

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DZHULIYA DASHTAMIROVA,
626 East Clement Street
Baltimore, Maryland 21230

Plaintiff,

v.

UNITED STATES OF AMERICA,
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Defendant.

No. _____

COMPLAINT FOR DAMAGES

(Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1402(b), 2401 & 2671–80)

INTRODUCTION

1. In conflict zones around the world, American soldiers piloting military helicopters attempt to disperse enemies by lowering their helicopters until they hover only a few stories above their opponents. That close to the ground, the helicopter’s blades generate storm-like winds that gust with earsplitting volume and blast debris into the enemies’ faces, creating pain and disorientation and carrying the not-so-subtle threat of even greater force to come.
2. On June 1, 2020, the D.C. National Guard deployed this tactic on American soil— in the heart of Washington, D.C., against peaceful civil rights demonstrators who were exercising their First Amendment right to express their views as part of the national dialogue on race and policing in the wake of the killings of George Floyd and Breonna Taylor.
3. Around 9:50 p.m. that night, D.C. National Guard pilots flew a Black Hawk and a Lakota helicopter low above a group of protestors near the Gallery Place Metro Station. When the protestors fled a few blocks away, to 5th and E Streets NW, the Black Hawk tracked them

down and descended low above them again. After the Black Hawk departed, the Lakota replaced it and flew as low as approximately 45 feet above the protestors' heads. No law enforcement official warned the group of protestors before the helicopters began their descents and generated terrifying storm-like conditions.

4. Plaintiff Dzhuliya (pronounced "Julia") Dashtamirova was one of the protestors in this group. She had peacefully marched with the other people for hours that night; they were on the streets after a 7 p.m. curfew that had been declared for the evening but were otherwise law-abiding.
5. The helicopters' powerful blades subjected Ms. Dashtamirova to thundering, disorienting noise and churned gale-force winds into her body, driving shards of broken glass and debris into her face. The helicopter attack terrified her and caused significant psychological trauma. The attack constituted assault, battery, and intentional infliction of emotional distress under D.C. law.
6. Ms. Dashtamirova now seeks compensation for her injuries and vindication of the rights of peaceful protestors not to be attacked by low-flying military helicopters.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because this action arises under the Federal Torts Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 1402(b), 2401 & 2671–80. The FTCA also confers jurisdiction. 28 U.S.C. § 1346(b)(1).
8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(2), 1391(e)(1), and 1402(b) because the events giving rise to the claims occurred in the District of Columbia.

ADMINISTRATIVE EXHAUSTION

9. On October 14, 2020, Ms. Dashtamirova submitted a Standard Form 95 to the D.C. National Guard, documenting her claims and injuries arising from the helicopter attack and requesting damages of \$200,000.
10. The D.C. National Guard confirmed receipt of the letter via email on October 14, 2020 and via letter on December 18, 2020.
11. More than six months have passed since the D.C. National Guard received Ms. Dashtamirova's claim, and the D.C. National Guard has not issued a final disposition of the claim.
12. Ms. Dashtamirova has therefore exhausted her administrative remedies under the FTCA.

PARTIES

13. Plaintiff, Dzhuliya Dashtamirova, is a United States citizen and current resident of Baltimore, Maryland. Ms. Dashtamirova and her family immigrated to the United States from Ukraine to escape xenophobic discrimination they experienced there and throughout the former Soviet Union. She moved to Baltimore for her first post-college job, and came to Washington, D.C. on June 1, 2020, to exercise her right to protest in the nation's capital.
14. Defendant United States of America is the governing entity that operates and oversees the D.C. National Guard. In this case, the United States acted through its agents, the D.C. National Guard officers who ordered the helicopter attack and the D.C. National Guard pilots who carried out the attack against Ms. Dashtamirova on June 1, 2020. Each of these actors was operating within the scope of his or her employment and under color of the law of the United States.

