

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
NEWARK DIVISION

RAYNU CLARK, )  
The mother of Tyler M. Gergler, )  
22427 Brook Point Way, )  
Clarksburg, Maryland 20871; and, )

JASON R. GERGLER, )  
as the father of Tyler M. Gergler and as the )  
Executor of the Estate of Tyler M. Gergler, )  
3047 Chickweed Place, )  
Ijamsville, MD 21754 )

Plaintiffs, )

v. )

Civ. No. \_\_\_\_\_

THE HONORABLE CARLOS DEL TORO )  
In his official capacity as the Secretary of the Navy )  
1000 Navy Pentagon )  
Washington, DC 20350-1000, and )

THE UNITED STATES OF AMERICA, )  
(No Address Needed) )

Defendants )

**COMPLAINT FOR RELIEF UNDER THE FEDERAL TORT CLAIMS ACT**

COME NOW, Raynu Clark, the mother of Tyler M. Gergler, and Jason R. Gergler, the father of Tyler M. Gergler, on his own behalf and in his capacity as the Executor and on behalf of the Estate of Tyler M. Gergler, by and through counsel, and bring this Complaint against the United States of America (“United States”) pursuant to the Federal Tort Claims Act (“FTCA”) 28 U.S.C. §§ 2671 *et. seq.* and 28 U.S.C. § 1346(b)(1).

The parents of Tyler M. Gergler allege as follows:

**I. INTRODUCTION**

1. This action is brought against the Defendant for the wrongful death of Tyler M. Gergler and for the pain and suffering he endured prior to his untimely and wrongful death due to the acts of the Defendant, which occurred on July 26, 2019.

## **II. STATEMENT OF THE PARTIES**

2. Plaintiffs at all times relevant to this Complaint were citizens of the United States who reside at the addresses in the caption for this Complaint.
3. Defendant the Honorable Carlos Del Toro is named in his official capacity as the Secretary of the Navy, which oversees the United States Marine Corps, whose employees committed the tortious acts in controversy here.
4. Defendant, UNITED STATES, is sued under the FTCA, 28 U.S.C. § 1346, for the tortious acts of its employees.

## **III. JURISDICTION**

5. This is a civil action brought pursuant to 28 U.S.C. §§ 2671 *et. seq.* and 28 U.S.C. § 1346(b)(1).
6. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.
7. This Court also has exclusive jurisdiction over the FTCA claims in this action pursuant to 28 U.S.C. § 1346(b) because Plaintiffs allege tort claims are against the United States for the acts of its employees.
8. The precise claims at issue are “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 employees 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. 1346(b)(1).

#### **IV. VENUE**

9. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiffs’ claims occurred in this District and Defendant’s agent committed the tort in Hackensack, New Jersey, which is part of this division.

#### **V. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10. In May and June of 2021, pursuant to 28 U.S.C. § 2675(a), Plaintiffs presented written notice, specifically completed Standard Form 95s, together with addendums and all pertinent supportive documents, of their administrative tort claims to the appropriate federal agencies, the Department of the Navy, and the United States, through Plaintiff’s legal representative.
11. Thereafter, a Claims Specialist provided written notice confirming receipt of Plaintiffs’ notices.
12. The Department of the Navy issued a final rejection letter for the claim on March 9<sup>th</sup>, 2022.
13. The parents of Tyler Gergler have thus exhausted their administrative remedies for purposes of these claims under the FTCA. *See* 28 U.S.C. §§ 2675, 1346.
14. Consistent with 28 U.S.C. §. 2401(b), Plaintiffs are commencing this action within six months of the government’s putative denial of the claim.

#### **V. STATEMENT OF THE FACTS**

15. Tyler M. Gergler was born at what was then National Naval Medical Center in Bethesda, Maryland and raised in suburban Maryland.
16. At the time of his death, he was living with his father Jason Gergler.

