

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JAMIE C. LATTIN, in her capacity as
PERSONAL REPRESENTATIVE
OF THE WRONGFUL DEATH ESTATE OF
CASEY JORDAN MARQUEZ,**

Plaintiff,

v.

Case No. 1:20-CV-00557

THE UNITED STATES OF AMERICA,

Defendant.

**COMPLAINT FOR NEGLIGENCE UNDER THE FEDERAL
TORT CLAIMS ACT RESULTING IN THE WRONGFUL
DEATH OF CASEY JORDAN MARQUEZ NATURE OF THE ACTION**

Plaintiff, Jamie Lattin, brings this lawsuit against the United States Government under the Federal Tort Claims Act, 28 U.S.C. §§ 1346 and 2671-80 (the “FTCA”), and New Mexico’s Wrongful Death Act, NMSA 1978, §§ 41-2-1 to -4 (the “WDA”). Where the death of a person has been caused by the wrongful act, neglect or default of another, the WDA authorizes the personal representative of the decedent to bring an action for damages. NMSA 1978, §§ 41-2-1 and 41-2-3. When a person dies as the result of a negligent or wrongful act or omission of a federal employee acting within the scope of his office or employment the FTCA provides a mechanism for obtaining compensation from the United States. *FDIC v. Meyer*, 510 U.S. 471, 477 (1994); 28 U.S.C. § 1346(b). If a private person could be held liable to the plaintiff under the law of the place where the negligent or wrongful act occurred, the FTCA provides that the plaintiff may seek

compensation from the United States. *FDIC v. Meyer*, 510 U.S. 471, 477 (1994); 28 U.S.C. § 1346(b).

As Ms. Lattin explains below, her daughter Casey died as a result of negligent acts and omissions by employees of the Federal Bureau of Investigation (the “FBI” or the “Bureau”), which operates under the jurisdiction of the Department of Justice (the “DOJ”). The FBI received a targeted threat against Aztec High School (“AHS” or the “School”) in March of 2016 that a former AHS student, William Atchison, made online. FBI agents interviewed William Atchison, but conducted a perfunctory investigation and made no attempt to obtain the information necessary to perform a proper threat assessment. The following year William Atchison acted on his threat. He entered AHS and began shooting. Ultimately, he killed Casey and another student before turning the gun on himself.

New Mexico law provides that a law enforcement officer has a statutory duty and also a common law duty to exercise reasonable care in the course of an investigation. *See Torres v. State*, 1995-NMSC-025, ¶ 27, 119 N.M. 609 (“We hold that police officers have a statutory duty to investigate and a common-law duty to exercise, for the safety of others foreseeably at risk, that care ordinarily exercised by reasonably prudent and qualified officers”). FBI agents who were responsible for investigating William Atchison in 2016 and for conducting a threat assessment of him had a common law duty to use reasonable care in their investigation of his threat against AHS. Their failure to properly exercise that duty would give rise to a claim for negligent investigation under New Mexico law. Had the FBI performed a proper threat assessment at the outset and continued to monitor William Atchison’s online activities, which involved substantial “leakage” about his desire to conduct a mass shooting, it could have intervened. The risk that William

Atchison would act on his threat was real by every yardstick the Bureau urges other law enforcement agencies and schools to use for assessing such threats. But the Bureau's agents didn't do their job, and Ms. Lattin's daughter had to pay the price with her life.

I. JURISDICTION AND VENUE

1. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it involves a claim that arises under the statutes of the United States, to wit, the FTCA.

2. Pursuant to 28 U.S.C. § 1346(b), the Court has exclusive jurisdiction over this federal tort claim for money damages against the United States.

3. Venue is proper in the U.S. District Court for the District of New Mexico pursuant to 28 U.S.C. § 1406(b) because the act or omission of which Ms. Lattin complains occurred in Aztec, New Mexico, and as alleged below, Ms. Lattin resides there, and the U.S. District Court for the District of New Mexico serves the entire state.

