

In the United States Court of Federal Claims

No. 05-722C
(Unpublished)

(Filed September 30, 2005)

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JOHN-PERRY BEN BIRDSALL-PERRY
a.k.a. JOHN PERRY CHANEY,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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MEMORANDUM OPINION AND ORDER OF DISMISSAL

Before the Court is a complaint<sup>1</sup> and motion to proceed in forma pauperis, filed by Plaintiff John-Perry ben Birdsall-Perry. Solely for the purpose of addressing whether this Court has jurisdiction, Plaintiff's motion to proceed in forma pauperis is granted. However, because Plaintiff fails to assert any claims demonstrating an express or implied contract with the federal government, showing evidence of money paid to the government for which a refund is due, or implicating a statute or regulation mandating payment to Plaintiff, the complaint is dismissed for lack of jurisdiction. 28 U.S.C. § 1915(e)(2)(B)(ii).<sup>2</sup>

<sup>1</sup> The Court is construing Plaintiff's "Motion for Assistance in Serving the Proper Party(ies)" as the Complaint.

<sup>2</sup> 28 U.S.C. § 1915(e)(2)(B)(ii) provides that notwithstanding any fee that may have been paid, the "court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim on which relief may be granted." The Court may also dismiss a complaint sua sponte at any time for want of jurisdiction. See RCFC 12(h)(3); see also 28 U.S.C. § 1491 (limiting this Court's jurisdiction to monetary claims based on contracts with the United States and other money-mandating legal authority, such as constitutional provisions, statutes, regulations, and executive orders).

## Background<sup>3</sup>

Plaintiff, an inmate with the Utah Department of Corrections, filed this action on July 1, 2005, seeking damages of \$20 million for “fraudulent applications of the . . . 14<sup>th</sup> Amendment” of the U.S. Constitution by agents of the United States, the State of Michigan, and the State of Utah. Plaintiff appears to allege that these agents entered into “‘contracts’ (direct or implied) [with Plaintiff] found[ed] upon fraudulent premises” such as: (1) words of art; (2) denial of genuine-law; (3) silent judicial notice of facts without evidence; (3) spurious claims by Government agents within illegal Bankruptcy; (4) false accusations/bearing false witness; (5) clandestine employment of civil process as though it were criminal; (6) abduction into false/foreign jurisdiction for obtaining commercial advantages; (7) denial of the certain unalienable rights; (8) abusing the scope of the Government’s legitimate power/authority; and (9) malicious destruction of life, liberty, and the pursuit of happiness.

In support of this Court’s jurisdiction, Plaintiff asserts that the United States failed to meet “its contractual obligations with [God]<sup>4</sup>.” As best the Court can discern, Plaintiff argues, based on religious grounds, that the laws of the State of Utah, State of Michigan, and Fourteenth Amendment of the U.S. Constitution do not apply to him, and he seeks redress stemming from their enforcement against him.<sup>5</sup>

Plaintiff seeks the following relief: (1) \$20 million dollars; (2) freedom to enjoy life, liberty, and pursuit of happiness in God; (3) the release from false imprisonment; and (4) “unbreakable guarantees” against any further wrongs.

## Discussion

Subject matter jurisdiction may be challenged at any time by any party, by the Court sua sponte, and even on appeal. Booth v. United States, 990 F.2d 617, 620 (Fed. Cir. 1993). In ruling on a motion to dismiss for lack of subject matter jurisdiction, the 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 (1974); Cedars-Sinai Med. Ctr. v. Watkins, 11 F.3d 1573, 1583 (Fed. Cir. 1993); Holland v. United States, 57 Fed. Cl. 540, 551 (2003). It is the traditional role of the Court, with respect to pro se plaintiffs, to examine the record “to see if plaintiff has a cause of action somewhere displayed.” Ruderer v. United States, 188 Ct. Cl. 456, 468 (1969). Still, the fact that Plaintiff “acted pro se in the drafting of his complaint may explain its ambiguities, but it does not

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<sup>3</sup> This background is derived from Plaintiff’s filing.

<sup>4</sup> Plaintiff refers to “YHWH,” which he defines as “the Supreme-Judge of the World, the Creator, the Son of God.”

<sup>5</sup> Plaintiff references: “fomenting an anti-YHWH cult via control of ‘public education’: see Deuteronomy 13”; “robbing me of my right to confer/withhold ratification of my daughter’s vows: see Numbers 30:3-5”; “abduction of my ‘person’ for false power and ill-gotten gain: Exodus 21:6”; “costs incident to false imprisonment: Leviticus 25:14”; “robbing me of my year with my wife: Deuteronomy 24:5”: and, “apostasy: Leviticus 20:22-26.”

excuse its failures, if such there be.” Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). In such instances, the Court does not hold Plaintiff’s pleadings to the more stringent standards that would apply if Plaintiff were represented by counsel. See, Hughes v. Rowe, 449 U.S. 5, 9 (1980). Ultimately, however, the plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. Taylor v. United States, 303 F.3d 1357, 1359 (Fed. Cir. 2002).

Under the Tucker Act, 28 U.S.C. § 1491, this Court’s jurisdiction is limited to monetary claims based on contracts with the United States and other money-mandating legal authority, such as constitutional provisions, statutes, regulations, and executive orders. United States v. Mitchell, 463 U.S. 206, 215-18 (1983). Although Plaintiff seeks damages of \$20 million, Plaintiff’s complaint does not state any claim for relief implicating a statute or regulation which the Court interprets as being “reasonably amenable” to recovery in money damages. See United States v. White Mountain Apache Tribe, 537 U.S. 465, 472-73 (2003). Nor does Plaintiff indicate any evidence of a contract with the United States. Further, this Court does not have criminal jurisdiction and cannot address Plaintiff’s claim of kidnapping. In addition, none of Plaintiff’s claims for deprivation of inalienable rights assert any right that is enforceable in this Court. Accordingly, these claims are dismissed for lack of jurisdiction.

To the extent that Plaintiff alleges false imprisonment and fraud, these are tort claims and this Court does not have jurisdiction over such claims. See Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997) (“The Court of Federal Claims is a court of limited jurisdiction. It lacks jurisdiction over tort actions against the United States.”). Finally, this Court only has jurisdiction over claims against the United States. United States v. Sherwood, 312 U.S. 584, 588 (1941). Therefore, Plaintiff’s claims asserted against the States of Utah and Michigan and the agents or institutions of these states are not cognizable in this Court. Id. (Stating that where the relief sought is against a person or entity other than the United States, the suit is beyond the jurisdiction of the Court of Claims). Accordingly, Plaintiff’s complaint is dismissed.

### **Decision**

The Clerk of the Court is directed to dismiss the action for lack of jurisdiction.

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**MARY ELLEN COSTER WILLIAMS**  
**Judge**