

# United States Court of Federal Claims

No. 05-885 C  
December 7, 2005

## NOT FOR PUBLICATION

**Alexander Jenkins, *et al.*,**

*Plaintiff,*

v.

**United States of America,**

*Defendant.*

### **ORDER GRANTING MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* AND DISMISSING COMPLAINT**

On August 4, 2005, plaintiffs Alexander Jenkins and Adam Steidl filed a complaint in this court charging the Federal Emergency Management Agency (FEMA) and its parent agency, the Department of Homeland Security, with “alleged discrimination, and unfair treatment of a disabled person.” Pl. Compl. at 1.

It appears that plaintiffs rented a mobile home in North Fort Myers, Florida, that was damaged by Hurricane Charley on August 13, 2004. *See* Pl. Letter June 13, 2005 at 1. Two days later, plaintiffs filed for FEMA disaster assistance. FEMA App. at 1.

In the immediate aftermath of the hurricane, FEMA considered plaintiffs’ disaster assistance application based upon preliminary information provided by plaintiffs and the urgency of their circumstance. While the plaintiffs’ application for permanent disaster assistance was being processed, FEMA temporarily provided plaintiffs a Travel Trailer in Port Charlotte, Florida for their housing needs. Plaintiffs signed a one month lease for the Travel Trailer on August 26, 2004. FEMA Letter May 19, 2005 at 1. Under the terms of that lease, plaintiffs’ temporary housing assistance could be renewed for additional terms of one month, “subject to recertification of continuing eligibility for temporary housing assistance.” *Id.*

Plaintiffs’ application for permanent disaster relief was rejected by FEMA because of insufficient damage to their property. *Id.* Plaintiffs appealed this decision on November 12, 2004. Def. Mot. App. at 11. FEMA denied the appeal on December 14, 2004. Def. Mot. App. at 13. Plaintiffs again appealed FEMA’s decision by letter on January 8, 2005, noting their impression that the inspector assigned to evaluate the damage to the plaintiffs’ property as a condition of permanent assistance was “impolite” and failed to conduct a thorough examination of the damaged property. Pl. Letter January 8, 2005 at 1. On March 15, 2005, FEMA made the final determination that plaintiffs were ineligible for disaster assistance. Def. Mot. App. at 20.

Two months after finally denying plaintiffs' application for disaster relief, on May 19, 2005, FEMA sent plaintiffs a notice of termination of the lease for the Travel Trailer, pursuant to the lease agreement dated August 26, 2004. FEMA Letter May 19, 2005 at 1. The letter informed plaintiffs that FEMA was terminating the lease on June 23, 2005, and that plaintiffs had to vacate the premises no later than that date. FEMA provided plaintiffs with an opportunity to present a written appeal, however, such an appeal did not guarantee plaintiffs the right to remain in FEMA provided housing. *Id.*

Despite the termination letter, plaintiffs remained in possession of the Travel Trailer. Plaintiffs filed an appeal with FEMA on June 13, 2005. Pl. Letter June 13, 2005 at 1. This appeal was denied on June 17, 2005. Def. Mot. App. at 30. On July 6, 2005, FEMA sent plaintiffs another letter threatening eviction if they did not immediately remit possession. FEMA Letter July 6, 2005 at 1. On August 18, 2005, FEMA sent another termination notice to plaintiffs. Def. Mot. App. at 37.

In response, plaintiffs sued in this court for injunctive relief, enjoining FEMA from pursuing an eviction process against plaintiffs.

## 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 can not, however, trump this court's limited subject matter jurisdiction. The Court of Federal Claims "has jurisdiction only where and to the extent that the government has waived its sovereign immunity, and any waiver of sovereign immunity cannot be implied but must be unequivocally expressed." *Ledford v. United States*, 297 F.3d 1378, 1381 (Fed. Cir. 2002). The Tucker Act—a purely jurisdictional statute—operates as a waiver of sovereign immunity in the Court of Federal Claims for non-tort suits against the United States premised on the Constitution, statute, regulation, or an express or implied contract with the United States. *See* 28 U.S.C. § 1491(a)(1); *United States v. Testan*, 424 U.S. 392, 397 (1976). "The courts have consistently held, however, that the Claims Court's jurisdiction is limited to such cases where the Constitution or a federal statute requires the payment of money damages as compensation for the violation." *Testan*, 424 U.S. at 401-02.

