



## **Initiating An FTCA Claim: Potential Client Counseling & Interviewing Pointers**

*Last Updated: August 2025*

The purpose of this advisal is to provide a guide for legal practitioners who are considering initiating a Federal Tort Claims Act (“FTCA”) matter for a potential or current client. Throughout this guide, we provide tips, suggested talking points, and topics to consider asking your client when initiating an FTCA claim. This advisal should not be used as a substitute for legal advice by a lawyer familiar with a client’s case. Further, not all talking points or topics may be relevant to a particular person’s situation or case. Readers are cautioned to adjust the talking points and questions as needed, and to check for new legal developments.

### **I. Initial Suggested Talking Points About the FTCA Process**

*A Spanish version of these talking points is contained in the Appendix, pp. 7–8 of this document.*

#### What is the goal of this call?

- I know you were treated badly by the U.S. government and U.S. federal officials. I want to talk to you about the possibility of a filing a complaint with the government about the way you were treated. If you file a complaint, you could receive money or financial compensation from the U.S. government because of that mistreatment.
- I am an attorney. I do not work with any government.
  - **If you are not the individual’s immigration attorney:** I cannot help you with your immigration case. We are going to talk about how to file a complaint with the government about how you were mistreated. That would be a separate legal case that is not part of your immigration case.
- I want to make sure today that you have information about your rights, and that you can learn more about this option of filing a complaint about how you were treated badly by the U.S. government.
- Even if I do not help you file a complaint, everything you tell me is confidential and will be kept between us. I cannot share what you tell me with the government.
- Some of the things that we will discuss and questions that I will ask may be very sensitive and possibly triggering. You can take a break or pause the call at any time.

#### What is the FTCA?

- When an individual is harmed by a federal government official, they can sue the U.S. government under a law called the Federal Tort Claims Act (“FTCA”) and receive financial compensation for their injuries. Bringing an FTCA claim or filing a lawsuit is not part of your immigration case or asylum application – it’s completely separate.

- There is a **two-step process** for filing an FTCA claim against the government.
- **The first step** is submitting an administrative complaint to the government agencies (e.g., U.S. Immigration and Customs Enforcement (“ICE”)) that hurt you. The administrative complaint would explain what happened to you and how government officials violated your rights. The U.S. government could give you money or financial compensation, but it is not likely you will receive compensation unless you go on to the second step.
- **The second step** is filing a lawsuit in federal court, if the agency denies the claim or ignores it for more than six months. But this decision and process can take months or years depending on what you decide and how the government responds.
- It’s important to know that you have to file an administrative complaint within **two years** of when the U.S. government hurt you for you to receive any money or financial compensation from the U.S. government. You have to file an administrative complaint to have the right to file a lawsuit against the U.S. government for the harm you suffered.
- The administrative complaint will include your name and will be filed directly with the agencies where the government official who harmed you works. These government agencies will have your name, they will know that you filed an administrative complaint, and will understand that you could decide to file a lawsuit. We have not heard of any cases where the U.S. government has retaliated against someone who filed this type of claim, but it is possible.
- The FTCA administrative complaint is completely separate from your immigration case.
  - **If relevant:** If you have an immigration lawyer, they will continue working on your immigration case. I would also be happy to speak to your immigration attorney about this complaint against the government and answer any questions they have.
- You do not need to decide right now whether you want to file a federal lawsuit if your administrative complaint is denied or ignored. There are benefits and risks associated with filing a lawsuit, but we can discuss this decision in detail later.
- Do you have any questions? Do you think you are interested in filing an FTCA administrative complaint?