FACTS

The D.C. National Guard's Mission on June 1, 2020

15. On May 29, 2020, Major General William Walker, the commanding general for the D.C. National Guard (DCNG), ordered DCNG members to support law enforcement in civil disturbance operations in the District.
16. On June 1, 2020, the DCNG members on duty were operating pursuant to 32 U.S.C. § 502(f)(2), as documented in a text message sent by the DCNG Joint Operations Command to DCNG members on May 31, 2020 (which was subsequently published in the U.S. Department of Army Inspector General Agency's September 2020 Report of Investigation into the incident) and a statement released on the DCNG's website on June 1, 2020 stating that "[a]ll guardsmen [deployed in the District] are in Title 32, 502 federal status."
17. Because the DCNG members who ordered the helicopter attack and the DCNG members who piloted the helicopters were acting pursuant to 32 U.S.C. § 502(f)(2), they were acting as employees of the United States Government for purposes of the FTCA, which defines employees of the United States Government to include "members of the National Guard while engaged in training or duty under section . . . 502 of title 32." 28 U.S.C. § 2671.
18. On the morning of June 1, Major General Walker, and Brigadier General Robert K. Ryan, who supervised the DCNG's response to civil disturbances on or around May 29, 2020 and through at least June 1, 2020, met with senior U.S. military officials.
19. That morning, the Chief of Staff of the Army and the Secretary of the Army relayed instructions from President Donald J. Trump and Secretary of Defense Mark T. Esper to "flood the zone," and "use everything available to protect federal property and symbols" (as reported

by the Department of Defense Office of Inspector General's January 22, 2021 report on the incident).

20. Brigadier General Ryan summarized his understanding of his orders (in subsequent interviews with military officials investigating the incident) as tasking him to "deploy the DC National Guard by all means necessary, armed, out in support of civil authority in the District of Columbia . . . to include massive presence."
21. Brigadier General Ryan briefed his subordinates on this mission.
22. DCNG members have the authority to execute searches, seize evidence, and make arrests for violations of federal law.
23. On the evening of June 1, Brigadier General Ryan ordered all available D.C. Air National Guard aircrafts into the air, including a Black Hawk helicopter and a Lakota helicopter with Red Cross markings.
24. One subordinate DCNG member stated that he understood the mission to be "Fly low, be loud. . . . Fly low over the crowds" as a means of "deterrent." Other DCNG members reached similar conclusions. (As reported by U.S. Department Army Inspector General Agency's September 2020 Report of Investigation into the incident.)

Ms. Dashtamirova's Protest Activities on June 1, 2020

25. On June 1, Ms. Dashtamirova and her roommate traveled from Baltimore to D.C. to protest the killings of Breonna Taylor and George Floyd and the racist police practices that led to those killings.
26. At around 7 p.m., Ms. Dashtamirova and her roommate got off the Metro at Farragut North Station, where they learned that federal and D.C. law enforcement had violently cleared peaceful protestors from Lafayette Square.

27. Committed to making their voices heard, Ms. Dashtamirova and her roommate joined a group of protestors and began to march. Ms. Dashtamirova carried a sign calling for an end to racism in policing; other protestors also held up signs. Ms. Dashtamirova joined the protestors in chanting slogans as they marched.
28. Ms. Dashtamirova and the other protestors sought to avoid police confrontation. To that end, some protestors at the front of the group rode bikes, looked to see if police had blocked off a street, and directed the protestors away from those streets.
29. Ms. Dashtamirova did not commit any acts of violence or property destruction during the protest. Nor did she see anyone else do so.
30. Although Mayor Bowser issued a curfew for 7 p.m. on June 1, Ms. Dashtamirova did not encounter any law enforcement officers who ordered her to clear the streets. In fact, Ms. Dashtamirova does not recall any officer saying anything to her or the other protestors at all.

The Helicopter Attack

31. At around 9:50 p.m., Ms. Dashtamirova, her roommate, and other protestors reached 7th Street NW, between H and G Streets NW, near the Gallery Place Metro Station and Capital One Arena.
32. The protestors continued to demonstrate peacefully, as they had done throughout the evening, with many holding signs and chanting slogans.
33. Shortly after Ms. Dashtamirova and the protestors arrived in the area near the Gallery Place Metro Station, and without any law enforcement officer issuing a warning or a dispersal order, a DCNG pilot began slowly flying a Black Hawk helicopter low above the protestors, south above 7th Street NW.

