



## **Filing an FTCA Lawsuit: Litigation Counseling Pointers<sup>1</sup>**

*Last Updated: August 2025*

### **FTCA Administrative Claim Receipt**

- When you receive a Federal Tort Claims Act (“FTCA”) administration claim receipt from the relevant federal agency or agencies, explain to your client that the claim received a receipt notice and that all correspondence regarding the claim will be sent to you (the attorney). The receipt notice is simply an acknowledgement by the agency that the claim was delivered, it is not a substantive response to the administrative claim.
- Remind the client that the administrative claim for monetary compensation is separate from their immigration case, even if the claim was sent to an immigration-related agency, like U.S. Customs and Border Protection (“CBP”) or Immigration and Customs Enforcement (“ICE”).
- Be sure to confirm that the claim was filed on behalf of every relevant individual who was harmed (e.g., your client’s child, if relevant). If the claim is not timely filed specifically in someone’s name, even if they are a minor, it may be forever barred.

### **Potential Government Responses to the Administrative Complaint**

- Remind your client that the administrative claim is only the first step in the damages case against the government.
- The government has at least four options for responding to the administrative claim:
  1. Settlement Offer
    - It is possible, though not likely, that the government will respond to the claim by offering a monetary sum in exchange for resolution at the outset.
  2. Request for Evidence
    - The government agency may send you a letter requesting more information, documents, or other evidence either of the alleged employee misconduct or the harm. *See, e.g., 28 C.F.R. § 14.4.* Practitioners have differing approaches to these sorts of requests. Some practitioners simply ignore the request for evidence, as some courts have held that claimants need not respond to an agency’s request for information to exhaust the administrative claim. *See, e.g.,*

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<sup>1</sup> The purpose of this advisal is to share information that may be helpful when initiating a new Federal Tort Claims Act (“FTCA”) matter for a client who is a noncitizen and who is considering filing a lawsuit against the United States government for financial compensation in the event that their administrative claim is not resolved with the agency directly. The intended audience is legal practitioners, and this advisal should not be used as a substitute for legal advice by a lawyer familiar with a client’s case.

*Warren v. U.S. Dep't of Interior Bureau of Land Mgmt.*, 724 F.2d 776 (9th Cir. 1984). Other practitioners do respond to the request for evidence to demonstrate attempts to negotiate a pre-litigation settlement in good faith. We suggest formulating a decision on how to respond based upon the facts of the case and the law regarding FTCA claim exhaustion in your jurisdiction.

3. A Denial Letter

- If the agency sends a formal, final denial letter, the claimant has six months after the date of mailing of the letter to file a federal lawsuit, after which point the suit is time-barred. *See* 28 U.S.C. § 2401(b).

4. No Response

- If the agency fails to respond to the administrative claim within six months of its submission, it will be deemed to have constructively denied the claim and the claimant may file suit in federal court. *See* 28 U.S.C. § 2675(a). Courts are split on whether there is a time limitation on when plaintiffs must file in federal court after deeming their administrative claims constructively denied. *See Barnes v. United States*, 776 F.3d 1134, 1140 (10th Cir. 2015) (discussing circuit split). If the agency fails to respond to your client's administrative claim within six months, we suggest researching the law regarding FTCA claim exhaustion for claims "deemed denied" under § 2675(a) in your jurisdiction.
- Based upon the dates of the claim's receipt and your capacity to litigate, provide the client with a general expectation of when it would be possible to litigate the claim in federal court.
  - Clearly explain to the client that the agency's formal denial of the administrative claim triggers a six-month deadline to litigate the claim.

### **Federal Lawsuit Expectations**

- Discuss generally the process of filing a federal lawsuit, *i.e.*, complaint, motions to dismiss, discovery (including the strong possibility that your client will be deposed), trial, appeals, etc.
- Discuss the factors that the client should consider when deciding whether or not to proceed with litigation if the government does not respond to their claim or denies it:
  - **Length of time:** A federal lawsuit can take years to resolve. Many periods do not require the client to actively participate, while others, like discovery, do.
  - **Testimony:** The client may have to testify at deposition and/or at trial. Explain that providing testimony is a form of interrogation. Depositions can last up to 8 hours or longer and can take place over multiple sessions.

- **Expert Witnesses:** Depending upon the nature of the harm alleged, the client may have to sit for medical/psychological evaluations with experts. This may happen multiple times since the defense will also likely be entitled to expert discovery.
- **Location:** Generally, a lawsuit can be brought in a federal court located in the place where the harm occurred or where the plaintiff resides. The government might move to transfer the case under 28 U.S.C. § 1404.
- **Immigration case:** It is possible to file a lawsuit while the client is seeking asylum in immigration court or before USCIS, but documents filed in one case could impact the other. It is essential to maintain consistency across the two matters.