In the United States Court of Federal Claims

No. 11-397C
(Filed: June 29, 2011)

MICHAEL PHILLIP TELEMAQUE,	*
	*
Plaintiff,	*
	*
v.	*
	*
THE UNITED STATES,	*
	*
Defendant.	*

OPINION AND ORDER

Plaintiff Michael Phillip Telemaque, appearing pro se, filed the above-captioned case on June 16, 2011. He alleges that various agencies and employees of the United States have violated a federal statute purportedly permitting him to expatriate himself from the United States and repatriate himself in the state of Mississippi. Because the court lacks jurisdiction over plaintiff's claims, the court dismisses his complaint. The court also grants plaintiff's application to proceed in forma pauperis, but finds that plaintiff must pay the filing fee in full.

I. BACKGROUND[1]

Plaintiff was born in the United Kingdom and was admitted into the United States as a lawful permanent resident on November 3, 1979. In 1997, he was convicted in federal court for conspiracy to possess with intent to distribute cocaine and cocaine base and received a 180-month prison sentence. Subsequently, United States Immigration and Customs Enforcement ("ICE") filed an immigration detainer with the Federal Bureau of Prisons and initiated deportation proceedings based on plaintiff's criminal conviction.

In July 2004, plaintiff sent the United States Attorney General certain documents that purportedly demonstrated that he had "expatriated out of the Untied States and Repatriated back in to the foreign state of Mississippi," that he had been "naturalized under 8 U.S.C. § 1481(a)(1)

[1] The court derives the facts in this section from plaintiff's complaint, the court's decision in an earlier case filed by plaintiff, Telemaque v. United States, 82 Fed. Cl. 624 (2008), and the magistrate judge's report and recommendation in Telemaque v. Holder, No. 10-CV-0901, 2010 WL 5722834 (W.D. La. Dec. 29, 2010).

& (2) and 8 U.S.C. § 1481(b)" and that his "allegiance [was] to the government thereof." Compl. 2.

Plaintiff was released from the custody of the Federal Bureau of Prisons in March 2010 and transferred to the Federal Detention Center in Oakdale, Louisiana as a detainee in the custody of ICE. The following month, he sent a letter to ICE indicating that if ICE brought him into an immigration court, he would bring suit in state and federal court. He further demanded that ICE lift the immigration detainer.

Despite his attempt to avoid it, plaintiff was brought before the immigration court in May 2010. He presented the documents described above to the immigration judge, and the judge gave the government two weeks to respond. At plaintiff's next appearance before the court, the immigration judge informed plaintiff that the government did not respond to his documents, indicating that they did not oppose them. Nonetheless, the judge issued an order of deportation against plaintiff. Plaintiff unsuccessfully appealed the deportation order to the Board of Immigration Appeals ("BIA").

In his complaint, plaintiff implies that the government's failure to respond to his documents meant that the government agreed that he had expatriated himself from the United States and repatriated himself in Mississippi. He contends that given the government's agreement, the immigration judge should have terminated his case because the court no longer had jurisdiction. Plaintiff further alleges that the immigration court originally took jurisdiction over his case through "threat, duress and coersion [sic]" and suggests that the failure of the immigration court and the BIA to transfer his case to a forum that possessed jurisdiction was a result of fraud, failure to follow proper procedure, unlawful activities, and a conflict of interest. Plaintiff seeks damages of $10,000,000 and an injunction preventing his deportation.

II. DISCUSSION

A. The United States as Defendant

As an initial matter, the court addresses plaintiff's naming of Eric H. Holder, Jr., the current Attorney General of the United States, as the defendant, as well as his allegations against the immigration judge. It is well settled that the United States is the only proper defendant in the Untied States Court of Federal Claims ("Court of Federal Claims"). See 28 U.S.C. § 1498(a)(1) (2006) (providing that the Court of Federal Claims has jurisdiction over claims against the United States); RCFC 10(a) (requiring that the United States be designated as the defendant in the Court of Federal Claims); Stephenson v. United States, 58 Fed. Cl. 186, 190 (2003) ("[T]he only proper defendant for any matter before this court is the United States, not its officers, nor any other individual."). This court does not possess jurisdiction to hear claims against individual federal government officials. See Brown v. United States, 105 F.3d 621, 624 (Fed. Cir. 1997) ("The Tucker Act grants the Court of Federal Claims jurisdiction over suits against the United States, not against individual federal officials."). Indeed, the jurisdiction of the Court of Federal

Claims "is confined to the rendition of money judgments in suits brought for that relief against the United States, . . . and if the relief sought is against others than the United States, the suit as to them must be ignored as beyond the jurisdiction of the court." United States v. Sherwood, 312 U.S. 584, 588 (1941). Accordingly, plaintiff's claims against Attorney General Holder and the immigration judge are dismissed for lack of jurisdiction.

