

**NATIONAL
IMMIGRATION
PROJECT**

Lawyers for the Movement

HOW TO SUE THE U.S. GOVERNMENT: THE FEDERAL TORT CLAIMS ACT¹

¹ National Immigration Project created this resource based on an Asylum Seeker Advocacy Project (ASAP) resource and is grateful to ASAP for allowing us to adapt their resource for this purpose. ASAP is a nonprofit membership organization that supports members as they navigate the U.S. asylum system—using in-depth resources, a remote legal help desk, and breaking news alerts available at <https://asaptogether.org/en/>. This information does not replace advice from a lawyer. You should consult with a lawyer to learn about your particular situation.

If Department of Homeland Security officials have abused or mistreated you, you may be able to sue the United States government under the Federal Tort Claims Act (“FTCA”). Suing under the FTCA is separate from your immigration case and is completely voluntary. If you win or reach a settlement with the government based on your FTCA lawsuit, you may receive money from the U.S. government acknowledging the physical, mental, or psychological harm you suffered.

What is the Federal Tort Claims Act?

If an agent of the U.S. government (like an Immigration and Customs Enforcement, “ICE,” officer, or Customs and Border Protection, “CBP,” agent) does something wrong in the course of doing their job and, as a result, harms you physically, mentally, or by damaging your property, you have the right to sue the government under the FTCA.

By filing a claim, you would be trying to make the U.S. government pay you money to compensate you for the harm you suffered. The money paid in compensation is called **damages**. Examples of harms could include:

UNLAWFUL DETENTION

MEDICAL NEGLIGENCE

WRONGFUL DEPORTATION

FAMILY SEPARATION

PHYSICAL OR PSYCHOLOGICAL ABUSE

What is the process for suing the U.S. government under the FTCA?

Claims under the FTCA proceed in two steps:

1

File an administrative complaint.

File an administrative complaint with the agency that employed the federal agent who harmed you. The federal agency may choose to settle the claim (offer money) or not (send a denial letter or take no action).

2

File a lawsuit in federal court.

If the agency ignores your claim or you do not reach a settlement within six months, you can file a lawsuit in federal court. If the agency denies your claim, you have six months to file a lawsuit. You don't have to be in the United States to file either the administrative complaint or the lawsuit. There is no guarantee the government will offer money or that you will win the lawsuit.

Is there a deadline to sue under the FTCA?



To preserve your right to sue the government for the harm you suffered, you must complete **Step One** within **two years** of when the government agent harmed you. It is recommended that you complete **Step One** within two years of when the harm **began** as opposed to when the harm ended.

How would filing an FTCA claim affect my immigration case?

You have the right to file an FTCA claim when federal agents harm you in the course of their duties, and the government should not retaliate against you. You should consult with a lawyer experienced in FTCA cases to determine whether suing under the FTCA is a good option for your situation.

If you proceed with an FTCA claim, it is important that your FTCA lawyer coordinate with your immigration lawyer. **Be careful not to say or write anything in your FTCA case that contradicts your immigration case.**

What are the possible benefits of suing under the FTCA?

You may receive money as part of an FTCA claim and hold the U.S. government accountable for its actions, which may also prevent the government from harming others. For example, after the U.S. government separated children from their parents at the border during the first Trump administration, many of those families sued the U.S. government under the FTCA for the mistreatment they suffered. The cases took years, but some of them received money.

The possibility of receiving money will depend on the specific facts of your case. It is important to know that every case is different. **That is why it is very important to speak with a lawyer experienced in FTCA cases before starting an FTCA claim.**

Do lawyers charge to file FTCA cases?

Some lawyers are interested in doing this work pro bono, meaning that they will not charge a fee to bring an FTCA claim against the government on your behalf. Other lawyers may charge to cover their costs, but **the law limits how much and when they can charge you.**

20%

PRE-LAWSUIT SETTLEMENT

Maximum fee for lawyers if you and the government settle before you file a lawsuit in federal court

25%

FEDERAL COURT CASE

Maximum fee for lawyers representing you in federal court on your FTCA claim if you win or agree to settle

If a lawyer charges you a fee for their work on your FTCA case, that fee for legal services will not be due unless you win money from the government at the end of your case. Lawyers are permitted under U.S. law to keep up to 20 percent of any money you win on settlement if you and the government settle your case (agree how much money the government will pay) before you file a lawsuit in federal court. Lawyers who represent you in a federal court on your FTCA claim are permitted to charge up to 25 percent of any money you win on your case.

Always carefully review the contract you sign with a lawyer to understand what costs you will bear, if any, for your representation, noting that the contract may include some information about who should cover other costs of litigation.

What should I do if I am interested in starting a lawsuit against the U.S. government under the FTCA?

First, consider whether you want to begin another legal process in addition to your immigration case. As you can imagine, you will need to talk about what happened to you and how you suffered, probably more than once and in detail. You should also keep in mind that FTCA lawsuits often last several years; this means you will have to think about the facts for a long time, which can be difficult to endure without the necessary support.



Remember, you must file the administrative complaint within **two years** of when the harm occurred. If you want to proceed with a lawsuit and are ready to do so, you should first speak with a lawyer experienced in FTCA cases about your particular situation. If you have an immigration lawyer, they may be able to connect you with a lawyer experienced in FTCA law.