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United States

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JUST OUTSIDE OF ATLANTA  
SITS A QUIET SUBURBAN  
HOME BELONGING TO A  
FAMILY OF THREE:

WHEN THE FAMILY WENT TO  
SLEEP ON THE NIGHT OF  
OCTOBER 18, 2017, THEY  
NEVER EXPECTED THEIR  
LIVES TO CHANGE FOREVER.

HILLIARD "TOI" CLIATT

CURTRINA "TRINA" MARTIN

AND TRINA'S SEVEN-  
YEAR-OLD SON, G.W.

IN THE EARLY HOURS OF THE MORNING, A SIX-AGENT FBI SWAT TEAM SMASHED IN THE FRONT DOOR, DETONATED A FLASH-BANG GRENADE, AND PROCEEDED TO RAID THE HOUSE.

KRANK!

BANG!

TERRIFIED THAT  
CRIMINALS HAD BROKEN  
INTO THEIR HOME, THE  
FAMILY JUMPED INTO  
ACTION TO PROTECT  
THEMSELVES.

WE NEED  
TO HIDE!

I NEED TO  
GET MY SON!

MOMMY?

BUT HIDING PROVED USELESS.

DON'T MOVE!  
YOU'RE UNDER ARREST!

WHAT'S  
GOING ON!?

WHY IS THIS  
HAPPENING!?

FREEZE!  
HANDS UP!

PLEASE!! I NEED TO  
GO GET MY SON! PLEASE,  
I BEG YOU!

BUT AS QUICKLY AS THE  
RAID BEGAN, IT CAME  
TO AN ABRUPT HALT.

UH, GUYS?  
I THINK WE HAVE  
A PROBLEM.

UHH...  
WE'LL BE  
RIGHT BACK.

THE FBI SWAT TEAM HAD A WARRANT TO  
RAID THE HOUSE OF A SUSPECTED GANG  
MEMBER LOCATED AT 3741 LANDAU LANE.

THE ONLY PROBLEM? THEY WEREN'T ON LANDAU  
LANE. THEY WERE AT 3756 DENVILLE TRACE.

BEFORE CONDUCTING THE RAID, THE SWAT TEAM MADE NO EFFORT TO VERIFY THAT THEY WERE AT THE RIGHT LOCATION.

SOMETHING SEEMS OFF. SHOULD WE MAKE SURE THIS IS THE RIGHT HOUSE?

NAH, I'M SURE IT'S FINE. LET'S GO!

WHEN ASKED HOW THE SWAT TEAM MANAGED TO MAKE SUCH AN EGREGIOUS MISTAKE, THE SPECIAL AGENT IN CHARGE OF THE OPERATION BLAMED HIS PERSONAL GPS DEVICE, CLAIMING IT LED THEM TO THE WRONG HOUSE.

BUT THIS CLAIM COULD NEVER BE VERIFIED BECAUSE THE OFFICER THREW AWAY THE GPS DEVICE AFTER THE RAID.

AFTER REALIZING THEIR MISTAKE, THE SWAT TEAM WENT DOWN THE BLOCK TO RAID THE CORRECT HOUSE, LEAVING TRINA AND HER FAMILY CONFUSED AND TERRORIZED.

ALTHOUGH THE SPECIAL AGENT IN CHARGE OF THE OPERATION DID EVENTUALLY RETURN TO APOLOGIZE, TOI, TRINA, AND G.W. WERE LEFT WITH MORE QUESTIONS THAN ANSWERS.

SORRY ABOUT ALL THE COMMOTION. HERE'S MY SUPERVISOR'S NUMBER.

THE RAID CAUSED EXTENSIVE INJURIES AND PROPERTY DAMAGE. IN AN EFFORT TO RECOVER FOR AT LEAST SOME OF THOSE LOSSES, TRINA AND TOI SUED THE UNITED STATES UNDER THE FEDERAL TORT CLAIMS ACT (FTCA).

