

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
Case No. 1:13-cv-22501-KMM**

SHANIKA A. GRAVES, as Personal
Representative of the Estate of
Travis McNeil, and on behalf of the
Estate of Travis McNeil and the
survivors of the Estate, T.M. and K.J.P.,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

SECOND AMENDED COMPLAINT

1. Plaintiff, Shanika A. Graves, as Personal Representative of the Estate of Travis McNeil, on behalf of the Estate of Travis McNeil, and on behalf of the survivors of the Estate, T.M. (a minor) and K.J.P. (a minor), pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, seeks damages arising from Defendant United States of America's (hereinafter "Defendant" or "United States") negligence and other wrongful acts, that resulted in Mr. McNeil's wrongful death.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 in that this action arises under the laws of the United States of America and is premised on the acts and omissions of the Defendant acting under color of federal law. This Court further has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1346(b) in that this is a claim

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against the Defendant United States of America, for money damages, accruing on or after January 1, 1945, for a death caused by the negligent and wrongful acts and omissions of employees of the United States Government while acting within the course and scope of their office or employment, under the circumstances where the Defendant, if a private person, would be liable to the Plaintiff.

3. Jurisdiction founded upon the federal law is proper in that this action is premised upon federal causes of action under the Federal Tort Claims Act (hereinafter "FTCA"), 28 U.S.C. § 2671, *et. seq.*

4. Pursuant to the FTCA, 28 U.S.C. § 2671, *et. seq.*, on or about January 3, 2013, Plaintiff presented her claim to the appropriate federal agencies for administrative settlement under the FTCA. Over six months have elapsed and the Defendant United States has failed to respond to Plaintiff's claims.

5. This action is timely pursuant to 28 U.S.C. § 2401(b) in that it was presented to the appropriate federal agency within two years of accrual and this action was filed within six months of the running of the six month period after Plaintiff presented her claim to the appropriate agencies.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c), as Defendant does business in this judicial district and the events or omissions giving rise to the claims occurred in this judicial district.

Parties

7. Plaintiff, Shanika A. Graves, is the duly appointed Personal Representative of the Estate of Travis McNeil (the "decedent"), having been appointed Personal Representative by the Probate Division of the Circuit Court in and for Miami-Dade County on June 16, 2011. This ac-

tion is brought by Shanika A. Graves in her capacity as Personal Representative of the Estate of Travis McNeil, on behalf of the Estate, and on behalf of the survivors, T.M. and K.J.P. T.M. and K.J.P. are minors and are the son and daughter respectively of the decedent. Today and at the time of Mr. McNeil's death, both were under the age of twenty-five, and were dependent on the decedent for support.

8. Defendant, United States of America, is subject to suit for a death caused by the negligent and wrongful acts and omissions of employees of the Government while acting within the course and scope of their office or employment, under the circumstances where the Defendant, if a private person, would be liable to the Plaintiff, pursuant to the FTCA.

9. Defendant, United States of America, is also subject to suit for a death caused by the negligent and wrongful acts and omissions of employees of law enforcement persons from local governments acting on behalf of a federal agency in an official capacity under the FTCA, as the term government employees is broadly defined pursuant to 28 U.S.C. § 2671(1).

10. At all times material to this action, Defendant was responsible for the supervision, training and coordination of its employees and law enforcement persons from local governments acting on behalf of a federal agency in an official capacity.

Factual Allegations

11. At some point prior to February 2011, the United States arranged and initiated a series of law enforcement actions around the country known as "Operation Southern Tempest." As part of this operation, agents of the United States from, at least, the Department of Homeland Security Investigations (hereinafter "Homeland Security"), the Bureau of Alcohol, Tobacco, Firearms & Explosives (hereinafter "ATF") partnered with local law enforcement agencies.

12. The United States decided to partner with the City of Miami Police Department (“MPD”) despite the fact that the United States was aware of serious systemic deficiencies in MPD’s operations, including deficiencies in MPD officers’ use of deadly force, that have persisted for over a decade. In 2002, the United States launched an investigation into MPD’s practices in response to allegations that officers used excessive deadly and non-deadly force. It was discovered that, in the year prior to commencing that investigation, thirteen MPD officers were indicted on conspiracy charges for lying and planting physical evidence, including guns, in an effort to undermine the investigations of four officer-involved shootings. The indictments implicated officers at various levels of the chain of command, including supervisory staff, and resulted in six convictions. The investigation uncovered serious deficiencies in MPD’s investigative practices and found that officers’ use of deadly force was sometimes avoidable. For example, MPD investigators routinely failed to pursue inconsistencies in officer or witness accounts, and left glaring omissions unexplored. The United States found that these deficiencies led to a heightened risk that MPD officers would use force, including deadly force, excessively. That investigation culminated in a March 2003 technical assistance letter written to MPD from the United States.