34. Shortly after the Black Hawk passed the protestors, a DCNG-piloted Lakota helicopter arrived with a red cross medical insignia painted on its body.
35. The Lakota flew low and slowly in the area, then turned west and flew toward the National Portrait Gallery.
36. After the Lakota flew west, the Black Hawk turned around and completed a low, slow, pass above the protestors, this time traveling north up 7th Street NW. The Black Hawk descended as low as about 110 feet above the protestors (according to estimates by *The Washington Post*).
37. The helicopters' maneuvers lasted a few minutes.
38. The protestors remained peaceful as the helicopters flew above them.
39. The helicopter maneuvers that the Black Hawk and Lakota employed are tactics that the United States Armed Forces have implemented against enemies in Afghanistan, Iraq, and other conflict zones around the world.
40. The purpose of the tactic is to use the powerful wind and blaring noise generated by the helicopter's blades to intimidate the enemy.
41. The use of the tactic against civilian protestors in the United States is unprecedented.
42. As the helicopters flew low near the Gallery Place Metro, the sound of their churning blades roared in Ms. Dashtamirova's ears, terrifying her.
43. The helicopters' blades generated powerful winds that crashed against Ms. Dashtamirova's body and stirred up shards of trash, broken glass, and sticks.
44. Debris stung Ms. Dashtamirova's skin and dirt flew into her eyes and mouth.
45. Alex Horton, a reporter who covered the June 1 helicopter attack and served as an Army infantryman in the Iraq War, compared the debris whipped around by the helicopters to shrapnel.

46. Ms. Dashtamirova feared that the helicopters would land and that soldiers would exit and attack her. She wanted to escape, but the wind and the noise disoriented her, making it hard for her to move or even take basic safety precautions such as putting the goggles she brought with her over her eyes.
47. The wind, noise, and debris forced Ms. Dashtamirova to halt and duck down near a fence to take cover.
48. Ms. Dashtamirova eventually was able to pull her goggles over her eyes.
49. When the helicopters were no longer hovering over the protestors' heads, the winds died down, allowing, Ms. Dashtamirova, her roommate, and the other protestors to flee.
50. The group reached the intersection of 5th Street and E Street NW, where, shortly before 10 p.m., the Black Hawk returned and hovered low in the area above the protestors, including Ms. Dashtamirova, for close to four minutes.
51. No law enforcement officer issued a warning or dispersal order before the helicopter began its descent.
52. Soon after the Black Hawk ascended and departed, the Lakota helicopter arrived, flying as low as approximately 45 feet above the protestors' heads, and hovering low in the area for several minutes.
53. The helicopter attack forced Ms. Dashtamirova to stop around 5th and E Street NW. She, her roommate, and other protestors put their signs over their heads for cover.
54. The attack at 5th and E Street NW again caused debris to fly into Ms. Dashtamirova's face and mouth and sting her arms. The blaring noise of the helicopters disoriented and terrified her.
55. As the helicopters hovered, the protestors remained peaceful. Some kneeled on the ground, demonstrating their peaceful intent.

56. Eventually, Ms. Dashtamirova and her roommate managed to leave the area.
57. The Black Hawk's blades produced approximately 54 mph winds and the Lakota produced approximately 48 mph winds (according to estimates conducted for *The Washington Post* by Atanu Halder, an aerospace engineering researcher at Texas A&M University)—speeds equivalent to a severe gale.
58. The gusts ripped a thick branch from a tree outside the National Portrait Gallery, snapped a small tree, and tore signs off buildings.
59. DCNG pilots are not trained to use helicopters as part of operations to quell civil disturbances.
60. No DCNG policies or procedures exist to govern the use of helicopters in this context.

The Aftermath of the Helicopter Attacks

61. D.C. Mayor Bowser called the DCNG's actions "wholly inappropriate in an urban setting."
62. Senator Tammy Duckworth, a former Black Hawk pilot, stated that she was "appalled to see our military using low-flying Black Hawk and Lakota helicopters as a show of force to intimidate peaceful protestors," and that the use of the tactic in this way, "violates everything I learned in my military training."
63. Another former Army helicopter pilot, quoted in *The Washington Post*, said the helicopters flew much lower than necessary to conduct surveillance.
64. Ms. Dashtamirova experienced irritation in her eyes for several days following the incident.
65. The helicopter attack caused Ms. Dashtamirova severe emotional distress, which manifested in several ways.
66. The attack exacerbated Ms. Dashtamirova's stress-induced migraines. In April and May 2020, Ms. Dashtamirova's migraine condition was under control: she had migraines on four or fewer days each month. Within days of the attack, Ms. Dashtamirova began having regular, severe

migraines that continued with little-to-no interruption for approximately three weeks. Her migraine prevention medication did not stop the migraines and her migraine rescue medication failed to dull the pain.