4. New Mexico law provides that a law enforcement officer has a statutory duty and also a *common law* duty to exercise reasonable care in the course of an investigation. *Torres v. State*, 1995-NMSC-025, ¶ 27.

5. If the United States were a private person, it could be held liable for negligent investigation under the law of New Mexico owing to its law enforcement officers' failure to exercise reasonable care in the course of investigating the 2016 targeted threat against AHS.

II. COMPLIANCE WITH STATUTE OF LIMITATIONS AND ADMINISTRATIVE EXHAUSTION REQUIREMENTS

6. Casey died on December 7, 2017, and Ms. Lattin complied with the pre-suit notice requirements under the FTCA by filing a timely written Notice of Claim with the DOJ-FBI on

June 8, 2019, which was within 2 years of the date her claim for Casey's death accrued. 28 U.S.C. § 2401(b).

7. The DOJ-FBI failed to settle that claim or issue a formal denial by December 9, 2019, which means Ms. Lattin may deem the claim denied by that date. *See* 28 U.S.C. § 2401(b).

8. Ms. Lattin is filing this civil suit within 6 months of the date when her Notice of Claim was deemed to be denied by operation of time under 28 U.S.C. § 2401(b).

9. The FBI advised Ms. Lattin on October 11, 2019, that Assistant General Counsel Stefania M. Porcell was the agent in charge of her claim and to direct all additional correspondence on her administrative claim to Ms. Porcell.

10. On November 14, 2019, Ms. Lattin was formally appointed PR for Casey's Wrongful Death Estate by the Eleventh Judicial District Court for San Juan County in New Mexico.

11. On November 15, 2019, Ms. Lattin notified Ms. Porcell in writing via certified mail of her appointment as PR for Casey's Wrongful Death Estate.

12. Ms. Lattin had full legal authority under the WDA to settle her administrative claim against the FBI *before* the deadline expired for the FBI to issue a decision on that claim and properly apprised the FBI of her appointment as PR.

III. THE PARTIES

13. Ms. Lattin is an individual who resides in the City of Aztec, in San Juan County, New Mexico.

14. At all times material to the Complaint, Ms. Lattin was the mother of the decedent Casey and her sole legal guardian.

15. Ms. Lattin is authorized to bring this action because she was appointed PR of Casey's Wrongful Death Estate.¹

16. The United States of America is the proper defendant in this action because the negligent acts and omissions of which Ms. Lattin complains and for which she is seeking compensation as PR of Casey's Wrongful Death Estate were committed by employees of the FBI while acting within the scope of their duties and employment.

17. The FBI is a federal law enforcement agency that is statutorily empowered by the U.S. Congress to enforce and investigate alleged violations of the United States Criminal Code, including violations of 18 U.S.C. § 875 for communicating in interstate commerce threats to harm a person or property.

18. The FBI is part of the DOJ and is subject to oversight and direction by the U.S. Attorney General.

IV. FACTS

19. In March of 2016, the FBI received information from a participant in an online gaming website that an individual had posted a comment soliciting advice on how to acquire a cheap assault rifle to commit a mass shooting at his former school.

20. The FBI traced the post to a computer server in Aztec, New Mexico that belonged to Brentt Atchison.

¹ Ms. Lattin has consented to have Dennis Murphy, Esquire substitute for her as PR under the Wrongful Death Act. The petition for appointment of Mr. Murphy as PR in lieu of Ms. Lattin is currently pending in the Eleventh Judicial District Court for San Juan County, and is scheduled for a hearing on June 12. *See In the Matter of Casey Jordan Marquez*, Case No. 1116-CV-2019-01691, Petition for Appointment of Dennis P. Murphy under the New Mexico Wrongful Death Act as Personal representative in Substitution for Jamie C. Lattin, filed March 12, 2020. As of the time of the filing of this Complaint, Ms. Lattin still has authority to act as PR and bring this claim against the United States.

