

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:24-cv-01776-RTG
(To be supplied by the court)

FIRST AMENDED COMPLAINT

KEITH CUNNINGHAM, Plaintiff

v.

Jury Trial requested:
(please check one)
 Yes No

UNITED STATES OF AMERICA,

BUREAU OF PRISONS

_____, Defendant(s).

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

DEC 02 2024

JEFFREY P. COLWELL
CLERK

(List each named defendant on a separate line. If you cannot fit the names of all defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section B. Do not include addresses here.)

PRISONER COMPLAINT

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint.

A. PLAINTIFF INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

KEITH CUNNINGHAM,
220 11th Ave., Seattle, Washington 98122

(Name, prisoner identification number, and complete mailing address)

(Other names by which you have been known)

Indicate whether you are a prisoner or other confined person as follows: (check one)

- Pretrial detainee
- Civilly committed detainee
- Immigration detainee
- Convicted and sentenced state prisoner
- Convicted and sentenced federal prisoner
- Other: (Please explain) _____

B. DEFENDANT(S) INFORMATION

Please list the following information for each defendant listed in the caption of the complaint. If more space is needed, use extra paper to provide the information requested. The additional pages regarding defendants should be labeled "B. DEFENDANT(S) INFORMATION."

Defendant 1: UNITED STATES OF AMERICA
(Name, job title, and complete mailing address)
(U.S. Attorney General) Room 5111, Main Justice Bldg.
10th and Constitution N.W., Washington, DC 20530

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes No (check one). Briefly explain:

The United States of America and its agents always
act under color of federal law.

Defendant 1 is being sued in his/her individual and/or official capacity.

Defendant 2: FEDERAL BUREAU OF PRISONS
(Name, job title, and complete mailing address)
BOP General Counsel
320 First St., NW, Washington, D.C. 20534

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes ___ No (check one). Briefly explain:

Bureau of Prisons is a federal agency and its agents act under color of federal law.

Defendant 2 is being sued in his/her individual and/or ___ official capacity.

Defendant 3: _____
(Name, job title, and complete mailing address)

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? ___ Yes ___ No (check one). Briefly explain:

Defendant 3 is being sued in his/her ___ individual and/or ___ official capacity.

C. JURISDICTION

Indicate the federal legal basis for your claim(s): (check all that apply)

___ State/Local Official (42 U.S.C. § 1983)

___ Federal Official

As to the federal official, are you seeking:

___ Money damages pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)

___ Declaratory/Injunctive relief pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361, or 28 U.S.C. § 2201

Other: (please identify) Federal Tort Claims Act & Freedom of Information Act (5 U.S.C. 552 & 552a)

D. STATEMENT OF CLAIM(S)

State clearly and concisely every claim that you are asserting in this action. For each claim, specify the right that allegedly has been violated and state all facts that support your claim, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific legal cases to support your claim(s). If additional space is needed to describe any claim or to assert additional claims, use extra paper to continue that claim or to assert the additional claim(s). Please indicate that additional paper is attached and label the additional pages regarding the statement of claims as "D. STATEMENT OF CLAIMS."

CLAIM ONE: NEGLIGENCE

Claim one is asserted against these Defendant(s): UNITED STATES OF AMERICA

Supporting facts:

1. On 1/17/2014, Plaintiff was in federal custody and had a seizure which resulted in his hospitalization. Plaintiff was treated by Dr. Don S. Nicolas while in the hospital. Dr. Nicolas discharged Plaintiff on 1/19/2014 after diagnosing him with a seizure disorder and prescribing 500 mg of Keppra, an anti-seizure medication.
2. Plaintiff was housed at FCI Englewood in Littleton, Colorado on 9/21/2022 when he had another seizure which required his being hospitalized. His seizure caused him to fall and hit the floor of his housing unit at FCI Englewood on 9/21/2022. He injured his head as a result of the fall on 9/21/2022. Prior to 9/21/2022, Plaintiff repeatedly asked Bureau of Prisons medical staff for treatment for his seizures. Plaintiff's medical care providers at the Bureau of Prisons ("BOP") failed to treat Plaintiff's seizures and did not provide him with the daily dosage of Keppra which Dr. Nicolas prescribed to him on 1/19/2014 to prevent his seizures. Plaintiff informed his care providers that he was fearful of falling and injuring himself due to a seizure ever since his initial seizure in federal custody on 1/17/2024.
3. While hospitalized on 9/21/2022, Plaintiff was treated by Dr. Aaron Lessen at the Swedish Medical Center. Dr. Lessen indicated that Plaintiff had a seizure, ran tests, and prescribed anti-seizure medication. Dr. Lessen also prescribed follow-up care and instructed Plaintiff's care providers to "make an appointment for follow-up care" with HealthONE Neurology Specialist at 499 East Hampden Ave., Suite #360, Englewood, Colorado 80113. To date, Plaintiff has never received any follow-up care for his seizure disorder.