## II. Initial Intake Questions

*A Spanish version of these questions is contained in the Appendix, pp. 8–10 of this document.*

If your client is interested in filing an FTCA administrative complaint, draft an outline or script of questions based on the summary of facts your client has described. Below are some suggested sample intake questions that may help you determine whether your client has a viable FTCA claim and/or whether you are able to take on the representation. **Please be sure to add additional questions based on the person’s specific circumstances.**

**Suggested Sample Intake Questions (Adjust as Needed)**

1. What is your complete name?	
2. What is your A number?	
3. What country are you originally from?	
4. What is the best way to reach you? a. Telephone number: b. Do you use WhatsApp? c. <i>The more ways we have to contact you the better.</i>	
5. Is there anyone else in your family whose contact information you'd like us to have in case we can't get in touch with you?	
6. For what reason/s did you come to the United States?	
7. Did you experience any harm or threat of harm in your country?	
8. Are you afraid to return to your country? Why?	
9. Since being in the United States, did you experience harm or mistreatment at the hands of U.S. government officials?	
10. Can you please describe what happened? When did this happen?	
11. Did anyone physically harm you?	
12. Did anyone threaten or intimidate you?	
13. Are you interested in holding the U.S. government accountable for the mistreatment you suffered?	
14. What is your current address?	

15. (If not in the U.S.) Would you like to return to the United States?	
16. If so, where would you like to relocate to in the United States? Where do you know people? This is important for us to know because it could determine what court we will file our complaint in.	
17. Where do you know people? This is important for us to know because it could determine what court we will file our complaint in.	
18. (If in the U.S.) Are you pursuing asylum or other immigration relief in the United States?	
19. Do you have an immigration attorney? What is your immigration attorney's name?	

### III. Taking on Representation: Collecting Contact Information & Other Information

- After the intake call, inform the potential client whether you will be representing them in filing an FTCA administrative claim.
  - If you have decided not to take on the case, consider explaining your reasoning (e.g., statute of limitations issue; lack of a viable claim) or providing referrals if you do not have capacity to take on this case.
  - If you have decided to take on the case, consider collecting and discussing the below information.
- Contact Information & Signature
  - Collect the following contact information and ensure it is updated regularly:
    - Basic identity information (name, birth date, country of origin, current address, phone number, email).
    - Social media account usernames (Facebook, Instagram, TikTok, X / Twitter).
    - Ask the individual to inform you of any changes to their address and phone number to avoid losing contact.
    - Ask whether the person prefers to communicate by WhatsApp, text message, or phone call.

- Collect at least **three** phone numbers for close family members and friends.
- Collect a digital version of your client’s wet signature that you can use with their authorization to sign documents on their behalf. Explain that you will only use this signature with prior consent from the client after reviewing each document to be signed with them.
- Immigration Lawyer & Immigration Documents
  - Collect the immigration lawyer’s name and contact information.
  - Scan or copy all available immigration documents in your client’s or their attorney’s possession.
- Explain the Retainer
  - Before taking on any representation, advise your client that you will be taking on the case pro bono (completely free of charge) or explain to them in detail about the extent to which you will collect fees from whatever damages or settlement award they receive.
  - We encourage attorneys to take these cases on pro bono. Unlike in the context of Equal Access to Justice Act (EAJA) fees, attorney’s fees in FTCA claims come out of the claimant’s award or settlement amount, thus taking fees will result in a lower award or settlement amount for the claimant.
  - However, if you are planning to take attorney’s fees, note that under the FTCA if the claim is resolved administratively, attorneys’ fees may not exceed 20% of the settlement; if the claim is resolved after litigation, fees may not exceed 25% of any award or settlement. *See 28 U.S.C. § 2678.*

#### **IV. Preparing FTCA Administrative Complaint: Focus on In-Depth Fact Finding**

- Before you file the FTCA administrative claim with the relevant agency or agencies, we recommend having a detailed, fact-finding conversation with your client regarding the harm they experienced at the hands of federal officials.
- Prior to this conversation, we recommend first:
  - Brainstorming potentially relevant state law torts based upon the summary of events described in the initial call with the potential client. Please see the Toolkit’s Summary of Selected State Torts and sample administrative complaints for additional information.
  - Drafting an outline or script of questions based upon the elements of those relevant torts and the summary of the facts your client described. Be sure to ask detailed questions about the harms (physical and emotional) experienced; the individual

government employees or independent contractors who harmed them; and any lasting impacts (physical and emotional) of the tortious conduct.