Subject matter jurisdiction may be challenged at any time by the parties or by the court, *sua sponte*, *see Folden v. United States*, 379 F.3d 1344, 1354 (Fed. Cir. 2004), and this court "obviously has jurisdiction to determine whether it has jurisdiction over a particular matter." *Moyer v. United States*, 190 F.3d 1314, 1318 (Fed. Cir. 1999). To survive the court's *sua sponte* review of subject matter jurisdiction, (*see* RCFC 12(b)(1)), the plaintiffs must point to a statute that specifically confers power upon this court to grant the relief they has requested. *Martinez v. United States*, 48 Fed. Cl. 851, 856 (2001), *aff'd*, 281 F.3d 1376 (Fed. Cir. 2002).<sup>1</sup>

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<sup>1</sup> Defendant filed a motion to dismiss for lack of jurisdiction in response to the plaintiffs' complaint on November 17, 2005. The court is proceeding to review plaintiffs' complaint *sua sponte*, however,

## A. Plaintiffs Do Not Allege a Claim for Payment of Money

Based on the rather vague language in plaintiffs' complaint, the court discerns five possible avenues by which plaintiffs could attempt to base their claim. These include: (1) tort, (2) equal protection, pursuant to the Fourteenth Amendment to the United States Constitution, (3) violation of the Americans with Disabilities Act ("ADA") Pub.L. No. 101-336, 104 Stat. 327 (1990), or (4) agency action in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706. None of these potential claims, however, is within the jurisdiction of this court under the Tucker Act, 28 U.S.C. § 1491. As such, the court must dismiss plaintiffs' complaint.

Plaintiffs' complaint alleges that they are the subject of "harassment" from FEMA. Pl. Compl. at 1. In letters accompanying the complaint, plaintiffs further allege that the FEMA personnel who inspected the damage to their original home were "very impolite." Furthermore, the inspection itself was allegedly "inconsistent with a complete inspection . . . The time spent was about ten minutes and failed to examine all the loss and damage." Letter of January 8, 2005 at 1. In the exhibits the plaintiffs also allege that the FEMA inspection of their property "was done by incompetent personal [sic]." Letter of July 18, 2005 at 1.

Plaintiffs' potential claims arising out of alleged negligent and wrongful conduct of the defendant in the course of discharging official duties are claims clearly sounding in tort.<sup>2</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). 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.").

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because it can find no colorable grounds for jurisdiction upon which the plaintiffs could base their claim.

<sup>2</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).

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 FEMA officials, therefore, cannot be entertained in this court due to lack of jurisdiction, but must instead be raised in district court.

Plaintiffs’ complaint states “that this notice be taken as our right to file claim against the Federal Emergency Management Agency for discrimination.” Pl. Compl. at 1. The plaintiffs also indicate that they “are suing FEMA for alleged discrimination.” *Id.* Such statements could be construed to raise a claim based on a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Again, however, this court has no jurisdiction to hear such a claim.

The Tucker Act gives this court jurisdiction to render judgment against the United States for claims “founded either upon the Constitution, or any Act of Congress or any regulation of an Executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). “Not every claim invoking the Constitution, a federal statute, or a regulation is cognizable under the Tucker Act. The claim must be one for money damages against the United States.” *United States v. Mitchell*, 463 U.S. 206, 216 (1983). “Claims of violations of the Due Process and Equal Protection clauses of the Fifth Amendment and Fourteenth Amendment are not within this court’s jurisdiction because those clauses do not support a claim for money damages against the United States . . . .” *Teichman v. United States*, 65 Fed. Cl. 610, 617 (2005); *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995)(alleging violation of rights under Equal Protection Clause of the Fourteenth Amendment is an insufficient basis for jurisdiction because the clause does not mandate payment of money by the government); *Beach v. United States*, No. 05-1111C, 2005 WL 2746553, at \*6 (Fed. Cl. Oct. 24, 2005) (nothing in the Equal Protection clause of the Fourteenth Amendment can be read to mandate monetary compensation). Since there is no money mandating provision in the Equal Protection clause, this court cannot hear any claim by the plaintiff based on a violation of the clause.