17. Like many young men, Tyler idolized his parents and wanted to follow his parents call to service as both had served in the United States Marine Corps.
18. Indeed, since Tyler was 9 years old, his goal was to enlist and serve honourably in the Marine Corps.
19. At the age of 18, having graduated from Clarksburg High School, Tyler enlisted in the Marine Corps Reserve for 8 years with a 4-year active duty obligation on June 11, 2019.
20. Less than two months later, Tyler would be dead as a result of the actions taken by Marine Corps personnel.
21. Tyler joined the Marine Corps through the delayed entry program.
22. As detailed in cell phone text records, Staff Sergeant Jeremy Blassingame, USMC, recruiter and Sergeant Mitchell Castner, were percipient witnesses, agents of the United States Marine Corps and both of their actions as detailed herein provide clear liability for the government for the tortious injuries suffered.
23. During the late days of July, his recruiter, Sergeant Castner, USMC ordered Tyler to attend a Marine recruiting event, which was scheduled to take place on July 27, 2019 at the Recruiting Station, New Jersey Naval Weapons Station Earle Highway 34 South, Colts Neck, NJ 07722.
24. Sergeant Castner sent these texts from the Reserve Center in Hackensack, New Jersey.
25. Unfortunately, Tyler had become extremely sick and was exhausted, something he had explicitly told Sergeant Castner.
26. The following damning text messages were recovered from Tyler's phone:

**S 1044 – I got some type of stomach virus and have been throwing up for the past 16 hours... I'm really trying bc I need to be there for the IST and MEPs.**

**R 1047 – You still got to come man, at least be there in person for**

S 1047 – I’ve been in bed with water, tea, and a bucket trying to flush it out so I can drive up for the IST

S 1116 – The throwing up isn’t the problem I’ve got migraine and when I get up I get dizzy and lightheaded.

R 1117 – **Fuck, you at least need to show cause they’re making a big deal about people not showing.**

S 1119 – I know Sir and I’m sorry but I’m trying to get it out of me

R 1120 – **Do your best man**

S 1120 - Give me an hour I’ll see if I can get someone to drive me because I can’t drive it’s not safe for me or anyone else on the road.

S 1312 - It's not looking good sir... I really am sorry to be getting sick like this I know this screws a ton of crap up but maybe I'll be able to make it by the 30th for meps?

R 1333 - **It ain't about meps man.... this pool function and you not being there is the important. You need to be up here for the pool function. At least to show face.**

R 1336 - **And that's coming from ssgt blassingame. Cause they're gonna talk about discharging you if you dont**

S 1339 – I guess I’m gonna try and drive then

1339 - **Phone call for 4 minutes w/ Sergeant Mitchell Castner**

R 1401 - **Just let me know when you leave and when you get up here.**

S 1401 - **Yes sir**

S 1529 – **Leaving—**

Exhibit 1, Cell Phone Records Provided to Carroll County Sheriff’s Office.

27. Less than 90 minutes later, Tyler was dead.

28. The car he was driving was involved in a single vehicle collision on I-70 just outside Ellicott City, Maryland.

29. According to a witness, David C. Collela, Tyler's car just veered from the road for no apparent reason.
30. That was corroborated by another witness, William Copenhagen.
31. Furthermore, according to the Maryland state police report, "[N]o pre-impact braking was evident for the entire 234 feet that the vehicle was driving on the grass prior to the impact with the guard rail end."
32. Road conditions were unremarkable that day.
33. At the time of the crash, the weather was clear. Visibility was clear. The ambient temperature was approximately eighty-eight degrees Fahrenheit with a dew point of fifty two degrees Fahrenheit.... Weather and environmental conditions were not a factor in this crash.
34. The road Tyler was traveling on was straight, relatively level with no significant elevation changes.
35. A black box within the vehicle clocked the vehicle as traveling at 86.4 MPH.
36. According to the autopsy performed on Tyler no drugs or alcohol were in his system.
37. With all probability, Tyler was most likely unconscious when the accident occurred—he made no attempt to break prior to striking the guard rail and he made no attempt to avoid the guard rail or to steer the vehicle back into the road.
38. The impact of the crash caused a guard rail to enter the vehicle, pass through Tyler's body and exit the vehicle.
39. The guard rail effectively amputated Tyler's left leg.
40. Tyler also suffered massive head injuries and injuries to his torso as described herein.
41. Even worse, Tyler survived the crash but was later pronounced dead at the scene.
42. Tyler's last moments involved having to suffer incredible and unbearable pain and trauma.

