

# United States Court of Federal Claims

No. 09-355 C  
December 8, 2009  
UNPUBLISHED

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**DELARICK HUNTER,**

*Plaintiff,*

v.

**UNITED STATES OF AMERICA,**

*Defendant.*

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*Delarick Hunter, pro se.*

*Tony West*, Civil Division, Commercial Litigation Branch, United States Department of Justice, for defendant.

## OPINION AND ORDER

**Block, Judge.**

*Pro se* plaintiff, Delarick Hunter, brings this suit alleging that he is a direct descendant of an Eskimo Indian, but that his adoption by non-Eskimo parents severed the tribal affiliation to which Mr. Hunter believes he is entitled. “[A]ttempting to obtain his tribal affiliation, rights, and benefits,” plaintiff asks this court to order the Bureau of Indian Affairs (“BIA”) to produce information and documents that may lead to plaintiff’s admission into the Eskimo Indian Tribe.<sup>1</sup> Because plaintiff does not seek monetary damages, but instead seeks only equitable relief, this court does not have subject matter jurisdiction to consider his claim. Plaintiff’s complaint is therefore dismissed.

As always, plaintiff carries the burden of establishing this court’s jurisdiction. *See Alder Terrace, Inc. v. United States*, 161 F.3d 1372, 1377 (Fed. Cir. 1998) (citing *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936)). While courts hold *pro se* plaintiffs’ pleadings to “less stringent standards than formal pleadings drafted by lawyers,” *Haines v. Kerner*, 404 U.S. 519, 520 (1972), “they are not exempt from meeting [the Tucker Act’s] jurisdictional requirements,” *Lester v. United States*, 85 Fed. Cl. 742, 744 (2009) (citing *Kelley v. Sec’y Dep’t of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987)); *see Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995)

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<sup>1</sup> Plaintiff also filed an application to proceed *in forma pauperis*. Plaintiff’s application is granted.

(recognizing that a litigant's "act[ing] *pro se* in the drafting of his complaint may explain its ambiguities, but does not excuse its failures"). When a plaintiff plainly fails to assert a claim that is within the court's subject matter jurisdiction, the court must dismiss the complaint. *See, e.g., Martinez v. United States*, 281 F.3d 1376, 1381, 1384 (Fed. Cir. 2001).

Even under the liberal standards applied to *pro se* complaints, the court does not have jurisdiction over plaintiff's case. Plaintiff's prayer for relief reads as follows:

Wherefore, plaintiff/petitioner request[s that] the court enter an *order* that defendant comply with plaintiff's request; [a]nd after compliance and said documents be sen[t] to plaintiff/petitioner by way of certified mail. Such further relief that [is] just and proper.

Compl. at 2 (emphasis added). The "request" to which plaintiff refers is his submission to the BIA asking for "information for enrollment in [an] [I]ndian tribe and rights/benefits associated with membership under [25 U.S.C. 1951(b)]." 25 U.S.C. § 1951(b) merely requires the Secretary of the Interior to disclose "such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership." In other words, plaintiff is asking for the court to order the BIA to produce information and documents that may lead to plaintiff's admission into the Eskimo Indian Tribe. Notably absent is any claim for monetary damages.

Under the Tucker Act, the court may not grant equitable relief outside the context of a bid protest, unless it is "an incident of and collateral to" a judgment for monetary damages. 28 U.S.C. §1491(a)(2), (b)(2). "Stated another way, [the court] has no power 'to grant affirmative non-monetary relief unless it is tied and subordinate to a money judgment.'" *James v. Caldera*, 159 F.3d 573, 580 (1998) (quoting *Austin v. United States*, 206 Ct. Cl. 719, 723 (1975)). Lacking any connection to a claim for monetary damages, plaintiff's complaint falls outside the scope of the court's jurisdiction. *See Carman v. United States*, 602 F.2d 946, 949 (Ct. Cl. 1979) (holding that there must be a "proper nexus" between a plaintiff's monetary and equitable claims for the Claims Court to consider the equitable claims).

Because the court lacks jurisdiction to order the equitable relief plaintiff requests, defendant's motion to dismiss is **GRANTED**. The Clerk is directed to take the necessary steps to dismiss this matter.

**IT IS SO ORDERED.**

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Lawrence J. Block  
Judge