No._____

IN THE

SUPREME COURT OF THE UNITED STATES

GHAZALA SIDDIQUI AND MASOOD SIDDIQUI,
individually and as Personal Representatives of
the Estate of RAHEEL SIDDIQUI, Deceased

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SIXTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Feres v. United States*, 340 U.S. 135 (1950) this Court held that service members were barred from bringing tort claims under the Federal Tort Claims Act where the injury or death arose out of or in the course of activities incident to service. Further, in its progeny of cases, the *Feres* analysis adopted the military nexus and discipline rationale as the most critical consideration in determining whether *Feres* bars a claim. This Court has never considered whether the *Feres* Doctrine can be expanded to bar claims brought by civilians absent a military relationship.

The questions presented are:

1. Does the *Feres* doctrine bar civilians and the estates of military recruits from bringing tort claims under the Federal Torts Claims Act for wrongful acts committed against them at a time before enlistment and where no military nexus or relationship was formed?

2. Should *Feres* be overruled for tort claims brought under the Federal Tort Claims Act where the negligence against the civilians and military recruit began before the civilian enlisted, and where religious discrimination and targeted abuse resulting in a military recruit's death was directly related to the pre-enlistment negligence?

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INTRODUCTION

In *Feres v. United States*, 340 U.S. 135 (1950) the Court limited the waiver of sovereign immunity that Congress provided in the Federal Tort Claims Act ("FTCA") and held that the FTCA bars suits against the United States by military service members in limited situations, and for injuries occurring "incident to service." *Feres*, 340 U.S. 135, at 136-37.

There is a compelling need for this Court to grant certiorari and reverse or at least revisit the *Feres* doctrine. *Feres* is one of the few cases which has been universally criticized "across the jurisprudential spectrum" *Ritchie v. United States*, 733 F.3d 871,874 (9th Cir. 2013). Restricted by *stare decisis,* appellate courts have called for this Court to reverse or alter the Feres Doctrine. In fact, this Court has recognized the pitfalls of the *Feres* injustice as well. In *United States v. Johnson*, 481 U.S. 681, 700, (1987), Justice Scalia's dissent makes it clear that "*Feres* was wrongly decided and heartily deserves the widespread, almost universal criticism it has received." See also, *Lanus v. United States*, 570 U.S. 932 (2013) (Thomas J., dissenting from denial of certiorari); *Taber v. Maine*, 67 F.3d 1029, 1037-1049 (2d Cir. 1995). The *Feres* doctrine has gone far beyond what Congress intended when it enacted the FTCA. As it stands, *Feres*' practical effect is to bar remedy and deny justice to most, if not all, service members when injured or killed by the negligence of the government.

Feres mandates a 'military relationship' be formed. This case demonstrates the absolute injustice of applying the *Feres* doctrine in tort cases involving civilians who then go on to become military recruits. When a civilian, who maintains regular civilian employment walks into a U.S. Military Branch office to inquire about joining the forces, no military relationship is formed. When that same civilian is purposefully and fraudulently misled over a significant period of time due to his faith before enlistment - no military relationship is formed and the torts against that civilian cannot be "incident to service" or protected by *Feres*. The blurred lines between *Feres* and its absolute bar against recovery involving civilians and misled military recruits needs to be redrawn to offset Feres' unjust impact and overbroad reach.

The lower Court decision in this present case conflicts with the decision in *Schoenfeld*. In *Schoenfeld*, "Lance Corporal Aaron Schoenfeld lost his leg while a passenger in his roommate's car when it crashed into a previously damaged, but unrepaired, guardrail on a military base." *Schoenfeld* 492 F.3d 1016. The Court ruled that "Schoenfeld's activities leading up to his accident are not of the sort that could adversely impact military discipline if litigated in a civil suit." The Court found that activities "indistinguishable" from a civilian's activities are not barred by *Feres*. *Id*. at 1026. Here, the Court in the instant case erred by looking exclusively at the death of Raheel Siddiqui as the primary factor in its analysis, and not on the activities that set up the framework for his death. By failing to look at all the pieces of his tragic death, their analysis was incomplete. As in *Schoenfeld*, Petitioners' activities before Raheel's enlistment were also not the sort that could adversely impact military discipline. Thus *Feres*, its progeny, and its iron clad analysis is

inapplicable in this case. See *Schoenfeld v. Quamme*, 492 F.3d 1016, 1019 (9th Cir. 2007).

Similarly, the facts of this case are outside of *Feres*' overbroad reach. Raheel Siddiqui performed typical civilian tasks by attending college and maintaining civilian employment at a national department store chain. Raheel was recruited by the Government Recruiter and exercised his right as a United States citizen to obtain more information about the United States Military before enlisting. Raheel had not officially enlisted in the United States Marine Corps at the time that he began training, learning from and communicating with the Military Recruiter, who had misled him and his family due to their religion. Raheel was only a civilian engaged in regular civilian activities at the time the Recruiter took advantage of Raheel and his parents' naïve and trusting nature, intentionally sending him and his family down a path that would eventually result in extreme hazing and abuse leading to Raheel's untimely death. Had another civilian endured the same type of abuses suffered by Raheel Siddiqui, he and his estate could have brought an actionable suit. But because Raheel Siddiqui was considered a military recruit with an unverified and uncorroborated allegation of suicide against him, he and his family were denied this right.

This is not a case of medical malpractice. It is not a case of negligent enlistment, or suicide (which remains verifiably uncorroborated), it's a case of systemic abuses, intentional failures at all levels of command, and deliberate religious discrimination causing the death of an American Citizen on American soil. The Sixth Circuit Court of Appeals' decision compounds its error by grouping each and every tort in this case under the broad scope of "*Feres*" under the "incident to service" test. Raheel and his

parents had no military relationship at the time the torts began. The intentional violations, fraudulent actions, and torts against Petitioners were initialized and effected long before Siddiqui ever enlisted, but their effects were fatal. Factually, Mr. Siddiqui's complaint is not tied to any form of combat or military service. If justice cannot hold the military accountable for what happened when Raheel was a civilian, and the aftereffects of that continued abuse, then *Feres* has extinguished the rights of all American Citizens and civilians – practically an exercise of power that is contrary to Congress' legislative intent.

The foundation of *Feres* has undergone fundamental changes since it was decided in 1950. In its inception, "parallel liability" was the root of the analysis. 28 U.S.C. § 2674 in relevant part:

> The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a **private individual under like circumstances,** but shall not be liable for interest prior to judgment or for punitive damages.

Only a few years after *Feres*, this Court rejected the parallel private liability interpretations in *Indian Towing Co. v. United States*, 350 U.S. 61 (1955) and *Rayonier v. United States*, 352 U.S. 315 (1957). As the Court noted in *U.S. v. Shearer*, 473 U.S. 52, 105 S.Ct. 3039, 87 L.Ed.2d 38 (1985), a key issue of analysis became "whether the suit requires the civilian court to second-guess military decisions". See *Stencel Aero Engineering Corp. v. United States*, 431 U.S. 666, 673, 97 S.Ct. 2054, 2058, 52 L.Ed.2d 665 (1977), and whether the suit might impair essential "military discipline". See *Chappell v. Wallace*, 462 U.S. 296, 300, 304, 103 S.Ct. 2362, 2365, 2367, 76 L.Ed.2d 586

(1983). These rationales were not considered in 1950, when *Feres* was decided. This Court has never held that fraudulently misleading civilians inquiring about joining the armed forces resulting in their ultimate death based on systemic and patterned religious discrimination is a "military decision" barred by *Feres*. However, if instead of a Military Recruiter, the tortfeasor was, say, an employer for a private company who fraudulently mislead a civilian inquiring about a job position, resulting in his/her death, the tortfeasor would indisputably be subject to suit.

The current social climate of our society and its relation to civilian/military relations has drastically changed since 1950. Historically, *Feres* bars claims by military personnel for injuries received related to military service.

Today, however, military personnel are faced with all types of dangers that are clearly not unique to their military service. In recent years, we see high instances of mass shootings on training bases, sexual assault and harassment cases, racially charged hazing, and so on. In the year 2019 alone, there have been at least six incidents of non-service-related shootings on military bases that have resulted in serious injury or death of military

personnel.[1] The current crisis surrounding gun violence and mass shootings should not be considered an expected injury incident to service. The fact that individuals must navigate not just the dangers that are expected to be incident to service, but also the "civilian-type" dangers that have arisen in military settings with alarming frequency, it is crucial to consider how damaging *Feres* has become in directly blocking justice for many military personnel.

It has been over 60 years since *Feres* was decided, but the Government's immediate opposition to any FTCA claim is still a heavily criticized *stare decisis*. See Garner, et al., *The Law of Judicial* Precedent 29 (2016) ("Lower courts are bound even by old and crumbling high-court precedent—until the high court changes direction.").