43. Tyler had tragically predicted his own future.
44. He was in no condition to operate a vehicle given his sickness.
45. And he never should have been behind the wheel of his car.
46. The police report states that “[f]or unknown reason, it does not appear that Gergler reacted to leaving the roadway. Brakes were not applied prior to impacting the guard rail end.”
47. The reason is well known to the parties here: Tyler was sick, had been dizzy, lightheaded and he knew that it was unsafe for him to operate a vehicle.
48. More importantly, so did Sergeant Castner.
49. Instead of doing the right thing, Sergeant Castner ordered Tyler to drive to New Jersey for the recruiting event or face discharge.
50. The threat of a discharge is very serious, as it is much more than a mere firing.
51. Tyler would have been discharged for ostensibly failing to perform his duties as part of the Delayed Entry Program.
52. In his mind, he was facing a discharge characterization that could have been something other than purely Honorable—for him a bad conduct or even dishonorable discharge would destroy his life’s ambition.
53. Sergeant Castner could have also pressed for a variety of other administrative actions.
54. These would have stained Tyler’s record for future employers.
55. The Court must also consider the other consequences of a discharge.
56. Tyler had dreamed for nearly a decade of following in his parents’, and maternal grandfather’s (who retired from the Marine Corps after more than 20 years of service), footsteps, by joining the USMC.

57. He was now being ordered to either submit to the direct and uncompromising order of Sergeant Castner or give up on that dream.
58. But for the negligent acts of Sergeant Castner, who explicitly knew Tyler had been extremely ill and was exhausted and was in no condition to drive a vehicle, but nonetheless—under threat of discharge from the Marine Corps—ordered Tyler to drive from his home in Maryland in the late afternoon of Friday, July 26, 2019 to attend a Marine recruiting event the next day at the Marine Recruiting Center in Colts Neck, New Jersey, Tyler Gergler would not have died.
59. Sergeant Castner, when he ordered Tyler to drive, was acting in his role as a U.S. Marine Corps sergeant and recruiter.
60. For that, the United States is liable for Tyler’s injury to his body and for his wrongful death.
61. After Tyler’s tragic, wholly preventable death, his parents attempted to ensure that Tyler received the honors due to those who have served in the United States Marine Corps.
62. But because he was not a Marine and was just a Poolee, no such benefits were forthcoming: no flag, no life insurance, not even a letter of appreciation for Tyler’s dedication to serve in the Marine Corps and his wish and desire to accomplish his life-long ambition to follow in his parents’ footsteps.
63. The official position adopted by the Marine Corps was that Tyler did not qualify for any of those benefits or honors because he was driving to stay with family in New Jersey that evening and would then drive to the Poolee event the next morning. See Exhibit 2, Email from Capt. Corey Muller, USMC, to Lt. Col. Dena Lentz, USARMY NG, dated September 16, 2019.

