

In the United States Court of Federal Claims

No. 10-405C
(Filed: December 15, 2010)
(Not for Publication)

JOHN PATRICK WALLACE, *

Plaintiff, *

v. *

THE UNITED STATES, *

Defendant. *

ORDER OF DISMISSAL

WILLIAMS, Judge.

This matter comes before the Court on Defendant’s motion to dismiss Plaintiff pro se’s complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims (“RCFC”). Because the Court lacks subject matter jurisdiction over the matters alleged in the complaint, the motion is granted, and the complaint is dismissed.

Background¹

Plaintiff pro se, John Patrick Wallace, is an inmate at a Texas state prison. He was convicted of burglary in a Texas state court and sentenced to 36 years in prison. Compl. at 2, 4; Def.’s Mot. to Dismiss at 2 (citation omitted). According to Plaintiff, a Texas Court of Appeals affirmed his conviction. Compl. at 10.

Through the years, Plaintiff has been intermittently treated for mental illness. Compl. at 3. On June 29, 2010, Plaintiff filed a complaint in this Court, alleging unlawful conduct on the part of numerous individuals and entities, including the City of Plano and the Plano Police Department. Id. at 4-5, 9. Plaintiff’s mother, Maria Wallace (“Ms. Wallace”), represents him in this action as authorized by Rule 83.1, which states, in relevant part, “An individual who is not an attorney may represent oneself or a member of one’s immediate family.” RCFC 83(a)(3).

¹ This background is derived from the pleadings and motion papers.

The primary issue raised in the complaint appears to be that Plaintiff's mental health was not properly taken into consideration at his trial and sentencing. Accordingly, he asks this Court to vacate his conviction. Compl. at 12; Def.'s Mot. to Dismiss at 1. Plaintiff also alleges the following:

1. **Wrongful Conviction:** Plaintiff claims that a physician "wrongfully" diagnosed him in 2005, resulting in the filing of a complaint against the physician. Compl. at 3. According to Plaintiff, the complaint should have provided notice to a Texas judge and to Plaintiff's appointed attorney that the court "was not rulling [sic] in full compliance with the [sic] Article 46 B.003 of the Texas Code of Criminal Procedure." Id. Plaintiff further claims that a "competent physician" never examined him to determine whether he was competent to stand trial. Id. He asserts that he was convicted "without evidence," and a Texas Court of Appeals affirmed his conviction. Id. at 4, 10. Specifically, Plaintiff alleges that the Texas court system failed to properly take into account his mental health in rendering judgment and did not adequately consider the fact that the physician misdiagnosed Plaintiff in 2005. Compl. at 3-4, 10.
2. **Deprivation of Mental Health Medical Assistance:** According to Plaintiff, the State of Texas "has denied and deprived" him of mental health medical assistance since 2005. Compl. at 4. He also asserts that "[t]he agents of the city of Plano and [the physician] are to be held fully responsible for the consequences of John Patrick Wallace not to be able to participate in a mental health care treatment since that time." Id. Plaintiff claims that although his mother filed various complaints against the Texas Department of State Health Services and Professional Licensing and Certification Units, the Department refused to investigate. Id.
3. **Deprivation of Civil and/or Human Rights:** Plaintiff alleges that "[t]he agents and officials of the City of Plano and the Plano Police Department are to be held fully responsible" for depriving him of his civil and/or human rights to obtain a college education. Compl. at 5. Plaintiff cites Article 13 of the International Covenant on Human Rights in support of this claim. Pl.'s Response to Def.'s Mot. to Dismiss ("Pl.'s Response") at 9-10. He also states that upon discharge from The Waco Center for Youth in 2004, the Texas Workforce Commission denied him a placement with the job corps. Id. at 5. According to Plaintiff, this denial of "the opportunity to learn a trade and gain full time employment" constitutes unlawful discrimination. Id. Plaintiff nowhere indicates the statute, if any, on which he bases his claim of discriminatory denial of a job placement.
4. **Denial of Social Security Benefits:** Plaintiff states that an unidentified Texas judge denied him social security benefits when he was 10 years old. Compl. at 5.
5. **Detective's Failure to Fulfill Her Professional Duties:** Plaintiff asserts that a detective, who investigated the crime underlying his conviction, never arrested an individual who, according to Plaintiff, was involved in the crime resulting in his conviction. Compl. at 5-6. Plaintiff alleges that the detective failed to perform her "full duties as a police officer." Id. at 5.