D. STATEMENT OF CLAIMS

4. On 9/23/2022, Plaintiff had yet another seizure at FCI Englewood while in the recreation area of the federal prison. During this seizure, Plaintiff fell from the bleachers where he was sitting and broke his neck as well as his back. Plaintiff was taken to the Swedish Medical Center where he was treated until his release on 9/30/222. During Plaintiff's hospitalization at Swedish Medical Center, he was treated by Dr. Miyako Watanabe. Dr. Watanabe documented various injuries that Plaintiff suffered including a C5-6 transdiscal injury, C5 teardrop fracture, compression fracture of T6, partial thickness tear of PLL (level of C5-6), moderate focal narrowing of cervical left vertebral artery at level of C5-6 without evidence of vascular injury.
5. At discharge, Dr. Miyako Watanabe prescribed antiseizure medication of Keppra at 750 mg per day. On Plaintiff's discharge paperwork which was sent to Plaintiff's care providers at FCI Englewood including Dr. Susan Conroy, Plaintiff's doctor at Swedish Medical Center indicated that his care providers "make sure to [give Plaintiff] Keppra as directed" and told his care providers at FCI Englewood to ensure he received follow-up appointments with Dr. Maxwell Hirsh Busch. Plaintiff was never taken to see any doctor for the follow-up appointments or treatment which was prescribed by his doctor on 9/30/2022 at his discharge from the Swedish Medical Center. The Bureau of Prisons' medical care providers at FCI Englewood tasked with caring for Plaintiff have negligently failed to provide Plaintiff with any medical care for his seizure disorder.
6. Dr. Susan Conroy, physicians unknown, and nurses unknown acting as the agents, servants, and employees of defendant, the United States of America, in the course of their employment, who along with their servants, and employees of defendant, but unknown to plaintiff, committed the acts of negligence that are set forth above.
7. As a result of the fault of the defendants by and through its agents, servants and employees, acting within the scope of their employment, plaintiff suffered and continues to suffer fear, anxiety, sleeplessness, permanent neck injuries, and permanent back injuries along with pain.

FTCA and Negligence under Colorado Law

8. Each of the care providers at FCI Englewood prison who were tasked with providing medical care for Plaintiff owed Plaintiff a duty of care under Colorado law. Under Colorado law, healthcare providers have a duty not to cause injury and to refer an individual for outside testing or care that would alleviate injury where the failure to do so would result in continued harm. The above indicated healthcare providers acting on behalf of the United States of America breached their duty of care under Colorado law by failing to provide Plaintiff with medical care for his seizure

D. STATEMENT OF CLAIMS

disorder, failing to provide Plaintiff with his prescribed anti-seizure medications, failing to send Plaintiff to a specialist capable of treating his seizures, failing to provide Plaintiff with his prescribed follow-up care for his seizure, and ignoring Plaintiff's seizure disorder from the year 2014 until his release from FCI Englewood.

CLAIM TWO: Medical Negligence

Claim Two is asserted against Defendant United States of America.

Supporting Facts:

9. Plaintiff complained to his medical care providers at FCI Englewood concerning his pain in both knees and inability to walk properly as a result. Plaintiff repeatedly voiced his complaints to his care providers at FCI Englewood from at the time he was placed in custody at FCI Englewood until his subsequent release from FCI Englewood.
10. Plaintiff was not sent to see a specialist capable of providing care for his knee pain until June 1, 2023. On June 1, 2023, Plaintiff was seen by Dr. John Woodward Jr., a doctor working for the Swedish Medical Center. Dr. Woodward prescribed total knee replacement as treatment for Plaintiff's severely damaged knees.
11. Plaintiff was eventually scheduled by the FCI Englewood medical care providers to have a surgery on both knees by 9/13/2023 according to his medical records.
12. Plaintiff was never transported to an orthopedist to conduct the prescribed knee replacement surgery.
13. Plaintiff suffered and continues to suffer pain as a result of the FCI Englewood medical care providers failing to provide him with adequate treatment for his knees. Plaintiff's knee injuries were exacerbated as a result of the lack of treatment by the FCI Englewood medical staff tasked with providing his medical care. Plaintiff suffered from emotional injuries as a result of the negligent acts described above to include fear, anxiety, depression, and insomnia.

FTCA and Negligence under Colorado Law

14. As a result of the fault of the defendant, by and through its agents, servants, and employees, acting within the scope of their employment, Plaintiff suffered extreme pain and the emotional injuries described supra.
15. Each of the care providers at FCI Englewood prison who were tasked with providing medical care for Plaintiff owed Plaintiff a duty of

D. STATEMENT OF CLAIMS

care under Colorado law. Under Colorado law, healthcare providers have a duty not to cause injury and to refer an individual for outside testing or care that would alleviate injury where the failure to do so would result in continued harm. The medical care providers at FCI Englewood known and unknown to Plaintiff including Dr. Susan Conroy acting on behalf of the United States of America breached their duty of care under Colorado law by failing to provide Plaintiff with care for both of his knees which required surgery and delaying Plaintiff's referral to a knee specialist for years after Plaintiff informed his care providers of his serious medical concerns regarding his knees.