21. FBI investigators from the Bureau's local office for Albuquerque-Farmington (the "FBI Investigators") interviewed Brentt Atchison and his family.

22. As a result of these interviews, the FBI Investigators determined that the individual who had posted the comment was not Brentt Atchison; it was his younger brother William Atchison.

23. The FBI Investigators determined from information contained in the post or shortly thereafter from their interview of William Atchison that the School in question was AHS.

24. At the time of the interviews, William Atchison had a significant online profile as someone who was obsessed with school shootings and glorified schools shooters on alt-right websites.

25. Upon information and belief, the FBI Investigators would have had access to this information when they interviewed William Atchison.

26. Upon information and belief, the FBI Investigators questioned William Atchison about some of his more offensive online posts and his admiration for school shooters.

27. The FBI subsequently acknowledged that the agents who interviewed William Atchison in March of 2016 concluded he was just posting these comments in jest and enjoyed acting as an internet troll but had no plans to secure a gun.

28. Sometime following his interview by FBI Investigators, William Atchison commented online about how the FBI Investigators told him they didn't think he was a serious threat and understood the satirical aspect to his online trolling.

29. William Atchison marked his comment on this subject with a "wink" sign.

30. The FBI later acknowledged that it closed the investigation into the 2016 targeted threat against AHS shortly after interviewing William Atchison in March of 2016.

31. The FBI Investigators never made an attempt to determine whether William Atchison had any grievance with AHS that might lead him to target the School.

32. Specifically, the Aztec Municipal School District and AHS responded to public records requests on this subject by confirming that the FBI did not contact AHS to request a copy of William Atchison's student file or make an inquiry as to whether he had a grievance with AHS when he was a student there.

33. More than 15 years earlier, the Bureau published a "School Shooter Threat Assessment" for use by educators, mental-health professionals, and law-enforcement agencies that stressed it would be important to make such an inquiry in evaluating a threat from a student or former student.

34. In fact, William Atchison did have a grievance with AHS. On March 9, 2012, he was suspended from AMSD's for a making a "potential threat" against the School or what administrators perceived to be a potential threat.

35. More specifically, AHS suspended Atchison for memorializing the Columbine School Shooting by writing the schedule of that Shooting on a whiteboard at School.

36. The conditions of the suspension required that Atchison's family meet with the School social worker before he would be allowed to return to AHS.

37. William Atchison did not return to AHS after March 9, 2012, and ultimately dis-enrolled from the School on August 20, 2012, and did not graduate from High School.

38. Upon information and belief, if the FBI Investigators had inquired about William Atchison's history at AHS they would have been advised of these facts and had some understanding of why William Atchison may have wanted to target AHS.

39. Information compiled in the School Shooter Threat Assessment and in FBI data on active shooting incidents between 2000-2013 noted that a number of factors have been associated with school shooters, including:

- a. A high level of online "leakage"² on the subject of school shootings and violent ideation;
- b. A history of psychological problems at school;
- c. A history of family discord in the home;
- d. A history of bullying at school; and
- e. Consumption of violent media.

40. If the FBI Investigators had inquired about William Atchison's history at AHS and reviewed his student file, it would have determined that he had a history of psychological problems

² The FBI's School Shooter Threat Assessment defines leakage as a phenomenon that occurs:

when a student intentionally or unintentionally reveals clues to feelings, thoughts, fantasies, attitudes, or intentions that may signal an impending violent act. These clues can take the form of subtle threats, boasts, innuendos, predictions, or ultimatums. They may be spoken or conveyed in stories, diary entries, essays, poems, letters, songs, drawings, doodles, tattoos, or videos. . . . Leakage is considered to be one of the most important clues that may precede an adolescent's violent act.

