. 1986), where the court held that an FTCA judgment against the United States barred plaintiff's constitutional claim against the individual federal employee. One appeals court has held that if a Bivens claim is dismissed, a separate action under the FTCA may still continue because the claims are based on different legal theories. See Sterling v. United States, 85 F.3d 1225 (7th Cir. 1996).

Circuits differ in how they handle these cases. Before deciding whether to include a Bivens claim along with an FTCA claim, look for similar cases in your circuit and see how courts have treated them. The chart below compares your options:

Which Action Should a Federal Prisoner File?

	<u>Bivens</u> action: constitutional rights	FTCA action: a tort under state law	Both Bivens and FTCA in one action
pros	<ul style="list-style-type: none"> • jury trial available • punitive damages available 	<ul style="list-style-type: none"> • government is more willing to settle • filing fee is low • easy to exhaust with Form 95 • defendant is the United States: deep pockets 	<ul style="list-style-type: none"> • if some counts are dismissed, others may remain • efficiency

cons	<ul style="list-style-type: none"> • government probably won't settle; must go through discovery and trial • filing fee is high • requires exhaustion of prison grievances • defendant is the individual employee: may have no money 	<ul style="list-style-type: none"> • bench trial only; no jury • no punitive damages available • any judgment – no matter in whose favor – bars any further suit 	<ul style="list-style-type: none"> • statutory “judgment bar” of FTCA: if there is any judgment on a tort claim, it could preclude further litigation of the constitutional claims
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2. Other individual claims – There may be situations where you can sue the United States under the FTCA and also sue individuals for violations of certain federal statutes. For example, you can bring claims against individuals for the violation of your rights under Title II of the Americans With Disabilities Act, 42 U.S.C. § 12131-12134.

You may also be able to bring individuals into your lawsuit by suing them as “pendent parties” under 28 U.S.C. § 1367 if the claims are related to the primary suit against the United States. This is called “supplemental jurisdiction.” For example, you might be able to bring a state law claim against an individual. This may be a way to add an independent contractor to a lawsuit by suing the United States under the FTCA and the independent contractor under state law. See, for example, Hollman v. United States, 783 F.Supp. 221 (M.D. Pa. 1992).

D. Damages

1. Limit on the amount of damages – In a lawsuit under the FTCA, you cannot ask for damages greater than the amount that you asked for in your administrative claim to the federal agency. 28 U.S.C. § 2675(b). There are two exceptions to this rule: you may seek a larger amount if the increase is based on newly discovered evidence that was not reasonably discoverable at the time that the administrative claim was presented; or if you allege and prove intervening facts relating to the amount of the claim. For examples, look at the following cases: Husovsky v. United States, 590 F.2d 944, 954 (D.C. Cir. 1978) (allowing increased damages because improved health increased life expectancy); Allgeier v. United States, 909 F.2d 869, 877-79 (6th Cir. 1990) (allowing an award greater than originally sought after plaintiff showed that her injuries were greater than she knew); Michels v. United States, 815 F. Supp. 1244, 1260-64 (S.D. Iowa 1993) aff'd 31 F.3d 686 (8th Cir. 1994) (surveying cases and finding that, because biker’s injuries in collision were greater than first recognized, increased award was justified); Tookes v. United States, 811 F. Supp. 2d 322, 333-35 (D. D.C. 2011) (justifying an increased award because plaintiff later developed post-traumatic stress disorder). But see Low v. United States, 795 F.2d 466, 471 (5th Cir. 1986) (finding that mere greater precision in a diagnosis was insufficient to increase the amount of damages); Kielwien v. United States, 540 F.2d 676, 680-81 (4th Cir. 1976) (barring increased damages based only on receiving a confirming medical opinion about paralysis).

2. Type of damages available – The FTCA provides for recovery of compensatory damages only. See Molzof v. United States, 502 U.S. 301, 306 (1992). Compensatory damages are meant to restore the injured party to the position he was in before the injury and nothing more. (In other words, they compensate him for the injury.) Moreover, how compensatory damages are calculated depends upon the law of the state in which the tort occurred. 28 U.S.C. § 1346(b)(1).

You cannot ask for or receive injunctive relief under the FTCA. Moon v. Takisaki, 501 F.2d 389 (9th Cir. 1974). You cannot ask for or receive the expungement of your prison records. Walker v. United States, 116 F.R.D. 149 (S.D. N.Y. 1987).

Finally, you cannot ask for or receive punitive damages. 28 U.S.C. § 2674.