16. As a direct and proximate result of the combined negligence of Defendant's agents, servants, and employees, Plaintiff has suffered unnecessary pain, emotional injuries, and exacerbation of his knee injuries.

CLAIM THREE: Medical Negligence

Claim Three is asserted against the United States of America.

Supporting Facts:

17. Plaintiff was diagnosed with an inguinal hernia on or about 12/30/2021. Dr. Susan Conroy, Plaintiff's doctor at FCI Englewood indicated in Plaintiff's medical records that Plaintiff had a inguinal hernia which required surgery on 12/30/2021.
18. Plaintiff made repeated complaints to the FCI Englewood prison medical staff tasked with his medical care regarding his hernia and the pain it was causing him. Plaintiff was told by Dr. Conroy that he would be scheduled to receive a surgery for his hernia at some point in the future each time Plaintiff complained about his hernia pain from January 2022 until March 2024.
19. Inguinal hernias have the potential to be fatal and are extremely painful. On March 31, 2023, a doctor at the Swedish Medical Center informed Dr. Susan Conroy that Plaintiff required immediate surgery to resolve his inguinal hernia.
20. According to Plaintiff's medical records, the Bureau of Prisons Regional Medical Director approved Plaintiff's request for hernia surgery on 4/27/2023 after Dr. Susan Conroy made a request to Medical Director Fateh Hyder Syed on 4/17/2023.
21. FCI Englewood medical staff did not provide Plaintiff with medical care for his inguinal hernia until surgery was conducted in March of 2024. Plaintiff suffered unnecessary pain and mental anguish from December 2021 until March 2024 due to his care providers at FCI Englewood failing to provide him with medical care in a timely manner.

D. STATEMENT OF CLAIMS

22. Dr. Susan Conroy, physicians unknown, and nurses unknown acting as the agents, servants, and employees of defendant, United States of America, in the course of their employment, who along with their servants, and employees of defendant, but unknown to Plaintiff, committed the acts of negligence that are set forth above.
23. As a result of the fault of the defendant, by and through its agents, servants, and employees, acting within the scope of their employment, Plaintiff suffered fear, anxiety, amnesia, and severe pain while his hernia remained untreated by defendant.

FTCA and Negligence under Colorado Law

24. Each of the care providers at FCI Englewood prison who were tasked with providing medical care for Plaintiff owed Plaintiff a duty of care under Colorado law. Under Colorado law, health care providers have a duty not to cause injury and to refer an individual for outside testing or care that would alleviate injury where the failure to do so would result in continued harm. The above indicted health care providers responsible for the medical care of Plaintiff's hernia and acting on behalf of the United States of America breached their duty of care under Colorado law by failing to provide Plaintiff with medical care in a timely manner for his hernia from March 31, 2023 until the date the surgery was performed in March of 2024.
25. As a direct and proximate result of the combined negligence of Defendant's agents, servants, and employees, Plaintiff has suffered unnecessary pain, emotional injuries, and exacerbation of his hernia.

CLAIM FOUR: Bureau of Prisons violated the provisions of the Freedom of Information Act, 5 U.S.C. 552

Supporting Facts:

26. Plaintiff submitted a Freedom of Information Act ("FOIA") request to the Bureau of Prisons via mail on 8/16/2024. Exhibit E is a copy of the FOIA request that Plaintiff sent to the Bureau of Prisons ("BOP") on 8/16/2024.
27. The BOP did not conduct a search for records responsive to Plaintiff's FOIA request and failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A)(i). Twenty business days passed without the BOP conducting a search for the records Plaintiff requested in his FOIA request. Additionally, the BOP did not issue a response to Plaintiff's FOIA request that complies with the mandates of the FOIA.
28. The BOP did not make and communicate a "determination" within the meaning of 5 U.S.C. § 552(a)(6)(A)(i) within 20 working days

D. STATEMENT OF CLAIMS

of receiving Plaintiff's FOIA request.

29. On June 1, 2024, Plaintiff submitted a written cop-out (Inmate Request to Staff Form) to the medical records staff at FCI Englewood requesting all of his medical records pursuant to 28 C.F.R. § 513.42 for forwarding to his legal counsel. The medical records staff did not respond to Plaintiff's request under FOIA and § 513.42 for his medical records.