This Court has never considered whether the *Feres* doctrine should apply to tort cases brought by civilians and the estate of a military recruit after the demise of the *Feres* theory on parallel liability and the adoption of the military discipline rationale. This is precisely the type of change in the roots of *Feres* that warrant reexamination

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[1] Lance Cpl. Andrew Johnson shot and killed a fellow marine at the Marine Barracks in Washington D.C. Other incidencts include shootings on bases in Southern California, South Carolina, Virginia Beach, Pearl Harbor, and Pensacola. Bill Hutchinson, *Fatal shootings at US military bases highlight unexpected and growing threat -- insiders with access badges: Shootings in Pensacola and Hawaii left five victims dead in three days,* ABC News, Dec. 11, 2019, https://abcnews.go.com/US/fatal-shootings-us-military-bases-highlight-unexpected-growing/story?id=67597032. See Also Manny Fernandez, *On Military Bases, the Dangers Increasingly Come From the Inside Shootings in Pensacola and Pearl Harbor reflect the rising tide of gun violence at military bases,* N.Y. Times, Dec. 6, 2019, https://www.nytimes.com/2019/12/06/us/military-naval-base-shootings.html.

and departure from *stare decisis*. This action does not and will not require a civilian court to "second guess" military decisions, nor will it impair military discipline. See. *United States v. Shearer*, 473 U.S. 52, 105 S.Ct. 3039, 87 L.Ed.2d 38 (1985). See also *Stencel Aero Engineering Corp. v. United States*, 431 U.S. 666, 673, 97 S.Ct. 2054, 2058, 52 L.Ed.2d 665 (1977), *Chappell v. Wallace*, 462 U.S. 296, 300, 304, 103 S.Ct. 2362, 2365, 2367, 76 L.Ed.2d 586 (1983)."

This case is of exceptional national significance. The final decision of this Court will properly establish the barrier of the Government's immunity as related to civilians and military recruits before they become 'active members' of the U.S. Military. Only this Court has the "tools to do so." *Daniel v. United States*, 889 F.3d 978, 982 (9th Cir. 2018).

This case gives this Court the opportunity now to overturn an outdated and heavily criticized *Feres* in the interests of a nation that faces new challenges along the very blurred lines of civilian/military relations.

OPINIONS BELOW

The Court of Appeals opinion is reported at 2019 U.S. App. LEXIS 23442. Appendix A-1—A-11. The District Court opinion is reported at 2018 U.S. Dist. LEXIS 200137. Appendix A-13—A-21.

JURISDICTION

The Court of Appeals entered its judgment on August 6, 2019. Appendix A-12. A petition for rehearing en banc was denied on October 22, 2019. Appendix. A-22–23. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves a claim brought under the Federal Tort Claims Act (FTCA), 28 U.S.C. §1346, U.S.C. §2671, 28 U.S.C. §2674, and 28 U.S.C. §2680. The pertinent provisions of the FTCA are reproduced at Appendix A-24—A-29.

STATEMENT OF THE CASE

Raheel Siddiqui, an American citizen, was a student at University of Michigan and worked for a national department store chain on or about the time he was recruited by a USMC Military Recruiter. Raheel Siddiqui, a civilian, had regular contact with the Recruiter and the recruitment team. Petitioner Ghazala Siddiqui, who wears the Muslim hijab at all times, met with the Government Recruiter during one of the initial meetings with Raheel Siddiqui at the recruiter's recruiting location. Petitioners, Ghazala Siddiqui and Masood Siddiqui, had contact with Raheel's recruiter and often asked a series of questions about the process and the safety of their son. The Recruiter made certain intentional misrepresentations and false promises about joining the Marine Corps, and Raheel Siddiqui and Appellants relied on those representations. Raheel Siddiqui was misled by the government recruiter into believing that he was being given a "golden opportunity" if he enlisted by way of the recruiters.

Prior to his arrival at the Parris Island training base, Raheel spent approximately eight months in the Delayed Entry Program (D.E.P.) upon being recruited by the recruiter to join the Marine Corps. **Before and during** the eight months of DEP training, **Raheel Siddiqui had regular contact with his government recruiter**. On or about the same time Raheel Siddiqui was preparing for recruit training, there were at least two other documented

incidents of torture and abuse against other recruits of the Muslim faith by the **exact same command at the same recruit depot in Parris Island, South Carolina.**

During this time neither the Petitioners nor Raheel Siddiqui were ever informed about incidents involving other Muslim recruits at Parris Island, or about the possible imminent dangers that as a Muslim, Raheel Siddiqui may face specifically at the Parris Island location.

The government's negligent actions placed Siddiqui in an environment where he was the victim of multiple hate crimes having been forced to endure torture, maltreatment, and abuse that subsequently resulted in his untimely death. Raheel was never on full time active duty in Michigan, **and these events of which he had no knowledge prior to enlistment, included an officer abusing and targeting, specifically, other Muslim recruits.**

Despite having had many opportunities to warn Raheel Siddiqui about the possible dangers at Parris Island, the government recruiter intentionally failed to do so. The government deliberately withheld material information such as hazing, abuse of Muslim recruits, and inhumane treatment that was taking place at the exact location Raheel would later be sent to upon his enlistment.

After enlistment, on March 7, 2016, Raheel arrived at the Recruit Depot Parris Island, South Carolina. At the time Raheel Siddiqui was assigned and directed to Platoon 3042, the government was well aware that there was an investigation for abuses against other Muslim recruits in the same Recruit Depot - Parris Island, South Carolina, by the same command. Less than one full day after training, Raheel attempted to complain to his superiors of his abuse. The government failed to follow standard operating procedures and the government dismissed Siddiqui's

complaint of being physically hit and abused as mere "drill corrections".

The documented trail of abuse suffered by Raheel is not an isolated incident. Even though there were documented incidents of torture and abuse against other Muslim recruits by the same command at the same recruit depot, there were no attempts by the Government to exercise discretion in relocating Muslim recruits to a different battalion.

Raheel Siddiqui died in South Carolina. In a letter dated April 26, 2017, the Beaufort County Coroner stated that he responded to the scene on the date of the incident. Upon information and belief, government was instrumental in providing a "history" of the incident to the Beaufort County Coroner. The Medical Examiner, who is no longer at her position at the Medical University of South Carolina, used said "history" in part to make her determination. To date, no authenticated witness statement(s) related to the fall have been released to corroborate any allegation of suicide.

On October 13, 2017, Petitioners filed their complaint under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680. On November 27, 2018, the United States District Court for the Eastern District of Michigan, Southern Division, entered an order and judgment dismissing the case. See Order Granting Defendant's Motion to Dismiss, RE 21, Page ID # 292-300. Petitioners timely filed a notice of appeal on December 10, 2018. Notice of Appeal, RE 23, Case Number 18-2415. On appeal, the Sixth Circuit Court of Appeals affirmed the District Court. *Siddiqui v. United States*, 2019 U.S. App. LEXIS 23442. See Appendix A-1—A-11.

The Sixth Circuit Court of Appeals entered an order and opinion on August 6, 2019, stating "Unless and until the Supreme Court overturns *Feres*, we remain bound by the *Feres* doctrine and accordingly find Plaintiffs' claims barred for lack of subject matter jurisdiction." *Id.*

The Sixth Circuit opinioned "…**if** Siddiqui's death was incident to his military service, then a claim of negligent enlistment relating to his death is also barred by *Feres*. See *Satterfield*, 788 F.2d at 399." See Court of Appeals Opinion, Document 30-1, 30-2, Page 1-9. Case Number 18-2415. *Id.*

The Sixth Circuit died a Petition for Rehearing En Banc on October 22, 2019. *Siddiqui v. United States*, 2019 U.S. App. LEXIS 31516.

REASONS FOR GRANTING THE PETITION

1. The *Feres* doctrine should be overturned because it has evolved since 1950 and expanded far beyond what Feres identified as the legislative intent behind the FTCA

A. The FTCA Permits Recovery Against the Government

The FTCA, enacted in 1946, "was designed primarily to remove the sovereign immunity of the United States from suits in tort." *Richards v. United States*, 369 U.S. 1 (1962). "The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances…." 28 U.S.C. § 2674. See also 28 U.S.C. § 1346(b)(1), in that the Court's jurisdiction is alive under circumstances where "**the United States, if a**

private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." The FTCA acts as a "broad waiver of the Federal Government's sovereign immunity." *Costo v. United States*, 248 F.3d 863, 866 (9th Cir. 2001). See also 28 U.S.C. § 2671, permitting "officers or employees of any federal agency, members of the military or naval forces of the United States" to bring suit in tort for negligent acts or omissions. But the FTCA is not without exceptions. Although there are currently thirteen exceptions, the two most commonly cited exceptions are the "intentional tort" exception and the "military combatant activities" exception. See 28 U.S.C. § 2680(h), and § 2680(j). Neither exception applies. The third commonly cited exception is the intentional tort exception which does not apply to religious discrimination before enlistment, targeted torture, hazing, abuse and forced inhumane treatment either. Moreover, emotional duress isn't barred by the FTCA. See *Kohn v. United States*, 680 F.2d 922 (2nd Cir. 1982); *Truman v. United States*, 26 F.3d 592, 597 (5th Cir. 1994); and *Santiago-Ramirez v. Secretary of Department of Defense*, 984 F.2d 16 (1st Cir. 1993).Factually, there are no exceptions to the FTCA that apply herein.