The School Shooter: A Threat Assessment Perspective, by Mary Ellen O'Toole, Special Supervisory Agent, Federal Bureau of Investigation, 22 (Critical Incident Response Group and National Center for the Analysis of Violent Crime, FBI Academy, Quantico Virginia, 1999), *available for download online at:* <https://www.fbi.gov/file-repository/stats-services-publications-school-shooter-school-shooter>.

at school, a long history of family discord at home, a history of bullying at school, and an interest in violent media.

41. The AHS administrator who suspended William Atchison knew his student records evinced a history of considerable family discord at home with Atchison's father and a history of disciplinary problems and counseling referrals.

42. At the time the FBI conducted its 2016 investigation of William Atchison's targeted threat against AHS there was a local law enforcement officer who was assigned to the School as a "School Resource Officer ("SRO").

43. SROs are licensed law enforcement officers who are assigned to work with school administrators, staff and students to address, inter alia, violations of laws and crime prevention with the goal of creating a safer school environment.

44. The idea of assigning law enforcement officers to schools where they could serve as liaisons with administrators to create a safer environment for both students and staff and take a proactive approach to crime prevention began to gain traction in the United States in the late 1990s following a series of school shootings.

45. The FBI Investigators did not contact AHS, the Aztec Municipal School District or its SRO in 2016 to advise that the Bureau had received a targeted threat against AHS that been posted online by someone who resided locally and who attended AHS.

46. Upon information and belief, the FBI Investigators did not conduct a thorough examination of William Atchison's computer files or his online posts when they interviewed him in 2016.

47. If the FBI had conducted such an examination or more thoroughly reviewed

William Atchison's online posts, the Bureau would have determined in 2016 that he was exhibiting a high level of online leakage on the subject of school shootings and also exhibiting violent ideation.

48. The FBI did not monitor William Atchison's online posts after it closed its case on him in 2016.

49. If the Bureau had continued to monitor his online activities, the Bureau would have noted that he was in contact with David Sonboly, the Iranian-German youth who conducted a mass shooting at a Munich shopping mall in July of 2016.

50. William Atchison glorified David Sonboly as a true Aryan in online posts after the Munich Shooting.

51. Upon information and belief, intelligence agencies in the United States were initially monitoring the investigation of the Munich Shooting to determine whether the Shooter had contacts outside of Germany.

52. The U.S. State Department had issued shelter-in-place advisories to Americans in Germany following the Munich Shooting and the White House condemned the Shooting as an apparent terrorist attack.

53. Upon information and belief, if the FBI had continued to monitor William Atchison's posts it would have noticed this concerning link with the Munich Shooter, which provided more evidence that William Atchison had a high level of leakage on mass shootings.

54. The FBI did issue a "Use Caution" Bulletin to the Aztec Police Department ("APD") in March 2016 to advise that the Bureau was investigating a targeted threat against AHS and might require assistance from local law enforcement.

55. However, the "Use Caution" Bulletin mistakenly identified the individual under investigation as Brentt Atchison.

56. The FBI did not follow up with APD after it issued the Use Caution Bulletin to advise on the status of its investigation or to request assistance or correct the information it provided on the identity of the individual who was the target of the investigation.

57. Research on School Shooters that was available to the FBI in 2016 indicated that such individuals often begin planning their shootings a year in advance.

58. On December 7, 2017, William Atchison entered the AHS's main campus shortly after 8:00 a.m.

59. Approximately six (6) minutes afterwards AHS video cameras recorded him entering the 800/900 Building of the School that houses computer labs and general use classrooms, and shots rang out in the second floor of the Building.

60. Law enforcement officers later determined that William Atchison proceeded to a restroom on the second floor of the 800/900 Building to gear up for the Shooting.

61. When William Atchison exited the restroom, he encountered 2 students in the second floor hall of the 800/900 Building, Francisco Fernandez and Casey, and shot both of them dead.

62. Casey was a seventeen year-old high school senior at AHS at the time.

63. She had stopped for a drink of water at a fountain outside the restroom where William Atchison was preparing for the Shooting.

