NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

WALTER L. ALLEN,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1578

Appeal from the United States Court of Federal Claims in No. 1:19-cv-01304-VJW, Senior Judge Victor J. Wolski.

Decided: August 5, 2020

WALTER L. ALLEN, Brooklyn, NY, pro se.

SOSUN BAE, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant-appellee. Also represented by ETHAN P. DAVIS, TARA K. HOGAN, ROBERT EDWARD KIRSCHMAN, JR.

Before O'MALLEY, BRYSON, and REYNA, *Circuit Judges.*

PER CURIAM.

The Court of Federal Claims ("Claims Court") has 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). Absent from this grant of jurisdiction are claims based on personal grievances against post office employees. Walter L. Allen ("Allen") appeals a decision of the Claims Court dismissing for lack of subject matter jurisdiction his complaint alleging such a grievance. *Allen v. United States*, No. 19-1304C, 2020 WL 975438 (Fed. Cl. Feb. 28, 2020). We *affirm*.

BACKGROUND

Allen filed his complaint on August 27, 2019, alleging that on January 2, 2019, a United States Postal Service ("USPS") employee in Brooklyn, New York refused to accept Allen's letters for mailing. *Allen*, 2020 WL 975438, at *1. The employee was apparently the only worker at the time and was therefore unable to weigh the letters. J.A. 7. After a "minor verbal dispute," Allen took the letters to another post office. *Id.* Within 30 minutes of the initial incident, Allen's mail was accepted by the second post office. *Id.* Allen subsequently filed a grievance with USPS headquarters, requesting "900 zillion" dollars for this unpleasant interaction. *Allen*, 2020 WL 975438, at *1. The USPS apologized to Allen, but did not pay him the requested amount. *Id.* Allen then filed a complaint against the United States in the Claims Court, increasing his monetary demand to "one hundred million zillion dollars." *Id.* He also sought termination of the employee involved in the incident. *Id.*

The government filed a motion to dismiss Allen's complaint for lack of subject matter jurisdiction. *Id.* Allen did

not respond to the motion. Even after accepting all factual allegations as true, drawing all reasonable inferences in the light most favorable to Allen, and liberally construing Allen's filings, the Claims Court found that it did not have subject matter jurisdiction. *Allen*, 2020 WL 975438, at * 2. The court dismissed Allen's complaint pursuant to Rule 12(b)(1) of the Rule of the Court of Federal Claims ("RCFC"). *Id.*

Allen timely filed a notice of appeal. Allen also filed two motions for other relief in June 2020 (ECF Nos. 13 and 14), which we construe as motions to file supplemental briefing in support of his appeal. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(3).

DISCUSSION

We review *de novo* a dismissal for lack of subject matter jurisdiction under RCFC 12(b)(1). *Maher v. United States*, 314 F.3d 600, 603 (Fed. Cir. 2002). In ruling on a motion to dismiss for lack of subject matter jurisdiction, the court must accept all factual allegations in the complaint as true and construe them in the light most favorable to the non-moving party. *Estes Express Lines v. United States*, 739 F.3d 689, 692 (Fed. Cir. 2014). The filings of *pro se* parties, moreover, should be liberally construed and held to less stringent standards than professionally drafted pleadings. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

The Claims Court derives its jurisdiction from the Tucker Act, 28 U.S.C. § 1491, which waives sovereign immunity for certain monetary claims against the federal government. In order to establish jurisdiction under the Tucker Act, the plaintiff must identify a constitutional provision, federal statute, executive agency regulation, or an express or implied contract with the United States that creates a right to money damages. *See* 28 U.S.C. § 1491(a)(1). Allen cannot identify any provision of federal law that entitles him to monetary damages against the federal government stemming from his allegedly unpleasant encounter

with the postal officer worker or the temporary refusal of his mail. Nor does Allen claim to have been party to, or in privity with, an express or implied contract with the United States.