THE FTCA IS A FEDERAL LAW THAT WAIVES THE GOVERNMENT'S SOVEREIGN IMMUNITY\* FOR CERTAIN TYPES OF CLAIMS, ALLOWING INJURED INDIVIDUALS TO SUE.

IT IS ONLY FAIR THAT THE FEDERAL GOVERNMENT BE HELD LIABLE WHEN A FEDERAL EMPLOYEE COMMITS MISCONDUCT FOR WHICH A PRIVATE PERSON WOULD BE LIABLE IF THEY DID THE SAME THING.

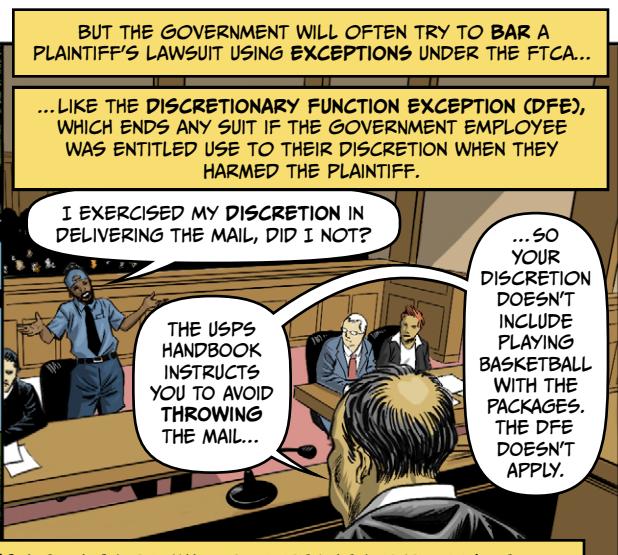
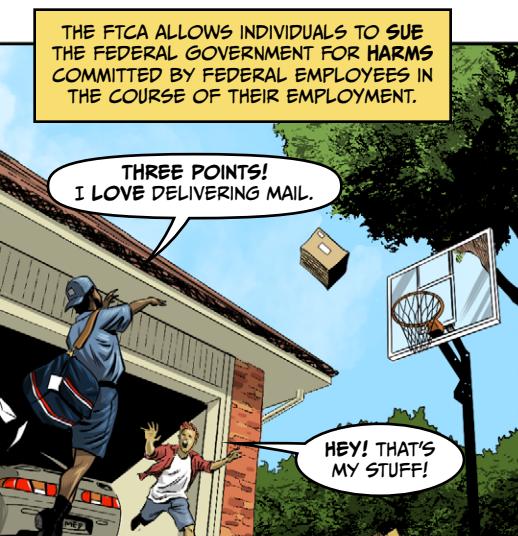
THE FTCA WILL ENSURE LEGAL RECOURSE FOR AMERICANS WHO ARE HARMED BY GOVERNMENT NEGLIGENCE OR MISCONDUCT.

\*Legal doctrine preventing lawsuits against a government without consent.

THE FTCA ALLOWS INDIVIDUALS TO SUE THE FEDERAL GOVERNMENT FOR HARMS COMMITTED BY FEDERAL EMPLOYEES IN THE COURSE OF THEIR EMPLOYMENT.

BUT THE GOVERNMENT WILL OFTEN TRY TO BAR A PLAINTIFF'S LAWSUIT USING EXCEPTIONS UNDER THE FTCA...

...LIKE THE DISCRETIONARY FUNCTION EXCEPTION (DFE), WHICH ENDS ANY SUIT IF THE GOVERNMENT EMPLOYEE WAS ENTITLED USE TO THEIR DISCRETION WHEN THEY HARMED THE PLAINTIFF.

