No. 05-524 C
(Filed December 20, 2005)

UNPUBLISHED

CHANDRA RAE CRONE,	*	*Pro se*; Motion to Dismiss for Lack of Subject Matter Jurisdiction; RCFC 12(b)(1); Breach of Contract Based on Criminal Plea Agreement; Transfer of Claims to Federal District Court
Plaintiff,	*	
v.	*	
THE UNITED STATES,	*	
Defendant.	*	

Chandra Rae Crone, pro se.

Dawn S. Conrad, United States Department of Justice, with whom were *Peter D. Keisler*, Assistant Attorney General, *David M. Cohen*, Director, *Patricia M. McCarthy*, Assistant Director, Washington, DC, for defendant.

OPINION

BUSH, *Judge*

This contract dispute is currently before the court on Defendant's Motion to Dismiss. For the reasons set forth herein, the court concludes that it has no jurisdiction to entertain the claims presented in this lawsuit. It further concludes that this matter should be transferred, to the United States District Court for the Western District of Washington, under 28 U.S.C. § 1631 (2000).

BACKGROUND

I. Factual Background

In this lawsuit, plaintiff Chandra Rae Crone, appearing *pro se*, has filed claims against six employees of the United States government.[1] Ms. Crone alleges that those individuals are liable to her for breach of contract. That contention arises from a decision, by the United States Department of Justice (DOJ), to rescind a plea agreement offered to plaintiff in 2003. The circumstances which led to that agreement are as follows.

The record is uncontroverted that, from the late 1990s through February 2001, Ms. Crone worked as an "Information Officer" for Anderson's Ark and Associates (AAA), a financial services company with offices in the United States and Costa Rica. Compl. Ex. D (Sworn Affidavit of Chandra Rae Crone) ¶ 1. During that time, AAA was under investigation by the United States Internal Revenue Service (IRS) and the United States Attorney for the Western District of Washington, on suspicions that it was involved in international money laundering and tax evasion. *See* Compl. Ex. F. The investigation apparently culminated on February 28, 2001, when IRS agents raided the homes and offices of several of plaintiff's co-workers. Crone Aff. ¶ 6. A number of arrests and indictments followed. The record is clear, however, that at the time of the arrests and indictments, Ms. Crone was not one of the AAA employees targeted specifically by DOJ. *Id.* ¶¶ 7-9.

Plaintiff alleges that, in October or November 2003, she contacted Corey Smith (Smith), an attorney practicing in DOJ's tax division, "to let him know [she] was willing to meet with him, turn over any and all information [she] had, and to be debriefed by him thoroughly." *Id.* ¶ 11. On December 9, 2003, plaintiff met with Smith and another DOJ attorney, Lawrence Miller (Miller), in Jefferson City, Missouri. During the meeting, she provided them with information about AAA's president, Keith E. Anderson. On the same day, Smith presented a "proffer letter"

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[1]/ Defendants Corey Smith and Krista Tongring are attorneys with the Tax Division of the United States Department of Justice. Todd Graves is the United States Attorney for the Western District of Missouri, and Lawrence Miller is an Assistant United States Attorney in that district. Sheila Jenkins and Ken Kibort are tax investigators with the United States Internal Revenue Service.

to Ms. Crone, which represented that, in exchange for her cooperation with the "ongoing Grand Jury investigation being conducted by the United States Department of Justice, Tax Division in the Western Judicial District of Washington," plaintiff would be granted "use immunity" – that is, none of the information she provided to the government would be used in criminal proceedings against her. *See* Compl. Ex. A (Proffer Letter) at 1 & ¶ 3. The proffer letter also set out the parties' agreement that Ms. Crone would plead guilty to a Class D felony, or a misdemeanor, "as a consequence of her participation in [AAA]," and that the government would "request[] a reduction in [her] sentence to a three year term of probation." *Id.* ¶¶ 4-5. The letter advised plaintiff that

> [i]t is important . . . that Ms. Crone understand any intentional misstatement or material omission of facts will make further cooperation with United States authorities impossible and may lead to additional consequences . . . .

Id. ¶ 2.