A year before the *Feres* decision, in *Brooks v. United States*, 337 U.S. 49, 69 S.Ct. 918, 93 L.Ed. 1200 (1949) ("*Brooks*"), the Court held that two army servicemen injured off duty by a civilian army truck could recover for their injuries and that "that the language, framework and legislative history of the Tort Claims Act require a holding that petitioners' actions were well founded." *Id.*, 337 U.S. at 52.

The Court, however, left open a clear distinction in what might result where military servicemen are injured **while**

on duty, finding that to present "a wholly different case." Id.

Brooks' focus was on the distinction between the event and whether it was incident to service. *Jane Doe v.Lt. Gen. Franklin Lee Hagenbeck,* 870 F.3d 36 (2d Cir. 2017). See also *Taber v. Maine*, 67 F.3d 1029 (2d Cir. 1995). As Justice Scalia noted, **"Perhaps Congress recognized that the likely effect of Feres suits upon military discipline is not as clear as we have assumed, but in fact has long been disputed."** *United States v. Johnson*, 481 U.S. 681, (1987)

Under the same analysis, that same distinction is overtly applicable to the facts herein. Nonetheless, under the *Feres* doctrine, no action could be filed under the Federal Tort Claims Act, (FTCA) by any family member, no matter how far removed the torts are from "active" military service or "incident to service".

B. The Central Rationales of *Feres* are no longer Controlling Authority

The purpose of the *Feres* doctrine was never to create an impenetrable shield of liability for Government in cases against them, especially given the special nature of the facts of this case.

In *Feres*, the Court held that "the Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries **arise out of or are in the course of activity incident to service**." *Feres*, 340 U.S. at 146.

The Court provided three central rationales for its decision. The "parallel (private) liability" of the FTCA was deemed to have been absent in *Feres* in that "no liability of a "private individual" even remotely analogous to that which they are asserting against the United States."340 U.S. at 141-142. Secondly, the relationship between the Government and members of its armed forces is "distinctively federal" in nature. *United States v. Standard Oil Co.*, 332 U.S. 301.," and not intended or interpretation by local law. *Id.* at 142-144. Third, was the availability of "benefits" for "servicemen who have already received veterans' benefits to compensate for injuries suffered incident to service". *Id.*, at 144-145.

It was in *Indian Towing Co. v. United States*, 350 U.S. 61, 76 S.Ct. 122, 100 L.Ed. 48 (1955), and again in *Rayonier, Inc. v. United States*, 352 U.S. 315, 319, 77 S.Ct. 374, 1 L.Ed.2d 354 (1957), that the court did away with the parallel private liability rationale. *In Indian Towing*, the Court found that even in cases where the 'activity' was "uniquely governmental", the government could be held liable if a private person in like circumstances could be held liable, since, "all Government activity is inescapably "uniquely governmental" in that it is performed by the Government." *Indian Towing Co.* v. United States, 350 U.S. 61, 67 (1955).

In *Brown,* the Court found that "the *Feres* decision did not disapprove of the *Brooks* case. It merely distinguished it, holding that the Tort Claims Act does not cover injuries to servicemen where the injuries arise out of or are in the course of activity incident to service." 340 U.S. 135, 146. " *United States v. Brown*, 348 U.S. 110, 112 (1954). The Court made a key distinction analogous to the

core of this case when it held, "The present case is, in our view, governed by *Brooks,* not by *Feres.* The injury for which suit was brought was not incurred while respondent was on active duty or subject to military discipline. The injury occurred after his discharge, **while he enjoyed a civilian status.** " *Id.,* 348 U.S. 110, 112 (1954). The timing of the torts and 'civilian' status of the injured party was the key in the Court's determination and holding, just as it should be here where the torts that give rise to this action were completed at the pre-enlistment stage but led Siddiqui, intentionally, down the path to his demise.

Brooks also dealt directly with the 'compensation system' and its flawed rationale, setting the tone for cases that followed. In comparing veteran's benefits with workers' compensation laws, the Court held that "Congress could, of course, make the compensation system the exclusive remedy." Id., 348 U.S. 110, 113 (1954). But Congress did not do that. See also *Stencel Aero Engineering Corp. v. United States*, 431 U.S. 666, 675 (1977); (Marshall J., dissenting). In *Brooks* and cases following it, the Court pointed out that the statutes providing for veterans' benefits, unlike other workers' compensation laws, did not have exclusivity provisions. *United States v. Brown*, 348 U.S. 110, 113 (1954) ("Congress could, of course, make the compensation system the exclusive remedy."). See also *Stencel Aero Engineering Corp. v. United States*, 431 U.S. 666, 675 (1977); (Marshall J., dissenting); *United States v. Johnson*, supra, 481 U.S. at 696-96 (Scalia J., dissenting).

2. This Case Presents No Impact on Military Discipline

A. The (New) Rationale - Interference with Military Discipline Does Not Bar This Court from Overturning Feres

In the years following *Feres*, this Court focused on the adverse effect of a suit upon military discipline. *United States v. Brown*, 348 U.S. 110, 112, 348 S.Ct. 110, 99 L.Ed. 139 (1954). The Court's rulings began a shift in the central analysis of cases involving military relations and found that the basis of *Feres* was the Court's concern with the disruption of "[t]he peculiar and special relationship of the soldier to his superiors" that might result if the soldier were allowed to hale his superiors into court. Id., 348 U.S. 110, 112 (1954). **That problem does not arise when a nonmilitary third party brings suit.** *Stencel Aero Engineering Corp. v. U.S.*, 431 U.S. 666, 676 (1977)

In *United States v. Shearer*, 473 U.S. 52, 58, 105 S.Ct. 3039, 87 L.Ed.2d 38, fn. 4 (1985) ("*Shearer*") the Court's decision was pivotal in that it further deemed two of the three central rationales 'no longer controlling'. In *Shearer*, the Court essentially did away with the "distinctively federal" relationship rationale and the "availability of benefits" rationale. In fact, *Shearer* rested primarily on the rationale that civilian courts should not "second-guess military decisions" where impairment of "essential military discipline" might result. *Shearer*, 473 U.S. at 57, 105 S.Ct. at 3042" citing *Johnson v. U.S.*, 735 F. Supp. 1, 3 (D.D.C. 1990). See also *United States v. Brown*, 348 U.S. 110, 112, 348 S.Ct. 110, 99 L.Ed. 139 (1954). *Shearer* developed the "military decisions" rationale further and held:

> "The Feres doctrine cannot be reduced to a few bright-line rules; each case must be examined in light of the statute as it has been construed in Feres and subsequent cases. Here, the Court of Appeals placed great weight on the fact that Private Shearer was off duty and away from the base when he was murdered. But the situs of the murder is not nearly as important as whether the suit requires the civilian court to second-guess military decisions, see *Stencel Aero Engineering Corp. v. United States*, 431 U.S. 666, 673 (1977), and whether the suit might impair essential military discipline, see *Chappell v. Wallace*, 462 U.S. 296, 300, 304 (1983)." *United States v. Shearer*, 473 U.S. 52, 57 (1985).

The Court in *United States v. Johnson*, 481 U.S. 681, 690-91 (1987), held that "in every respect the military is, as this Court has recognized, "a specialized society." *Parker v. Levy*, 417 U.S. 733, 743 (1974). "[T]o accomplish its mission the military must foster instinctive obedience, unity, commitment, and esprit de corps." *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986). " While that may be the case, the rationale in this case was centered primarily around military discipline. "Moreover, military discipline involves not only obedience to orders, but more generally duty and loyalty to one's service and to one's country. Suits brought by service members against the Government for service-related injuries could undermine the commitment essential to effective service and thus have the potential to disrupt military discipline in the broadest sense of the word." Id., 481 U.S. 681, 691 (1987)

The *Pre-Feres* and *Feres* rationales are not controlling here. "Since the negligent act giving rise to the injury in the present case **was not incident to the military service**, **the *Brooks* case governs** and the judgment must be" *United States v. Brown*, 348 U.S. 110, 113 (1954).

As Justice Scalia noted, "the foregoing three rationales — the only ones actually relied upon in *Feres* — are so frail that it is hardly surprising that we have repeatedly cited the later-conceived-of "military discipline" rationale as the "best" explanation for that decision." See *United States v. Shearer*, 473 U.S., at 57; *Chappell v. Wallace*, 462 U.S. 296, 299 (1983); *United States v. Muniz*, 374 U.S. 150, at 162 (1963). See, *United States v. Johnson*, supra, 481 U.S. at 699 (Scalia, J., dissenting).

