

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

March 3, 2023

Department of Veterans Affairs
Office of General Counsel Torts Law Group
810 Vermont Avenue NW
Washington, D.C. 20420

RE: FTCA Claim on Behalf of [REDACTED]

To Whom It May Concern:

The Jerome N. Frank Legal Services Organization represents Mr. [REDACTED]. Enclosed please find an administrative claim we are filing on his behalf under the Federal Tort Claims Act.

The claim consists of:

1. A Standard Form 95; and
2. An Attachment to the Standard Form 95 detailing the basis of his claim

We submit this claim without the benefit of formal discovery. Mr. [REDACTED] reserves the right to amend or supplement his claim.

/s/ Michael J. Wishnie

Michelle Fraling, Law Student Intern
Rebecca Harris, Law Student Intern
Adam Henderson, Law Student Intern
Beatrice Pollard, Law Student Intern
Claire Sullivan, Law Student Intern
Michael Sullivan, Law Student Intern
Michael J. Wishnie, Supervising Attorney

Counsel for [REDACTED]

ANSWER 2

Claimant:



Legal Representative:

Michael Wishnie
Jerome N. Frank Legal Services Organization
127 Wall Street
New Haven, CT 06511

ANSWER 8

I am a Black veteran who served in the U.S. Army from 2009 to 2016. I applied for disability compensation benefits in 2021.

In September 2021, I learned of VA's longstanding racial disparities, and of the agency's knowledge and failure to address such disparities after reviewing data that the Black Veterans Project obtained through Freedom of Information Act requests and was produced by VA. While I knew of anecdotal evidence of racial bias in the VA, I did not learn of systemic evidence illustrating racial disparities before September 2021.

This claim does not seek to relitigate benefit applications. Rather, it seeks to recover for the negligence of VA leadership in failing to redress the longstanding racial disparities in VA benefits administration, about which VA had a duty to correct under 38 U.S.C. § 303 ("The Secretary is responsible for the proper execution and administration of all laws administered by the Department"); see also 38 U.S.C. § 210(b) (1958) ("The Administrator . . . is responsible for the proper execution and administration of all laws administered by the Veterans' Administration").

I reserve the right to amend or supplement this claim.

ANSWER 10

I was injured as a result of the negligence of VA leadership, including VA Administrators' and Secretaries' negligence in failing to meet its statutory duty of care. The VA acted negligently by administering the veterans benefits system in a discriminatory manner and negligently failing to redress longstanding, pervasive race discrimination of which they knew or should have known. Due to this benefits obstruction, I suffered dignitary harm, emotional distress, moral injury, stigma and humiliation of being subjected to a racist system.

For this reason, I demand no less than \$1,000,000 for damages resulting from the VA's negligent administration of housing, education, and disability compensation benefits.

ANSWER 11

- Denis McDonough, VA Secretary
- Dr. Shereef Elnahal, Under Secretary for Health at the United States Department of Veterans Affairs
- Joshua Jacobs, Under Secretary of Veterans Affairs for Benefits at the United States Department of Veterans Affairs

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

CLAIM FOR DAMAGE, INJURY, OR DEATH

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED
OMB NO. 1105-0008

1. Submit to Appropriate Federal Agency:

U.S. Department of Veterans Affairs

2. Name, address of claimant, and claimant's personal representative if any.
(See instructions on reverse). Number, Street, City, State and Zip code.

See Attachment.

3. TYPE OF EMPLOYMENT

4. DATE OF BIRTH

5. MARITAL STATUS

6. DATE AND DAY OF ACCIDENT

7. TIME (A.M. OR P.M.)

☒ MILITARY ☐ CIVILIAN

[REDACTED]

Single

Ongoing

N/A

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).

See Attachment.

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).

N/A

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED
(See instructions on reverse side).

N/A

10. PERSONAL INJURY/WRONGFUL DEATH

STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.

See Attachment.

11. WITNESSES

NAME

ADDRESS (Number, Street, City, State, and Zip Code)

See Attachment.

12. (See instructions on reverse).

AMOUNT OF CLAIM (in dollars)

12a. PROPERTY DAMAGE

12b. PERSONAL INJURY

12c. WRONGFUL DEATH

12d. TOTAL (Failure to specify may cause forfeiture of your rights).

0.00

1,000,000

0.00

1,000,000

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).

13b. PHONE NUMBER OF PERSON SIGNING FORM

14. DATE OF SIGNATURE

(917) 676 2233

3 MAR 23

CIVIL PENALTY FOR PRESENTING
FRAUDULENT CLAIM

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT
CLAIM OR MAKING FALSE STATEMENTS

The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).

Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)

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STANDARD FORM 85 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

95-109

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

N/A

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

N/A

0.00

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

N/A

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

N/A

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

The amount claimed should be substantiated by competent evidence as follows:

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of title or authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 16 of the form.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the incident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to supply the requested material within two years from the date the claim accrued may render your claim invalid.

PRIVACY ACT NOTICE

This notice is given to you in accordance with the Privacy Act, 5 U.S.C. 552a, and its implementing regulations. The information requested is to be used in evaluating claims.

A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. Collection of Information: The information requested is to be used in evaluating claims.

C. Retention of Information: Data are retained as long as necessary for the agency to whom you are submitting this form for this information.

D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

FOR FURTHER INFORMATION

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Privacy, Policy, and Administration, Department of Justice, Washington, D.C. 20540-8001. This notice is not intended to collect information from you, and it does not impose any requirements on you. It is only for your information.

Form(s) to these addresses.