The parties agree that Ms. Crone met with DOJ attorneys on more than one occasion, and presented them with a substantial number of documents and information related to AAA.[2] Despite those efforts, the government formally terminated plea negotiations with plaintiff on June 4, 2004. *See* Compl. Ex. C. In a letter to Ms. Crone's attorney, Smith recited DOJ's opinion that plaintiff had violated the terms of the proffer letter by omitting material facts regarding her involvement in AAA; by failing to turn over all relevant documents in her possession; and by maintaining contact with other defendants and material witnesses in the case, despite express admonitions not to do so. *Id.* ¶¶ 1-3. For those reasons, the government concluded that Ms. Crone "ha[d] breached the December 9, 200[3] Proffer Agreement, and [was] ineligible for a Plea Agreement based on the previously discussed parameters." *Id.* at 2.

The record is silent on whether Ms. Crone was ever prosecuted for a crime as a result of her involvement with AAA. On May 5, 2005, however, plaintiff filed

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[2]/ A second meeting took place in Jefferson City, Missouri, on February 13, 2004, and a final meeting was held in Seattle, Washington, in April 2004. *See* Compl. Ex. A-1; Crone Aff. ¶ 23.

this lawsuit. She alleges, primarily, that defendants are liable to her for a "breach of contract" which occurred when DOJ revoked the plea agreement. *See generally* Compl. Ms. Crone claims that, by issuing the proffer letter, the government entered into a contractual agreement with her, and that she "did in fact comply with all terms and conditions of said contract as witnessed by officers of the court." Compl. at 2. Plaintiff is adamant that Smith and others acted inappropriately by rescinding that agreement. She seeks $3,450,523.15 in damages as a result of the government's alleged breach, and the "mental anguish" caused by defendants. Ms. Crone also asks the court to "remind the Defense that any tampering, molesting, intimidating and/or threatening of a witness under the color of law is a crime punishable by imprisonment." Compl. at 3. And, although her complaint is difficult to interpret in some instances, it appears that plaintiff has made claims based on violations of her rights under the Fourth and Fifth Amendments to the United States Constitution.

On July 5, 2005, defendant filed a motion to dismiss Ms. Crone's claims against the individual defendants for lack of subject matter jurisdiction. Defendant also asks the court to dismiss any putative claims against the United States. The government argues that Ms. Crone's tort or constitutional claims should be dismissed for lack of subject matter jurisdiction, and that her allegations of a breach of contract fail to state a claim upon which relief can be granted. Plaintiff has not responded to those arguments, despite the granting of an extension of time in which to do so, and an order to show cause why her lawsuit should not be dismissed. Accordingly, the matter is ripe for a ruling.

DISCUSSION

I. Jurisdiction

The Tucker Act delineates this court's jurisdiction. 28 U.S.C. § 1491 (2000). That statute "confers jurisdiction upon the Court of Federal Claims over [] specified categories of actions brought against the United States . . . ." *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005). These include claims founded on the Constitution, an act of Congress, a regulation promulgated by an executive department, or any express or implied contract with the United States. *Id.* (citing 28 U.S.C. § 1491(a)(1)); *see also Ky. Bridge & Dam, Inc. v. United States*, 42 Fed. Cl. 501, 516 (1998) (citing *United States v. Mitchell*, 445 U.S. 535, 538, *reh'g denied*, 446 U.S. 992 (1980); *United States v. Testan*, 424 U.S. 392,

398-99 (1976); *United States v. Connolly*, 716 F.2d 882, 885 (Fed. Cir. 1983) (*en banc*)). The Tucker Act concurrently "waives the Government's sovereign immunity for those actions." *Fisher*, 402 F.3d at 1172. The statute does not, however, create a substantive cause of action or right to recover money damages in the Court of Federal Claims. *Id*.; *see also Mitchell*, 445 U.S. at 538. Instead, "to come within the jurisdictional reach and the waiver of the Tucker Act, a plaintiff must identify a separate source of substantive law that creates the right to money damages." *Fisher*, 402 F.3d at 1172. In other words, the source must be "money mandating," in that it "'can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.'" *Testan*, 424 U.S. at 400 (quoting *Eastport S.S. Corp. v. United States*, 372 F.2d 1002, 1009 (Ct. Cl. 1967) and citing *Mosca v. United States*, 417 F.2d 1382, 1386 (Ct. Cl. 1969)); *Khan v. United States*, 201 F.3d 1375, 1377 (Fed. Cir. 2000). If the provision relied upon is found to be money-mandating, the plaintiff need not rely upon a waiver of sovereign immunity beyond the Tucker Act. *Huston v. United States*, 956 F.2d 259, 261 (Fed. Cir. 1992) (citing *United States v. Mitchell*, 463 U.S. 206, 218 (1983)).