In review of *Brown*, *Brooks*, and *Shearer* the Court has never addressed a case involving religious and racial discrimination in civilian-military relations before enlistment leading to the untimely death of a military recruit, where the torts materialized long before any military nexus or relationship was formed.

The historical record of the *Feres* doctrine serves to highlight the conflict among the Circuits. There is a fundamental difference between military cases in military matters, such as the Court Martials related to this case, and the civilian's rights under the FTCA. This petition, now, presents a perfect opportunity for this Court to overturn and/or limit *Feres*' overbroad and unjust impact.

B) *Stare Decisis* Does Not Bar This Court from Overturning *Feres* in this Action

Stare Decisis is meant to "promote the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Kimble v. Marvel Entm't, LLC*, 135 S. Ct. 2401, 2409 (2015) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827-828 (1991)).

Whilst the Federal Tort Claims Act effects "a broad waiver of sovereign immunity" from suits in tort. *Millbrook v. United States*, 569 U.S. 50, 52 (2013), it was not meant to categorically prevent all suits of any kind. It allows suit for negligent acts or tortious omissions of government employees, defined to include "members of the military or naval forces of the United States." 28 U.S.C. §2671. The Feres Doctrine, on the other hand, takes the FTCA out of context and delineates that congressional disposition. While it is true that *Feres* has been almost exclusively declared applicable to medical malpractice suits, this Case before the Court is not a malpractice action. See *Buch v. United States*, 138 S. Ct. 746 (2018)); *Read v. United States*, 571 U.S. 1095 (2013); and *Witt v. United States*, 564 U.S. 1037 (2011). Stare Decisis has died petitions for certiorari related to medical malpractice and other torts when a military relationship led to the injury or death, but never before has it encountered the case of religious and racial discrimination at the pre-enlistment stage. See *Lanus v. United States*, 570 U.S. 932 (2013); McConnell v. United States, 552 U.S. 1038 (2007); *Costo v. United States*, 534 U.S. 1078 (2002), and *O'Neill v. United States*, 525 U.S.

962 (1998). The question here is not of precedent or the "consistent development of legal principles", it is that of the *Feres* doctrine's applicability to a non-malpractice action, or one unrelated to service.

The FTCA prohibits claims that arise out of combatant activities as well as any claim arising in a foreign country. See 28 U.S.C. § 2680(j) and (k). Further, Stare Decisis demands that the center of the entire *Feres* argument is that "service members cannot bring tort suits against the Government for injuries that 'arise out of or are in the course of activity incident to service.'" quoting *Feres*, 340 U.S. at 146). The argument has been established, as in *Halliburton Co. v. Erica P. John Fund, Inc.*, where the Court found that a decision to overrule precedent calls for "'special justification'—over and above a belief 'that the precedent was wrongly decided.'" Id., at 573 U.S. 258, 266 (2014). Such "special justification" is ever so present in this case. Any pre-enlistment negligence and torts that gave rise to Raheel Siddiqui's demise are not barred by *stare decisis*, and it is absolutely necessary to abandon established precedent in these circumstances where the lines between civilian rights and military powers are so clearly blurred that *Feres* is being implicated with torts outside a military nexus.

3. *Feres* was Wrongly Decided and Will Only Serve to Distort the lines between Civilian-Military Relations.

A. The *Feres* Doctrine: A New Decade of Universal Criticism

The FTCA provides that the United States will be liable, at most, for the misfeasance of its agents to the

extent that a private party would be liable for the same conduct under state court law. 28 U.S.C. § 2674. See also *Rayonier Inc. v. U.S.*, 352 U.S. 315, 319, 77 S. Ct. 374, 377, 1 L. Ed. 2d 354 (1957).

In *Feres v. United States*, 340 U.S. 135 (1950), the Court combined three pending federal cases for a hearing in certiorari, two of which (*Jefferson v. United States*, 77 F. Supp. 706 (D. Md. 1948), aff'd, 178 F.2d 518 (4th Cir. 1949), and *Griggs v. United States*, 178 F.2d 1 (10th Cir. 1949)), involving alleged medical malpractice. In *Jefferson*, the service member alleged that a towel was negligently left in his stomach by an army surgeon during surgery. *Feres*, 340 U.S. at 137. In comparison, in *Griggs*, the spouse of a service member "alleged that while on active duty he met death because of negligent and unskillful medical treatment by army surgeons." Ibid. None of the claims in *Feres* involved the issues this case has brought before this Court, and the structural outline of this case is completely outside the underpinnings of *stare decisis*.

Perhaps the most striking argument against *Feres* is that "'*Feres* was wrongly decided and heartily deserves the widespread, almost universal criticism it has received.'" *Lanus v. United States*, 570 U. S. 932, 933 (2013) (quoting *United States v. Johnson*, 481 U. S. 681, 700 (1987) (Scalia, J., dissenting). The practical effect of *Feres* has been the denial of relief to military personnel and civilians alike. See *Davidson v. United States*, 137 S. Ct. 480 (2016); *Ritchie v. United States*, 572 U.S. 1100 (2014); *Lanus v. United States*, 570 U.S. 932 (2013); *McConnell v. United States*, 552 U.S. 1038 (2007); *Costo v. United States*, 534 U.S. 1078 (2002); *O'Neill v. United States*, 525 U.S. 962 (1998); *Sonnenberg v. United States*, 498 U.S. 1067 (1991).

This Court's Justices have recognized, on numerous occasions, the chilling effect the *Feres* doctrine will have through our country's jurisprudence as long as the Court refuses to reconsider *Feres*. As noted by Justice Scalia, "neither the three original Feres reasons nor the post hoc rationalization of "military discipline" justifies our failure to apply the FTCA as written. Feres was wrongly decided and heartily deserves the "widespread, almost universal criticism"" *United States v. Johnson*, 481 U.S. 681, 700 (1987). Justice Thomas' dissent acknowledged the same when he said, "I tend to agree with Justice Scalia that Feres was wrongly decided…. At a bare minimum, it should be reconsidered." *Lanus v. United States*, 133 S.Ct. 2731, (Mem)–2732 (2013) (internal quotations omitted).

The Sixth Circuit Court of Appeals found that the "independent claims of dependents of service members" have been barred under Feres only where such claims have their "genesis" in an injury to a serviceperson incident to military service. See *Irvin v. United States*, 845 F.2d 126, 130-31 (6th Cir. 1988). Moreover, in Brown, a former serviceman caught a parasitic infection called Leishmaniasis while serving in the Persian Gulf War in 1991. His family members were subsequently infected years later and filed a $125 million action for damages. The Sixth Circuit Court found that the bar on a dependent's claims under Feres extends no farther than it would to a serviceperson's claim based on the same injury" *See Brown, et al. v. United States* No. 05-1673 Page 1-5 (6th Cir. 2006).

Almost all other Circuits have acknowledged and criticized the ripple effect of "injustice" *Feres* presents. In *Taber*, the court found that "the Feres doctrine has gone

off in so many different directions that it is difficult to know precisely what the doctrine means today." *Taber v. Maine*, 67 F.3d 1029, 1032 (2d Cir. 1995). See also *Hinkie v. United States*, 715 F.2d 96, 97 (3d Cir.1983); *Scales v. United States*, 685 F.2d 970, 974 (5th Cir. 1982); *Veillette v. United States*, 615 F.2d 505, 506 (9th Cir. 1980); *Dreier v. United States*, 106 F.3d 844, 848 (9th Cir. 1986).

As the dissent in *Johnson* noted,

> "The unlegislated desires of later Congresses with regard to one thread in the fabric of the FTCA could hardly have any bearing upon the proper interpretation of the entire fabric of compromises that their predecessors enacted into law in 1946. And even if they could, intuiting those desires from congressional *failure* to act is an uncertain enterprise which takes as its starting point disregard of the checks and balances in the constitutional scheme of legislation designed to assure that not all desires of a majority of the Legislature find their way into law. *United States v. Johnson*, 481 U.S. 681, 702-3 (1987) (Scalia, J., dissenting).

Stare decisis and Congress' alleged failure to amend the FTCA does not represent affirmative congressional approval. See *Patterson v. Mclean Credit Union*, 491 U.S. 164 (1989); and *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 173 (1994).

As we enter into a new decade, *Feres* will continue to shackle and effectively bar relief to any 'military' serviceman and their families, bleeding onto the rights of civilians in the process. "The Feres Court claimed its decision was necessary to make "the entire statutory system of remedies against the Government . . . a workable, consistent and equitable whole." 340 U.S., at 139. I am unable to find such beauty in what we have wrought." *United States v. Johnson*, 481 U.S. 681, 701 (1987). (Scalia, J., dissenting). Had Congress itself determined that service members cannot recover for the negligence of the country they serve, the dismissal of their suits "would (insofar as we are permitted to inquire into such things) be just." *Johnson*, supra, at 703 (Scalia, J., dissenting).