6. **Chronic Back Pain Resulting from Detention and Manual Labor:** Plaintiff allegedly suffers chronic back pain, resulting from his detention in a sheriff's office in Texas and from manual labor that he performed. Compl. at 7.
7. **Harm to Reputation:** According to Plaintiff, "the Plano Police Department" has "ruined" his reputation. Compl. at 8.
8. **Fraud, Embezzlement, Dishonesty, and Injustice:** Referring to a Florida bankruptcy proceeding, Plaintiff asserts "a federal cause of action of which the United States Judges of that cause of action had never been honest to authorize the payment of a claim after the bankruptcy case was lifted since the year of 1997 regarding a property that belongs to" his mother. Compl. at 9. He continues, "[t]he officials of the United States" have "chosen to acquit the funds of the property and the entire claim by embezzling these funds under the assets of the bankruptcy court in agreement with Jim Walter Homes Inc." Id. The complaint also alleges that unnamed "United States officials" have committed "fraud through [the] illegal acquisition of funds of a bankruptcy court case," which should have been paid, and alleges that the United States is "criminally responsible" for fraud perpetrated against him and his entire family. Id. at 9, 11. In addition, according to Plaintiff, "[t]he Collin County Board of Criminal Appeals and [a Justice] are not in a very good or favorable position to judge and convict John Patrick Wallace after the United States officials committed crimes of fraud and[/]or dishonesty against the appellant John Patrick Wallace and his family." Id. at 10.
9. **Unlawful Seizure and Impoundment of Plaintiff's Property:** Plaintiff asserts that the Plano Police Department unlawfully seized and held his automobile, cellular telephone, and other miscellaneous personal property valued in the aggregate at approximately \$650. Compl. at 6-7. According to Plaintiff, his automobile was impounded and fraudulently sold by Signature Towing, a contractor, for a profit. Id. at 6. Signature Towing never notified the lien holder of the impoundment or impending sale. Id. To inquire about the impoundment and sale of his automobile, Plaintiff contacted various individuals, including the "Manager of the City of Plano" and "the City of Plano attorney's office assistant," who either did not return his telephone call or were unable to provide the desired information to him. Id. at 6-7. Plaintiff also emphasizes that the "fraudulent sale" was not mentioned in his appeal. Id. at 8.

Plaintiff's original complaint does not seek monetary relief. See Pl.'s Response at 6 (conceding that in Plaintiff's original complaint, he "does not request any monetary damages").

On September 23, 2010, Defendant moved to dismiss Plaintiff's complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1). In the alternative, Defendant moved to dismiss the complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6).

On October 21, 2010, Plaintiff responded to the motion, asking the Court to transfer him from the Texas Department of Criminal Justice Facility to a different facility due to alleged violations of his civil and/or human rights relating to "the international covenant on civil rights." Pl.'s Response at 1. The response further alleges that Plaintiff is "amending his original

complaint” to, inter alia, request money damages. In his response, Plaintiff makes the following additional allegations of misconduct:

1. **Discrimination on the basis of pro se status:** Plaintiff states, “Plaintiff does not wish to be discriminated against, because of his pro se status.” Pl.’s Response at 2.
2. **Bribery of Public Officials:** Plaintiff’s response appears to allege that on August 23, 2010, the Court improperly granted Defendant’s corrected motion to enlarge time to respond to the complaint because Plaintiff had not yet filed his response. Pl.’s Response at 2. In addition, Plaintiff states that Defendant’s counsel:

deliberately and knowingly [sic], directly or indirectly, corruptly influenced the performance of the official act of [two judges of the United States Court of Federal Claims] . . . to remove the above civil cause of action from the status of [Alternative Dispute Resolution] process at the time the Defendant United States filed its appearance with this Honorable Court on August 13, 2010. The Plaintiff John Patrick Wallace understands perfectly that this action was committed by the Defendant United States [sic] Legal counsel . . . in order to violate the U.S. Code, Title 18, Section 201 of which refers to bribery of public officials and witnesses.

Id. at 4.² However, Plaintiff provides no evidence to support his allegations.