## **VI. ARGUMENT**



64. This action will be governed under the substantive law of the State of New Jersey
65. FTCA claims under 28. U.S.C. § 1346(b)(1) are judged based on the law of the place where the act occurred.
66. The Supreme Court has interpreted this to mean that the Federal Tort Claims Act “requires federal courts, in multistate tort actions, to look in the first instance to the law of the place where the acts of negligence took place.” *Richards v. United States*, 369 U.S. 1, 10 (1962).
67. Sergeant Castner sent the texts which resulted in Tyler’s death from Colt’s Neck New Jersey.
68. However, Tyler’s accident occurred in Maryland.
69. New Jersey conflict of law procedure first considers whether an actual conflict exists between state substantive laws. *P.V. ex rel. T.V. v. Camp Jaycee*, 962 A.2d 453, 460 (N.J. 2008).
70. The District of New Jersey has previously found that New Jersey and Maryland tort laws conflict, on the grounds that “New Jersey has a strong interest in preventing tortious misconduct by its domicillaries.” *See Clawans v. United States*, 75 F. Supp. 2d 368, 372-3 (D. N.J. 1999) (holding that there is a conflict of laws between New Jersey and Maryland tort laws).
71. Secondly, the contributory and comparative negligence laws differ between the two states.  
*Id.*
72. New Jersey substantive law will control because it has a stronger relationship to the occurrence and to the parties.
73. New Jersey applies the Second Restatement of Conflict of Laws. *Camp Jaycee*, 962 A.2d at 140-1.

74. The Second Restatement, at § 145, states that the governing law for a tort should be determined by the local law of the state with the most significant relationship to both the occurrence and parties for the specific issue. Restatement (Second) Conflict of Laws § 145 (Am. Law Inst. 1971).

75. The most significant relationship is determined by qualitatively weighing the following contacts:

- (a) The place where the injury occurred;
- (b) The place where the conduct which caused the injury occurred;
- (c) The domicile, residence, nationality, place of incorporation and place of business of the parties; and
- (d) The place where the relationship, if any, between the parties, is centered. *Id.* at (2)(a)-(d).

76. Here, factors (a) and (b) balance each other out, as the injury occurred in Maryland, but the conduct which caused the injury, Sergeant Castner's sending of texts ordering Tyler to appear that the pool event in New Jersey, occurred in Hackensack, New Jersey.

77. Factor (c) weighs in favor of New Jersey, as though Tyler was domiciled in Maryland, and Sergeant Castner in New Jersey, the New Jersey Supreme Court has clearly stated that it places a heavy weight on preventing tortious misconduct by its domicillaries, including Sergeant Castner. *See Clawans*, 75 F. Supp. 2d at 372-3.

78. Factor (d) weighs strongly in favor of New Jersey, as the primary place where the parties relationship was centered was Colt's Neck, New Jersey, the location of the Poolee event.

79. The secondary location where their relationship was centered was the USMC recruiting center in Hackensack, New Jersey.

80. Thus, on a qualitative basis, the factors weigh strongly in favor of New Jersey having the most significant relationship to the parties and occurrence. *See id.*; *see also* Restatement (Second) Conflict of Laws § 145(2)(a)-(d).

**Claim I: Negligence (Wrongful Death and Survivorship Action)**

81. The foregoing allegations are re-alleged and incorporated herein by reference.

82. There are three elements to a Federal Torts Claims Act claim, namely:

- (a) Death,
- (b) Caused by the negligent or wrongful act,
- (c) Of an employee or agent of the Federal government,
- (d) Acting within the scope of their office or employment. 28 U.S.C. § 1346(b)(1).

83. The first element is clearly satisfied here.

**A. Sergeant Castner was negligent under New Jersey law.**

84. A negligence claim under New Jersey law requires that the plaintiff show that the defendant breached a duty of reasonable care and that this breach constituted the proximate cause of the plaintiff's injuries. *Keith v. Truck Stops Corp.*, 909 F.2d 743, 745 (3rd Cir. 1990).

85. Under New Jersey law, the fundamental question for determining whether a duty of care exists is "whether a plaintiff is entitled to legal protection against the defendant's conduct." *Kubert v. Best*, 75 A.3d 1214, 1223 (N.J. App. 2013) (citing *J.S. v. R.T.H.*, 714 A.2d 924, 928 (N.J. 1998)).

86. This must take into account generally applicable rules which govern societal behaviors. *Id.*

87. Under New Jersey law, defendants are considered culpable for damages caused by impaired driving if they substantially encourage the driver to drive while impaired. *Champion ex rel. Ezzo v. Dunfree*, 939 A.2d 825, 833 (N.J. App. 2008).