II. Standard of Review - Motion to Dismiss for Lack of Subject Matter Jurisdiction, RCFC 12(b)(1)

Jurisdiction may be challenged by the parties or by the court on its own initiative at any time, and if jurisdiction is found to be lacking, this court must dismiss the action. Rule 12(h)(3) of the Rules of the United States Court of Federal Claims (RCFC). The court's determination of jurisdiction starts with the complaint, "which must be well-pleaded in that it must state the necessary elements of the plaintiff's claim, independent of any defense that may be interposed." *Holley v. United States*, 124 F.3d 1462, 1465 (Fed. Cir. 1997) (citations omitted). In rendering a decision on a motion to dismiss for lack of subject matter jurisdiction, under RCFC 12(b)(1), this court must presume all undisputed factual allegations to be true, and construe all reasonable inferences in favor of the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236-37 (1974); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988). The court should not grant a motion to dismiss "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) (footnote omitted). Nonetheless, the non-movant bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence. *Cubic Def. Sys., Inc. v. United States*, 45 Fed. Cl.

239, 245 (1999) (citing *Cedars-Sinai Med. Ctr. v. Watkins*, 11 F.3d 1573, 1583 (Fed. Cir. 1993)); *see also Reynolds*, 846 F.2d at 748.

The court is mindful that, because plaintiff is a *pro se* litigant, she is entitled to certain leniencies which are afforded to parties proceeding in that capacity. This is particularly true when ruling on a motion to dismiss, as "[i]t is settled law that the allegations of [a *pro se*] complaint, however inartfully pleaded[,] are held to less stringent standards than formal pleadings drafted by lawyers[.]" *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotations omitted); *Troutman v. United States*, 51 Fed. Cl. 527, 531 (2002). Indeed, in such cases, courts have "strained [their] proper role in adversary proceedings to the limit, searching [the records] to see if plaintiff has a cause of action somewhere displayed." *Ruderer v. United States*, 412 F.2d 1285, 1292 (Ct. Cl. 1969). It must be recognized, however, that while "[t]he fact that [a plaintiff] acted pro se in the drafting of his complaint may explain its ambiguities, . . . it does not excuse its failures, if such there be." *Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995). In other words, the leniency afforded to a *pro se* litigant with respect to mere formalities does not relieve her of jurisdictional requirements. *Kelley v. Sec'y, U.S. Dep't of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987). Further, "[t]here is no duty on the part of the trial court . . . to create a claim which [the plaintiff] has not spelled out in his pleading . . . ." *Scogin v. United States*, 33 Fed. Cl. 285, 293 (1995) (quoting *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1994)).

III. The Court of Federal Claims Does Not Possess Jurisdiction to Adjudicate Plaintiff's Claims

A. Claims Against Officers in their Individual Capacity

In her complaint, Ms. Crone has named six employees of the United States as defendants. However, as the government correctly points out, "[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). Indeed, allegations of "wrongful conduct by governmental officials in their official capacity are tort claims over which the United States Court of Federal Claims does not have jurisdiction." *Sindram v. United States*, 67 Fed. Cl. 788, 792 (2005) (citing 28 U.S.C. § 1346(b) (2000)). For that reason, Ms. Crone's claims against Corey Smith, Krista Tongring, Todd Graves, Lawrence Miller, Sheila Jenkins, and Ken Kibort are outside this court's subject matter

jurisdiction.

Although the United States is not technically named as a defendant in this lawsuit, the government has interpreted Ms. Crone's complaint broadly, and has based its motion on an assumption that she intended to state claims against it, as well. The court agrees with defendant that such an approach is appropriate in reviewing the complaint. Defendant's motion, as it relates to the putative claims against the United States, is addressed below.