B. Subject Matter Jurisdiction

The court next addresses whether it possesses jurisdiction over the subject matter of plaintiff's claims against the United States, the only remaining defendant.

1. Legal Standard

Whether the court has jurisdiction to decide the merits of a case is a threshold matter. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998). "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868). The parties or the court sua sponte may challenge the existence of subject matter jurisdiction at any time. Folden v. United States, 379 F.3d 1344, 1354 (Fed. Cir. 2004).

When considering whether to dismiss a complaint for lack of jurisdiction, a court assumes that the allegations in the complaint are true and construes those allegations in plaintiff's favor. Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995). A pro se plaintiff's complaint, "'however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers' . . . ." Hughes v. Rowe, 449 U.S. 5, 10 n.7 (1980) (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). However, a pro se plaintiff is not excused from meeting basic jurisdictional requirements. See Henke, 60 F.3d at 799 ("The fact that [the plaintiff] acted pro se in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures, if such there be."). In other words, a pro se plaintiff is not excused from his or her burden of proving, by a preponderance of the evidence, that the court possesses jurisdiction. See McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988).

The ability of the Court of Federal Claims to entertain suits against the United States is limited. "The United States, as sovereign, is immune from suit save as it consents to be sued." Sherwood, 312 U.S. at 586. The waiver of immunity "cannot be implied but must be unequivocally expressed." United States v. King, 395 U.S. 1, 4 (1969).

2. Plaintiff's Allegations

Plaintiff alleges that the Court of Federal Claims possesses jurisdiction over his complaint based upon the Tucker Act, 28 U.S.C. § 1491 (2006), the principal statute governing

the jurisdiction of this court. The Tucker Act waives sovereign immunity for claims against the United States, not sounding in tort, that are founded upon the United States Constitution, a federal statute or regulation, or an express or implied contract with the United States. Id. § 1491(a)(1). However, the Tucker Act is merely a jurisdictional statute and "does not create any substantive right enforceable against the United States for money damages." United States v. Testan, 424 U.S. 392, 398 (1976). Instead, the substantive right must appear in another source of law, such as a "money-mandating constitutional provision, statute or regulation that has been violated, or an express or implied contract with the United States." Loveladies Harbor, Inc. v. United States, 27 F.3d 1545, 1554 (Fed. Cir. 1994) (en banc).

Plaintiff first alleges that defendant violated Revised Statutes § 1999 when the immigration court exercised jurisdiction over his case despite his purported expatriation. Section 1999 of the Revised Statutes, which appears as a note under 8 U.S.C. § 1481 (2006), provided:

> Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic.

Revised Statutes § 1999 (1875). A review of the language of section 1999 reveals that it does not mandate the payment of money damages in the event it is violated. Accordingly, the court lacks jurisdiction over plaintiff's claim that defendant restricted his right of expatriation.

Plaintiff also alleges that defendant, acting through the immigration court and the BIA, should have, under the authority of 28 U.S.C. § 1631, transferred his case to a court that possessed jurisdiction and that its failure to do so was a result of fraud, failure to follow proper procedure, unlawful activities, and a conflict of interest. Section 1631 provides:

> Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal . . . 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 . . . .

In essence, plaintiff is requesting that the court issue an order directing the immigration court or the BIA to transfer his case. The court, however, lacks jurisdiction to direct a government agency to take action in the absence of a money judgment in a plaintiff's favor. See Nat'l Air Traffic Controllers Ass'n v. United States, 160 F.3d 714, 716 (Fed. Cir. 1998) ("Although 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, there is no provision giving the Court of Federal Claims jurisdiction to grant equitable relief when it is unrelated to a claim for monetary relief pending before the court." (citations omitted)); Ferreiro v. United States, 501 F.3d 1349, 1353 n.3 (Fed. Cir. 2007) ("An order compelling the government to follow its regulations is equitable in nature and is beyond the jurisdiction of the Court of Federal Claims."). And, section 1631 does not mandate the payment of money damages in the event it is violated. Accordingly, the court cannot entertain plaintiff's claim that defendant should have transferred his case to another court.[2]