64. An AHS teacher, Steve Lanier, and the School's custodian, Thomas Emery Hill, witnessed Casey being shot in the head by William Atchison.

65. William Atchison was armed with a 9 mm. Glock 19 handgun and several magazines.

66. He didn't just shoot Casey once, however.

67. The 9 mm. Glock 19 handgun he was holding was capable of semi-automatic fire, and he fired multiple rounds into Casey.

68. An autopsy revealed Casey suffered at least two separate penetrating gunshot wounds to the head that resulted in multiple fractures of her skull and facial bones, and hemorrhaging in her brain, a separate gunshot wound to the chest that penetrated her heart and lungs causing massive hemorrhaging, and gunshot wounds to her abdomen and thigh.

69. After William Atchison killed Casey, he proceeded to try and gain entry to various classrooms in the 800/900 Building, but students and teachers had heard the shots ring out and were able to follow active shooter procedures and lock their rooms and take cover.

70. The custodian who witnessed Casey's shooting was also able to radio the main Office to go into lockdown and call 911.

71. 911 was called at 8:11 a.m., and APD arrived within three (3) minutes.

72. William Atchison continued to fire multiple rounds into several classrooms as he walked down the hall of the second floor of the 800/900 Building towards a breezeway that allowed access to an adjacent building.

73. William Atchison shot and killed himself before APD officers reached him in the breezeway.

74. Several hours later agents from the FBI arrived at AHS to assist with the investigation of the School Shooting by local law enforcement.

75. FBI agents tentatively identified the Shooter as Bre[n]tt Atchison and advised New Mexico State Police that the Bureau had contact with him in 2016.

76. However, FBI agents were able to make a positive identification of the Shooter sometime later that same day as William Atchison.

77. The Bureau acknowledged to the press that FBI Investigators had interviewed William Atchison in March of 2016 in regard to the threat he posted about wanting to acquire a cheap assault rifle to shoot up his former school.

78. The Bureau obtained a search warrant to examine William Atchison's computer and journals after the Shooting.

79. The records the FBI reviewed documented that William Atchison had been providing all sorts of clues of impending violence following his 2016 threat against AHS, and had been planning the Shooting for some time.

80. Ms. Lattin has attempted to obtain records pertaining to the investigation that the FBI conducted of William Atchison in 2016, and filed a Freedom of Information Act Request ("FOIA") for all records of that investigation and any other records the FBI has on William Atchison that predate the AHS Shooting.

81. Although the FBI declined to charge William Atchison in 2016 with using interstate commerce to communicate a threat to injure persons or property, and has admitted it closed its investigation of that threat in 2016, it has denied Ms. Lattin's FOIA request.

82. The FBI has advised the records Ms. Lattin has sought on the Bureau's 2016 investigation of William Atchison could reasonably be expected to interfere with a pending or prospective law enforcement proceeding.

83. Upon information and belief, the records of the FBI's 2016 investigation document the Bureau's negligent failure to conduct a reasonable investigation and to obtain the information needed to perform a proper threat assessment of William Atchison and provide notice to local law enforcement, school officials, and students and their parents.

V. COUNT I: NEGLIGENCE

84. Ms. Lattin incorporates by reference the allegations contained in the preceding paragraphs 1-83.

85. The FBI Investigators owed a common law duty to the students and teachers at AHS to conduct a reasonable investigation of a targeted threat against the School by a former student.

86. The FBI Investigators knew that William Atchison was a former student of AHS and that he had made a threat to shoot up AHS and inquired online as to how he might acquire a cheap assault weapon to carry out his threat.

87. The FBI knew that William Atchison frequently posted comments online that indicated he was obsessed with school shootings and or that glorified schools shooters on alt-right websites.