3. **False Statements under Oath:** Plaintiff alleges that Defendant’s counsel made a false statement to the Court when he stated, “The complaint does not provide any detail regarding the criminal proceedings about which Mr. Wallace complains.” Pl.’s Response at 6.
4. **Perjury:** Plaintiff states in pertinent part, “Defendant United States should be aware of what the U.S. Title 18 states and reserves under Section 1621, Part 1, Chapter 79 (relating to perjury). Pl.’s Response at 8. However, Plaintiff fails to explain whether or how Defendant has committed perjury. See id.
5. **Poor and Inadequate Prison Accommodation:** Citing Article 11 of the International Covenant on Human Rights, Plaintiff alleges, “The Texas Department of Criminal Justice is also offering to the Plaintiff very poor and inadequate housing provisions[,] including housing the Plaintiff John Patrick Wallace with homosexuals, drug addicted inmates and other inmates who are always attempting to commit suicide.” Pl.’s Response at 8, 10.

² If Plaintiff alleges that Defendant’s attorney bribed or attempted to bribe Judges of this Court and possesses specific evidence of such wrongdoing, he may lodge a complaint with the Clerk of Court pursuant to Rule 83.2, which is available on the Court’s website. To the extent Plaintiff believes that judicial misconduct has occurred as described in the Rules of Judicial-Conduct and Judicial-Disability Proceedings, he may file a complaint with the Clerk of Court in compliance with those Rules.

In his response, Plaintiff also attempts to amend his prayer for relief to include money damages in an unspecified amount. The monetary relief requested appears to be intended to compensate Plaintiff for the following: (i) an “unjust” conviction; (ii) denial of a college education; and (iii) denial of mental health care treatment for three years. Pl.’s Response at 11.

Discussion

Jurisdiction

Plaintiff bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence before the Court proceeds to the merits of the action. Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988); Naskar v. United States, 82 Fed. Cl. 319, 320 (2008); Fullard v. United States, 78 Fed. Cl. 294, 299 (2007); BearingPoint, Inc. v. United States, 77 Fed. Cl. 189, 193 (2007). When determining jurisdiction, the Court must accept as true all undisputed allegations of fact made by the non-moving party and draw all reasonable inferences from those facts in the non-moving party’s favor. Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995); Naskar, 82 Fed. Cl. at 320. “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” RCFC 12(h)(3); see also Tindle v. United States, 56 Fed. Cl. 337, 341 (2003).

Complaints drafted by pro se litigants are held to “less stringent standards than formal pleadings drafted by lawyers.” Naskar, 82 Fed. Cl. at 320 (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)); Tindle, 56 Fed. Cl. at 341 (2003). Nevertheless, a plaintiff’s pro se status does not excuse him from meeting this Court’s jurisdictional requirements. Tindle, 56 Fed. Cl. at 341. Pro se litigants still bear the burden of establishing the Court’s subject matter jurisdiction. Id. “[T]he court has no duty to create a claim where a pro se plaintiff’s complaint is so vague or confusing that one cannot be determined.” Fullard, 78 Fed. Cl. at 299.

The United States Court of Federal Claims is a “court of limited jurisdiction.” Id. The Tucker Act states that this Court:

shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1) (emphasis added).

In other words, the Tucker Act confers jurisdiction upon the Court over cases in which a plaintiff identifies a separate Constitutional provision, statute, or regulation, which if violated, provides for a claim for money damages against the United States. See id. The Tucker Act provides a waiver of sovereign immunity enabling a plaintiff to sue the United States for money damages. Reid v. United States, No. 10-470C, 2010 WL 4487661, at *2 (Fed. Cl. Nov. 10, 2010) (citation omitted). However, the Tucker Act, standing alone, does not create a substantive right enforceable against the United States for money damages. Id. (citing United States v. Testan, 424 U.S. 392, 398 (1976)). To the contrary, a plaintiff must establish an independent right to monetary damages from the United States based upon a money-mandating source within a contract, regulation, statute, or Constitutional provision. Jan’s Helicopter Serv., Inc. v. Fed. Aviation Admin., 525 F.3d 1299, 1306 (Fed. Cir. 2008).

Here, the Court lacks subject matter jurisdiction for the following reasons: (i) the Court cannot review the decisions of other courts; (ii) Plaintiff requests equitable relief, which the Court is not authorized to provide, except in certain circumstances inapplicable in the instant case; (iii) the allegations arise from conduct by non-federal agents and entities; (iv) the allegations sound in tort; (v) the allegations constitute civil and/or human rights violations that are not based on money-mandating statutes; and (vi) the Court cannot adjudicate alleged criminal conduct.