13. However, the United States’ admonitions were not heeded. In a follow-up technical assistance letter in January 2006, the United States recommended that MPD improve accountability by modifying its policies and training to require, among other things, more diligent and thorough investigations by supervisors. It also recommended that MPD improve training for line supervisors and Internal Affairs investigators in interview techniques, assessing the credibility of witnesses, and achieving impartiality in the interview process. MPD made some changes to its policies, and the United States closed its investigation in 2006.

14. Unfortunately, MPD once again failed to achieve the changes that the United States sought. During an eight-month period from 2010-2011, MPD officers shot and killed seven young African-American men, culminating in the February 2011 fatal shooting of Travis McNeil, which is the subject of this Complaint. The shootings gave rise to widespread community concern about MPD's use of deadly force and led to multiple requests for a Department of Justice investigation. Like the prior investigation, the current investigation also arose during a wave of corruption allegations involving sworn MPD officers and supervisors, including allegations of extortion and obstruction of justice. As a result, in November 2011 the United States began yet another investigation into MPD's practices.

15. On July 9, 2013, the United States released the results of its latest investigation. It concluded that MPD engages in a pattern or practice of excessive force with respect to firearms discharges, in violation of the Fourth Amendment to the United States Constitution. It noted that many of the systemic problems that were supposed to have been fixed had reoccurred, evidenced by a steady rise in officer-involved shootings. The United States also noted that the previous spike in officer-involved shootings may have been avoidable, and that continued, court-enforceable oversight is necessary to ensure lasting reforms.

16. Despite its awareness of the systemic and intractable deficiencies in MPD's practices, the United States decided to conduct an operation on the night of February 10, 2011, in Miami, in conjunction with MPD and other local police agencies. Upon information and belief, the United States designed and planned the operation, initiated it, funded it, directed the assignments for it, decided on the tactical procedures, and was responsible for the conduct of the operation, including but not limited to the training, supervision, and coordination of the law enforcement agents involved. The law enforcement agents involved included employees of the United

States and employees of local law enforcement agencies who were acting as agents of the United States at all material times.

17. On or about February 10, 2011, the United States held a briefing for that night's operation at the Miami Police Department's Special Operations Section building. Upon information and belief, no "takedown" procedures, use of force protocols, supervision protocols, procedures for vehicle stops, or any other information on how to effectuate the arrests of suspects were discussed. Upon information and belief, the United States conducted no training for the law enforcement agents involved in this operation. The United States failed to have proper protocols in place and failed to conduct any training despite its knowledge of the systemic deficiencies in MPD's practices, especially with regard to uses of force.

18. On the night of February 10, 2011, law enforcement officers from Homeland Security and the ATF, as well as the City of Miami's and City of Hialeah's Police Departments, were positioned outside the Take One Lounge ("Take One") located at 333 N.E. 79th Street in Miami, Florida.

19. Travis McNeil and his cousin Kareem Williams were observed exiting the lounge and getting into a vehicle. Mr. McNeil was driving. Neither was suspected of any gang activity, and neither was suspected to be armed. In fact, both patrons were frisked before entering the Take One. Nonetheless, the decision was made to pursue Mr. McNeil's car.

20. Three separate unmarked law enforcement vehicles pursued Mr. McNeil's car. The lead car was driven by Homeland Security Special Agent Timothy Scott, and also contained Miami Police Officer Reynaldo Goyos, who was sitting in the front passenger seat.

21. At some point, the pursuing law enforcement agents decided to stop Mr. McNeil's car. The law enforcement agents hastily attempted to confer via their radios to determine how to

stop the car. Rather than initiate a simple traffic stop, the law enforcement agents decided to use a dangerous, unnecessary, and unplanned technique which involved “boxing” in Mr. McNeil’s car. At some point, the agents activated their interior emergency lights.

22. Noticing the police lights, Mr. McNeil immediately pulled over.

23. Agent Scott, who was driving the lead car, pulled his vehicle around to the left of Mr. McNeil’s car and attempted to get in front of it to “box” it in. Mr. McNeil’s car slowed to a stop. Agent Scott stopped his vehicle so that its passenger door was less than five feet from Mr. McNeil’s driver’s door. The second law enforcement vehicle stopped behind Mr. McNeil’s car, and the third vehicle stopped to the left of Mr. McNeil’s car, boxing him in.

24. By stopping Mr. McNeil’s car in this way, the drivers of the law enforcement vehicles, including but not limited to Agent Scott, created an unreasonable risk of harm to Mr. McNeil, Mr. Williams, the other law enforcement officers, and the public at large.

25. Miami Police Officer Reynaldo Goyos, riding in the passenger seat of Agent Scott’s vehicle, exited his vehicle. Because of the position of the vehicle, Officer Goyos was immediately less than three feet from Mr. McNeil’s driver side window, with no cover between them. In violation of proper protocol, Officer Goyos approached the vehicle with his gun drawn and pointed at Mr. McNeil and yelled for Mr. McNeil to show his hands. Mr. McNeil’s window was down, so Goyos could see him clearly. Neither Mr. McNeil nor Mr. Williams did anything to threaten or provoke Officer Goyos. When Goyos was one foot away from Mr. McNeil’s window, Goyos intentionally discharged his firearm three times, fatally wounding Mr. McNeil and striking Mr. Williams twice.