88. In addition, defendants are also culpable for the damages caused by a driver if they have a special relationship with said driver, such as parent-child, or employer-employee, and fail to exercise their duty to control the person they have a special relationship with. *Id.* at 830-1.
89. Most importantly, New Jersey law entitles plaintiff's to protection from a defendant who impairs them through negligently serving them alcohol when the defendant knows the plaintiff will be driving. *See* N.J. Stat. § 2A:22A-5 (imposing liability on commercial hosts for the damages caused to both first and third parties through the negligent service of alcoholic beverages); *see also* N.J. Stat. § 2A:15-5.7 (applying first party liability of social hosts to impaired drivers if the driver was an underage drinker).
90. It is clear that New Jersey statute seeks to protect plaintiffs from being pushed, or caused, to drive impaired, and also seeks to protect people from being harmed by impaired driving encouraged by someone else.
91. Under *Kubert*, and taking into account generally applicable rules governing societal behaviors, it is clear that Sergeant Castner was negligent when he compelled Tyler to drive while knowing Tyler was impaired. *See Kubert*, A.3d 1214, 1223 (N.J. App. 2013).
92. Tyler did not want to drive, and he told Sergeant Castner that he should not be driving due to his impairment.
93. He communicated this information clearly and unequivocally to Sergeant Castner.
94. In response, Sergeant Castner threatened him with discharge, carrying with it the colossal consequences laid out of above, unless Tyler drove.
95. This is a far more egregious case than a bartender negligently serving a party alcohol, conduct which already entitles a plaintiff to a cause of action, here one of a bartender's

patrons was drunk and did not want to drive, and the bartender forced them under threat to drive. *Compare* N.J. Stat. § 2A:22A-5; *compare* N.J. Stat. § 2A:15-5.7.

96. Being compelled, under threat, to drive while impaired is clearly the kind of conduct against which New Jersey seeks to entitle plaintiffs with legal protections from. *See Kubert*, A.3d 1214, 1223 (N.J. App. 2013).

97. By compelling Tyler to drive, Sergeant Castner acted negligently, carelessly, recklessly, and unlawfully, breaching his duty to act as a reasonable person would under the circumstances and using his special relationship with Tyler in order to compel him to drive while impaired.

98. Sergeant Castner knew that his Poolee, Tyler Gergler, was so sick—so impaired—that he should not be driving a vehicle.

99. He knew that his Poolee had been vomiting for hours, was dizzy, and was lightheaded.

100. He knew that Tyler was deeply concerned about driving and did not want to drive.

101. Despite knowing that his Poolee was incapacitated, Sergeant Castner ordered him to drive to New Jersey, threatening him with discharge from the Marine Corps.

102. These threats were a clear proximate cause of Tyler's death, as, but for said threats, Tyler would never have driven, and would not have crashed. *See, e.g., Gilbert v. Stewart*, 255 A.3d 1101, 1114, (N.J. 2021) (citing *Komlodi v. Picciano*, 89 A.3d 1234, 1254-5 (N.J. 2014)).

103. Sergeant Castner has thus clearly been established to have been negligent under New Jersey law. *See Keith*, 909 F.2d 743, 745 (3rd Cir. 1990).

104. As a result of the unlawful conduct of the Marine Corps recruiter, alleged above, and other undiscovered negligent conduct as to which the Gergler family cannot know the details in the absence of any disclosure by government authorities of the facts surrounding the incident, Tyler Gergler sustained fatal injuries that resulted in his death.

105. As a further result of the unlawful conduct of the Defendant, the Gergler family's only son struggled for life while suffering from what were fatal injuries, and thereby suffered extreme emotional distress, including grief, anxiety, worry, shock, apprehension, terror, and mental anguish.

106. As a final result of the unlawful conduct of the Defendant, the Gergler family suffered and continues to suffer loss of love, society, solace, companionship, comfort, care, assistance, protection, affection, and support by Tyler and will continue to be so deprived for the remainder of their natural lives.