E. Mental or Emotional Injury

If a prisoner wishes to file an FTCA claim for **emotional or mental injury**, then he or she must be able to prove physical injury as well. Under 28 U.S.C.A. § 1346(b)(2), “No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence may bring a civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury.” Thus, unless you can prove that you suffered a physical injury, you cannot recover damages in a claim for mental injury under the FTCA. So, if your Complaint alleges mental or emotional injury, it must allege physical injury as well.

F. Time Limits

1. If your claim was denied – An FTCA claim must be filed in the federal district court within six months of the final denial of the administrative claim by the agency. 28 U.S.C. § 2401(b). The date from which the six months begins to run is the date of the mailing, by certified or registered mail, of the notice of the final denial of the claim. You are still required to file the lawsuit within six months, even if the six month period expires before the end of the two year period you originally had for filing the administrative claim. Childers v. United States, 442 F.2d 1299 (5th Cir. 1971). If you do not file the lawsuit within this time period, you will be forever barred from bringing one for the incident.

2. If the Agency never responded to your claim – If the agency has not acted on your claim six months after it was filed, you can treat the inaction as a final denial of your claim. You may then sue. You must file your suit within six years of when the right of action accrued – that is, six years after you knew or should have known about the injury. 28 U.S.C. § 2401(a). But you may have more time if you were “under legal disability or beyond the seas” when the claim accrued. In that case, you must file “within three years after the disability ceases.” 28 U.S.C. § 2401(a). “Legal disability” could include severe mental illness.

G. What Type of Trial?

In an FTCA lawsuit, you are allowed to have only a non-jury trial. You are not entitled to a jury trial. 28 U.S.C. § 2402.

H. How Do I Deliver My Complaint?

After you have written your Complaint, you must send it to the clerk of the United States District Court for the place where the injury occurred. Copies must also go to the defendant, that is, the United States. This is called “service.” Ask the clerk whether special provisions have been made in your district for serving the Complaint of a prisoner who is indigent, that is, one who applies to file “in forma pauperis.” Sometimes the clerk will arrange for making copies of your Complaint and serving them. Otherwise, you must do it yourself. Service must be made to the United States District Attorney and to the U.S. Attorney General in Washington. Each must get two things: a copy of the Complaint, and a copy of a summons. Fed. R. Civ. P. 4(i)(1). The clerk may automatically prepare the summons for you, or you may have to prepare it yourself.

I. The Government’s Response

1. When is it due? – The United States has 60 days to answer your Complaint, after it is served on the U.S. Attorney. Fed. R. Civ. P. 12(a)(2). But courts have flexibility to extend this deadline.

2. Defenses – Many courts have held that the United States cannot claim the defense of qualified immunity in an FTCA case. Ruffalo v. United States, 590 F.Supp. 706, 710 (E.D. Mo. 1984); Townsend v. Carmel, 494 F.Supp. 30, 37 (D. D.C. 1979); Picariello v. Fenton, 491 F.Supp. 1026, 1040 (M.D. Pa. 1980); Castro v. United States, 34 F.3d 106, 111 (2d Cir. 1994) (no official immunities apply under the FTCA).

3. Responses – The standard ways for the government to respond are to either file an Answer that specifically denies the elements of your claim and asserts all available defenses, or else file a Motion to Dismiss under Fed. R. Civ. P. 12(b). For example, a Rule 12(b)(6) motion, “for failure to state a claim upon which relief can be granted,” asserts that your Complaint did not adequately allege all the elements of the tort for which you are seeking relief. You will be less vulnerable to a “12(b)(6) motion” if you draft your Complaint carefully with an eye on the elements of the tort, as defined in recent court cases.

J. Costs

If the plaintiff wins the lawsuit, he is entitled to seek to recover his costs. 28 U.S.C. § 2412; 28 U.S.C. § 1920; Fed. R. Civ. P. 54(d). However, if the United States wins the lawsuit, it can also seek to recover its costs under these same provisions.

V. Examples of Torts for FTCA Claims

A. Negligence, in General

The elements of negligence are: duty, breach, causation, and injury. In other words, your Complaint must show that someone owed you a duty, they failed to fulfill it, and the failure caused you injury. The courts of each state have developed case law around each of these four elements. You must research the case law of negligence in your particular state to make sure that you touch upon all the points that the courts require. This is because, as explained above, the FTCA requires claims to be adjudicated under the prevailing local law.

B. Medical Malpractice

Malpractice is basically negligence by a licensed professional practitioner. Your medical tort Complaint must describe the nature of the injury to your health. You must state that the defendant is an employee of the federal government. You must state that the defendant had a duty to provide you with adequate medical, dental, psychiatric, or nursing care, and that their failure to provide such care is what caused the injury.

In researching the duty of care owed to the plaintiff, look first to the law of the state where the tort occurred. In addition, the Federal Bureau of Prisons has a series of Policy Statements on various aspects of medical care. Individual institutions may also have regulations specifying standards of care for prisoners.