26. No weapons, drugs or contraband were found on either Mr. McNeil or Mr. Williams or in or around the vehicle. Moreover, Mr. McNeil did not give the officers any reason to believe he had committed, was committing, or was about to commit a felony.

27. Mr. McNeil is survived by his now 12 year old son, T.M. and his now 7 year old daughter, K.J.P.

Count One: Wrongful Death - Negligence

28. Plaintiff incorporates paragraphs 1-27 as if fully set forth herein.

29. The United States negligently caused Mr. McNeil's death by, among other things, failing to create and implement proper procedures for this operation, failing to have a proper plan in place for this operation, failing to adequately supervise its agents, failing to adequately coordinate between agencies, and failing to adequately train its agents. Agents under the control and supervision of the United States and working on behalf of the United States were individually negligent in the execution of this operation.

30. Defendant has in its employ and/or agency various law enforcement officers, over which it exercised control and supervision. At all times material to this action, Defendant authorized these agents and employees to act for Defendant when they committed the negligent and wrongful acts alleged herein. Defendant's agents and employees accepted the undertaking of acting on behalf of Defendant when they committed the negligent and wrongful acts alleged herein. Defendant had control over its agents and employees when they committed the negligent and wrongful acts alleged herein. Defendant also had control over local law enforcement officers from the City of Miami and City of Hialeah who were acting on behalf of Defendant in an official capacity on a joint task force known as "Operation Southern Tempest."

31. The negligent and wrongful acts of Defendant's agents and employees were committed while acting within the course and scope of their employ and/or agency with Defendant. Thus, Defendant is statutorily liable for the actions of its agents and employees and local law enforcement agents when they committed the negligent acts alleged herein.

32. As the direct and proximate result of Defendant's negligence, Mr. McNeil was shot and killed.

Count Two: Wrongful Death - Battery

33. Plaintiff incorporates paragraphs 1-27 as if fully set forth herein.

34. At all material times, Officer Reynaldo Goyos was acting on behalf of a federal agency in an official capacity, in the service of the United States.

35. At all material times, Officer Reynaldo Goyos was an investigative or law enforcement officer of the United States Government.

36. Officer Goyos caused bodily harm to Mr. McNeil by shooting and killing Mr. McNeil while Mr. McNeil was sitting in his car. The shooting constituted excessive force and was accomplished without the consent and against the will of Mr. McNeil.

37. As a direct and proximate result of Officer Goyos's actions, for which Defendant the United States is responsible, Mr. McNeil died.

Prayer for Relief

WHEREFORE Plaintiff, Shanika A. Graves, as Personal Representative of the Estate of Travis McNeil, on behalf of the Estate of Travis McNeil and the survivors of the Estate, T.M and K.J.P., demands judgment against the Defendant, United States of America, and claim the following damages:

A. The Estate has sustained the following damages:

1. Funeral and burial expenses incurred as a result of the death of Travis McNeil that have become a charge against his estate or that were paid on his behalf;
2. Loss of prospective net estate accumulations; and
3. Interest and costs.

B. T.M. and K.J.P., children and dependents of the decedent, have sustained the following damages:

1. Loss of support and services of their father from February 10, 2011 to the present, plus interest;
2. Loss of support and services of Travis McNeil which would have been received by them from their father in the future, with interest thereon, reduced to present value;
3. Loss of parental companionship, instruction and guidance, from February 10, 2011;
4. Great mental pain and suffering from on or about February 10, 2011, and for the remainder of their lives; and
5. Interest and costs.

Respectfully submitted,

Randall C. Berg, Jr., Esq.
Florida Bar No. 0318371
E-mail: RBerg@FloridaJusticeInstitute.org
Dante P. Trevisani, Esq.
Florida Bar No. 72912
E-Mail: DTrevisani@FloridaJusticeInstitute.org

Florida Justice Institute, Inc.
3750 Miami Tower
100 S.E. Second Street

Miami, Florida 33131
Tel: 305.358.2081
Fax: 305.358.0910

Ray Taseff, Esq.
Florida Bar No. 352500
E-mail: raytaseffpa@gmail.com

Ray Taseff, P.A.
225 Alcazar Avenue, 2nd Flr.
Coral Gables, FL 33134
Tel: 786.363.9020
Fax: 786.363.9040

By: s/Randall C. Berg, Jr.
Randall C. Berg, Jr., Esq.

Attorneys for the Plaintiff

Certificate of Service

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/Randall C. Berg, Jr.
Randall C. Berg, Jr., Esq.

Service List

By Email and CM/ECF

Lawrence Nathan Rosen, Esq.
Assistant United States Attorney
larry.rosen@usdoj.gov

Attorneys for the Defendant