88. Given these facts, a reasonable investigation of a targeted threat against AHS by William Atchison would include, at a *very minimum*, an effort to contact AHS to find out information that could be used to complete a threat assessment, such as:

- a. Whether William Atchison had a grievance against AHS; and
- b. Whether there was anything in William Atchison's student file that might indicate he was subject to stressors that often figure in the histories of school

shooters such as family discord, or psychological problems, and/or to factors relating to school dynamics such as bullying, or exhibited any preoccupation with violent media or themes.

89. The FBI also had a duty to advise AHS and/or the Aztec Municipal School District and the SRO assigned to AHS that AHS was the subject of a targeted threat so the School and District and the SRO could take precautions for the protection of students.

90. Additionally, the FBI Investigators owed a common law duty to the students and teachers at AHS to provide local law enforcement, including the SRO, with the correct information needed to assist with the investigation of a targeted threat against AHS.

91. The FBI undertook the responsibility of serving as the conduit of information to local law enforcement on the 2016 targeted threat that William Atchison posted against AHS and failed to provide accurate information.

92. The FBI's website states that: "[t]he FBI concentrates on crime problems that pose major threats in American society. Significant violent crime incidents such as mass shootings. . . can paralyze entire communities and stretch state and local law enforcement resources to their limits."

93. The FBI's website also states that the Bureau's number one priority is protecting the United States from terrorist attacks, and it focuses on homegrown violent extremists.

94. The FBI breached its duty to conduct a reasonable investigation of William Atchison's 2016 targeted threat against AHS by failing to contact AHS as described in paragraphs 31-45 to obtain information that would be important for performing a threat assessment of William Atchison.

95. The FBI breached its duty to provide local law enforcement with the correct information needed to assist in an investigation of the 2016 targeted threat against AHS by sending out a Use Caution Bulletin that listed the wrong suspect.

96. The FBI breached its duty to conduct a reasonable investigation of William Atchison's 2016 targeted threat against AHS by closing its investigation in a summary fashion shortly after interviewing him with no provisions to follow up thereafter with local law enforcement.

97. The FBI breached its duty to conduct a reasonable investigation of William Atchison's 2016 targeted threat against AHS by failing to use the information it had compiled on school shooters, the stressors that can figure in their personal histories, and the behaviors they engage in such as online leakage in evaluating William Atchison.

98. Given all these facts, it was foreseeable that, if the FBI Investigators failed to exercise reasonable care in investigating a targeted threat against AHS, then students at AHS could be at risk of harm.

99. As a direct and proximate result of the FBI's negligence in investigating William Atchison's 2016 targeted threat against AHS, Casey was killed in a School Shooting at AHS that was perpetrated by William Atchison.

100. The Shooting occurred the year after William Atchison made his threat and FBI Investigators summarily dismissed it.

101. The FBI knew in 2016 from data that was available to it on school shootings that individuals who carry out such shootings begin planning for such events the year before they take action.

102. Under the circumstances, it was unreasonable for the FBI to investigate William Atchison in a perfunctory fashion and not to gather the basic information for assessing his threat against AHS.

103. As the PR for Casey's Wrongful Death Estate, Ms. Lattin is authorized under New Mexico law compensation to prosecute an action for the negligent acts and omissions of the persons that caused Casey's death and to seek compensation for the statutory beneficiaries of Casey's Estate.

104. Ms. Lattin is entitled as PR to recover all available damages for Casey's Estate allowable under law, including:

- a. Lost value of life;
- b. Pain and suffering endured by Casey between her injury and death; and
- c. Loss of earning capacity and of support Casey contributed to the household in money and in kind.

VI. PRAYER FOR RELIEF

In view of the foregoing facts and as allowed by New Mexico law, and the FTCA, Ms. Lattin in her capacity as PR for Casey's Wrongful Death Estate, requests that her Estate be awarded compensatory damages against the United States Government for all of Casey's injuries in an amount to be proven at a bench trial, post-judgment interest, and all other relief that this Court deems proper and just.

Respectfully submitted:

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