

# The United States Court of Federal Claims

No: 06-332 C

May 24, 2006

NOT FOR PUBLICATION

**MELVIN L. HASSELL,**

*Plaintiff,*

v.

**THE UNITED STATES OF AMERICA,**

*Defendant.*

## OPINION and ORDER

On April 25, 2006, plaintiff filed a complaint with this court seeking a stay of his prison sentence, a writ of habeas corpus, and compensation for damages stemming from his “illegal prosecution and conviction.” Apparently, in earlier criminal proceedings in Federal Court in Texas, plaintiff was convicted of being a “vexatious litigant” and sentenced to six months in prison.<sup>1</sup> On May 11, 2006, defendant filed a motion pursuant to Rule 12 of the Rules of the Court of Federal Claims seeking dismissal of plaintiff’s complaint.

### I. DISCUSSION.

*Pro se* litigants are afforded great leeway in presenting their issues to the court. *See, e.g., Forshey v. Principi*, 284 F.3d 1335, 1357-58 (Fed. Cir. 2002). “An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims.” *Hughes v. Rowe*, 449 U.S. 5, 15 (1980). This broad latitude extended to *pro se* litigants does not, however, exempt them from meeting this court’s jurisdictional requirements. *Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995) (noting that the fact a litigant “acted *pro se* in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures . . .”). In this instance it is clear that plaintiff’s complaint is fatally flawed, in that all the requested forms of relief plaintiff seeks are outside this court’s jurisdiction.

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<sup>1</sup> The limited facts presented to the court are drawn from plaintiff’s Complaint, page 2.

## A. Injunctive Relief.

This court does not have the authority to grant a stay of plaintiff's prison sentence. The Court of Federal Claims may grant injunctive relief only in two very limited instances which are inapplicable here.<sup>2</sup> Other than these two narrow exceptions, it is well established that this court does not have general jurisdiction for injunctive relief. *First Hartford Corp.*, 194 F.3d 1294; *Vanalco*, 48 Fed. Cl. at 74. Since plaintiff's claim for an injunction does not fall within the instances allowed in § 1491, this court simply has no jurisdictional basis upon which to grant the relief plaintiff request.

## B. Habeas Corpus.

This court also lacks jurisdiction over plaintiff's petition for habeas corpus. The statute authorizing federal courts to grant writs of habeas corpus, states:

### § 2241. Power to Grant Writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

28 U.S.C. § 2241. It is important to note, while several federal courts are listed in the statute, the Court of Federal Claims is not named among those courts having authority to grant writs of habeas corpus. *Ledford v. United States*, 297 F.3d 1378, 1380-81 (2002) (“[T]he habeas statute does not list the Court of Federal Claims among those courts empowered to grant a writ of habeas corpus . . . .”); *Stephenson v. United States*, 58 Fed. Cl. 186, 191-192 (2003) (“Congress has plainly drawn the lines of jurisdiction and the matter is, therefore, foreclosed as to . . .” seeking a writ of habeas corpus in the Court of Federal Claims).

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<sup>2</sup> First, this court may grant injunctive relief when such relief is merely incidental to a plaintiff's claim for money damages. 28 U.S.C. § 1491(a)(2); *Wheeler v. United States*, 11 F.3d 156, 159 (Fed. Cir. 1993) (“The Court of Federal Claims lacks jurisdiction to grant such equitable relief absent a concurrent colorable claim for monetary recovery.”); *Vanalco, Inc. v. United States*, 48 Fed. Cl. 68, 74 (2000). Second, this court may grant injunctive relief in bid protest cases. See e.g., 28 U.S.C. § 1491(b)(2) (permitting the Court of Federal Claims to grant declaratory and injunctive relief in bid protest actions); *First Hartford Corp. v. United States*, 194 F.3d 1279, 1294 (Fed. Cir. 1999) (with the exception of the carve out in 28 U.S.C. § 1491(b)(2), the United States Court of Federal Claims “cannot grant nonmonetary equitable relief such as an injunction or declaratory judgment, or specific performance.”).

### C. Compensation for “Illegal Prosecution and Conviction.”

Plaintiff’s claim for compensation arises from his alleged “illegal prosecution and conviction.” However, negligent and wrongful conduct of the defendant in the course of discharging official duties are claims clearly sounding in tort.<sup>3</sup> This court’s jurisdictional statute, the Tucker Act, explicitly states, “(a)(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States . . . . *not sounding in tort.*” 28 U.S.C. § 1491 (2001) (emphasis supplied). As the statute makes clear, this court does not have jurisdiction to hear any claims of the plaintiffs sounding in tort. *See New Am. Shipbuilders, Inc. v. United States*, 871 F.2d 1077, 1079 (Fed. Cir. 1989) (“If the government misconduct alleged was tortious, jurisdiction is not granted the Claims Court under the Tucker Act . . . .”); *Georgeff v. United States*, 67 Fed. Cl. 598, 606 (2005); *Whyte v. United States*, 59 Fed. Cl. 493, 497 (2004); *see also LeBlanc v. United States*, 50 F.3d 1025, 1030 (Fed. Cir. 1995) (noting that the claims at issue were “tort claims, over which the Court of Federal Claims has no jurisdiction”); *Shearin v. United States*, 992 F.2d 1195, 1197 (Fed. Cir. 1993) (“It is well settled that the United States Court of Federal Claims lacks—and its predecessor the United States Claims Court lacked—jurisdiction to entertain tort claims.”).

While “the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 1346(b)(1), waives sovereign immunity as to claims arising in tort,” the act also gives United States District Courts exclusive jurisdiction in suits against the United States for such claims. *Awad v. United States*, 301 F.3d 1367, 1372 (Fed. Cir. 2002); *Wood v. United States*, 961 F.2d 195, 197 (Fed. Cir. 1992) (“[D]istrict courts have . . . exclusive jurisdiction over tort claims for any amount if they fall within the Federal Tort Claims Act, [28 U.S.C.] § 1346(b.)”), *reh’g denied* (1992); *McCauley v. United States*, 38 Fed.Cl. 250, 264 (1997), *aff’d*, 152 F.3d 948 (Fed. Cir. 1998) (table) (“Jurisdiction to hear tort claims is exclusively granted to the United States District Courts under the Federal Tort Claims Act.”). Any claim plaintiffs would assert for relief from alleged tortious actions on the part of officials, therefore, cannot be entertained in this court due to lack of jurisdiction, but must instead be raised in district court.

## II. CONCLUSION.

The only proper course of action is for the court to dismiss the complaint for lack of subject matter jurisdiction. “In order to justify the dismissal of a *pro se* complaint, it must be ‘beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” *Platsky v. CIA*, 953 F.2d 26, 28 (2d Cir. 1991) (quoting *Haines v. Kerner*,

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<sup>3</sup>Plaintiffs’ complaint does not name any employees of FEMA in their individual capacity which might be construed as an attempt to state a claim for violations of constitutional rights under *Bivens*. *See Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (allowing a party, under certain circumstances, to bring an action for violations of constitutional rights against government officials in their individual capacity). Even if plaintiffs’ complaint could be construed as stating a claim under *Bivens*, “[t]he Tucker Act grants the Court of Federal Claims jurisdiction over suits against the United States, not against individual federal officials.” *Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997).

404 U.S. 519, 521 (1972)). That is the case here, as plaintiff's complaint fails to request relief that this court has jurisdiction to offer.

Accordingly, defendant's motion to dismiss is **GRANTED** and the clerk of the court is directed to take appropriate action.

**IT IS SO ORDERED.**

*Lawrence J. Block*

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**Lawrence J. Block**  
**Judge**