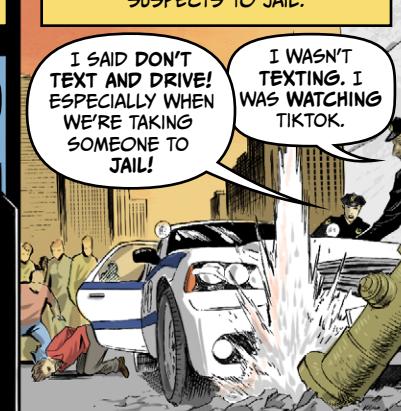
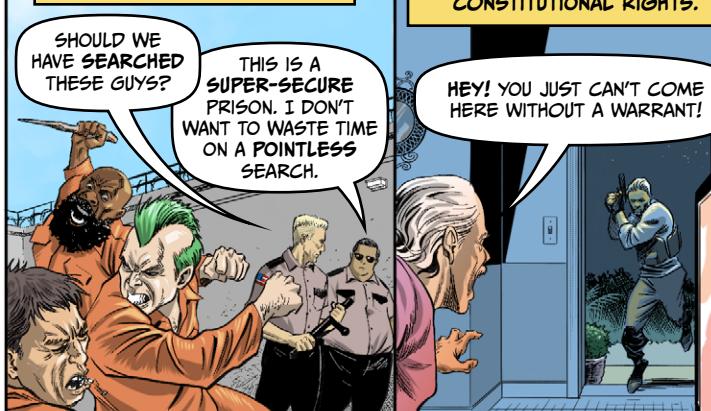


BUT GETTING PAST THE DFE IS NOT ALWAYS A STRAIGHTFORWARD PROCESS AS LOWER COURTS FREQUENTLY DISAGREE ABOUT HOW AND WHEN THIS EXCEPTION SHOULD APPLY.

SOME COURTS HAVE HELD THAT THE DFE DOES NOT PROTECT CONDUCT MARKED BY CARELESSNESS OR LAZINESS.

SOME COURTS REFUSE TO APPLY THE EXCEPTION WHEN FEDERAL LAW ENFORCEMENT OFFICERS VIOLATE A PLAINTIFF'S CONSTITUTIONAL RIGHTS.

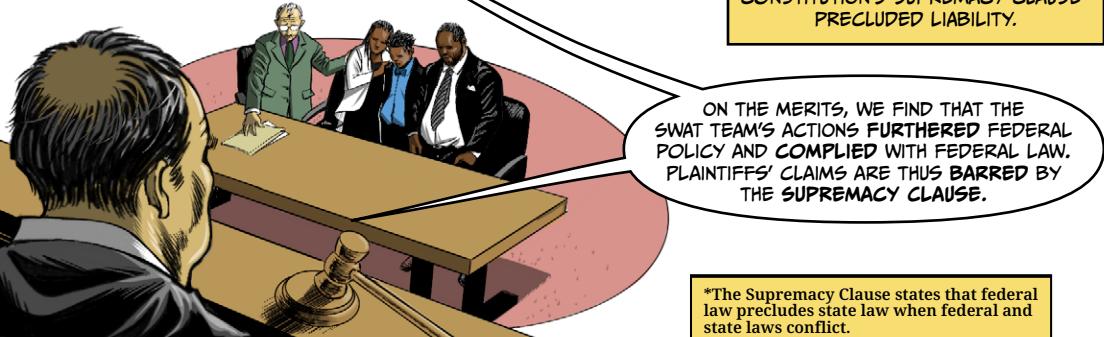
AND SOME COURTS HAVE SUGGESTED THAT THE DFE DOESN'T APPLY TO MINISTERIAL TASKS SUCH AS TRANSPORTING SUSPECTS TO JAIL.



WHEN THE US COURT OF APPEALS FOR THE ELEVENTH CIRCUIT HEARD THIS CASE, IT EMPLOYED ITS OWN APPROACH TO THE DFE.

THERE IS A LAW ENFORCEMENT PROVISO IN THE FTCA THAT LETS PLAINTIFFS SUE POLICE FOR THIS KIND OF MISCONDUCT. WE FIND THE PROVISO APPLIES TO THE DFE, SO WE'LL MOVE ON TO THE MERITS.

