

In the United States Court of Federal Claims

No. 11-777C

(Filed February 29, 2012)
NOT FOR PUBLICATION

WE THE PEOPLE OF THE US,

also known as

BRUCE W. KURT,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER DISMISSING CASE

The Court has reviewed defendant's motion to dismiss this case for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims ("RCFC") and plaintiff's response to the motion. For the following reasons, defendant's motion to dismiss is **GRANTED**.

Plaintiff filed his complaint on November 17, 2011¹ under the alias "We the People of the US."² Plaintiff seeks a ruling from the Court that the "War on Terrorism" is unconstitutional.

¹ In plaintiff's response to the government's Motion to Dismiss, he states that his complaint was mailed on September 12, 2011 and should have been filed three days later. Pl.'s Response to Def.'s Mot. to Dismiss at 6. Nevertheless, plaintiff signed his complaint using the name "Vox Populi" on November 11, 2011 and also signed the cover letter accompanying the complaint using his legal name on November 11, 2011. Plaintiff's complaint was received and filed on November 17, 2011.

² To date, plaintiff has not paid the filing fee required by RCFC 77.1(c). Nor has plaintiff completed Form AO-240, which is the application to proceed *in forma pauperis*. Rather, plaintiff attached a cover letter to his complaint stating in part that paying the filing fee would be "redundant" because "'We the People' have already paid the 'filing fee' . . . with our patriotic blood."

Plaintiff's grounds for this relief appear to be an allegation that the Congress has unconstitutionally delegated power to the executive branch and an allegation that borrowing funds to pay for the "War on Terrorism" is criminally fraudulent.

Under RCFC 12(b)(1), a complaint must be dismissed when it is shown that the Court lacks jurisdiction over the complaint's subject matter. When considering a motion to dismiss for lack of subject matter jurisdiction, the Court will normally accept as true all factual allegations made by the pleader and draw all reasonable inferences in a light most favorable to that party. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Pixton v. B&B Plastics, Inc.*, 291 F.3d 1324, 1326 (Fed. Cir. 2002) (requiring that on a motion to dismiss for lack of subject matter jurisdiction the Court views "the alleged facts in the complaint as true, and if the facts reveal any reasonable basis upon which the non-movant may prevail, dismissal is inappropriate").

While *pro se* plaintiffs' filings are to be liberally construed, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007), this lenient standard cannot prevent a case outside our jurisdiction from being dismissed. *See, e.g., Henke v. United States*, 60 F.3d 795, 799 (Fed.Cir.1995). Because the Tucker Act, 28 U.S.C. § 1491, does not create any substantive rights, a plaintiff must identify a separate source of law that creates a right to money damages for his claim to be within our jurisdiction. *Jan's Helicopter Serv., Inc. v. FAA*, 525 F.3d 1299, 1306 (Fed. Cir. 2008) (quoting *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (*en banc* in relevant part)). The test for determining whether a statute or regulation can support jurisdiction in our court is whether it can be fairly interpreted as mandating compensation. *See, e.g., United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472-73 (2003); *United States v. Mitchell*, 463 U.S. 206, 216-17 (1983); *Fisher v. United States*, 402 F.3d 1167, 1173-74 (Fed. Cir. 2005); *Contreras v. United States*, 64 Fed. Cl. 583, 588-92 (2005).

Plaintiff's complaint does not fall within the Court's jurisdiction. Plaintiff does not identify a money-mandating statute, regulation, or constitutional provision that would support our jurisdiction under the Tucker Act. The structural separation of powers provided by the Constitution does not create a right to money damages in the event one branch oversteps its constraints. Nor does this Court have jurisdiction over Mr. Kurt's allegation of criminal fraud, because this Court has no jurisdiction over criminal matters. Moreover, our court exists primarily as a forum for determining whether monetary relief shall be awarded for non-tort claims brought against the United States. *See* 28 U.S.C. §§ 1491-1509. Plaintiff does not even claim any money damages are owed him by the government. Relief other than money damages is limited to a few discrete areas not encompassing Mr. Kurt's request that the Court declare the "War on Terrorism" unconstitutional. *See, e.g.,* 28 U.S.C. §§ 1491(a)(2), 1491(b)(1), 1507. For these reasons, defendant's motion to dismiss the case for lack of jurisdiction under RCFC 12(b)(1) is **GRANTED**. Plaintiff's request that the case be transferred to another court, presumably under 28 U.S.C. § 1631, is **DENIED**, as plaintiff has neither identified another court with jurisdiction over the subject matter nor has paid the required filing fees. Plaintiff's case is dismissed without prejudice. The Clerk shall close the case.

IT IS SO ORDERED.

s/ Victor J. Wolski

VICTOR J. WOLSKI

Judge