Exhaustion of Administrative Remedies

30. Plaintiff has exhausted each of the above listed claims.
31. The plaintiff has complied with all the prerequisites to a suit under the Federal Tort Claims Act in that:
- (a) On 12/5/2023, Plaintiff timely filed an administrative claim for the matters in dispute in this action in the amount of \$500,000 (with regards to his seizure related claim) with the Regional Director of the BOP. Exhibit A is a copy of FTCA claim filed on 12/5/2023 with the Regional Director of the BOP.
 - (b) The BOP denied Plaintiff's administrative claim via letter on 5/28/24. Exhibit B is the letter that the BOP sent to Plaintiff denying his claim.
 - (c) On 12/13/2023, Plaintiff timely filed an administrative claim for the matter in dispute in this action (Claims 2 and 3) with the Regional Director of the BOP. Exhibit C is a copy of the FTCA claim filed on 12/13/2023 with the Regional Director of the BOP.
 - (d) On 7/1/2024, the BOP denied Plaintiff's administrative claim (for Claims 2 and 3) via letter. Exhibit D is the letter that Plaintiff received from the BOP denying his FTCA claim.
32. Plaintiff exhausted his administrative remedies concerning his FOIA claim by submitting his FOIA claim and failing to receive any response by the BOP for 20 business days. Under the FOIA no further action is necessary to exhaust a FOIA claim when an agency fails to make and communicate a "determination" within 20 business days of receiving a FOIA claim. 5 U.S.C. § 552(a)(6)(A)(i).

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? ___ Yes X No (*check one*).

If your answer is "Yes," complete this section of the form. If you have filed more than one previous lawsuit, use additional paper to provide the requested information for each previous lawsuit. Please indicate that additional paper is attached and label the additional pages regarding previous lawsuits as "E. PREVIOUS LAWSUITS."

Name(s) of defendant(s): _____

Docket number and court: _____

Claims raised: _____

Disposition: (is the case still pending?
has it been dismissed?; was relief granted?) _____

Reasons for dismissal, if dismissed: _____

Result on appeal, if appealed: _____

F. ADMINISTRATIVE REMEDIES

WARNING: Prisoners must exhaust administrative remedies before filing an action in federal court regarding prison conditions. See 42 U.S.C. § 1997e(a). Your case may be dismissed or judgment entered against you if you have not exhausted administrative remedies.

Is there a formal grievance procedure at the institution in which you are confined?

X Yes ___ No (*check one*)

Did you exhaust administrative remedies?

X Yes ___ No (*check one*)

G. REQUEST FOR RELIEF

State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "G. REQUEST FOR RELIEF."

Plaintiff requests that this Court render judgment against the United States for the intentional infliction of emotion distress, negligent infliction of emotional distress, medical negligence, and medical malpractice articulated in his Complaint:

- (A) In the sum to be shown at trial, but in no event less than \$1,000,000.00;
- (B) Including whatever pre- and postjudgment interest may be allowed by law;
- (C) Plaintiff to be awarded costs of suit; and
- (D) Declaring that the acts and inactions of the defendant's agents in failing to provide him with medical care for the medical issues described in the Complaint violated Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment.

Plaintiff further requests that the Court enjoin the Bureau of Prisons via injunction compelling the agency to produce the FOIA documents requested by Plaintiff.

H. PLAINTIFF'S SIGNATURE

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. *See* 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

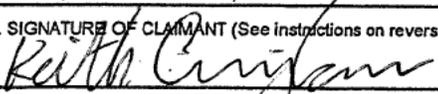


(Plaintiff's signature)

11/26/2024
(Date)

EXHIBIT A

FTCA claim filed with Regional Office of Bureau of Prisons 12/5/23

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: BOP, North Central Regional Office Gateway Complex Tower II, 8th Floor 400 State Ave. Kansas City, KS 66101-2492			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code) KEITH CUNNINGHAM #28019-064 FCI Englewood 9595 W. Quincy Ave. Littleton, Colorado 80123		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH [REDACTED]/42	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT [see narrative]	7. TIME (A.M. OR P.M.) -----	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.) On 9/21/2022, I had a severe seizure and was taken to the emergency room at the Swedish Hospital after falling unconscious and hitting my head on the floor at FCI Englewood where I am incarcerated. (See Exhibit B). The BOP has been aware of my seizures since at least 2014. <p style="text-align: center;">----See Continuation Page----</p>					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See Instructions on reverse side.)					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. I suffered a broken neck, pain, psychological & emotional injuries (fear, anxiety, depression), and numerous additional physical injuries listed in medical record attached as Exhibit B.					
11. WITNESSES					
NAME			ADDRESS (Number, Street, City, State, and Zip Code)		
Michelle Porter FNP [Medical Care Provider]			FCI Englewood, 9595 W. Quincy Ave., Littleton, Colorado 80123		
12. (See instructions on reverse.) AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE -----	12b. PERSONAL INJURY \$500,000.00	12c. WRONGFUL DEATH -----	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$500,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) 			13b. Phone number of person signing form	14. DATE OF SIGNATURE 12/5/2023	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS		
The claimant is liable to the United States Government for the civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)			Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)		

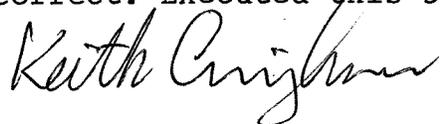
BASIS OF CLAIM CONTINUATION PAGE

At the Swedish Hospital, where the FCI Englewood medical staff took me for treatment, it was determined that I had another seizure. Although the BOP medical staff at FCI Englewood were well aware of my seizure disorder (see Exhibit C), I have not been treated for my seizures nor has the BOP medical staff sent me to see a specialist capable of providing treatment for my seizures.