The Court Lacks Jurisdiction to Review the Decisions of Other Courts and Has Limited Jurisdiction to Provide Compensation on the Basis of an Unjust Conviction and Imprisonment.

Plaintiff asserts that, despite his history of mental illness, a “competent physician” never determined whether he was competent to stand trial and that he was convicted “without evidence.” Compl. at 3-4, 10. He appears to argue that a Texas court failed to properly consider his mental health at his trial and sentencing and did not fully comply with the applicable rules of criminal procedure. Id. at 8.

To the extent Plaintiff asks this Court to review the decisions of other courts, including a Florida bankruptcy court, this Court lacks jurisdiction to do so. Joshua v. United States, 17 F.3d 378, 380 (Fed. Cir. 1994) (recognizing that this Court lacks jurisdiction to review the decisions of district courts). The Court similarly lacks jurisdiction to address the various deficiencies that allegedly occurred during Plaintiff’s criminal trial proceedings. Id. at 379. To the extent Plaintiff also alleges denial of due process under the Fifth Amendment, it is well established that this Court lacks jurisdiction over claims that derive from the Due Process Clause of the Fifth Amendment because it does not mandate the “payment of money damages.” Searles v. United States, 88 Fed. Cl. 801, 805-06 (2008) (finding that this Court lacks jurisdiction over claims arising under the Fifth Amendment Due Process Clause).

The Court also possesses limited jurisdiction over claims for compensation based on unjust conviction and imprisonment. 28 U.S.C. §§ 1495, 2513. The Court may only hear such claims after a court has reversed or set aside the conviction upon grounds of innocence, the individual has been found not guilty of the offense during a new trial or rehearing, or the individual has been pardoned on the ground of innocence and unjust conviction, and the individual did not commit the acts charged or “by misconduct or neglect cause or bring about his own prosecution.” 28 U.S.C. § 2513; see Brown v. United States, 42 Fed. Cl. 139, 141-42 (1998). None of those circumstances apply here.

The Court Lacks the Authority to Grant the Relief Requested.

Plaintiff’s request for vacatur of his conviction also fails because this Court may award equitable relief only “as an incident of and collateral to” a judgment for monetary damages, except in the context of a bid protest. 28 U.S.C. § 1491(a)(2) (the Court possesses limited injunctive authority in bid protest cases); Bowen v. Massachusetts, 487 U.S. 879, 905 (1988) (“The Claims Court does not have the general equitable powers of a district court to grant prospective relief.”). Plaintiff’s request for vacatur of his conviction is neither an incident of nor collateral to any claim for monetary relief and must be denied.

For the same reason, the Court lacks the equitable power to order Texas state prison authorities or the State of Texas to provide mental health assistance or other medical treatment to Plaintiff as requested in his claim regarding the purported deprivation of mental health medical assistance. Id. Nor does the Court possess the power to order Texas state prison authorities or the State of Texas to alter Plaintiff's prison housing situation or to transfer him to a different facility. Id.

The Court Lacks Jurisdiction over Claims Arising from Alleged Misconduct Committed by Non-Federal Parties.

The federal government is not liable for the actions of non-federal parties who are not agents of the United States. Vlahakis v. United States, 215 Ct. Cl. 1018, 1018 (1978) (stating that a pro se plaintiff's allegations concerning Illinois state officials and courts were beyond the court's jurisdiction); Fullard, 78 Fed. Cl. at 296, 300 (dismissing a prisoner's complaint for lack of jurisdiction because, inter alia, although the caption named the United States as Defendant, it failed to allege wrongdoing on the part of the federal government); Stephenson v. United States, 58 Fed. Cl. 186, 190 (2003) (the federal government is the only appropriate defendant in any matter brought in the United States Court of Federal Claims). To set forth a claim cognizable by this Court, the complaint must allege that the federal government, or its agent(s), has violated a federal statute, regulation, or the Constitution.

In the instant case, the caption of Plaintiff's complaint lists the United States as the Defendant, but Plaintiff erroneously identifies local law enforcement entities and officials as agents or agencies of the federal government. For example, the complaint states, "[t]he United States of America officials including the Plano Police Department and the City of Plano Officials who actually arrested John Patrick Wallace and brought criminal charges against John Patrick Wallace" Compl. at 8.