B. Feres Should be Overruled and/or Limited To Prevent Its Fundamental Unfairness and Irrationality Towards Civilian Rights.

There is nothing more compelling than the truth. There was documented negligence at every level of command in this case, but it started long before Mr. Siddiqui even enlisted. Raheel Siddiqui was an American-born U.S. Citizen, and an ordinary civilian when he was fraudulently misled, enticed and eventually recruited to join the Military. The Government Recruiter's misconduct and the Government's failure to warn the Petitioners, or to place Mr. Siddiqui in a different battalion under a different command leader led Raheel Siddiqui down a path of abuse, religious targeting and torture suffered by other Muslims at Parris Island. This time, however, the Muslim American died. This case does not affect military discipline and the petitioner's claims cannot all be simply grouped

into 'injuries incident to service'. See *Feres v. United States* 340 U.S. 135 (1950). *Feres* cannot ignore the terms of the FTCA insofar as to determine that service members cannot recover for the negligence of the country they serve.

Feres is dangerously out of date and has never encountered the types of issues this case presents at its core — is _Feres_ applicable to deny a civilians rights long before any military nexus is formed; and does the _Feres_ doctrine permit religious discrimination and targeted abuse to deny a serviceman's rights where the torts that gave rise to the action occurred at the pre-enlistment stage.

The relationship of the petitioners and the negligent federal employee, at the time the tortious conduct began, is central to Mr. Siddiqui's case, where "if the injury is not the product of a military relationship, suit under the [FTCA] may be allowed." See *Harten v. Coons*, 502 F.2d 1363, 1365 (10th Cir. 1974). The timing of the torts herein takes this matter outside the *Feres* shield, and the FTCA's Intentional Tort Exception does not apply to religious discrimination before enlistment, targeted torture, hazing, abuse and forced inhumane treatment. Moreover, emotional duress isn't barred by the FTCA. See *Kohn v. United States*, 680 F.2d 922 (2nd Cir. 1982); *Truman v. United States*, 26 F.3d 592, 597 (5th Cir. 1994); and *Santiago-Ramirez v. Secretary of Department of Defense*, 984 F.2d 16 (1st Cir. 1993).

The incorrect application of *Feres* by the lower court essentially asks this Court to ignore what Congress wrote and imagine what it may have written had it been applicable to pre-enlistment non-military torts. But this twisting of tort principles served only to exclude fairness to a recruit who was misled long before his enlistment.

In *Brown*, The Court specifically distinguished between "injuries that did and injuries that did not arise out of or in the course of military duty." See *United States v. Brown*, 348 U.S. pp.113 (1954). See also *Adams v. United States*, 728 F.2d 736 (5 Cir. 1984), where a deceased soldier's family was allowed to proceed against the U.S. Public Health Service, and *Jones v. United States*, 729 F.2d 326 (5 Cir. 1984), whereupon the decedent's service term completed, his family was allowed to proceed only for the negligence which occurred after the term of his enlistment but prior to his death. The lower court in this case focused on the location of Mr. Siddiqui's death, not on the negligence of the Recruiter and the Recruiting Depot before Raheel was officially admitted into the Delayed Entry Program.

In *Schoenfeld*, the Court stated that "a serviceman is not precluded from FTCA recovery merely because he receives disability benefits. *See United States v. Brown*, 348 U.S. 110, 113, 75 S.Ct. 141, 99 L.Ed. 139 (1954) (observing "that Congress had given no indication that it made the right to compensation the veteran's exclusive remedy, [and] that the receipt of disability payments under the Veterans Act was not an election of remedies and did not preclude recovery under the Tort Claims Act but only reduced the amount of any judgment under the latter Act.") *Schoenfeld* 492 F.3d 1018. "[O]ur citizens in uniform may not be stripped of basic rights simply because they have doffed their civilian clothes." *Chappell v. Wallace*, 462 U.S. 296, 304 (1983).

The Government will not be inhibited or deterred from doing its job if the petition is granted and the decision of the lower court reversed. This Court's ultimate decision will have a chilling effect on the relationship between U.S. Citizens (civilians) and Military Recruiters. The lower

court's review should have been on the "totality of the circumstances", not just dispositive on where Raheel took his last breath. See *Bon v. United States*, 802 F.2d 1092, 1094 (9th Cir.1986) (citing *Johnson*, 704 F.2d at 1436-41). There was nothing distinctly military about the negligence and religious targeting that ensued before Raheel was enlisted, and that led his death in South Carolina. The Recruiter's deliberate and religiously motivated torts against Petitioners were not distinctly military in nature and will not cause this Court to second guess any 'military' decisions.

As a nation, we must protect our citizens and this Court has the power to effectuate change, because as the appellate courts have noted, they are powerless to overrule *Feres*. In *Schoenfeld*, the Court found that "*Feres* jurisprudence is something of a muddle. [W]e have reached the unhappy conclusion that the cases applying the *Feres* doctrine are irreconcilable, and thus, comparison of fact patterns to outcomes in cases that have applied the *Feres* doctrine is the most appropriate way to resolve *Feres* doctrine cases." *Id.* (internal quotation marks omitted)." *Id.* at 1017. See also *Dreier v. United States*, 106 F.3d 844 (9th Cir.1996). **But such comparisons do not exist because *Feres* related cases have never addressed issues of religious discrimination and military negligence beginning at the pre-enlistment stage.**

This case has never been about one command decision, or 'military discipline' or the "peculiar and special relationship" between a soldier and his superior officer as defined in *Ritchie*; it is about the negligence of the United States Marine Corps against civilians long before the formation of any type of military nexus.

Under the facts of this case and the very principles of justice, the United States should be held liable for torts against civilians.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

DATED this 17th day of January, 2020.

Respectfully submitted,

By: /s/ SHIRAZ K. KHAN

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APPENDIX

783 Fed.Appx. 484

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 6th Cir. Rule 32.1.

United States Court of Appeals, Sixth Circuit.

Ghazala SIDDIQUI and Masood Siddiqui, Individually, and as Personal Representatives of the Estate of Raheel Siddiqui, Deceased, Plaintiffs-Appellants,

v.

UNITED STATES of America, Defendant-Appellee.

No. 18-2415

FILED August 06, 2019

Synopsis

Background: Parents of Muslim private in Marine Corps, individually and on behalf of private, brought action under Federal Tort Claims Act (FTCA), alleging that government negligently misled private into enlisting, assigned him to command of officers already under investigation for abusing another Muslim recruit, failed to protect him from discriminatory abuse that led to his death, and failed to investigate fully the circumstances of his death. The United States District Court for the Eastern District of Michigan, Arthur J. Tarnow, Senior District Judge, 2018 WL 6178983, granted government's motion to dismiss for lack of subject-matter jurisdiction. Parents appealed.

The Court of Appeals, Stranch, Circuit Judge, held that:

1 Feres doctrine, which precluded recovery under FTCA for military service members' injuries arising out of or in the course of activity incident to service, barred claim that government's negligence in failing to control supervising officers led to private's death;

2 Feres doctrine barred negligent-enlistment claim; and

3 Feres doctrine barred claims that government violated internal regulations regarding treatment of recruits and violated Eighth Amendment in subjecting private to punishments involving torture.

Affirmed.

***485** ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

OPINION

JANE B. STRANCH, Circuit Judge.

This case resulted from the tragic death of Raheel Siddiqui, a private in the United States Marine Corps who fell to his death during basic training. His parents, Ghazala and Masood Siddiqui, sued the United States under the Federal Torts Claims Act (FTCA), alleging that the Government negligently misled Private Siddiqui into enlisting, assigned him to the command of officers already under investigation for abusing another Muslim recruit, failed to protect him from discriminatory abuse that led to his death, and failed to investigate fully the circumstances of his death. Because the doctrine announced in *Feres v. United States*, 340 U.S. 135, 71 S.Ct. 153, 95 L.Ed. 152 (1950), bars suits for tort claims arising from injuries incident to military service, we

are bound to **AFFIRM** the district court's dismissal of the case for lack of subject matter jurisdiction.

I. BACKGROUND

The facts of this case are drawn from the First Amended Complaint. Raheel Siddiqui, a native of Taylor, Michigan, was studying at the University of Michigan-Dearborn and working for a department store when he was approached by a Marine Corps recruiter. On July 8, 2015, he signed enlistment papers, and on August 1, Siddiqui was accepted for enlistment in the Marine Corps' Delayed Entry Program (DEP), in which he spent eight months in part-time training as a member of the Marine Corps Reserve.

On his enlistment forms, he indicated that he was Muslim, and he was open to his recruiter about his faith.