On or about 9/23/2023 while at FCI Englewood I had another seizure and fell from the bleachers onto my face (about 5 feet). I was taken to the Swedish Hospital again where I received treatment from 9/23/23 until being discharged on 10/1/22. (See Exhibit A). It was determined that I broke my neck due to the seizure and subsequent fall from the bleachers at FCI Englewood. The hospital documented my injuries. (See Exhibit A).

The medical care providers who were tasked with caring for me since my incarceration are negligent for failing to provide me with adequate care for my seizures. The medical care providers at FCI Englewood who were tasked with providing care for me after my first seizure are negligent for failing to provide treatment for my seizures after having knowledge of my seizure and hospitalization on 9/21/2022. Due to the BOP's failure to provide me with adequate medical care and treatment for my seizures, I had another seizure (which could have been prevented) which caused the injuries described in Section 10 of this tort claim and in Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 5th day of December 2023 at Littleton, Colorado.



Keith Clifford Cunningham
Prisoner No. 28019-064
FCI Englewood
9595 W. Quincy Ave.
Littleton, Colorado 80123

* SWEDISH MEDICAL CENTER (COCZS)
Discharge Summary
REPORT#:1001-0024 REPORT STATUS: Signed
DATE:10/01/22 TIME: 0152

PATIENT: CUNNINGHAM, KEITH UNIT #: AQ02591418
ACCOUNT#: AQ1018270355 ROOM/BED: AQ.9326-A
DOB: 10/14/42 AGE: 79 SEX: M ATTEND: Busch, Maxwell Hirsh MD
ADM DT: 09/23/22 AUTHOR: Watanabe, Miyako DO RI
Report Service Date:10/01/22

* ALL edits or amendments must be made on the electronic/computer document *

General Information

Discharge date: 09/30/22

Discharge diagnosis:

*C5-6 transdiscal injury

*C5 teardrop fracture

*Complete disruption of ALL

*Partial thickness tear of PLL (level of C5-6)

*Age-indeterminate compression fracture of T6

*Moderate focal narrowing of cervical left vertebral artery
at level of C5-6 w/o evidence of vascular injury

s/p C5-6 anterior cervical disc fusion (Elliott) on 9/24

Hospital course:

79 y/o male with Hx of seizures presents after falling onto face from bleachers
4-5 feet from the ground

MOI: Fall from bleachers

DOI: 9/23

Code: Full

Trauma imaging

- CT Head and neck: no acute intracranial hemorrhage, no acute facial fracture.

Cervical findings as listed below in A/P

- CT chest/abdomen/pelvis: Age-indeterminate compression fracture of T6

- CTA head and neck: findings as below in A/P

- Cervical spine MRI: findings as below in A/P

*C5-6 transdiscal injury

*C5 teardrop fracture

*Complete disruption of ALL

*Partial thickness tear of PLL (level of C5-6)

*Age-indeterminate compression fracture of T6

*Moderate focal narrowing of cervical left vertebral artery at level of C5-6 w/o
evidence of vascular injury

- NSGY consulted (Elliott), appreciate recs

Per NSGY

-HOB at 0-20 degrees

-Aspen collar AAT

-NPO midnight today

-TLSO when OOB, expect 6-8 wks

-9/24: C5-6 anterior cervical disc fusion (Elliott)

Per NSGY

-Aspen collar OOB x 6 weeks

-TLSO when OOB, expect 6-8 wks

-Chem DVT ppx okay on POD2 pm (9/27 pm) from nsgy standpoint

*Seizures

EXHIBIT "A"

HISTORY OF PRESENT ILLNESS:

Patient is a 79-year-old male, PMH hyperlipidemia, hypertension, who presents today from presenting via EMS after his cellmate witnessed patient collapse to the ground with subsequent shaking. History primarily provided by EMS. Initially on EMS arrival, patient appeared somewhat altered and was combative requiring complete restraints but seemed to be clearing while in ambulance. On transport, patient was complaining of left knee pain but otherwise was unwilling to respond to direct questioning regarding his current symptoms. EMS report that patient had 1 seizure in 2014, no known seizure disorder and is not on any antiepileptic medications. No known trauma or falls, no recent changes to medications. Patient required full four-point restraints and transportation to initial combativeness.

REVIEW OF SYSTEMS:

Unable to obtain complete ROS secondary to patient's postictal state.
Neurological: No headache. No focal weakness. + confusion.

The documented elements of social, medical, surgical and family history were reviewed and verified by me.

PHYSICAL EXAM:

GENERAL: Alert and interactive, cooperative, has no immediate need for airway protection, and no current signs of significant toxicity. Appears stated age.

EYES: Pupils equal and round, no pallor, icterus or injection. EOMI.

HFNT: Normocephalic/atraumatic. No battle sign or Raccoon eyes. No appreciable scalp hematoma. Moist mucous membranes. Nares are grossly patent.

PULMONARY: There are no retractions, lungs are clear to auscultation bilaterally without wheezes rales or rhonchi. Normal respiratory effort.