Few amongst us have been spared the indignity of an unpleasant encounter with a customer service representative, government or private. But fewer still would take the path Allen chose to take here. As the Claims Court has informed Allen six times over, it is a court of limited subject matter jurisdiction.[1] Allen must identify a statutory or contractual right under the Tucker Act in order to bring a case in that court. He has not done so here.[2] Accordingly,

---

[1] Allen is no stranger to the Claims Court. In 2019, Allen filed ten complaints with that court within a three-month period. *Allen v. United States*, 145 Fed. Cl. 390, 397–98 (Fed. Cl. 2019) (collecting cases). Allen also appears to favor seeking damages in amounts such as "900 trillion dollars," and "one hundred million zillion dollars." *Id.* at 392. The Claims Court has dismissed all ten cases, at least six for lack of subject matter jurisdiction. *Id.* at 397–398. Not surprisingly, the Claims Court has imposed sanctions on Allen, barring him from filing any future complaints without first obtaining leave to file from the Chief Judge of the court. *Id.*

[2] To the extent Allen suggests that he has filed a bid protest case in his complaint, invoking the Claims Court's jurisdiction under 28 U.S.C. § 1491(b), that argument is meritless. Such jurisdiction only arises "in connection with a procurement or a proposed procurement." 28 U.S.C. §1491(b). As a procurement pertains to the government's "process of acquiring property or services," this action cannot be a bid protest. *Distributed Sols., Inc. v. United States*, 539 F.3d 1340, 1345 (Fed. Cir. 2008).

we conclude that the Claims Court correctly determined that it lacked subject matter jurisdiction.

CONCLUSION

Because the Claims Court lacked subject matter jurisdiction, we *affirm*. We dismiss as moot Allen's June 2020 motions for other relief.

AFFIRMED

COSTS

No costs.

United States Court of Appeals for the Federal Circuit

WALTER L. ALLEN,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1578

Appeal from the United States Court of Federal Claims in No. 1:19-cv-01304-VJW, Senior Judge Victor J. Wolski.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

ENTERED BY ORDER OF THE COURT

August 5, 2020

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

In the United States Court of Federal Claims

No. 19-1304C
(Filed February 28, 2020)
NOT FOR PUBLICATION

* *

WALTER L. ALLEN,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

* *

MEMORANDUM OPINION AND ORDER

WOLSKI, Senior Judge.

Plaintiff, Walter L. Allen, asserts a claim based on an apparently unsatisfactory interaction with his local United States Postal Service (USPS) office. The exact nature of this interaction is unclear, but it appears that a USPS employee refused to accept letters for mailing. Mister Allen requests one hundred "million zillion" dollars, and the termination of certain USPS employees who were involved in this incident. The government has moved to dismiss the case for lack of subject-matter jurisdiction under Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (RCFC). Plaintiff has not filed a response. For the reasons stated below, the motion is **GRANTED** and the complaint is **DISMISSED**.

I. BACKGROUND

On August 27, 2019, Mr. Allen filed a complaint in this court *pro se*, complaining about his treatment at a USPS office in Brooklyn, New York. Compl. at 1. Apparently, on January 2, 2019, a USPS employee declined to accept letters for mailing, due to her inability to weigh them at that time because of a lack of sufficient staffing. *Id.* Plaintiff argued with her and then took his mail to another post office, where it was accepted. *Id.* He followed up with a complaint to the USPS headquarters and received an apology for his treatment. *Id.* at 1–2. The USPS,

however, declined to pay him the "900 zillion" dollars he sought in that complaint. *See* Ex. 1 to Compl. He thus filed a complaint in this court, now seeking one hundred "million zillion" dollars and the termination of the USPS employees responsible for his displeasure. Compl. at 1. Defendant has moved to dismiss the complaint, arguing that none of the allegations in the complaint state a claim within our subject-matter jurisdiction. Def.'s Mot. to Dismiss. at 1 (citing, *inter alia*, 28 U.S.C. § 1491(a)(1)). Plaintiff did not respond to the motion to dismiss.

II. DISCUSSION

A. Standard of Review

Under RCFC 12(b)(1), this court must dismiss claims that do not fall within its subject-matter jurisdiction. When considering a motion to dismiss a case for lack of subject-matter jurisdiction, courts will accept as true all factual allegations the non-movant made and draw all reasonable inferences in the light most favorable to that party. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Airport Rd. Assocs., Ltd. v. United States*, 866 F.3d 1346, 1351 (Fed. Cir. 2017) (quoting *Pixton v. B & B Plastics*, Inc., 291 F.3d 1324, 1326 (Fed. Cir. 2002)) (stating that on a motion to dismiss a case for lack of subject-matter jurisdiction, a court must "view 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"); *CBY Design Builders v. United States*, 105 Fed. Cl. 303, 325 (2012).