After completing DEP training, on March 7, 2016, Siddiqui was sent to the Recruit Depot in Parris Island, South Carolina, where he signed a form granting his discharge from the DEP Program and accepting enlistment in the regular United States Marine Corps at the rank of private. Later that week, Private Siddiqui was assigned to Platoon 3042, Company K, Third Recruit Training Battalion, for basic training under the supervision of senior drill instructor Gunnery Sergeant Joseph A. Felix, Jr. Neither Private Siddiqui nor his family were aware that Sergeant Felix had allegedly abused another Muslim recruit ***486** at the Parris Island Depot while intoxicated.

After less than one full day of training, on March 13, Private Siddiqui threatened to commit suicide and told

military police that a supervisor had physically hit him.[1] It was decided that he did not require emergency transport to the hospital. The next day, a supervisor escorted Siddiqui to recruit liaison services, and he retracted his threat of suicide. He was then deemed to be at a "low risk for harm" and returned to training.

On March 17, Private Siddiqui's platoon practiced mixed-martial-arts punching techniques. As was allegedly typical for "weaker" recruits in such exercises, Private Siddiqui was paired with a bigger, stronger recruit and subsequently sustained serious injuries. On March 18, he gave the following note to a supervisor:

> This recruit has to go to medical. This recruit's throat has been swollen for three days and is getting worse. This recruit also coughed blood a few times last night. And this recruit completely lost his voice and can barely whisper. This recruit's whole neck is in a lot of pain.

He was not permitted to go to the medical center or provided medical attention.

Later that day, Sergeant Felix found Private Siddiqui unconscious in the barracks and attempted to revive him

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[1] Because the Amended Complaint uses the word "Defendant" to refer to the United States Government, the Marine Corps, the Parris Island Recruit Depot, the Marine Corps Recruiting Station in Detroit, and 20 individual employees of those entities, it is unclear which individual is alleged to have hit Private Siddiqui. It is similarly unclear which specific individuals or entities Plaintiffs allege are responsible for other actions attributed to "Defendant," though all are employees or agencies of the Government.

by rubbing his sternum and slapping him. Shortly thereafter, Siddiqui fell to his death from a stairwell in the barracks. His death was ruled a suicide.

A Marine Corps Command Investigation into Private Siddiqui's death recommended punitive and administrative action against several Marines, including Sergeant Felix and his supervisor, Lieutenant Colonel Joshua Kissoon. Upon conviction by a court martial for violating orders, maltreatment, false official statements, and drunk and disorderly conduct, Sergeant Felix was dishonorably discharged and sentenced to ten years' confinement. Lieutenant Colonel Kissoon pled guilty to various charges.

The Siddiqui family received $100,000 from the Marine Corps death benefits program—a payment made to the survivors of any military personnel who die during active duty—and $400,000 from the Servicemen's Group Life Insurance program.

Plaintiffs Ghazala and Masood Siddiqui, on behalf of their deceased son and in their individual capacities, filed a complaint under the FTCA. They alleged that Marine Corps recruiters misled Private Siddiqui concerning enlisting by failing to warn him about abuse of other Muslim recruits at Parris Island, where he was sent. They brought claims of negligence, hazing, torture, and other criminal acts leading to the abuse that resulted in Private Siddiqui's death. Plaintiffs also allege that the Government failed to investigate fully the circumstances of Private Siddiqui's death and aver his death was a result of torture and forced inhumane treatment, not suicide.

The Government moved to dismiss for lack of subject matter jurisdiction. The district court, despite its strong reservations about the continued viability of the *Feres* doctrine, found that *Feres* applied and dismissed the case. Plaintiffs timely appealed.

*487 II. ANALYSIS

"We review de novo a district court's determination of the applicability of the *Feres* doctrine." *Lovely v. United States*, 570 F.3d 778, 781 (6th Cir. 2009) (quoting *Fleming v. United States Postal Serv.*, 186 F.3d 697, 698 (6th Cir. 1999)).

The FTCA "permits the government to be sued for injuries caused by the negligence of government employees, acting within the scope of their employment, to the same extent that a private individual would be liable for such negligence." *Brown v. United States*, 462 F.3d 609, 611 (6th Cir. 2006); *see* 28 U.S.C. § 1346(b). In *Feres*, the Supreme Court carved out an exception, holding that "the Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service." *Feres*, 340 U.S. at 146, 71 S.Ct. 153. The Court has emphasized three broad rationales underlying *Feres*. "First, the relationship between the Government and members of its armed forces is distinctively federal in character." *United States v. Johnson*, 481 U.S. 681, 689, 107 S.Ct. 2063, 95 L.Ed.2d 648 (1987)(alterations and internal quotation marks omitted). Second, the Government's "generous statutory disability and death benefits" provide "[t]hose injured during the course of activity incident to service ... benefits that 'compare extremely favorably with those provided by most workmen's compensation

statutes.'" *Id.* at 689–90, 107 S.Ct. 2063 (quoting *Feres*, 340 U.S. at 143, 71 S.Ct. 153). "Third, ... suits brought by service members against the Government for injuries incurred incident to service ... are the '*type[s]*of claims that, if generally permitted, would involve the judiciary in sensitive military affairs at the expense of military discipline and effectiveness.' " *Id.* at 690, 107 S.Ct. 2063 (quoting *United States v. Shearer*, 473 U.S. 52, 59, 105 S.Ct. 3039, 87 L.Ed.2d 38 (1985)). In applying the *Feres* doctrine, we do not reduce it "to a few bright-line rules; each case must be examined in light of the [FTCA] as it has been construed in *Feres* and subsequent cases." *Shearer*, 473 U.S. at 57, 105 S.Ct. 3039.

Plaintiffs' injuries arise from Private Siddiqui's death while on active duty, allegedly caused by the negligent actions and inactions of his military supervisors and recruiters. In cases involving similar facts, the Supreme Court and this court have applied *Feres* to bar suit against the Government. In *Shearer*, the mother of an Army private murdered by another serviceman off-base claimed that the Government knew of the other serviceman's prior murder and manslaughter convictions and negligently failed to control him or warn others that he was at large. *Id.* at 53–54, 105 S.Ct. 3039. The Supreme Court found those claims barred by *Feres* because the allegation of negligence went "directly to the 'management' of the military" and "call[ed] into question basic choices about the discipline, supervision, and control of a serviceman." *Id.* at 58, 105 S.Ct. 3039. The Court emphasized the importance of asking "whether the suit requires the civilian court to second-guess military decisions and whether the suit might impair essential military discipline," policy concerns that undergird *Feres*'s exception to the FTCA's waiver of sovereign

immunity. *Id.* at 57, 105 S.Ct. 3039 (internal citations omitted).

We addressed similar claims in *Satterfield v. United States*, 788 F.2d 395 (6th Cir. 1986), brought by the mother of Army private Charles Hulstine, who was beaten to death by three servicemen during basic training. *Id.* at 396. All four servicemen were off-duty and off-base at the time of the killing. *Id.* The plaintiff alleged that Army recruiters negligently recruited Private ***488** Hulstine, failed to supervise and control the servicemen who threatened and assaulted him before the fatal beating, and failed to warn and protect him. *Id.* We concluded that Private Hulstine's death "was incident to his military service," even though the servicemen were off-duty and off-base, for the same reasons stated in *Shearer*. *Id.* at 398. Because we "focus[ed] the inquiry on whether Hulstine's *death* was incident to his military service," we found it unnecessary to decide whether his recruitment and enlistment were also incident to military service. *Id.* at 398–99 (emphasis in original).Instead, "[h]aving already concluded that Hulstine's death was incident to his military service," we held that "the *Feres* doctrine was properly applied to bar plaintiff's claim of negligent enlistment as well." *Id.* at 399.

Like the Army privates in *Shearer* and *Satterfield*, Private Siddiqui was an active serviceman at the time of his death. Like the plaintiffs in those cases, Plaintiffs Ghazala and Masood Siddiqui allege that the Government's negligence in failing to control Private Siddiqui's supervising officers led to their son's death. Because Plaintiffs' FTCA claims also "call[ ] into question basic choices about the discipline, supervision, and control of a serviceman," we are bound to

apply the *Feres* doctrine. *Shearer*, 473 U.S. at 58, 105 S.Ct. 3039.

Plaintiffs argue that because Marine Corps recruiters made misrepresentations to entice Private Siddiqui to enlist, their claim of negligent enlistment arises before their son began military service, and *Feres* thus does not apply. But, as discussed in *Satterfield*, if Siddiqui's death was incident to his military service, then a claim of negligent enlistment relating to his death is also barred by *Feres*. *See Satterfield*, 788 F.2d at 399. Plaintiffs also cite to *Hajdusek v. United States*, No. 16-CV-340-SM, 2017 WL 4250510 (D.N.H. Sept. 21, 2017), arguing that during their son's training in the DEP program, he was a "poolee," not an active duty member of the armed services, and was not engaging in activity incident to service. But Private Siddiqui's death occurred after he left the DEP program and enlisted in the Marine Corps. There is no dispute that Siddiqui was on active duty when he died, and we conclude that his death during basic training falls squarely within the wide reach of the *Feres* doctrine. *See Lovely*, 570 F.3d at 782–83.