To succeed with a medical malpractice tort claim, the plaintiff must be prepared to submit evidence of the specific nature of the injury suffered and evidence of the type of care he should have received. That depends on the standard of care applied by state law. You will need to request copies of your medical records from the prison and from any outside health care providers who treated you. There will be a fee to obtain those records. In some places, state law requires the plaintiff to file a certificate from a medical expert attesting that the malpractice claim is well founded. The expert may charge a fee to review your records and supply this certificate. Virtually all medical tort claims will eventually require expert testimony. Thus, this kind of claim can be costly.

A medical FTCA claim, in addition to alleging that a federal employee was negligent in exercising

reasonable care and meeting established professional standards in doing their work, must also show that the medical worker is not an independent contractor but rather a federal employee acting within the scope of his or her duty. United States v. Orleans, 425 U.S. 807, 813-14 (1976).

C. Assaults by Other Prisoners

It may be possible to bring a negligence claim against the United States if the prison was so careless that it could be held responsible for inmate assaults on other inmates. However, these claims are difficult to prove. Even if there was some obvious lapse of prison procedure that enabled another prisoner to hurt you, the claim will fail unless you can show that the procedure was mandatory, not discretionary. (This is because of the “discretionary function” bar, discussed above. If the employee had a choice about how to perform the procedure, then the United States is not liable for harm arising from the choice.) You must show that the employee failed to follow some **mandatory** procedure that was spelled out in a regulation, policy, handbook, or post order – and that was designed to keep you safe from assaults by other inmates. Recently, for example, the Third Circuit found that an inmate handbook imposed a mandatory duty to collect razors after shower time, so the court permitted a negligence suit to go forward under the FTCA after a prisoner was slashed with a razor that a corrections officer had failed to retrieve. Gray v. United States, 486 F. App’x 976, 978 (3d Cir. 2012) (non precedential).

Courts look for evidence that the prison knew of the danger or should have known of the danger of inmate assault. The federal courts have interpreted the minimum duty of care in 18 U.S.C. § 4042 to require that federal employees exercise “ordinary diligence to keep prisoners free from harm.” The duty imposed on the prison is to exercise reasonable care and diligence to protect the prisoner from danger known to or which might reasonably be known by the prison. Jones v. United States, 534 F.2d 53, 54 (5th Cir. 1976).

However, courts have also stated that some antisocial behavior is to be expected in the prison environment. The government is not an insurer of prisoner safety. See Fleishour v. United States, 244 F.Supp. 762, 766 (N.D. Ill. 1965). In other words, in a broad sense the government does not and cannot insure the safety of all inmates against all potential harms.

D. Assaults by Staff

The FTCA enables you to recover damages for assault and battery committed by correctional and law enforcement officers. However, some “incidental and necessary touchings by correctional officers of inmates in the performance of their duties are not batteries, but are privileged contacts.” Picariello v. Fenton, 491 F. Supp. 1026, 1038 (M.D. Pa. 1980) (citing Restatement (Second) of Torts § 132, Comment b (1965); Kedra v. City of Philadelphia, 454 F.Supp. 652, 673 n.22 (E.D. Pa.1978)). The Federal Bureau of Prisons has several published policies that define how much force an officer may use on a prisoner, and under what circumstances. For example, see Program Statement P5566.06, “Use of Force and Application of Restraints.”

E. Property Losses

You cannot sue for loss of property under the FTCA. The U.S. Supreme Court held that 28 U.S.C. § 2680(c) bars lawsuits against the United States for the unlawful detention of property by “any” law enforcement officer. This includes correctional officers. Ali v. Fed. Bureau of Prisons, 552 U.S. 214, 220-21 (2008). However, you can still submit an administrative claim for property loss using Form 95.

F. Intentional Infliction of Emotional Distress

You cannot recover for intentional infliction of mental or emotional harm under the FTCA as a prisoner unless you allege in your Complaint that you incurred physical harm as well. 28 U.S.C. § 1346(b)(2). One federal court remarked that the tort of intentional infliction of emotional distress is not one of the thirteen exceptions expressly barred by 28 U.S.C. § 2680. Ross v. United States, 641 F.Supp. 368, 377

(D. D.C. 1986).

VI. Conclusion

This bulletin is a guide for prisoners intending to do further research in pursuing a claim under the Federal Tort Claims Act. While it is not exhaustive or comprehensive, the information contained in this bulletin should provide a starting point for further investigation of the process and procedure for bringing suit against the United States under the FTCA. Because the law frequently changes, be sure to check for any new cases or statutes in this area as they relate to your claim.