



National Immigration Litigation Alliance
Immigrant justice through the courts

Administrative FTCA Claim Packet Checklist

October 2021

This packet contains sample materials for presenting an administrative claim against the United States under the Federal Tort Claims Act (FTCA) for personal injury, death, or property damage caused by a federal employee's negligence or wrongful act or omission occurring within the scope of the employee's employment. Administrative FTCA claims must be presented within two years after the claim accrues. A claim is deemed presented when it is received by the federal agency or agencies whose employee conduct gave rise to the injury. and

An administrative FTCA claim consists of the following documents:

1. **Cover letter**: A sample cover letter and list of common agency service addresses for immigration-related administrative FTCA claims are included in this packet.
2. **Claim Authorization**: A claim must include the title or legal capacity of the person signing the claim form and evidence of the signer's authority to present the claim as agent, executor, administrator, parent, guardian, or other representative. Because minors lack the legal capacity to sign a claim on their own behalf, the claim must be signed by a parent, guardian, or other duly authorized representative. A sample claim authorization in English (for the agency) and Spanish (for the benefit of Spanish-speaking claimants) is included in this packet.
3. **Standard Form 95 (SF-95)**: Although the SF-95 is not required, the form is widely used and is a convenient way to ensure that the agency receives all relevant information. It is available at: <https://www.justice.gov/civil/documents-and-forms-0>. A guide to completing SF-95 and a sample attachment are included in this packet.
4. **Index of Exhibits and Exhibits**: Including an index and exhibits in support of an FTCA claim is *not* required. In some cases, including exhibits may be helpful to corroborate the claim. Exhibits might include documents from a claimant's A-File, applicable agency memorandum, medical records, or mental health evaluations. If the agency is interested in settling the claim, it frequently will request counsel to provide these records.

For answers to frequently asked questions regarding FTCA claims in the immigration context, please see *Federal Tort Claims Act: Frequently Asked Questions for Immigration Attorneys*, available at <https://immigrationlitigation.org/practice-advisories/>.

The materials in this packet are merely samples. They must be modified and adapted to each claimant's individual situation.

Sample Cover Letter

[LETTERHEAD]

VIA OVERNIGHT MAIL AND ELECTRONIC MAIL

[DATE]

[NAME, ADDRESS, EMAIL ADDRESS OF EACH AGENCY]

See accompanying list of agency addresses

Re: Claim[s] for Damages under the Federal Tort Claims Act
[Name of Adult Claimant]

If at least one of the claimants is a child, insert *one* of the following:

- [Name of Parent/Legal Guardian], on behalf of [herself/himself/themselves] *and* [his/her/their] minor [son[s]/daughter[s], [Name[s] of Child/Children]
- [Name[s] of Child/Children] by [his/her their] [Name of Parent/Legal Guardian]

Dear Counsel:

The [Name of Organization/Law Firm] represents **insert one:** [Name of Adult Claimant] (Claimant) / [Name of Parent/Legal Guardian], on behalf of [herself/himself/themselves] and [his/her/their minor son[s]/daughter[s]], [Name[s] of Child/Children] (Claimants) / [Name[s] of Child/Children] by his/her their [Name of Parent/Legal Guardian] (Claimant[s]).

Enclosed please find [an administrative claim] or [administrative claims] under the Federal Tort Claims Act [for each Claimant]. The claim consists of: (1) a Claim Authorization Form; (2) Standard Form 95 [for each Claimant]; (3) Attachment to Standard Form 95 detailing the basis of [the/their] claim[s]; **optional:** [and (4) Index of Exhibits and Exhibits __ - __ in support of the claim[s]].

We are submitting [this/these] claim[s] without the benefit of formal discovery. Claimant[s] reserves the right to amend or supplement [his/her/their] claim[s]. Please provide confirmation of receipt of this filing and contact information for the attorney who will be handling this matter as soon as possible.

Optional: The [identity/identities] of the Claimant[s] is confidential, and we ask that the claim[s] be treated accordingly. If any agency receives a request under the Freedom of Information Act (FOIA) related to the enclosed claim[s], or any other information that would reveal the identity of the Claimant[s], we ask that the agency: (1) notify the undersigned before responding; and (2) redact any information identifying the Claimant[s] pursuant to the FOIA privacy exemption under 5 U.S.C. § 552(b)(6), or any other law protecting the privacy of the Claimant[s].