Insofar as Plaintiffs also bring claims that the Government violated internal regulations regarding treatment of recruits and violated the Eight Amendment in subjecting Private Siddiqui to "punishments involving torture," those claims are also barred by *Feres*. *See Satterfield*, 788 F.2d at 398 (noting the "impropriety of a civilian court involving itself in a military matter, especially where a military regulation is at issue"); *Chappell v. Wallace*, 462 U.S. 296, 304, 103 S.Ct. 2362, 76 L.Ed.2d 586 (1983) (holding that "it would be inappropriate to provide enlisted military personnel a *Bivens*-type remedy against their superior officers" for constitutional violations).

Finally, Plaintiffs call upon us to disregard or overrule *Feres*. We would not be the first court to consider doing so. As the Ninth Circuit noted, "We can think of no other judicially-created doctrine which has been criticized so stridently, by so many jurists, for so long." *Ritchie v. United States*, 733 F.3d 871, 878–79 (9th Cir. 2013). In 1987, Justice Scalia wrote, in a dissent joined by Justices Brennan, Marshall, and Stevens, that "*Feres* was wrongly decided and heartily deserves the 'widespread, almost universal criticism it has received.' " *Johnson*, 481 U.S. at 700, 107 S.Ct. 2063 (Scalia, J., dissenting) (quoting ***489** *In re "Agent Orange" Prod. Liab. Litig.*, 580 F. Supp. 1242, 1246 (E.D.N.Y. 1984)). More recently, Justice Thomas has urged reconsideration of *Feres*. *See Daniel v. United States*, —— U.S. ——, 139 S. Ct. 1713, 204 L.Ed.2d 275 (2019) (Thomas, J., dissenting from denial of cert.); *Lanus v. United States*, 570 U.S. 932, 133 S.Ct. 2731, 186 L.Ed.2d 934 (2013) (Thomas, J., dissenting from denial of cert.). We also acknowledge the district court's appropriate challenge to the generosity of the death benefits provided:

> [T]he *Feres* doctrine's reliance on "generous" military no-fault compensation has not withstood the test of time. A $100,000 death benefit and $400,000 in a group life insurance payout are mere fractions of most wrongful death awards. The September 11th Fund's wrongful death awards were in the $2-$3 million-dollar range. Eric Posner & Cass Sunstein. Dollars and Death, 72 U CHI. L. REV. 537 (2005). Those awards considered modern tort principles, including the focus on deterrence and compensation. *Id.* Private Siddiqui's death

> benefit is woefully out-of-step with such principles.

Unless and until the Supreme Court overturns *Feres*, we remain bound by the *Feres* doctrine and accordingly find Plaintiffs' claims barred for lack of subject matter jurisdiction.

III. CONCLUSION

For the reasons stated above, we **AFFIRM** the district court's dismissal of the case.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Ghazala Siddiqui, et al,	Case No. 17-13351
Plaintiffs,	Senior U.S.
v.	District Judge
	Arthur J. Tarnow
United States of America,	
	U.S. Magistrate
Defendant.	Judge
	David R. Grand
_____/	

JUDGMENT

All issues having been resolved by the Court's Order [21] of November 26, 2018, **THIS CASE IS CLOSED**.

Dated at Detroit Michigan, this 27th day of November, 2018.

DAVID J. WEAVER
CLERK OF THE COURT

BY: s/Michael E. Lang
Deputy Clerk

Approved:

s/Arthur J. Tarnow
ARTHUR J. TARNOW
SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Ghazala Siddiqui, et al,	Case No. 17-13351
Plaintiffs,	Senior U.S.
v.	District Judge Arthur J. Tarnow
United States of America,	
	U.S. Magistrate
Defendant.	Judge David R. Grand

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ORDER GRANTING DEFENDANT'S MOTION TO DISMISS [14]

Private Raheel Siddiqui fell to his death from his barracks on Parris Island on April 18, 2016 while training to become a United States Marine. His parents, both individually and as personal representatives of their son, brought this suit under the Federal Torts Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680 ("FTCA"), alleging that Pvt. Siddiqui was brutalized by a sadistic drill instructor, who was already under investigation by the Marines for abusing Muslim recruits. Despite the serious questions that remain regarding the circumstances of Pvt. Siddiqui's death, the Court will dismiss this case. Because of the *Feres* Doctrine, tort claims arising from injuries incident to military service are not actionable under the FTCA.

FACTUAL BACKGROUND

Raheel Siddiqui, a native of Taylor, Michigan, was a student at the University of Michigan in Dearborn when he was recruited to join the U.S. Marine Corps. (Am. Compl. ¶ 17). He signed his enlistment papers on July 8, 2015 and began training part- time with the Marine Corps Delayed Entry Program ("DEP") on August 20, 2015. (Id. at ¶ 36; Pl. Ex. F).

Raheel arrived at the Recruit Depot in Parris Island, South Carolina, on March 7, 2016. At 9:31 A.M. he signed, with a biometric signature, a form granting his discharge from the DEP Program. (Def. Ex. 3). At that point he was "accepted for enlistment in the Regular Component of the United States Marine Corps in pay grade E1." (Id.). On March 13, the Marine Corps assigned him to Platoon 3042, Company K, Third Recruit Training Battalion. (Am. Compl. ¶ 44). Gunnery Sergeant Joseph A. Felix, Jr. was the senior drill instructor assigned to Platoon 3042. (Id.).

That same day, Pvt. Siddiqui allegedly threatened to commit suicide. (Am. Compl. ¶ 50-57). The Marine Corps contacted emergency medical services, who dispatched military police to the Third Recruit Training Battalion barracks. (Id.). They declined to bring Pvt. Siddiqui to the hospital, and the next day he went to recruit liaison services and retracted his threat of suicide. (Id. at ¶ 57). He was thereafter deemed a "low risk of harm" and sent back to training. (Id. at ¶ 58).

Several days later, on March 17, 2016, Pvt. Siddiqui participated in a mixed-martial arts exercise, during which he was paired with a bigger, stronger recruit. (Am. Compl. at ¶ 65). He sustained serious injuries from these drills. (Id. at ¶ 67).

On March 18, 2016, Pvt. Siddiqui gave this note to his superiors:

> "This recruit has to go to medical. This recruit's throat has been swollen for three days and is getting worse. This recruit also coughed blood a few times last night. And this recruit completely lost his voice and can barely whisper. This recruit's whole neck is in a lot of pain."

(Id. at ¶ 68).

He was not allowed to go to the medical center, and, later that day, Sgt. Felix found Pvt. Siddiqui unconscious in the barracks. In an attempt to revive him, Sgt. Felix rubbed his knuckles on Pvt. Siddiqui's sternum and slapped him. (Id. at ¶ 70). Shortly thereafter, Private Raheel Siddiqui fell to his death from a stairwell in the barracks. He had been at boot camp for 11 days.

The Marine Corps initiated a Command Investigation into Pvt. Siddiqui's death. On August 10, 2016, the Command Investigation recommended punitive and administrative action against several Marines, including Sgt. Felix, who was charged and convicted by a U.S. Marines Court Martial for violating orders, maltreatment, false official statements, and drunk and disorderly conduct. (Def. Ex. 3). He was dishonorably discharged and sentenced to ten years confinement. (Id.). His former supervisor, Lt. Col. Joshua Kissoon, pled guilty to dereliction of duty, making false official statements, and conduct unbecoming of an officer.

The Siddiqui family has received $100,000 from the Marine Corps death benefits program, as well as $400,000

from the Servicemen's Group Life Insurance ("SGLI") program. (Def. Ex. 2).

PROCEDURAL BACKGROUND

On October 13, 2017, Plaintiffs (Pvt. Siddiqui's parents and his estate) filed their complaint under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-2680, alleging negligence, vicarious liability, and hazing [Dkt. #1]. Defendant filed its Motion to Dismiss on December 15, 2017 [8], and a hearing was held on April 26, 2018. The Court gave Plaintiffs leave to amend their complaint to account for the unique legal position of DEP recruits, specifically as it is discussed in *Hajdusek v. United States*, 2017 WL 4250510 (D.N.H. Sept. 21, 2017). Plaintiffs then filed an amended complaint on May 29, 2018 [13], mooting the previous motion to dismiss. Defendant filed a new motion to dismiss on June 19, 2018 [14]. That motion is now fully briefed, and a hearing was held October 29, 2018.

LEGAL STANDARD

The United States moves to dismiss Plaintiffs' claims for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). A challenge to subject matter jurisdiction takes the form of a facial attack or a factual attack. The United States makes a factual attack, which means that it challenges "the factual existence of subject matter jurisdiction." *Cartwright v. Garner*, 751 F.3d 752, 759-60 (6th Cir. 2014). Accordingly, Plaintiffs' factual allegations do not get the benefit of the presumption of truthfulness, and the Court may "weigh the evidence and satisfy itself as to the existence of its power to hear the

case." *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994).