- Inform the person that some of the things that you will discuss and questions that you will ask will be extremely sensitive and possibly triggering. Please advise them that they can take a break or pause the call at any time.<sup>1</sup>
- After going through fact finding questions, inform your client that you will evaluate the potential claims and reach back out with any follow up questions.
- Before filing the administrative complaint, please review other documents in our Toolkit for sample administrative claims and additional guidance about filing administrative claims.

#### **V. After Filing Administrative Complaint: Explanation of Next Steps**

- Inform your client when you plan to file their administrative claim and what are the next steps in: (1) preparing the claim; (2) reviewing the details of the claim with them; and (3) submitting the claim to the relevant government agencies.
- Inform your client that you will be in touch with them at least quarterly to ensure you have accurate contact information, as well as with any case updates as they arise.
- Ask your client to contact you if they have a change of address or contact information, or with any meaningful updates about changes in their immigration status or ongoing harm related to the injuries they suffered at the hands of federal officials.

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<sup>1</sup> The American Bar Association (and many other organizations) has trauma-informed lawyering materials that can be helpful to review. For example, this is a [quick video primer](#).

## Appendix 1: Spanish Initial Talking Points About the FTCA

### I. Puntos iniciales sobre el proceso de la Ley de Reclamos por Agravios Federales (FTCA, por sus siglas en inglés)

#### ¿Cuál es el objetivo de esta llamada?

- Sé que usted fue maltratado por el gobierno de los Estados Unidos y por funcionarios federales. Quiero hablar con usted sobre la posibilidad de presentar una queja ante el gobierno por la manera en que fue tratado. Si presenta una queja, podría recibir dinero o una compensación económica del gobierno de los Estados Unidos debido a ese maltrato.
- Soy abogado/a. No trabajo para ningún gobierno.
  - **Si usted no es el abogado de inmigración de la persona:** No puedo ayudarle con su caso de inmigración. Vamos a hablar sobre cómo presentar una queja ante el gobierno por el maltrato que usted sufrió. Ese sería un caso legal separado que no forma parte de su caso de inmigración.
- Quiero asegurarme de que hoy tenga información sobre sus derechos y que pueda conocer más sobre esta opción de presentar una queja por el maltrato que sufrió por parte del gobierno de los Estados Unidos.
- Aunque yo no le ayude a presentar la queja, todo lo que me cuente es confidencial y se mantendrá entre nosotros. No puedo compartir lo que usted me diga con el gobierno.
- Algunas de las cosas que hablaremos y las preguntas que le haré pueden ser muy delicadas y posiblemente desencadenantes. Usted puede tomar un descanso o pausar la llamada en cualquier momento.

#### ¿Qué es la Ley de Reclamos por Agravios Federales (FTCA, por sus siglas en inglés)?

- Cuando una persona sufre daños por parte de un funcionario del gobierno federal, puede demandar al gobierno de los Estados Unidos bajo una ley llamada la Ley de Reclamaciones por Agravios Federales (“FTCA,” por sus siglas en inglés) y recibir dinero del gobierno por sus daños. Presentar una reclamación bajo la FTCA o entablar una demanda no forma parte de su caso de inmigración ni de su solicitud de asilo – es completamente aparte.
- Hay un **proceso de dos pasos** para presentar un reclamo de FTCA contra el gobierno.
- **El primer paso** es presentar una queja administrativa ante las agencias gubernamentales (por ejemplo, el Servicio de Inmigración y Control de Aduanas (“ICE”)) que le hicieron daño. La queja administrativa explicaría lo que le sucedió y cómo los funcionarios del gobierno violaron sus derechos. El gobierno de EE.UU. podría darle dinero o una compensación económica, pero es poco probable que reciba compensación a menos que pase al segundo paso.