67. Ms. Dashtamirova’s doctor prescribed a new migraine prevention medicine in late June 2020.

The near-continuous migraines subsided by around July 1, but it took until around December 2020 for her migraine condition to improve to the state it was in before the attack.

68. Through summer 2020 and up to early fall 2020, Ms. Dashtamirova felt anxious when she encountered law enforcement or saw a helicopter fly overhead, even at normal heights. To assure herself of her safety, she often looked up helicopter flight patterns online and attempted to determine whether the helicopter was a military vehicle.

69. In the weeks following the incident, Ms. Dashtamirova lost sleep, as thoughts about the attack—why the DCNG carried it out and whether she was at risk of something similar happening again—kept her awake.

70. Ms. Dashtamirova struggled to concentrate at work, with her performance suffering as a result.

71. The January 6, 2021 attack on the U.S. Capitol caused Ms. Dashtamirova to return to memories of the helicopter attack against her. She began having panic attacks and her doctor prescribed an anti-anxiety medication.

72. Ms. Dashtamirova no longer feels comfortable protesting, fearing that doing so will put her life or career at risk.

CLAIM I

Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1402(b), 2401 & 2671–80 (Assault)

73. Under D.C. law, an assault is an intentional act that causes “an apprehension of an imminent harmful or offensive contact.” *Person v. Children’s Hosp. Nat. Med. Ctr.*, 562 A.2d 648, 650 (D.C. 1989).

74. The DCNG's helicopter attack constituted an assault under D.C. law. By flying helicopters at a low altitude above Ms. Dashtamirova, the DCNG intended to put Ms. Dashtamirova in apprehension of imminent harmful or offensive contact and did put her in fear of such contact.
75. The helicopter attack was not privileged because it was not reasonable: DCNG subjected Ms. Dashtamirova to the extreme noise, wind, and terror of low-flying helicopters even though, at the time of the attack, she and the people nearby her were peacefully protesting, did not pose a danger to people or property, and were not resisting arrest or law enforcement commands (as none was issued).
76. The law enforcement proviso to the FTCA's intentional tort exception, 28 U.S.C. § 2680(h), waives the United States' defense of sovereign immunity to claims of assault undertaken by "investigative or law enforcement officers of the United States Government" acting within the scope of their employment.
77. Because DCNG members are federal employees authorized to execute searches, seize evidence, and make arrests for violations of federal law, they qualify as investigative or law enforcement officers of the United States Government under 28 U.S.C. § 2680(h).
78. Because the DCNG pilots flying the Black Hawk and Lakota helicopters and the officers who ordered them to conduct the attack were acting within the scope of their employment, the United States is liable for their assault on Ms. Dashtamirova.
79. Because, at the time of the helicopter attack, Ms. Dashtamirova and the people near her were peacefully protesting, not resisting arrest or any law enforcement commands (as none was issued), and did not pose a danger to people or property, the helicopter attack against them violated the Fourth and/or Fifth Amendment to the United States Constitution. The DCNG therefore lacked discretion to commit the helicopter attack against Ms. Dashtamirova, and the

discretionary function exception to the FTCA, 28 U.S.C. § 2860(a), does not shield the decision to conduct the attack or the implementation of that decision.

CLAIM II

Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1402(b), 2401 & 2671–80 (Battery)