While a *pro se* plaintiff's filings are to be liberally construed, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007), this lenient standard cannot spare from dismissal claims which fall outside this court's jurisdiction. *See, e.g., Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995). It is incumbent on the plaintiff to properly invoke the court's jurisdiction by properly alleging a breach of contract by the federal government or identifying a money-mandating law which was allegedly violated by the government. *See United States v. Mitchell*, 463 U.S. 206, 216–17 (1983). A plaintiff's *pro se* status does not relieve him of the obligation to demonstrate jurisdiction by a preponderance of the evidence. *See McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936) (explaining the plaintiff's responsibility for showing that the claim falls within the court's jurisdiction); *Henke*, 60 F.3d at 799 (noting that a plaintiff's status does not excuse defects in the complaint); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988) (stating that the burden of proof for establishing jurisdiction is by a preponderance of the evidence).

B. Analysis

The complaint fails to articulate any claim within this court's subject-matter jurisdiction. It seems that, at most, one USPS office refused to accept some of Mr. Allen's letters for mailing, which resulted in his mailing them less than thirty

minutes later at different office. Compl. at 1. The Court is not aware of any legal theory that could support recovery under these facts. Plaintiff has failed to allege either the existence of a contract with the United States or the violation of a money-mandating provision of federal law, which are generally the requirements to establish a claim within our jurisdiction. *See* 28 U.S.C. § 1491(a); *Mitchell*, 463 U.S. at 216–17. Plaintiff has not identified any contractual right, or federal law or regulation, which would entitle him to money damages for the inconvenience of having to take his mail to a second USPS office before it could be mailed.

Although it is not clear, in the portion of his complaint relating to the relief sought, plaintiff seems to suggest that he has filed a bid protest case. *See* Compl. at 3. Under 28 U.S.C. § 1491(b), our court is empowered to hear certain cases objecting to the conduct of government procurements, such as claims that a solicitation for offers is improper or that the government made an arbitrary or unlawful contract award. *See* 28 U.S.C. § 1491(b). This includes cases involving "any alleged violation of statute or regulation in connection with a procurement or a proposed procurement." *Id.* While the scope of this jurisdiction may be very broad, it is nonetheless limited to federal procurements, which means the federal government's "process of acquiring property or services." *Distributed Sols., Inc. v. United States*, 539 F.3d 1340, 1345 (Fed. Cir. 2008) (quoting what was then 41 U.S.C. § 403(2) and is now 41 U.S.C. § 111). As Mr. Allen's matter does not involve an attempt by the government to obtain services, but rather *his* attempt to obtain services *from* the government, it obviously cannot come within our bid protest jurisdiction. Moreover, even as a bid protest, it would suffer from the defect placing the case outside our general subject-matter jurisdiction---Mr. Allen's failure to identify any statute or regulation that may have been violated in his unsatisfactory encounter with the one USPS office.

III. CONCLUSION

For the reasons stated above, the government's motion to dismiss this case for lack of subject-matter jurisdiction, under RCFC 12(b)(1), is **GRANTED**. The Clerk shall close the case.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Senior Judge

In the United States Court of Federal Claims

No. 19-1304 C
Filed: February 28, 2020

WALTER L. ALLEN

v.

JUDGMENT

UNITED STATES

Pursuant to the court's Memorandum Opinion and Order, filed February 28, 2020, granting defendant's motion to dismiss,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff's complaint is dismissed for lack of subject-matter jurisdiction.

Lisa L. Reyes
Clerk of Court

By: Debra L. Samler

Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is $505.00.

United States Court of Appeals for the Federal Circuit

WALTER L. ALLEN,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1578

Appeal from the United States Court of Federal Claims in No. 1:19-cv-01304-VJW, Senior Judge Victor J. Wolski.