Finally, plaintiff requests that the court issue an injunction preventing his deportation. Except in three statutorily defined circumstances, however, the court lacks jurisdiction to award injunctive relief. See Kanemoto v. Reno, 41 F.3d 641, 644-45 (Fed. Cir. 1994) ("The remedies available in [the Court of Federal Claims] extend only to those affording monetary relief; the court cannot entertain claims for injunctive relief or specific performance, except in narrowly defined, statutorily provided circumstances . . . ."). None of those circumstances applies here. See 28 U.S.C. § 1491(a)(2) (providing the court with jurisdiction to issue, "as incident of and collateral to" an award of money damages, "orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records"); id. (providing the court with jurisdiction to render judgment in nonmonetary disputes arising under the Contract Disputes Act of 1978); id. § 1491(b)(2) (providing the court with jurisdiction to award declaratory and injunctive relief in bid protests). Moreover, to the extent that plaintiff is entitled to challenge the deportation order, the federal courts of appeals possess exclusive jurisdiction. See 8 U.S.C. § 1252(a)(5) ("[A] petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter . . . ."). Accordingly, the court cannot enjoin plaintiff's deportation.

In sum, because plaintiff has not alleged a money-mandating source of jurisdiction to proceed in this court, his complaint must be dismissed.

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[2] Furthermore, 28 U.S.C. § 1631 applies only to civil actions filed in the courts described in 28 U.S.C. § 610, which "includes the courts of appeals and district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Federal Claims, and the Court of International Trade." Section 1631 does not apply to proceedings before the immigration courts or the BIA. Thus, neither the immigration court nor the BIA could have transferred his case.

C. Application to Proceed In Forma Pauperis

Plaintiff filed, concurrent with his complaint, an application to proceed in forma pauperis. Courts of the United States are permitted to waive the prepayment or payment of filing fees and security under certain circumstances.[3] Id. § 1915(a)(1). Plaintiffs wishing to proceed in forma pauperis must submit an affidavit that lists all of their assets, declares that they are unable to pay the fees or give the security, and states the nature of the action and their belief that they are entitled to redress. Id. Further, prisoners must file "a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint . . . obtained from the appropriate official of each prison which the prisoner is or was confined." Id. § 1915(a)(2). Although plaintiff is presently in the custody of ICE and not the Federal Bureau of Prisons, he is considered to be a prisoner for these purposes. See id. § 1915(h) (defining "prisoner" as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program" (emphasis added)).

Plaintiff has satisfied most of the requirements by stating his lack of income and assets, declaring that he is unable to pay the filing fee, and submitting a statement from the detention facility reflecting an account balance of $11.94. He does not, however, state the nature of his action in his application. Nevertheless, because his complaint contains a sufficient description of his claim, the court concludes that plaintiff has satisfied all of the statutory requirements. The court therefore grants plaintiff's application to proceed in forma pauperis and waives plaintiff's prepayment of the filing fee.

Notwithstanding the court's waiver, prisoners seeking to proceed in forma pauperis are required to pay, over time, the filing fee in full. Id. § 1915(b). Thus, plaintiff shall be assessed, as a partial payment of the court's filing fee, an initial sum of twenty percent of the greater of (1) the average monthly deposits into his account, or (2) the average monthly balance in his account for the six-month period immediately preceding the filing of his complaint. Id. § 1915(b)(1). Thereafter, plaintiff shall be required to make monthly payments of twenty percent of the preceding month's income credited to his account. Id. § 1915(b)(2). The agency having custody of plaintiff shall forward payments from plaintiff's account to the clerk of the Court of Federal

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[3] While the Court of Federal Claims is not generally considered to be a "court of the United States" within the meaning of title 28, the court has jurisdiction to grant or deny applications to proceed in forma pauperis. See 28 U.S.C. § 2503(d) (2006) (deeming the Court of Federal Claims to be "a court of the United States" for the purposes of section 1915); see also Matthews v. United States, 72 Fed. Cl. 274, 277-78 (2006) (recognizing that Congress enacted the Court of Federal Claims Technical and Procedural Improvements Act of 1992, authorizing the court to, among other things, adjudicate applications to proceed in forma pauperis pursuant to section 1915).

Claims each time the account balance exceeds $10 and until such time as the filing fee is paid in full. Id.

III. CONCLUSION

For the reasons set forth above, the court **DISMISSES** plaintiff's complaint for lack of jurisdiction. In addition, the court **GRANTS** plaintiff's application to proceed in forma pauperis, but directs plaintiff to pay the filing fee in full pursuant to 28 U.S.C. § 1915(b), as set forth above. The clerk shall enter judgment accordingly.

IT IS SO ORDERED.

MARGARET M. SWEENEY
Judge