Plaintiffs state that they are “suing FEMA for . . . . unfair treatment of a disabled person.” Pl. Compl. at 1. Plaintiffs seem to allege that the discrimination on the part of FEMA may be motivated by the fact that one plaintiff “was in a car accident last year, and can do only minimal work,” while the other is battling leukemia. Letter June 13, 2005 at 1. Such allegations may suggest a claim based upon a violation the ADA. Once again, however, the state courts and United States District Courts, not the United States Court of Federal Claims, have exclusive jurisdiction to entertain claims under the ADA. *McCauley*, 38 Fed.Cl. at 266. Furthermore, plaintiffs have not shown any money mandating provisions upon which to base an ADA claim. *Id.* Therefore, this court lacks jurisdiction to hear any potential claim plaintiffs might raise based on a violation of the ADA.

Finally, plaintiffs could be claiming that FEMA's decision that plaintiffs were ineligible for permanent emergency relief was unlawful agency action. Review of final agency decisions under the APA is not within the jurisdiction of this court. In general, APA reviews are conducted in federal district court rather than the Court of Federal Claims, since the APA itself addresses "relief other than money damages." 5 U.S.C. § 702 (1994). As has been made clear, money damages are the cornerstone of this court's Tucker Act jurisdiction. Since reviews of agency action under the APA are not for money damages, "this court does not have jurisdiction over claims for relief pursuant to the APA." *Teichman v. United States*, 65 Fed. Cl. 610, 617-18 (Fed. Cl. 2005); *See Martinez v. United States*, 333 F.3d 1295, 1313 (Fed. Cir. 2003) ("[T]he Court of Federal Claims lacks APA jurisdiction...."); *Murphy v. United States*, 993 F.2d 871, 874 (Fed. Cir. 1993) ("[T]he Claims Court has no authority to invoke the APA."); *McNabb v. United States*, 54 Fed. Cl. 759, 767 (Fed. Cl. 2002).

## **B. Equitable Relief Is Not Available to Plaintiffs**

Even if this court had jurisdiction to hear plaintiffs' claim, this court would be unable to grant the equitable relief plaintiffs seek. In their claim, plaintiffs "request that all and any legal proceedings by FEMA against us cease at once, and any and all harassment cease." Comp. at 1. The court construes this statement as a request for an injunction, preventing FEMA from evicting plaintiffs. Unfortunately for plaintiffs, this court does not have the authority to grant such an injunction.

The principal jurisdictional basis of this court is the Tucker Act. 28 U.S.C. § 1491. The Tucker Act, however, only authorizes this court to grant injunctive relief in two limited instances which are inapplicable here. 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). In this case, however, any equitable relief sought cannot be incidental to plaintiffs' claim for money damages because, as discussed earlier, plaintiffs have not stated a claim for money damages.

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."). Plaintiffs' claim, however, can in no way be termed a bid protest.

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 plaintiffs' 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 plaintiffs request.

## **II. CONCLUSION**

The only proper course of action is for the court to *sua sponte* dismiss the complaint, without prejudice, 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*, 404 U.S. 519, 521 (1972)). That is the case here, as plaintiffs’ complaint fails to demonstrate the type of facts that might give rise to jurisdiction in this court.

Accordingly, plaintiffs’ motion for leave to proceed in this court *in forma pauperis* is **GRANTED**. Further, the court *sua sponte* dismisses plaintiffs’ complaint and directs the clerk of the court to take appropriate action.

**It is so ORDERED.**

*s/ Lawrence J. Block*

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