MANDATE

In accordance with the judgment of this Court, entered August 5, 2020, and pursuant to Rule 41 of the Federal Rules of Appellate Procedure, the formal mandate is hereby issued.

FOR THE COURT

November 9, 2020

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

Appendix A

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

WALTER L. ALLEN,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1578

Appeal from the United States Court of Federal Claims in No. 1:19-cv-01304-VJW, Senior Judge Victor J. Wolski.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before PROST, *Chief Judge*, NEWMAN, LOURIE, BRYSON*, DYK, MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN, HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

---

* Circuit Judge Bryson participated only in the decision on the petition for panel rehearing.

ORDER

Appellant Walter L. Allen filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on November 9, 2020.

FOR THE COURT

November 2, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

WALTER L. ALLEN,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1821

Appeal from the United States Court of Federal Claims in No. 1:19-cv-01305-PEC, Judge Patricia E. Campbell-Smith.

Before O'MALLEY, BRYSON, and TARANTO, *Circuit Judges.*

PER CURIAM.

ORDER

Having received the parties' responses to this court's show cause order, we consider whether Walter L. Allen's appeal must be dismissed as untimely.

On September 12, 2019, the United States Court of Federal Claims entered judgment dismissing Mr. Allen's complaint for lack of jurisdiction. The Court of Federal

Claims received Mr. Allen's notice of appeal on May 13, 2020, eight months after the date of judgment.

To be timely, a notice of appeal must be filed with the Court of Federal Claims within 60 days of the entry of judgment. 28 U.S.C. § 2522; 28 U.S.C. § 2107(b)(1); Fed. R. App. P. 4(a)(1)(B)(i). The statutory deadline for taking an appeal from the Court of Federal Claims is "mandatory and jurisdictional." *Sofarelli Assocs., Inc. v. United States*, 716 F.2d 1395, 1396 (Fed. Cir. 1983) (internal quotation marks and citations omitted); *see also Bowles v. Russell*, 551 U.S. 205, 209 (2007). This means that the court has no authority to create equitable exceptions for untimely notices of appeal. *Bowles*, 551 U.S. at 214. Because this court did not receive the appeal within 60 days of the entry of judgment, we must dismiss for lack of jurisdiction.

Accordingly,

IT IS ORDERED THAT:

(1) The appeal is dismissed.

(2) Each party shall bear its own costs.

FOR THE COURT

August 04, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

s35

In the United States Court of Federal Claims

No. 19-1305C

(Filed: September 11, 2019)

NOT FOR PUBLICATION

WALTER L. ALLEN, Plaintiff, v. THE UNITED STATES, Defendant.	Pro Se Complaint; Sua Sponte Dismissal for Want of Jurisdiction; RCFC 12(h)(3); Injunction Against the Filing of New Complaints without Leave of the Chief Judge.

ORDER

The complaint of pro se plaintiff Walter Allen, ECF No. 1, is currently before the court. Because the court lacks jurisdiction over plaintiff's claim, the court must dismiss this case pursuant to Rule 12(h)(3) of the Rules of the United States Court of Federal Claims (RCFC). See RCFC 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

I. Background

Plaintiff's handwritten complaint is largely incoherent. The first line of the complaint indicates that Mr. Allen's suit is "[a]ll related to Domestic Violence (verbal dispute only)." ECF No. 1 at 1. The complaint references the fact that plaintiff was arrested, id., then "Detained and Bail[ed] out," id. at 2. One of the attachments to the complaint is the record of the arraignment of Mr. Allen, which shows that the "DVI" charge was later dismissed. ECF No. 1-1 at 1.

Mr. Allen, on the civil cover sheet attached to his complaint, describes the nature of his suit as one sounding in Unjust Conviction and Imprisonment. ECF No. 1-2 at 1. The amount claimed in this suit is "100,000,000,000,000,000.00," or "one hundred million zillion dollars." Id. There is no indication, however, that there was any conviction that might support such a claim. See ECF No. 1 at 1 ("Court Appearances Disposition Dismissed."). Nor is there any indication that a federal criminal statute or

Approached

federal officials were involved in either the arrest of or adjudicative proceedings for Mr. Allen as to the incident described in the complaint.