B. Breach of Contract

At the center of this lawsuit is Ms. Crone's claim that the United States breached a contract with her when it revoked the plea agreement set out in the December 2003 proffer letter. Defendant argues, however, that Ms. Crone's allegations regarding an alleged breach of contract cannot be considered in the Court of Federal Claims. Def.'s Mot. at 7. The United States is adamant that "[t]his Court's jurisdiction to entertain contract disputes is almost exclusively limited to cases in which the Government acts in a non-sovereign capacity." *Id.* It insists that, here, the United States acted as a sovereign when it offered the plea agreement to Ms. Crone, and so, jurisdiction over plaintiff's claim is lacking. *Id.* Defendant concedes that, in limited circumstances, the Court of Federal Claims may entertain breach of contract claims which are premised on the government's sovereign acts. As the United States correctly points out, an exercise of jurisdiction is proper, in such cases, when the government has expressly agreed to be liable for money damages, and when the agent who created the agreement is authorized to obligate the United States in that capacity. Defendant contends, however, that the exception to the general bar on such claims is not applicable here, because "[t]here is no express language in the proffer letter agreeing that the United States will be liable for monetary damages." *Id.* at 8. The United States also notes that Ms. Crone "has neither alleged nor presented evidence demonstrating that these Government agents possessed specific authority to obligate the United States to pay monetary damages." *Id.* at 8-9. In sum, the government insists that "[b]ecause plaintiff does not allege that she entered into a contract with the United States acting in a non-sovereign capacity, nor does she allege that the proffer letter contained an express obligation of the United States to pay monetary damages, Ms. Crone's breach of contract claim should be dismissed . . . ." *Id.* at 9.

Defendant's argument is persuasive. It is true that Ms. Crone's pleadings, read broadly, may state a claim for breach of contract. The United States Court of Appeals for the Federal Circuit has recognized that "federal and state prosecutors are authorized to enter into plea agreements . . . with criminal defendants[,] and that such agreements are specifically enforceable." *Sanders v. United States*, 252 F.3d 1329, 1334 (Fed. Cir. 2001) (citing *Town of Newton v. Rumery*, 480 U.S. 386 (1987); *Santobello v. New York*, 404 U.S. 257 (1971)). But to invoke the jurisdiction of this court, under the Tucker Act, a plaintiff must do more than generally lay out the factual basis for a breach of contract claim, as "[t]he contract liability which is enforceable under the Tucker Act consent to suit does not extend to every agreement, understanding, or compact which can semantically be stated in terms of offer and acceptance or meeting of minds." *Kania v. United States*, 650 F.2d 264, 268 (Ct. Cl. 1981). Instead, "the court's jurisdiction in the contract area is generally limited to those cases in which the government acts in its non-sovereign capacity." *Sadeghi v. United States*, 46 Fed Cl. 660, 662 (2000); *see also Kania*, 650 F.2d at 268. Because administration of the criminal justice system "is an activity that lies at the heart of sovereign action," *Sadeghi*, 46 Fed. Cl. at 662, "alleged breaches of plea agreements and other agreements arising out of the criminal justice system do not ordinarily give rise to claims for money damages," *Sanders*, 252 F.3d at 1335. Accordingly, breach of contract claims which are "entirely concerned with the conduct of the parties in a criminal case" typically do not fall within the court's Tucker Act jurisdiction. *Id.* at 1334; *see also Sadeghi*, 46 Fed. Cl. at 662. For that reason, a plaintiff who hopes to pursue such a claim in this court must produce evidence that, in her unique case, money damages are, in fact, at stake. As the United States Court of Claims explained in *Kania*,

> it [is] possible to make a binding contract subject to Tucker Act jurisdiction, creating a liability for breach of a plea bargaining agreement or one to grant immunity for giving testimony, or to protect a witness. But, in such [a] case, the court would look for specific authority in the [Assistant United States Attorney] to make an agreement obligating the United States to pay money, and spelling out how in such a case the liability of the United States is to be determined.

650 F.2d at 268; *see also Sanders*, 252 F.3d at 1335. The Federal Circuit has recently distilled that holding, ruling that "a claim for money damages for the

alleged breach of such an agreement may not be maintained unless the agreement clearly and unmistakably subjects the government to monetary liability for any breach." *Sanders*, 252 F.3d at 1335. Such a rule "serves the important policy consideration of leaving the enforcement mechanism for a criminal-related agreement in the district court where the agreement was negotiated and executed." *Dethlefs v. United States*, 60 Fed. Cl. 810, 813 (2004) (explaining the holding of *Sanders*, 252 F.3d at 1335-36). If a plaintiff is unable to make the requisite showings, her claim must be dismissed as outside this court's subject matter jurisdiction. *See, e.g.*, *Pappas v. United States*, 66 Fed. Cl. 1, 8 (2005) (dismissing plaintiff's breach of contract claim, which was premised on government's agreement not to prosecute him, for lack of subject matter jurisdiction); *see also Gary v. United States*, 67 Fed. Cl. 202, 218 (2005); *Miller v. United States*, 67 Fed. Cl. 195, 200 (2005).