CARDIOVASCULAR: Regular rate and rhythm. Heart sounds normal, no murmur. Appears well perfused. No dependent edema.

GI: Abdomen is soft. Diffusely non-tender, non-distended. No guarding, and no rebound tenderness.

NEURO: Awake, alert. Moves all extremities under own power. PERRLA, EOMI, Face symmetrical, speech clear. Smile symmetric. Soft touch sensation intact to extremities.

SKIN: Warm and dry, no rash on exposed surfaces.

MSK: Neck is supple, non tender with full ROM. No midline spinal tenderness to palpation without any appreciable step-offs. Paraspinal tenderness in thoracic spine. Extremities are symmetrical, full range of motion.

IMMUNE: No lymphadenopathy

PSYCH: Agitated affect

DIFFERENTIAL DIAGNOSIS: Including, but not limited to seizure, epilepsy, tumor, intracranial bleeding, CVA, traumatic SAH, subdural hematoma, electrolyte abnormality, hypoglycemia, medication effect

DATA INTERPRETATION:

Radiology images independently viewed by me. Labwork reviewed.

EKG interpretation:

time : 0923

rate : 62 bpm

EXHIBIT B¹¹

1ST SEIZURE

**Bureau of Prisons
Health Services
Clinical Encounter**

Inmate Name: CUNNINGHAM, KEITH CLIFFORD	Reg #: 28019-064
Date of Birth: █████ 1942	Sex: M Race: WHITE Facility: ENG
Encounter Date: 09/21/2022 07:39	Provider: Porter, Michelle FNP Unit: E06

Emergency - Trauma encounter performed at Health Services.

SUBJECTIVE:

COMPLAINT 1 Provider: Porter, Michelle FNP

Chief Complaint: Trauma/Injury

Subjective: IM is a 79 yo WM who was found down, sz suspected with fall to the head, but sz not confirmed. IM breathing, responsive to painful stimuli, and intermittently responsive to verbal commands, pupils equal and reactive to light. No cervical step offs noted, and moving arms, legs, and head; at times related to commands. IM diaphoretic, airway intact, able to verbalize questions after 10 minutes. IM A&Ox1-self only.

Pain: Not Applicable

EXHIBIT "B"

**1ST SEIZURE
WENT TO ER**

OBJECTIVE:

Temperature:

<u>Date</u>	<u>Time</u>	<u>Fahrenheit</u>	<u>Celsius</u>	<u>Location</u>	<u>Provider</u>
09/21/2022	07:41	ENG	97.3	36.3	Porter, Michelle FNP

Pulse:

<u>Date</u>	<u>Time</u>	<u>Rate Per Minute</u>	<u>Location</u>	<u>Rhythm</u>	<u>Provider</u>
09/21/2022	07:41	ENG	91		Porter, Michelle FNP

Respirations:

<u>Date</u>	<u>Time</u>	<u>Rate Per Minute</u>	<u>Provider</u>
09/21/2022	07:41	ENG	16 Porter, Michelle FNP

Blood Pressure:

<u>Date</u>	<u>Time</u>	<u>Value</u>	<u>Location</u>	<u>Position</u>	<u>Cuff Size</u>	<u>Provider</u>
09/21/2022	07:41	ENG	131/69			Porter, Michelle FNP

Blood Glucose:

<u>Date</u>	<u>Time</u>	<u>Value (mg/dl)</u>	<u>Type</u>	<u>Regular Insulin</u>	<u>Provider</u>
09/21/2022	07:41	ENG	122	Unknown	Porter, Michelle FNP

SaO2:

<u>Date</u>	<u>Time</u>	<u>Value(%)</u>	<u>Air</u>	<u>Provider</u>
09/21/2022	07:41	ENG	90 Room Air	Porter, Michelle FNP

ASSESSMENT:

Seizure disorder, other convulsions, 780.39 - Resolved

PLAN:

New Consultation Requests:

<u>Consultation/Procedure</u>	<u>Target Date</u>	<u>Scheduled Target Date</u>	<u>Priority</u>	<u>Translator</u>	<u>Language</u>
Emergency Room	09/21/2022	09/21/2022	Urgent	No	

**Bureau of Prisons
Health Services
Dental Health History Screen**

Inmate Name: CUNNINGHAM, KEITH CLIFFORD	Reg #: 28019-064
Date of Birth: █████ 1942	Sex: M Race: WHITE Facility: ENG
Encounter Date: 01/07/2019 10:07	Provider: Bermel, Thomas DMD Unit: E04

ASSESSMENTS:

Health Problems as of Dental Health History Encounter date: 01/07/2019 10:07

Health Problems

<u>Health Problem</u>	<u>Status</u>
Hyperlipidemia, mixed	Current
Continues with Atorvastatin	
Cognitive disorder NOS	Current
Patient's chief complaint centers around memory and ability to understand reading material. There are two head injuries which may account for his cognitive deficits. There doesn't appear to be any depression or anxiety that would be contributing. Therefore, no psychiatric treatment will be recommended. Since he doesn't remember any MRI or CT of his head and the most recent injury was in mid-April, a CT or MRI would be useful, but not emergent.	
Myopia	Current
Hypertension, Unspecified essential	Current
Continues with Lisinopril and HCTZ	
BPH, Benign Hypertrophy of Prostate	Current
Swelling, mass, or lump, localized superficial	Current
Pt has presented a growth Lump over Right Axillar back for almost 2 yrs Order US over Lump	
Deferred	Current
Psychosocial and environmental problems	Current
Basal cell carcinoma of skin, unspecified	Current
right cheek	
GAF 51 - 70	Current
Polyneuropathy, unspecified	Current
Unspecified cataract	Current
3+ NS	
Impacted cerumen	Current
bilateral	
Unspecified hearing loss	Current
Dental caries	Current
Unsatisfactory restoration of tooth	Current
Unspecified abnormalities of breathing	Current
Dislocation of shoulder joint	Current
Left AC joint complete separation - chronic pain	
Peripheral neuropathy, unspecified	Resolved
chronic low back pain	
Seizure disorder, other convulsions	Resolved
Diarrhea	Resolved
Rib(s), fracture, closed	Resolved
left rib 3 to 9 fractures	
Cauda equina syndrome	Resolved
Screening for hypertension	Resolved

NET RESOLVED

Medical History as of Dental Health History Encounter date: 01/07/2019 10:07

Medical History:

Allergies: Denied

EXHIBIT "C"

EXHIBIT B

Bureau of Prisons FTCA claim denial received 6/5/2024



U.S. Department of Justice
Federal Bureau of Prisons

North Central Regional Office

Office of the Regional Counsel

*400 State Avenue
Tower II, Suite 800
Kansas City, KS 66101*

May 28, 2024

Keith Cunningham, Reg. No. 28019-064
FCI Englewood
9595 West Quincy Ave
Littleton, CO 80123

RE: Tort Claim TRT-NCR-2024-03799
Amount of Claim: \$500,000.00

Certified Mail Receipt No: 9589 0710 5270 1058 7170 84

Dear Claimant:

Your above referenced tort claim has been considered for administrative review pursuant to 28 C.F.R. § 0.172, Authority: Federal Tort Claims and 28 C.F.R. Part 14, Administrative Claims Under Federal Tort Claims Act. Investigation of your claim did not reveal that you suffered any personal injury as a result of the negligent acts or omissions of Bureau of Prisons employees acting within the scope of their employment.

As a result of this investigation, your claim is denied. This memorandum serves as a notification of final denial under 28 C.F.R. § 14.9, Final Denial of Claim. If you are dissatisfied with our agency's action, you may file suit in an appropriate U.S. District Court no later than 6 months after the date of mailing of this notification.

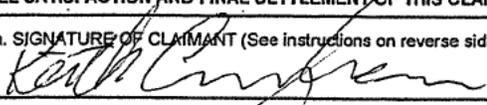
Sincerely,


Mary A. Noland
Regional Counsel

EXHIBIT C

**FTCA claim filed with the Regional Office of BOP on 12/13/2023
(re: Claim 2 and Claim 3 of Complaint)**

7019 0700 0000 7859 3213

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: North Central Regional Office (BOP) Gateway Complex Tower II, 8th Floor 400 State Ave. Kansas City, KS 66101-2492			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code) KEITH CUNNINGHAM #28019-064 FCI Englewood 9595 W. Quincy Ave. Littleton, Colorado 80123		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH [REDACTED] 942	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. OR P.M.)	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.) See attached BASIS OF CLAIM DECLARATION OF KEITH CUNNINGHAM.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See Instructions on reverse side.)					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. My injuries include intense pain and suffering combined with mental anguish (depression, anxiety, sleeplessness). Both of my knees have been further damaged due to the lack of treatment.					
11. WITNESSES					
NAME			ADDRESS (Number, Street, City, State, and Zip Code)		
12. (See instructions on reverse.) AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY \$500,000.00	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$500,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) 			13b. Phone number of person signing form	14. DATE OF SIGNATURE 12/13/2023	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for the civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)		

DECLARATION OF KEITH CUNNINGHAM
CONCERNING HIS "Basis of Claim."

Keith Cunningham states:

1. I am a prisoner at FCI Englewood in Littleton, Colorado. I submit this declaration in support of my attached FTCA claim.

2. I have complained to my care provider at FCI Englewood of my severe pain in both of my knees and inability to walk properly as a result. I began going to "sick call" ever since my incarceration in the BOP complaining of the pain in both of my knees and my mobility issues as a result of my knee problems, however, the BOP care providers did not provide me with any medical care for my knees.

3. Eventually, on June 1, 2023, a doctor at the Swedish Medical Center, Dr. John Woodward Jr., MD, who prescribed a total knee replacement surgery for my knees and informed my BOP medical care providers of his prescribed treatment. As of 11/13/23, I have not received the total knee replacement that was prescribed by my doctor and I am in constant severe pain in both of my knees. I have problems walking, cannot stand for any substantial period of time, and have back pain related to my knee problems.