II. Analysis

There are at least two impediments to this court's jurisdiction over plaintiff's unjust conviction and imprisonment claim. First, such a claim, to be within the jurisdiction of this court, must be founded on a conviction for a federal crime. 28 U.S.C. § 1495 (2012). There is no such allegation in the complaint. Second, the conviction for a federal crime must have been reversed or set aside. 28 U.S.C. § 2513 (2012). Again, there is no such allegation in the complaint. Without these two prerequisites to suit, an unjust conviction claim filed in this court must be dismissed for lack of jurisdiction. See, e.g., Salman v. United States, 69 Fed. Cl. 36, 39 (2005) (citations omitted).

III. Conclusion

The court does not possess subject matter jurisdiction over this suit and this case must be dismissed. The court notes, too, that this is plaintiff's second complaint assigned to the undersigned judge. See Allen v. United States, Case No. 19-1272C. In addition to the cases assigned to the undersigned judge, Mr. Allen has filed eight other cases in this court since May 23, 2019. See Allen v. United States, Case Nos. 19-791C, 19-1123C, 19-1151C, 19-1171C, 19-1260C, 19-1302C, 19-1303C, and 19-1304C. To date, four of these cases have been dismissed for lack of jurisdiction. See Allen v. United States, Case Nos. 19-791C, 19-1151C, 19-1260C and 19-1272C. The filing of ten complaints by Mr. Allen in less than four months, as evidenced by the dismissal of half of the suits, shows that these suits are filed without any consideration of the jurisdiction of this court. This is a repetitive and frivolous filing pattern which consumes valuable judicial resources.

Accordingly,

(1) The clerk's office is directed to **ENTER** judgment for defendant *DISMISSING plaintiff's complaint for lack of subject matter jurisdiction, without* prejudice, pursuant to RCFC 12(h)(3);

(2) The clerk's office is directed to **RETURN** any future filings not in compliance with this court's rules to plaintiff, **UNFILED**, without further order of the court, except for any notice of appeal; and

(3) Because plaintiff has repetitively filed complaints which needlessly consume the resources of the court, the court enters the following anti-filing injunction:

> Mr. Allen is immediately **ENJOINED** from filing any new complaints with this Court without first obtaining leave from the Chief Judge of the United States Court of Federal Claims to do so.

Appendix D

Any motion for leave to file must include as an attachment a full complaint that meets all of the requirements of RCFC 8; in particular the complaint must identify the source of law supporting this court's jurisdiction over the claims asserted. Thus, the clerk's office is directed to **REJECT** all future complaints from Mr. Allen unless filed by leave of the Chief Judge.

IT IS SO ORDERED.

Patricia E. Campbell-Smith

PATRICIA E. CAMPBELL-SMITH
Judge

Appendix B

In the United States Court of Federal Claims

No. 19-1305 C
(Filed: September 12, 2019)

WALTER ALLEN

Plaintiff

v **JUDGMENT**

THE UNITED STATES

Defendant

Pursuant to the court's Order, filed September 11, 2019,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff's complaint is dismissed without prejudice for lack of subject-matter jurisdiction.

Lisa L. Reyes
Clerk of Court

By: 

Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is $505.00.

United States Court of Appeals for the Federal Circuit

WALTER L. ALLEN,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1821

Appeal from the United States Court of Federal Claims in No. 1:19-cv-01305-PEC, Judge Patricia E. Campbell-Smith.

MANDATE

In accordance with the judgment of this Court, entered August 4, 2020, and pursuant to Rule 41 of the Federal Rules of Appellate Procedure, the formal mandate is hereby issued.

FOR THE COURT

September 25, 2020

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

Appendix B

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

WALTER L. ALLEN,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1945

Appeal from the United States Court of Federal Claims in No. 1:19-cv-01303-MBH, Senior Judge Marian Blank Horn.

Before REYNA, WALLACH, and CHEN, *Circuit Judges*.

PER CURIAM.

ORDER

Upon consideration of the parties' responses to the court's July 21, 2020 order to show cause, the court dismisses this appeal as untimely.