**B. Sergeant Castner was an agent or employee of the United States acting within the scope of his employment.**

107. It cannot be disputed that Sergeant Castner, a Marine Corps sergeant, was an employee of the United States.

108. Scope of employment is determined under the state agency rules where the person is employed. *CNA v. U.S.*, 535 F.3d 134, 146 (3rd Cir. 2008).

109. New Jersey defines conduct to be within the scope of employment when:

- (1) It is the kind that the servant is employed to perform,
- (2) It occurs substantially within the authorized time and space limits of employment,
- (3) It is actuated, at least in part, by a desire to serve the master,
- (4) If force is intentionally used by the servant against another, that use of force is not unexpected by the master.

*Di Cosala v. Kay*, 450 A.2d 508, 513 (N.J. 1982) (applying Restatement (Second) of Agency § 229 (Am. Law Inst. 1958)).

110. Here, factor (4) is not applicable, while factors (1) through (3) are firmly in favor of finding that Sergeant Castner's actions were within the scope of his employment.

111. First, ensuring that Poolees appeared at events, or making the decision to permit them to be absent, was the kind of act that Sergeant Castner was employed to perform.
112. Second, the texts occurred while Sergeant Castner was still “on duty,” as DEP personnel would be expected to communicate with Poolees during reasonable hours and the texts occurred in the afternoon.
113. Third, and finally, his compulsion of Tyler to appear at the Poolee event was, at least in part, motivated by a desire to serve the Marine Corps via ensuring that recruits were properly following the DEP requirements.
114. It is thus clear that Sergeant Castner’s acts were within the scope of his employment and satisfy the requirements necessary to waive the United States’ sovereign immunity under the FTCA. *See id.*; see 28 U.S.C. § 1346(b)(1).

**C. Conclusion.**

115. As has been illustrated above, all the required elements of a claim pursuant to the Federal Torts Claims Act have been met.
116. As a result of Defendants’ unlawful, egregious, conduct, which resulted in unnecessary and tragic death of Tyler on July 26, 2019, the Gergler family has been irreparably injured.
117. As the surviving parents of Tyler, the Gergler family seeks damages to compensate for, his wrongful death, *inter alia*:
- (a) Their sorrow and mental anguish;
  - (b) Loss of Tyler’s care, comfort, guidance, companionship, society, advice, and kindly offices;
  - (c) Medical and hospital expenses related to Tyler’s final injuries and death; and,
  - (d) Reasonable funeral and burial expenses.

118. Most importantly, they seek to deter the Government from continuing such abusive practices by military recruiters, and to motivate change which will ensure that no other family undergoes the grief they have been forced to endure, and that no other Poolee loses their life as a result of the wrongful compulsion of their recruiters.

### **VII. Prayer for Relief**

**WHEREFORE**, for the reasons stated above, the Gergler family respectfully requests that the Court enter a judgment against Defendant:

- (1) Awarding compensatory damages to Plaintiffs in the amount of \$18,015,000;
- (2) Awarding Plaintiffs attorneys' fees and costs pursuant to federal and state laws, including 28 U.S.C. § 2412; *and*
- (3) Ordering such other and further relief as the Court considers just and proper.

Date: May 2, 2022

Respectfully submitted,

/s/CraigJ.Schultz  
Craig J. Schultz (NJ Bar #10449)  
Schultz Law LLC  
9 Tall Timbers Dr.  
Princeton, NJ 08540  
Tel: 917 522 1970  
craig@schultz.llc  
*Counsel for Plaintiffs*

/s/DavidP.Sheldon  
David P. Sheldon (DC Bar # 446039)  
Law Offices of David P. Sheldon, P.L.L.C.  
100 M. St. SE, Suite 600  
Washington, DC 20003  
Tel: 202.546.9575  
Fax: 202.546.0135  
*Counsel for Plaintiffs*