80. Under D.C. law, “battery is harmful or offensive contact with a person, resulting from an act intended to cause that person to suffer such contact.” *Person*, 562 A.2d at 650 (cleaned up).
81. The DCNG’s helicopter attack constituted a battery because it caused Ms. Dashtamirova to be harmfully and offensively touched by powerful winds, flying debris, and blaring sounds.
82. The helicopter attack was not privileged because it was not reasonable: DCNG subjected Ms. Dashtamirova to the extreme noise, wind, and terror of low-flying helicopters even though, at the time of the attack, she and the people near her were peacefully protesting, did not pose a danger to people or property, and were not resisting arrest or law enforcement commands (as none was issued).
83. The law enforcement proviso to the FTCA’s intentional tort exception, 28 U.S.C. § 2680(h), waives the United States’ defense of sovereign immunity to claims of battery undertaken by “investigative or law enforcement officers of the United States Government” acting within the scope of their employment.
84. Because DCNG members are federal employees authorized to execute searches, seize evidence, and make arrests for violations of federal law, they qualify as investigative or law enforcement officers of the United States Government under 28 U.S.C. § 2680(h).
85. Because the DCNG pilots flying the Black Hawk and Lakota helicopters and the officers who ordered them to conduct the helicopter attack were acting within the scope of their employment, the United States is liable for their battery of Ms. Dashtamirova.

86. Because, at the time of the helicopter attack, Ms. Dashtamirova and the people near her were peacefully protesting, not resisting arrest or any law enforcement commands (as none was issued), and did not pose a danger to people or property, the helicopter attack against them violated the Fourth Amendment and/or Fifth to the United States Constitution. The DCNG therefore lacked discretion to commit the helicopter attack against Ms. Dashtamirova, and the discretionary function exception to the FTCA, 28 U.S.C. § 2860(a), does not shield the decision to conduct the attack or the implementation of that decision.

CLAIM III

Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1402(b), 2401 & 2671–80 (Intentional Infliction of Emotional Distress)

87. Under D.C. law, intentional infliction of emotional distress arises when there is “(1) extreme and outrageous conduct by the defendant that (2) intentionally or recklessly (3) caused the plaintiff severe emotional distress.” *Robertson v. District of Columbia*, 269 A.3d 1022, 1033 (2022).

88. The DCNG’s helicopter attack was an extreme and outrageous act.

89. The DCNG pilots who executed the attack, and the DCNG officers who ordered it, intended to cause protestors such as Ms. Dashtamirova severe emotional distress or recklessly disregarded the risk that they would inflict such harm.

90. The helicopter attack caused Ms. Dashtamirova to experience severe emotional distress.

91. The helicopter attack was not privileged because it was not reasonable: DCNG subjected Ms. Dashtamirova to the extreme noise, wind, and terror of low-flying helicopters even though, at the time of the attack, she and the people near her were peacefully protesting, did not pose a danger to people or property, and were not resisting arrest or law enforcement commands (as none was issued).

92. The law enforcement proviso to the FTCA’s intentional tort exception, 28 U.S.C. § 2680(h), waives the United States’ defense of sovereign immunity to claims arising out of an assault or battery undertaken by “investigative or law enforcement officers of the United States Government” acting within the scope of their employment.
93. Because DCNG members are federal employees authorized to execute searches, seize evidence, and make arrests for violations of federal law, they qualify as investigative or law enforcement officers of the United States Government under 28 U.S.C. § 2680(h).
94. Because the DCNG pilots flying the Blackhawk and Lakota helicopters, and the officers who ordered them to conduct the helicopter attack, were acting within the scope of their employment, the United States is liable for their torts, including intentional infliction of emotional distress.
95. Because, at the time of the helicopter attack, Ms. Dashtamirova and the people near her were peacefully protesting, not resisting any law enforcement commands, and did not pose a danger to people or property, the helicopter attack against them violated the Fourth and/or Fifth Amendment to the United States Constitution. The DCNG therefore lacked discretion to commit the helicopter attack against Ms. Dashtamirova, and the discretionary function exception to the FTCA, 28 U.S.C. § 2860(a), does not shield the decision to conduct the attack or the implementation of that decision.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Dashtamirova respectfully requests that this Court:

- (a) RULE that Defendant United States of America is liable to Plaintiff under the Federal Tort Claims Act for assault, battery, and intentional infliction of emotional distress as defined by D.C. law;

- (b) ENTER JUDGMENT awarding Plaintiff Dashtamirova compensatory damages of \$200,000;
- (c) ENTER JUDGMENT awarding Plaintiff Dashtamirova her costs and reasonable attorneys' fees in this action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A); and
- (d) GRANT Plaintiff Dashtamirova such other and further relief as this Court may deem just and proper.

March 14, 2023

Respectfully submitted,

/s/ Michael Perloff

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*Counsel would like to acknowledge law student Erica Witter for her assistance on the complaint.