IT CHOSE TO BALANCE A PLAINTIFF-FRIENDLY APPROACH TO THE DFE WITH A GOVERNMENT-FRIENDLY MERITS ANALYSIS. IT DETERMINED THAT THE DFE DOES NOT BAR PLAINTIFFS' CLAIMS, BUT THAT THE CONSTITUTION'S SUPREMACY CLAUSE\* PRECLUDED LIABILITY.



\*The Supremacy Clause states that federal law precludes state law when federal and state laws conflict.

TRINA AND TOI APPEALED TO THE SUPREME COURT, WHICH AGREED TO HEAR THEIR CASE.

THE SUPREME COURT DID NOT AGREE WITH THE ELEVENTH CIRCUIT'S UNUSUAL APPROACH TO THE FTCA.

FIRST, IT HELD THAT THE LOWER COURT MISREAD THE FTCA BY USING THE LAW ENFORCEMENT PROVISO TO SHIELD PLAINTIFFS' CLAIMS FROM THE DISCRETIONARY-FUNCTION EXCEPTION.

THE LAW ENFORCEMENT PROVISO DOES NOT APPLY TO THE DISCRETIONARY FUNCTION EXCEPTION. CONGRESS INTENDED FOR THE PROVISO TO APPLY ONLY TO THE FTCA'S INTENTIONAL TORT EXCEPTION, NOT ANY OF ITS OTHER EXCEPTIONS.

NEXT, THE COURT HELD THAT THE SUPREMACY CLAUSE DOES NOT PRECLUDE PLAINTIFFS' CLAIMS BECAUSE THE FTCA DOES NOT CONFLICT WITH STATE LAW.

GEORGIA LAW WOULD PERMIT A HOMEOWNER TO SUE A PRIVATE PERSON FOR DAMAGES IF THAT PERSON INTENTIONALLY OR NEGLIGENTLY RAIDED HIS HOUSE AND ASSAULTED HIM.

THE FTCA IS THE "SUPREME" FEDERAL LAW, AND IT INSTRUCTS COURTS TO APPLY THOSE SAME STATE RULES TO DECIDE WHETHER THE UNITED STATES IS LIABLE, SO THERE IS NO DISCORD BETWEEN FEDERAL AND STATE LAW.

THIS DECISION PROVIDES LOWER COURTS WITH SOME CLARITY REGARDING THE FTCA, BUT FAILS TO ANSWER ONE OF THE BIGGEST REMAINING QUESTIONS: DOES THE DFE BAR TRINA AND TOI'S CLAIMS?

IMPORTANT QUESTIONS SURROUND WHETHER AND UNDER WHAT CIRCUMSTANCES THE DISCRETIONARY-FUNCTION EXCEPTION MAY FORECLOSE A SUIT LIKE THIS ONE. BEFORE ADDRESSING THEM, WE WOULD BENEFIT FROM THE ELEVENTH CIRCUIT'S CAREFUL REEXAMINATION OF THIS CASE IN THE FIRST INSTANCE.

I CONCUR.  
THE ELEVENTH CIRCUIT MUST NOW CONSIDER ON REMAND WHETHER THE FTCA'S DISCRETIONARY-FUNCTION EXCEPTION BARS PLAINTIFFS' CLAIMS. THAT SAID, THERE IS REASON TO THINK THIS EXCEPTION MAY NOT APPLY.

IT HAS BEEN EIGHT YEARS SINCE GOVERNMENT AGENTS BROKE INTO TRINA AND TOI'S HOME AND TERRORIZED THEIR FAMILY.

WHILE THE SUPREME COURT'S DECISION ALLOWS THEIR FIGHT TO CONTINUE, IT LEAVES IN PLACE A CLOUD OF UNCERTAINTY SURROUNDING THE PATH TO JUSTICE.



TO BE CONTINUED...