Here, there is no question that, to the extent the United States contracted with Ms. Crone, it did so in its sovereign capacity. *See Sadeghi*, 46 Fed. Cl. at 662. And, as defendant underscores, Ms. Crone has introduced no evidence, or argument, to demonstrate that Smith was specifically authorized to "make an agreement obligating the United States to pay money." *Kania*, 650 F.2d at 268. Nor has plaintiff identified any part of the proffer letter which "clearly and unmistakably subjects the government to monetary liability." *Sanders*, 252 F.3d at 1335. To the contrary, even a cursory review of that document reveals that it does not. *See* Compl. Ex. A. Further, the proffer letter provides specifically that "[n]o promises, agreements, or conditions have been entered into other than those expressly set forth in this letter." *Id.* ¶ 7. For the foregoing reasons, it is clear that the court may not entertain Ms. Crone's breach of contract claim.[3]

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[3]/ The United States technically moved to dismiss the breach of contract claim for failure to state a claim upon which relief can be granted. However, all of its arguments on that matter address the issue of jurisdiction. For that reason, the court reads its motion as a request to dismiss the claim for lack of subject matter jurisdiction, as well. Moreover, because the court concludes that the contractual relationship on which Ms. Crone's claim is based "as alleged and pleaded is not money-mandating," it is required to address the claim under RCFC 12(b)(1), as "the absence of a money mandating source [is] fatal to the court's jurisdiction under the Tucker Act." *Fisher v. United States*, 402 F.3d 1167, 1173 (Fed. Cir. 2005). A "two-step inquiry into the issue of whether a particular [source] is money-mandating first for jurisdictional and later for merits purposes," in which the latter inquiry is undertaken via RCFC 12(b)(6), is no longer utilized in this circuit. *Id.* at 1172-73.

C. Tort Claims

Plaintiff also claims that she suffered emotional distress as a result of the individual defendants' conduct. She alleges, for example, that defendants caused her "mental anguish"; that DOJ employees "tr[ied] to force [her] to commit Perjury"; and that the IRS and DOJ "intentionally used fraud to shut [AAA] down." Compl. at 2-4. Defendant argues that these tort claims, to the extent they are asserted against the United States directly, do not invoke this court's subject matter jurisdiction.

The court agrees. There is no question that allegations of negligent actions which cause mental anguish are tortious in nature. It is well-settled, however, that the Court of Federal Claims has no jurisdiction over claims which lie in tort. 28 U.S.C. § 1491(a)(1); *Cottrell v. United States*, 42 Fed. Cl. 144, 149 (1998) (stating that "[t]he Court of Federal Claims lacks jurisdiction over any and every kind of tort claim"); *see also Berdick v. United States*, 612 F.2d 533, 536 (Ct. Cl. 1979) (court cannot exercise jurisdiction over claims for defamation, intentional infliction of emotional distress, tortious interference with business relationships, or conspiracy, all of which sound in tort) (citations omitted); *McCauley v. United States*, 38 Fed. Cl. 250, 265 (1997) (no jurisdiction over claims for negligent, fraudulent or other wrongful conduct) (citations omitted). Indeed, the Tucker Act itself explicitly limits its jurisdiction to those claims "not sounding in tort." 28 U.S.C. § 1491(a)(1); *see also Brown v. United States*, 105 F.3d 621, 622-23 (Fed. Cir. 1997). It is true that, because Ms. Crone's claims are drafted somewhat ambiguously, it is difficult to determine whether she intended to set forth tort claims. However, the law is clear that, even when a plaintiff characterizes a claim in terms which may fall outside the strict confines of tort law, it should be dismissed if it is, at its essence, tort-based. *See Brown*, 105 F.3d at 623. Such is the case here. Accordingly, this court has no subject matter jurisdiction to consider Ms. Crone's claims of mental anguish, attempts to induce perjury, and fraud.