Plaintiff has not alleged any facts that would attribute the conduct of these officials to the United States or bring their conduct within this Court's jurisdiction. Plaintiff makes no assertion as to why the United States or any of its agencies or agents is responsible for his alleged injuries. Rather, the factual predicate giving rise to his complaint stems exclusively from the acts of non-federal parties. Accordingly, this Court lacks jurisdiction. See Vlahakis, 215 Ct. Cl. at 1018; Fullard, 78 Fed. Cl. at 296, 300; Stephenson, 58 Fed. Cl. at 190.

Plaintiff asserts that he "is not seeking relief from the wrong entity" and has alleged a "compensable breach of contract or violation of a money-mandating statute by the United States because the Plaintiff . . . was given an unfair judgment of (36) thirty six years due to fraud, injustice [sic] and misrepresentation of the opposed party which was a jury." Pl.'s Response at 11. This conclusory assertion fails to satisfy Plaintiff's burden to prove that the Court has jurisdiction by a preponderance of the evidence.

Because the Court lacks jurisdiction over claims arising from the alleged misconduct of non-federal parties, it must dismiss the following claims:

- (i) deprivation of mental medical health assistance on the part of the State of Texas, the City of Plano, the Texas Department of State Health Services, and an employee of the Department of State Health Services;

- (ii) the Texas Workforce Commission’s purported discriminatory denial of placement with the job corps;
- (iii) Plaintiff’s alleged deprivation of a college education by the City of Plano and the Plano Police Department;
- (iv) an unidentified Texas judge’s denial of social security benefits to Plaintiff;³
- (v) a detective’s alleged failure to fulfill her professional duties;
- (vi) Plaintiff’s alleged chronic back pain resulting from his detention at a sheriff’s office in Texas, and manual labor he performed;
- (vii) reputational harm attributed to the Plano Police Department;
- (viii) alleged dishonesty, fraud, and injustice committed by the Collin County Board of Criminal Appeals and a Texas judge;
- (ix) the Plano Police Department’s unlawful seizure and impoundment of his automobile, cellular telephone, and other miscellaneous personal property. Vlahakis, 215 Ct. Cl. at 1018; Fullard, 78 Fed. Cl. at 296, 300; Stephenson, 58 Fed. Cl. at 190; and
- (x) alleged perjury, false statements, and bribery.

The Court Lacks Jurisdiction over Claims Sounding in Tort.

The Tucker Act explicitly states that this Court:

shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1) (emphasis added); see also Brown v. United States, 88 Fed. Cl. 322, 328 (2009) (court lacked jurisdiction over allegation that the Government had engaged in a “conspiratorial scheme” because the Tucker Act specifically states that the Court lacks jurisdiction over tort claims).

³ Congress specifically vested judicial review of decisions of the Social Security Agency in the United States district courts. The Social Security Act provides that “[a]ny individual, after any final decision of the Commissioner of Social Security . . . may obtain a review of such decision by a civil action Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides” 42 U.S.C. § 405(g).

Accordingly, the Court lacks jurisdiction over the following allegations because they sound in tort:

- (i) deprivation of mental health medical assistance, 28 U.S.C. § 1491(a)(1);
- (ii) harm to reputation, Compl. at 8; 28 U.S.C. § 1491(a)(1); Searles, 88 Fed. Cl. at 806 (finding that this Court lacks jurisdiction over tort actions);
- (iii) fraud and embezzlement, Compl. at 9; 28 U.S.C. § 1491(a)(1); Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997) (affirming that the Court lacks jurisdiction over fraud claims because they sound in tort); and
- (iv) the dishonesty or breach of oath of judges, Defendant's counsel, and other individuals, 28 U.S.C. § 1491(a)(1); Nalette v. United States, 72 Fed. Cl. 198, 202 (2006) (holding that the Court lacked jurisdiction over claims alleging that officials breached their oaths of office because such claims sound in tort).

The Court Lacks Jurisdiction over Civil Rights and/or Human Rights Claims That Are Not Based on Money-Mandating Statutes.