ANALYSIS

The United States argues that Plaintiffs' claims are barred by sovereign immunity. Specifically, it asserts that the Siddiqui family's claims are not actionable under the FTCA because 1) they are barred by the *Feres* Doctrine,[1] 2) they are barred by the intentional tort exception of the Federal Torts Claims Act, found in 28 U.S.C. § 2680(h), and 3) they are barred by the discretionary function exception to the FTCA, § 2680(a). Since the Court lacks jurisdiction under the *Feres* Doctrine, it will not reach the intentional tort or discretionary function exceptions.

Feres v. United States, 340 U.S. 135 (1950) was comprised of three consolidated cases, two of which alleged negligent treatment by military surgeons and a third of which involved a serviceman killed in a barracks fire. In each case, the plaintiffs, "while on active duty and not on furlough, sustained injury due to negligence of others in the armed forces." *Feres*, 340 U.S. at 138. The Supreme Court expanded the waiver of immunity exemption to the FTCA and held that "the Government is not liable… for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service." *Id.* at 146.

There were three rationales underlying *Feres*: (1) the distinctly federal nature of the relationship between the Government and members of its armed forces; (2) "the existence of [ ] generous statutory disability and death

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[1] The *Feres* Doctrine follows the Supreme Court's interpretation of the FTCA in *Feres v. United States*, 340 U.S. 135 (1950).

benefits"; and (3) the judiciary's unwillingness to involve itself "in sensitive military affairs at the expense of military discipline and effectiveness." *United States v. Johnson*, 481 U.S. 681, 688-89 (1987); *United States v. Shearer*, 473 U.S. 52, 59 (1985).

The Supreme Court has reasoned that suits "based upon service-related activity…could undermine the commitment essential to effective service and thus have the potential to disrupt military discipline in the broadest sense of the word." *Johnson*, 481 U.S. at 691. In general, the Supreme Court has adhered to this principle by

> "broadening the *Feres* doctrine to encompass…all injuries suffered by military personnel that are even remotely related to the individual's status as a member of the military without regard to the location of the event, the status (military or civilian) of the tortfeasor, or any nexus between the injury-producing event and the essential defense/combat purpose of the military activity from which it arose."

Major v. United States, 835 F.2d 641, 644-45 (6th Cir. 1987).

That said, "[t]he *Feres* doctrine cannot be reduced to a few bright-line rules; each case must be examined in light of the statute as it has been construed in *Feres* and subsequent cases." *Shearer*, 473 U.S. at 57.

The question is whether Pvt. Siddiqui's injuries arose out of, or were sustained in the course of, activity incident to service. The answer, according to binding

precedent, is yes, even though Pvt. Siddiqui was not yet a Marine. The Sixth Circuit has held that *Feres* barred the FTCA claims of a member of the Army Reserve Officers' Training Corps ("ROTC"), who was enlisted, but not yet on active duty. See *Lovely v. United States*, 570 F.3d 778 (6th Cir. 2009). At the time of his death, Pvt. Siddiqui was both enlisted and, as a recruit on a "full-time training duty," on active duty according to 10 U.S.C. § 101(d)(1). Significantly, in *Satterfield v. United States*, 788 F.2d 395 (6th Cir. 1986), the Sixth Circuit held that *Feres* barred the FTCA suit of a plaintiff who had not yet completed basic training and who was off-duty and off-base at the time of his death.

Plaintiffs cannot escape the reach of the *Feres* doctrine by alleging torts that began during recruitment and while Pvt. Siddiqui was still a DEP poolee. *Satterfield* held that when a soldier's death is "incident to military service," "the *Feres* doctrine was properly applied to bar plaintiff's claim of negligent enlistment as well." *Satterfield*, 788 F.2d at 399-400. Plaintiffs' negligent enlistment claim cannot provide a jurisdictional hook for the FTCA, because the injury for which the Siddiqui family seeks relief was suffered incident to Pvt. Siddiqui's military service.

CONCLUSION

The Siddiqui family has indicated that a purpose of the lawsuit was to clarify that their son did not commit suicide. They also wanted to persuade the Marine Corps to deter the harassment of Muslim recruits that played a part in their son's death. It is clear from the actions the Marine

Corps took against Sgt. Felix and Lt. Col. Kissoon that they recognize the severity of the problem and are acting to combat religious discrimination at Parris Island.

The Court cannot let the family move forward with their suit. The *Feres* Doctrine, a judicially-engineered exception to the FTCA's waiver of the U.S. Government's sovereign immunity, bars the suit. That doctrine has long been heavily criticized. In a scathing dissent, Justice Scalia wrote that "*Feres* was wrongly decided and heartily deserves the 'widespread, almost universal criticism it has received.'" *Johnson*, 481 U.S. at 700 (Scalia, J., dissenting) (quoting *In re "Agent Orange" Product Liability Litigation*, 580 F.Supp. 1242, 1246 (E.D.N.Y. 1984)). He described *Feres* as a "clearly wrong decision." *Id.* at 703.

Since *Feres*, soldiers suffering even the most brutal injuries due to military negligence have been shut out of the courts. *See* Major Deidre G. Brou, *Alternatives to the Judicially Promulgated Feres Doctrine*, 192 Mil. L. Rev. 1 (2007).

Lower courts have also recognized that "[t]he viability and applicability of the *Feres* doctrine's various rationales is in doubt." *Snow v. USMC*, 2011 WL 1599231, at *4 (E.D. Tex. 2011) (citing *Taber v. Maine*, 67 F.3d 1029, 1038-44 (2d Cir. 1995); *Parker v. United States*, 611 F.2d 1007 (5th Cir. 1980); see also *Daniel v. United States*, 889 F.3d 978, 982 (9th Cir. 2018) (dismissing a medical malpractice case brought by the family of a Lieutenant who bled to death during childbirth in a naval hospital while noting, "[i]f ever there were a case to carve out an exception to the *Feres* doctrine, this is it."). Dismissing an

action brought by the widow of a serviceman who was killed in a botched appendectomy at a military hospital, one district court characterized the doctrine as "unfair and irrational," and observed that the plaintiff was "limited to a fraction of the recovery she might have otherwise received." *Witt v. United States*, 2009 U.S. Dist. LEXIS 9451 at *6-7 (E.D. Cal. 2009).

Indeed, the *Feres* doctrine's reliance on "generous" military no-fault compensation has not withstood the test of time. A $100,000 death benefit and $400,000 in a group life insurance payout are mere fractions of most wrongful death awards. The September 11th Fund's wrongful death awards were in the $2-$3 million-dollar range. Eric Posner & Cass Sunstein. Dollars and Death, 72 U CHI. L. REV. 537 (2005). Those awards considered modern tort principles, including the focus on deterrence and compensation. Id. Pvt. Siddiqui's death benefit is woefully out-of-step with such principles.

Nevertheless, and despite strong reservations, the Court remains bound by *Feres* and its progeny.

Accordingly,

IT IS ORDERED that the Defendant's June 29, 2018 Motion to Dismiss [14] is **GRANTED**.

SO ORDERED.

s/Arthur J. Tarnow
Arthur J. Tarnow
District Judge

Dated: November 27, 2018

No. 18-2415

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GHAZALA SIDDIQUI AND MASOOD SIDDIQUI, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVES OF THE ESTATE OF RAHEEL SIDDIQUI, DECEASED,

Plaintiffs-Appellants,

v. ORDER

UNITED STATES OF AMERICA,

Defendant-Appellee.

BEFORE: SILER, STRANCH, and NALBANDIAN, Circuit Judges

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

s/Deborah S. Hunt

Deborah S. Hunt, Clerk

STATUTES INVOLVED

28 U.S.C. § 1346:

(b)(1) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 2671:

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term "Federal agency" includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

"Employee of the government" includes (1) officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 115, 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation, and (2) any officer or employee of a Federal public defender organization, except when such officer or employee performs professional services in the course of providing representation under section 3006A of title 18.

"Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

28 U.S.C. § 2674:

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

28 U.S.C. § 2680:

The provisions of this chapter and section 1346(b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer, except that the provisions of this chapter and section 1346(b) of this title apply to any claim based on injury or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if—

(1) the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense;

(2) the interest of the claimant was not forfeited;

(3) the interest of the claimant was not remitted or mitigated (if the property was subject to forfeiture); and

(4) the claimant was not convicted of a crime for which the interest of the claimant in the property was

subject to forfeiture under a Federal criminal forfeiture law.

(d) Any claim for which a remedy is provided by chapter 309 or 311 of title 46 relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1-31 of Title 50, Appendix.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

[(g) Repealed. Sept. 26, 1950, c. 1049, § 13(5), 64 Stat. 1043.]

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: *Provided*, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority.

(m) Any claim arising from the activities of the Panama Canal Company.

(n) Any claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.