- **El segundo paso** es presentar una demanda en un tribunal federal, si la agencia niega la reclamación o la ignora por más de seis meses. Pero esta decisión y proceso pueden tardar meses o años, dependiendo de lo que usted decida y de cómo responda el gobierno.
- Es importante saber que usted debe presentar una queja administrativa **dentro de los dos años** a partir de cuando el gobierno de EE.UU. le causó daño para poder recibir dinero o una compensación económica del gobierno de EE.UU. Usted tiene que presentar una queja administrativa para tener el derecho de presentar una demanda contra el gobierno de EE.UU. por el daño que sufrió.
- La queja administrativa incluirá su nombre y se presentará directamente ante las agencias donde trabaja el funcionario del gobierno que le causó daño. Estas agencias sabrán su nombre, sabrán que usted presentó una queja administrativa y entenderán que usted podría decidir presentar una demanda. No hemos escuchado de casos en que el gobierno de EE.UU. haya tomado represalias contra alguien que presentó este tipo de reclamación, pero es posible.
- La queja administrativa bajo la FTCA es completamente independiente de su caso de inmigración.
  - **Si es relevante:** Si usted tiene un abogado de inmigración, esa persona continuará trabajando en su caso de inmigración. Yo también estaría dispuesto(a) a hablar con su abogado de inmigración sobre esta queja contra el gobierno y responder cualquier pregunta que tenga.
- Usted no necesita decidir ahora mismo si quiere presentar una demanda federal en caso de que su queja administrativa sea denegada o ignorada. Hay beneficios y riesgos asociados con presentar una demanda, pero podemos hablar de esta decisión con más detalle más adelante.
- ¿Tiene alguna pregunta? ¿Cree que le interesaría presentar una queja administrativa bajo la FTCA?

## Appendix 2: Spanish Initial Intake Questions

### Preguntas de Entrevista Sugeridas (Ajustar según sea necesario)

1. ¿Cuál es su nombre completo?	
2. ¿Cuál es su número A?	
3. ¿De qué país es?	
4. ¿Cuál es la mejor manera de comunicarnos con usted?	

<p>a. Número de teléfono:  b. ¿Usa WhatsApp?  c. <i>Cuántas más formas tengamos de contactarlo/a, mejor.</i></p>	
5. ¿Hay alguien más en su familia cuya información de contacto le gustaría que tuviéramos en caso de que no podamos comunicarnos con usted?	
6. ¿Por qué razón(es) vino a los Estados Unidos?	
7. ¿Sufrió algún daño o amenaza de daño en su país?	
8. ¿Tiene miedo de regresar a su país? ¿Por qué?	
9. Desde que está en Estados Unidos, ¿ha sufrido daño o maltrato por parte de funcionarios del gobierno estadounidense?	
10. ¿Puede describir lo que sucedió? ¿Cuándo ocurrió?	
11. ¿Alguien le hizo daño físico?	
12. ¿Alguien lo/la amenazó o intimidó?	
13. ¿Está interesado/a en responsabilizar al gobierno de los Estados Unidos por el maltrato que sufrió?	
14. ¿Cuál es su dirección actual?	
15. <i>(Si no está en EE.UU.)</i> ¿Le gustaría regresar a Estados Unidos?	
16. Si es así, ¿a dónde le gustaría mudarse dentro de Estados Unidos? ¿Dónde conoce personas? Esto es importante que lo sepamos porque podría determinar en qué tribunal presentaremos la queja.	

<p>17. ¿Dónde conoce personas? Esto es importante que lo sepamos porque podría determinar en qué tribunal presentaremos la queja.</p>	
<p>18. (Si está en EE.UU.) ¿Está solicitando asilo u otro tipo de alivio migratorio en Estados Unidos?</p>	
<p>19. ¿Tiene un abogado de inmigración? ¿Cuál es el nombre de su abogado/a de inmigración?</p>	