

# Judge Rules US Air Force Largely Responsible For Sutherland Springs Shooting

Texas Public Radio | By [Kathleen Creedon](#), [Carson Frame](#), [Josh Peck](#)

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Joey Palacios / Texas Public Radio

A file photo of First Baptist Church in Sutherland Springs where a shooter killed 26 people in 2017.

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A federal judge has ruled the U.S. Air Force is largely culpable for the Sutherland Springs shooting in 2017. The Air Force did not submit the shooter's criminal history into an FBI database, which would have prevented him from purchasing the weapon he used in the attack.

Judge Xavier Rodriguez in San Antonio said the Air Force was 60% responsible for the attack. They're also liable for damages.

Devin Kelley, a former serviceman, killed 26 people and injured more than 20 after opening fire at the First Baptist Church in Sutherland Springs four years ago. He had been discharged from the Air Force several years before the shooting for bad conduct, after a conviction of assault against his former wife and stepson.

Rodriguez found that no one — not even the shooter's own parents or partners — knew as much as the U.S. government about the violence that Kelley had threatened to commit and was capable of committing.

He noted that Kelley had a history of making violent threats against his superiors and threatening mass shootings while in the Air Force and said the service failed to show reasonable care for public safety by not reporting Kelley's criminal history to the FBI.

Kelley is responsible for the remaining 40% of liability.

## Why the U.S. Air Force was held liable

"The theory of liability in this case is the government was careless, and the government's carelessness resulted in injury to lots of victims and those victims are entitled to recovery because when an individual is careless and their carelessness causes harm to another, they have to pay damages," said Timothy Lytton, professor of law at Georgia State University College of Law.

Lytton said the case was "relatively uncomplicated" in terms of theory of negligence liability — the standard form of liability seen in the U.S. civil justice system.

"The argument in this case was that the government had in its possession, particularly the Air Force, had in its possession information about a conviction for an offense of a service member which they failed to report — carelessly — to federal government

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that then could be accessible for background checks at retail," Lytton said. "And that carelessness on the government's part made them liable for the resulting harms, which were of course the mass shooting."

Unlike other "high-profile" mass shootings, the Sutherland Springs lawsuit didn't involve a venue that was negligent or a gun store that sold a firearm illegally.

"We don't have a lot of mass shootings where the problem is that a person who's currently enlisted in the armed services had a conviction that wasn't properly reported by the service to the federal government, that's a sort of unusual fact pattern so I can't really identify a trend of liability against the federal government in mass shootings," he said.

Gregory Sisk, professor at the University of St. Thomas School of Law in Minnesota, said the case may set a precedent for holding the U.S. government accountable.

"A case like this, raising these kinds of issues, is unusual," he said. "It's not unprecedented — there have been other cases in which the federal government has been sued for significant types of activities — but in terms of trying to hold the government liable for mistakes related to the firearms database, this would be a precedent-setting case."

He said whether it sets a precedent depends on "how often it is that the federal government negligently fails to get information reported to the NCIS."

Jamal Alsaffar, one of the lead plaintiff's counsel in the trial, said he hopes the Biden Administration will not try to appeal.

"This is the federal government of the United States who made this mistake and caused it," Alsaffar told TPR. "It's an opportunity to put their money where their mouth is when they say we are against gun violence. We know that these laws matter — that these victims should have a say. And this is presenting the opportunity for them to do that."

Sisk said the trial is many months — potentially even years — from being over, especially if the government appeals.

"I would expect that the government's going to appeal on every basis that it can,

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about whether federal firearms statutes provide immunity to those who fail to provide information with respect to this.”

Regardless of whether the case is affirmed by the Fifth Circuit, Sisk said he hopes the military recognizes their moral responsibility.

“At the very least, to ensure that individuals who should not be allowed to have possession of firearms because of their criminal wrongdoing or their threats of violence, that that information is provided so they can’t easily get their hands on a gun,” he said. “We should expect that of them just as a matter of their basic responsibilities as government officials.”

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

JOE HOLCOMBE <i>et al.</i> ,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. SA-18-CV-555-XR
	§	
UNITED STATES OF AMERICA,	§	<i>Consolidated Cases</i>
	§	
<i>Defendant.</i>	§	
	§	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

These consolidated cases stem from the mass shooting at the First Baptist Church Sutherland Springs, Texas on November 5, 2017. The shooter, Devin Patrick Kelley (“Kelley”) entered the church and opened fire, killing 26 people and wounding 22 more. After fleeing the scene, Kelley later died from a self-inflicted gunshot wound. Plaintiffs are survivors of the shooting and relatives of those injured or killed. They seek recovery against Defendant United States (“the Government”) under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(a)(2)–2671–2680. The thrust of these lawsuits is that Kelley should not have been able to purchase firearms he used in the shooting, but negligent failures by the Government to collect, handle, and report required information about Kelley allowed him to do so.

From April 7, 2021 to April 20, 2021, the Court held a bench trial to resolve disputed issues of fact. This Court relies on the testimony of the witnesses, both live and appearing remotely.

Before the decision was made, the [federal government argued](#) that the shooting was not preventable, regardless of whether the Air Force sent Kelley's felony conviction to the FBI background check database. Government lawyers said Kelley would have been able to acquire a firearm by other means if he couldn't pass a background check.

The trial highlighted threats Kelley made toward a supervisor in the Air Force, who then told colleagues to watch out for Kelley because he was the type of person “to come shoot us,” according to testimony.

Following [testimony in April](#), an attorney from the government made a motion to dismiss the case. He argued the government was immune from lawsuits and that the government could not have foreseen Kelley would commit large-scale violence.

Judge Rodriguez denied the motion, citing his previous ruling that the government was not immune from lawsuits. Rodriguez also rejected the foreseeability claim and said the government was aware of Kelley's potential to commit large-scale violence and had even banned him from returning to his former Air Force base.



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Rodriguez also said it was “disappointing” that the government argued that it protected itself from Kelley but did not protect the general public.

“These families showed great courage and strength in pursuing justice despite their horrible loss. If it wasn't for these brave families, the Government would never have taken or faced responsibility for their negligence,” said Jamal Alsaffar, one of the lead plaintiff's counsel in the trial, in response to the July ruling.

Alsaffar said he represents about five separate families who had relatives killed or injured in the shooting — about 20 people in total. He told TPR that he felt the July ruling placed accountability where it belongs: on the government.

“The judge got to hear all the facts and all the evidence, and the evidence was overwhelming that you know, not only were the government more aware, and more

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familiar with the extent and depth and degree of this person's violence and capacity for violence, but also his specific capacity for mass shooting violence," he said.

The case will move to new trial phase to determine compensation in the next few months.

Families began suing the U.S. government [in late 2017](#), after the Air Force admitted it failed to send the conviction information to the FBI.

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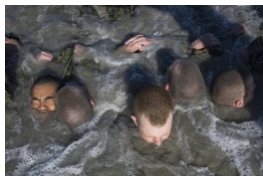
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