Sincerely,

[Attorney Signature]

[Attorney Signature Block]

**COMMON AGENCY SERVICE ADDRESSES
FOR IMMIGRATION FTCA ADMINISTRATIVE CLAIMS**

<p>DHS:</p> <p>Office of the General Counsel U.S. Department of Homeland Security 2707 Martin Luther King Jr. Ave, SE Washington, DC 20528-0485 ogc@hq.dhs.gov</p>	<p>ICE:</p> <p>Office of the Principal Legal Advisor U.S. Immigration and Customs Enforcement 500 12th St. SW, Mail Stop 5900 Washington, DC 20536-5900 OPLAServiceIntake@ice.dhs.gov</p>
<p>CBP:</p> <p>Office of Chief Counsel U.S. Customs and Border Protection 1300 Pennsylvania Avenue, Suite 4.4-B Washington, DC 20229 CBP-Service-Intake@cbp.dhs.gov</p>	<p>HHS:</p> <p>U.S. Department of Health and Human Services Office of General Counsel 200 Independence Avenue, SW Washington, DC 20201</p>
<p>ORR:</p> <p>Office of Refugee Resettlement Administration for Child and Families Mary E. Switzer Building, 330 C St. SW Room 5123 Washington, DC 20201</p>	<p>USCIS:</p> <p>U.S. Citizenship & Immigration Services Office of the Chief Counsel 5900 Capital Gateway Drive Mail Stop 2120 Camp Springs, MD 20588-0009 uscis.serviceofprocess@uscis.dhs.gov</p>

CLAIM AUTHORIZATION

I, [name of claimant], authorize [name of attorney/s and associated organization/law firm] to submit a claim under the Federal Tort Claims Act on my behalf [and behalf of my minor son/daughter, name of child] to the [name of federal government agency/agencies: e.g., Department of Homeland Security, including U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection], and any other government agency, requesting compensation for the unlawful actions of their agents or employees against me [and my son/daughter] on or approximately on [date].

Date

[Name of Claimant]

AUTORIZACIÓN DE DEMANDA

Yo, [name of claimant], autorizo a [name of attorney/s and associated organization/law firm] a interponer una demanda bajo el Federal Tort Claims Act de mi parte [ya la parte de mi menor hijo/hija, name of child] a [name of federal government agency/agencies: e.g., Department of Homeland Security, incluyendo a la U.S. Immigration and Customs Enforcement y a la U.S. Customs and Border Protection], y todo otra agencia gubernamental, pidiendo recompensa monetaria por los actos ilícitos de sus agentes o empleados contra mí [y mi hija/hijo] en o aproximadamente en la fecha [fecha].

Fecha

[Name of Claimant]

Standard Form-95 Guide

The form is available at: <https://www.justice.gov/civil/documents-and-forms-0>

Each claimant must submit a separate Form SF-95

Box 1:	Write the name[s] of the U.S. federal agency/agencies involved.
Box 2:	<i>Either</i> write both the claimant’s name and address and attorney’s name and address <i>or</i> write the claimant’s name c/o attorney’s name and address. If using the latter option (c/o), the claim must include a claim authorization form.
Box 3:	Tick the civilian box (assuming claimant has not been employed by the military).
Box 4:	Write claimant’s date of birth.
Box 5:	Write claimant’s marital status (single, married, divorced, or widowed).
Box 6:	If the exact date and day of the tortious conduct is known, include it. If not, write “See attachment” and explain in the attachment when the conduct occurred (e.g., “on or about” a certain date).
Box 7:	If the exact time of the tortious conduct is known, include it. If not, write “See attachment” and state in the attachment when the conduct occurred (e.g., “at approximately __:00am/pm,” “in the morning/in the afternoon/in the evening/at night.”).
Box 8:	The description of the claim may not fit within the space provided. If it does not fit, write “See attached” and include in the attachment a narrative of the tortious conduct by U.S. federal employees. If it does fit, describe it on the form.
Box 9:	Most immigration FTCA claims do not involve property damage. If property damage is not involved, write “Not applicable.” If it is involved, describe it on the form.
Box 10:	The description of the claimant’s injury/death may not fit within the space provided. In that case, write “See attached” and include in the attachment a narrative of the personal injury or wrongful death caused by the tortious conduct by U.S. federal employees. Personal injury includes physical harm as well as emotional distress such as stress, anxiety, depression, post-traumatic stress disorder, etc. If it does fit, state it on the form.
Box 11:	Witness information may not fit within the space provided. In that case, write “See attachment” and include in the attachment the names and, if known, addresses for all witnesses to the claim, including, for example, U.S. government employees, medical providers, family members, friends, or others who witnessed the events giving rise to the claim. If it does fit, include it on the form. Because