The Court lacks jurisdiction over claims of civil and/or human rights violations that are not based on money-mandating statutes. Hernandez v. United States, 93 Fed. Cl. 193, 198 (2010) (holding that this Court has no jurisdiction over claims arising under the Civil Rights Act); Searles, 88 Fed. Cl. at 804-05 (same); Sanders v. United States, 34 Fed. Cl. 75, 80 (1995), aff'd, 104 F.3d 376 (Fed. Cir. 1996) (finding that this Court lacked jurisdiction over a pro se plaintiff's allegations of civil and "basic human rights" violations because this Court cannot entertain "general civil rights claims" that are not based on money-mandating statutes). Accordingly, the Court lacks jurisdiction over Plaintiff's allegations involving the deprivation of a college education, discriminatory denial of a job placement with the job corps, inadequate prison housing, and other alleged violations of the International Covenant of Human Rights to the extent these allegations constitute civil rights and/or human rights claims that are not based on money-mandating statutes.

Plaintiff's mother represents that she will file suit to "demand punitive damages from the United States along with mental anguish in a civil law suit [sic]." Compl. at 9. To the extent she makes such a demand for relief in the instant complaint, her request is denied because the Court lacks jurisdiction to hear claims sounding in tort. 28 U.S.C. § 1491(a)(1). In addition, this Court may not award punitive damages against the United States. Mastrolia v. United States, 91 Fed. Cl. 369, 382 (2010) ("It is well-established that the United States Court of Federal Claims lacks authority to grant punitive damages.").

The Court Lacks Jurisdiction Over Alleged Criminal Conduct.

Plaintiff asserts that the United States is "criminally responsible" for fraud perpetrated against him, his mother, and his entire family. Compl. at 9, 11. However, this Court cannot adjudicate Plaintiff's claims of fraud, embezzlement, bribery, perjury, false statements, and other alleged criminal acts purportedly committed by Defendant because it lacks "jurisdiction to adjudicate any claims whatsoever under the federal criminal code." Joshua, 17 F.3d at 379

(internal quotation omitted); Woodson v. United States, 89 Fed. Cl. 640, 650 (2009) (same). Likewise, the Court cannot adjudicate Plaintiff's claim that "the Collin County Board of Criminal Appeals and [a judge] are not in a very good or favorable position to judge and convict John Patrick Wallace after the United States officials committed crimes of fraud and[/]or dishonesty against the appellant John Patrick Wallace and his family." Compl. at 10 (emphasis added).

Plaintiff's response seeks to amend his complaint to, inter alia, make new allegations of bribery, perjury, false statements, etc., and to seek new and additional relief.⁴ Specifically, he asks the Court to transfer him to a different facility and requests monetary damages, resulting from an "unjust judgment" and the deprivation of a college education and mental health treatment. Pl.'s Response at 11.

According to Rule 15(a)(1), a party may amend its pleadings once, as a matter of course, within 21 days after service or "if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under RCFC 12(b), (e) or (f), whichever is earlier." RCFC 15(a)(1). Rule 15(a)(2) states, "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." RCFC 15(a)(2); see Husband v. United States, 90 Fed. Cl. 29, 38 (2009).

The decision to permit or deny an opportunity to amend the complaint is within the sound discretion of the Court. Husband, 90 Fed. Cl. at 38 (citing Foman v. Davis, 371 U.S. 178, 182 (1962)). The following five factors justify denial of a motion for leave to amend a complaint: (i) undue delay; (ii) bad faith or dilatory motive on the part of the movant; (iii) repeated failure to cure deficiencies by amendments previously allowed; (iv) undue prejudice to the opposing party by virtue of allowance of the amendment; and (v) futility of amendment. Id.

Because the proposed amendment would be futile, fail to cure the jurisdictional deficiencies of the original complaint, and would cause undue delay in the resolution of this matter, Plaintiff's motion for leave to amend the complaint is denied. Permitting an amendment of the complaint here would be futile for the following reasons: (i) the Court would lack the authority to grant the additional equitable relief Plaintiff requests (i.e., transfer to another facility); and (ii) the Court would lack jurisdiction over the new and additional claims raised in his response because, inter alia, they are brought against individual defendants or sound in tort or crime.

⁴ To the extent the Court has discussed these new allegations throughout the opinion, it does so for the limited purpose of illustrating that amending the complaint would be futile in part because the Court would still lack jurisdiction over the allegations in the proposed amended complaint.

Conclusion

Defendant's motion is **GRANTED**. The Clerk of Court is directed to dismiss the complaint without prejudice.⁵

MARY ELLEN COSTER WILLIAMS
JUDGE

⁵ Plaintiff's motion for miscellaneous relief and Defendant's motion for an enlargement of time are denied as moot.