4. I have what the BOP describes as a "inguinal hernia" and have been prescribed a hernia operation to correct this possibly fatal condition. The Swedish Medical Center doctors informed the BOP of my need for a surgery to correct my hernia on March 31, 2023. My medical care providers at the BOP have not sent me to the doctor to perform my necessary and prescribed hernia surgery. On information and belief, my Dr. Conroy at FCI Englewood, one of my care providers at the prison, is responsible for my lack of medical care concerning my surgery.

5. I have three visible tumors present on my torso and have made repeated attempts to obtain treatment for these tumors by reporting to sick call at FCI Englewood and requesting treatment. I have had these three tumors since 2021, however, my requests for treatment of said tumors have been ignored by Dr. Conroy and my care providers at FCI Englewood. I do not know if these tumors are malignant or not, however, they have been the cause of much stress and concern. I am 81 years old and have already had one tumor removed from my torso. These tumors have steadily increased in size and are now restricting my arm movement.

6. Although I have continuously reported my tumors to the BOP medical care providers who are supposed to be ensuring that my health needs are met, I have not been able to obtain treatment for these tumors.

7. I have been diagnosed with basal cell carcinoma, a skin cancer that can lead to death if left untreated. My care providers at FCI Englewood, including Dr. Conroy, have determined not to send me to a specialist for treatment or otherwise provide care for this serious medical issue.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 13th day of December 2023 at Littleton, Colorado.



Keith Cunningham
Prisoner No. 28019-064
Federal Correctional Institution
9595 W. Quincy Ave.
Littleton, Colorado 80123

EXHIBIT D

Bureau of Prisons FTCA claim denial (re Claim 2 & 3) sent 7/1/24



U.S. Department of Justice
Federal Bureau of Prisons

North Central Regional Office

Office of the Regional Counsel

*400 State Avenue
Tower II, Suite 800
Kansas City, KS 66101*

July 1, 2024

Keith Cunningham, Reg. No. 28019-064
FCI Englewood
9595 West Quincy Ave
Littleton, CO 80123

RE: Tort Claim TRT-NCR-2024-04390
Amount of Claim: \$500,000.00

Certified Mail Receipt No: 9589 0710 5270 0370 0315 40

Dear Claimant:

Your above referenced tort claim has been considered for administrative review pursuant to 28 C.F.R. § 0.172, Authority: Federal Tort Claims and 28 C.F.R. Part 14, Administrative Claims Under Federal Tort Claims Act. Investigation of your claim did not reveal that you suffered any personal injury as a result of the negligent acts or omissions of Bureau of Prisons employees acting within the scope of their employment.

As a result of this investigation, your claim is denied. This memorandum serves as a notification of final denial under 28 C.F.R. § 14.9, Final Denial of Claim. If you are dissatisfied with our agency's action, you may file suit in an appropriate U.S. District Court no later than 6 months after the date of mailing of this notification.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary A. Noland".

Mary A. Noland
Regional Counsel

EXHIBIT E

Freedom of Information Request sent to BOP on 8/16/24

8/16/2024

Director
Federal Bureau of Prisons
320 First Street, N.W.
Washington, DC 20534

Re: FREEDOM OF INFORMATION ACT REQUEST / PRIVACY ACT REQUEST

The following is a request for records made pursuant to the Freedom of Information Act and Privacy Act, 5 U.S.C. § 552 and §552(a).

Please provide me with the following records in the possession of your Agency:

(1) Any and all medical records for KEITH CLIFFORD CUNNINGHAM, Inmate No. 28019-064 in BOP possession. Limit your search for responsive medical records to the period of time between January 2013 and June 1, 2024.

Please provide these records in the form of a CD ROM. Send said CD ROM to Jennifer Alexander, Esq., 7016 Little Harbor Drive, Huntington Beach, California 95070.

A certification of identity is enclosed executed by the undersigned.



Keith Clifford Cunningham

U.S. Department of Justice

Certification of Identity



FORM APPROVED OMB NO. 1103-0016
EXPIRES 05/31/2023

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester ¹ KEITH CLIFFORD CUNNINGHAM

Citizenship Status ² U.S. Citizen Social Security Number ³ _____

Current Address Keith Cunningham #28019-064
FCI Englewood, 9595 W. Quincy Ave., Littleton, Colorado 80123

Date of Birth ██████ 1942 Place of Birth COLVILLE, WA

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Print or Type Name

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above; and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature ⁴ *Keith Cunningham* Date 8/6/2024

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

Keith Cunningham #28019-064
Federal Correctional Institution
9595 W. Quincy Ave.
Littleton, Colorado 80123



Clerk of the Court
United States Courthouse
901 19th Street
Room A105
Denver, Colorado 80294-3589

Keith Cunningham #28019-064
Federal Correctional Institution
9595 W. Quincy Ave.
Littleton, Colorado 80123



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