	all witnesses may not be known, include “This is not intended to be an exhaustive list of possible witnesses.”
Box 12:	In each of the spaces provided, write the maximum amount of money claimed for: property damage; personal injury, and/or wrongful death, and calculate the total amount of damages. Except in extremely rare circumstances, the total amount listed in box 12.d. will be the maximum recoverable amount. For that reason, do not undervalue the claimed amount.
Boxes 13 and 14:	If the claim does not include a claim authorization form, the claimant must sign the form. If the claim includes a signed claim authorization form, counsel can sign, list their phone number, and date the form in lieu of the claimant. It is also advisable to include the language related to Box 13.b. in the Sample FTCA Standard Form SF-95 – Attachment (below).
Box 15:	In the immigration context, most FTCA claimants do not carry accident insurance. Answer yes or no to whether the claimant carries accident insurance and, if yes, provide the insurance carrier’s contact information.
Box 16:	If the claimant answered no in Box 15, write “Not applicable.” If the claimant answered yes in Box 15, answer yes or no to whether the claimant has filed a claim with the insurance carrier and, if so, whether it was for full coverage or deductible.
Box 17:	If the claimant answered yes to Box 16 and the claim has a deductible, write the amount of the deductible. Otherwise, write “Not applicable.”
Box 18:	If the claimant has filed a claim with an insurance carrier, indicate what action the insurer proposes as requested. Otherwise, write “Not applicable.”
Box 19:	In the immigration context, most FTCA claimants do not carry public liability and property damage insurance. Answer yes or no to whether the claimant carries such insurance and, if yes, provide the insurance carrier’s contact information.

Sample Attachment to SF-95

Sample header

FTCA Standard Form 95 – Attachment

Claimant: [name of claimant]

Page [#]

6. Date and Day of Accident

[Agency] unlawfully [agency action] [name of claimant] on or about [date/s].

7. Time of Incident

[Agency's] unlawful [agency action] took place in the evening of [date] and continued until the early morning of [date].

8. Basis of Claim

For sample descriptions, please contact the National Immigration Litigation Alliance.

10. Personal Injury/Wrongful Death

As a result of [agency's] tortious conduct described above in Section 8 and incorporated here, [name of claimant] suffered [severe] emotional and mental distress, including, but not limited to, [describe, e.g., anxiety, stress, continued and exacerbated post-traumatic stress disorder (PTSD)].

During the [agency action], [name of claimant] was [describe injury, e.g., physically injured and sustained (describe injury) or physically ill with (describe illness)]. As a result, claimant required [describe treatment, e.g., surgery, hospitalization, medication, or other medical care].

Since [date action terminated], [claimant] has continued to experience [describe ongoing physical and mental suffering, e.g., pain, limited mobility, headaches, nightmares, stress, anxiety, panic attacks].

11. Witnesses

Possible witnesses include: [note: the following are simply examples of potential witnesses]

- [name], Officer in Charge, [name and address of detention center]
- [name], [location] Field Office Director, [ICE office address]
- [name], medical provider to [claimant], [address]
- Guards and medical providers at [name of detention center] (names unknown)
- [name of social worker], [organization/address]

This is not intended to be an exhaustive list of possible witnesses.

13b. Phone Number of Person Signing Form

If for any reason [agency/agencies] believe that this notice of claim is not in compliance with the requirements of the FTCA, or any additional information is required, please contact [name of counsel], [telephone and email address of counsel].