D. Constitutional Claims

Plaintiff alleges that defendants Ken Kibort (Kibort) and Sheila Jenkins (Jenkins), both of whom are agents of the IRS, "purposely deceive[d]" her in October 2002. Compl. at 3. Ms. Crone's pleadings do not elaborate on the alleged deception. Along with that allegation, however, plaintiff has cited an opinion from the United States Court of Appeals for the Fifth Circuit, *United States v. Tweel*,

550 F.2d 297 (5th Cir. 1977). She also relies on a letter which her former attorney wrote to Miller in September 2003. Compl. Ex. G. That letter, which is attached as an exhibit to Ms. Crone's complaint, provides as follows:

> [A]n IRS Revenue Agent named Ken Kibort, along with an IRS Revenue Officer Sheila Jenkins, interrogated my client on her door step in October 2002. Neither Agent Kibort nor Officer Jenkins informed my client of her rights or that she was under any type of criminal investigation. After Ms. Crone asserted her right to counsel, Agent Kibort continued to question her regarding her past employment and income . . . .
>
> [A]ll of the above referenced actions by Agent Kibort constitute a violation of my client's civil rights. Agent Kibort has used the civil arm of the IRS to gather information for a criminal investigation in violation of IRC 26 Sec. 7602 and it is also prohibited by United States v. Tweel . . . and its progeny . . . . I find it difficult to believe that Agent Kibort did not know that Ms. Crone was under a criminal investigation prior to his illegal interrogation of my client, illegal initiation of a tax audit and false assurances to other lawyers involved in this case that there is no criminal investigation in order to illegally procure evidence under the guise of a civil tax collection summons.
>
> The violations by Agent Kibort listed above constitute gross due process and equal protection violations.

Id. at 2. Because plaintiff and her attorney referenced *Tweel* in connection with their complaints about Kibort's conduct, the court assumes that Ms. Crone hopes to pursue a claim similar to the one addressed in that opinion.

In *Tweel*, an IRS agent gathered tax information from a defendant without revealing the criminal nature of his investigation. 550 F.2d at 298. The record was clear that the defendant had consented to the collection and copying of his documents only after the agent falsely assured him that his investigation was solely

civil in nature. *Id.* The Fifth Circuit held that the defendant's consent had been obtained through deceit and trickery, and so, was invalid. *Id.* at 299-300. As a result, it concluded that the agent's search had violated the defendant's rights under the Fourth Amendment to the United States Constitution. *Id.* at 300. Construing Ms. Crone's pleadings in the light most favorable to her, the court interprets them as an allegation that Kibort and Jenkins violated plaintiff's Fourth Amendment rights. Because the letter from Ms. Crone's attorney also alleges due process and equal protection violations, the court assumes that Ms. Crone has made claims under those clauses of the Fifth Amendment, as well.

In its motion, the United States argues that, assuming Ms. Crone has made Fourth or Fifth Amendment claims, this court lacks jurisdiction to entertain them. Defendant is correct. This court has held, repeatedly, that "[a]lleged constitutional violations, other than a taking claim under the Fifth Amendment, do not state a cause of action for monetary relief against the United States in the [United States Court of Federal Claims]." *Frank's Livestock & Poultry Farm, Inc. v. United States*, 17 Cl. Ct. 601, 607 (1989), *aff'd*, 905 F.2d 1515 (Fed. Cir. 1990). For that reason, they do not invoke the waiver of sovereign immunity set out in the Tucker Act, and the Court of Federal Claims lacks jurisdiction over them. *Brown*, 105 F.3d at 623 ("Because monetary damages are not available for a Fourth Amendment violation, the Court of Federal Claims does not have jurisdiction over such a violation."); *Murray v. United States*, 817 F.2d 1580, 1583 (Fed. Cir. 1987) (violation of Fifth Amendment due process clause does not create an independent claim for money damages); *Carruth v. United States*, 627 F.2d 1068, 1081 (Ct. Cl. 1980) (holding that claims based on the Fifth Amendment's Due Process and Equal Protection clauses do not give rise to jurisdiction under the Tucker Act); *Dethlefs*, 60 Fed. Cl. at 814 (because due process clauses of Fifth and Fourteenth amendments are not money-mandating provisions, court does not have jurisdiction to consider claims based on them). Accordingly, the court lacks subject matter jurisdiction to entertain Ms. Crone's constitutional claims.

E. Declaratory Judgment

Finally, plaintiff asks the court to "remind" various federal defendants that witness tampering is a crime under federal law. The court finds, however, that the request, which is tantamount to one for a declaratory judgment, is also outside this court's jurisdiction. It is true that the Tucker Act "has been amended to permit the Court of Federal Claims to grant equitable relief ancillary to claims for monetary

relief over which it has jurisdiction . . . ." *Nat'l Air Traffic Controllers Ass'n v. United States*, 160 F.3d 714, 716 (Fed. Cir. 1998); *see also* 28 U.S.C. § 1491(a)(2), (b)(2); *Dethlefs*, 60 Fed. Cl. at 815 (internal citations omitted) ("The Tucker Act limits the Court's authority to award equitable relief only [to] when such an award would be ancillary to an affirmative obligation of the federal government to pay money damages . . . or in preaward bid protest cases."). There is no provision, however, which gives the court "jurisdiction to grant equitable relief when it is unrelated to a claim for monetary relief pending before the court." *Nat'l Air Traffic Controllers Ass'n*, 160 F.3d at 716 (citing *Katz v. Cisneros*, 16 F.3d 1204, 1208 (Fed. Cir. 1994)); *Figueroa v. United States*, 66 Fed. Cl. 139, 146 (2005); *Dethlefs*, 60 Fed. Cl. at 815. Here, because the court cannot exercise jurisdiction over plaintiff's breach of contract, tort, or constitutional claims, use of its ancillary power to grant equitable relief would be improper. *See Nat'l Air Traffic Controllers Ass'n*, 160 F.3d at 716-17.

IV. Transfer of Complaint to District Court

Plaintiff has not filed a motion to transfer her claims to an appropriate district court, in the event that they are found to be jurisdictionally barred from consideration by the Court of Federal Claims. However, the court has decided to raise the issue *sua sponte*.

Section 1631 of title 28 of the United States Code provides that

> [w]henever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

28 U.S.C. § 1631. Whether a case should be transferred to a district court, from

the Court of Federal Claims, is a discretionary matter which should be decided based upon the "peculiar facts and circumstances" presented. *Bienville v. United States*, 14 Cl. Ct. 440, 445 (1988); *see also Warr v. United States*, 46 Fed. Cl. 343, 352 (2000). Here, to the extent that Ms. Crone may have articulated a justiciable breach of contract claim, she may be entitled to request specific performance, a remedy which is available in district court. She may also be able to pursue Fourth or Fifth Amendment claims in that forum. A transfer is particularly appropriate here, because "the enforcement mechanism for a criminal-related agreement" should be left "in the district court where the agreement was negotiated and executed." *Dethlefs*, 60 Fed. Cl. at 813 (citing *Sanders*, 252 F.3d at 1335-36). Moreover, a transfer will avoid the timeliness issues which may arise if the claims are dismissed outright, and a refiling is required. For these reasons, the court concludes that a transfer of plaintiff's lawsuit is appropriate. It further concludes that the Western District of Washington appears to be the appropriate judicial district to consider plaintiff's claims.[4]

In view of the foregoing, this matter shall be transferred to the United States District Court for the Western District of Washington, under 28 U.S.C. § 1631.

CONCLUSION

The Court of Federal Claims does not have jurisdiction over the claims presented in this lawsuit. The court has determined, however, that in the interest of justice, a transfer of Ms. Crone's claims in lieu of dismissal is appropriate.

Accordingly, it is hereby **ORDERED** that:

(1) The Clerk's office is directed to **TRANSFER** plaintiff's complaint to the United States District Court for the Western District of Washington, pursuant to 28 U.S.C. § 1631; and

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[4]/ In reaching this conclusion, the court notes that the proffer letter was provided to Ms. Crone as a result of her cooperation with an investigation in the Western District of Washington, and was drafted by an attorney with the Tax Division of DOJ, in conjunction with the United States Attorney's office for the Western District of Washington. *See* Compl. Ex. A. Although plaintiff met with Smith and Miller in the Western District of Missouri, it is not clear, from the record, what connection that jurisdiction has with Ms. Crone's claims. *See id.* Ex. A-1.

(2) Defendant's Motion to Dismiss, filed July 5, 2005, is **DENIED** as moot.

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LYNN J. BUSH
Judge