On October 22, 2019, the United States Court of Federal Claims issued an order dismissing Walter L. Allen's complaint. The Court of Federal Claims entered judgment the same day. Mr. Allen's notice of appeal was received by the Court of Federal Claims on June 1, 2020.

An appeal from a judgment of the Court of Federal Claims must be filed within 60 days after judgment. *See* 28 U.S.C. § 2522; Fed. R. App. P. 4. The time period for filing a notice of appeal from a judgment of the Court of Federal Claims is "mandatory and jurisdictional," *Sofarelli Assocs., Inc. v. United States*, 716 F.2d 1395, 1396 (Fed. Cir. 1983) (internal quotation marks and citations omitted), and we have "no authority to create equitable exceptions to jurisdictional requirements," *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Because Mr. Allen's notice of appeal was not timely filed, we must dismiss.

Accordingly,

IT IS ORDERED THAT:

(1) The appeal is dismissed.

(2) Each side shall bear its own costs.

(3) All pending motions are denied as moot.

FOR THE COURT

September 30, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

s31

In the United States Court of Federal Claims

No. 19-1303C
Filed: October 22, 2019

WALTER ALLEN, **Plaintiff,** **v.** **UNITED STATES,** **Defendant.**	**Pro Se Plaintiff; Subject-Matter Jurisdiction; Frivolous Complaint; Sanctions.**

Walter Allen, pro se, Brooklyn, NY.

Sosun Bae, Attorney of Record, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant. With her was **Robert E. Kirschman, Jr.**, Director, Commercial Litigation Branch, Civil Division, and **Joseph H. Hunt**, Assistant Attorney General, Commercial Litigation Branch, Civil Division.

ORDER

HORN, J.

On August 27, 2019, pro se plaintiff Walter Allen filed a handwritten complaint in the United States Court of Federal Claims. Plaintiff's writing is difficult to decipher and his allegations are difficult to follow, but it appears that in his complaint before this court, plaintiff is alleging that two of his applications to change his federal income tax withholding amounts were not acted upon by the New York City Employees' Retirement System (NYCERS). Plaintiff begins his complaint: "All Related to unlimited Jurisdiction with = Distribution for me-plaintiff and Authorities. Plused unlimited court hearings and my cAse heard."[1] Plaintiff attached to his complaint two NYCERS Federal Income Tax Withholding Change applications (Form F-349), the first dated December 12, 2015 and the second dated May 3, 2016. On each application, plaintiff handwrote a request to withhold

[1] Capitalization, grammar, punctuation, abbreviations, spelling, emphasis, and choice of words when quoted in this Order are as they originally appear in plaintiff's submissions to this court.

"$900,000,000,000,000.00 *nine hundred trillions dollars*" of federal income tax from his pension payments under part 4 "ADDITIONAL AMOUNT TO WITHHOLD PER MONTH." Plaintiff submitted two typed letters on letterhead with the NYCERS name, dated December 17, 2015 and May 5, 2016 respectively, which stated that plaintiff's applications had been "successfully processed." Plaintiff states in his complaint that he sent "Email complaints" that were "Approved" with a "CASEWORK # 904009." Plaintiff does not state to whom the "Email complaints" were sent and no email correspondence or evidence of further correspondence was submitted to this court with plaintiff's complaint. Moreover, it is not clear from the plaintiff's complaint, or the documents submitted with the complaint, what documents were "Approved" or the meaning of "successfully processed" as used by the NYCERS in the letters attached to plaintiff's complaint. Plaintiff requests from this court that the amount listed in part 4 of his Form F-349 applications, nine hundred trillion dollars, "be Approved claimed," as well as "one hundred million zillion dollars" awarded to him for what the court can decipher from plaintiff's handwriting is alleged to be "True Complaint Info." Plaintiff also requests from the court that "All Employees Involved with Ignoring Section (4) Amt. Terminated for discourtesy and discredit while performing his/her duties."

DISCUSSION

The court recognizes that plaintiff is proceeding pro se. When determining whether a complaint filed by a pro se plaintiff is sufficient to invoke review by a court, a pro se plaintiff is entitled to a more liberal construction of the pro se plaintiff's pleadings. See Haines v. Kerner, 404 U.S. 519, 520-21 (requiring that allegations contained in a pro se complaint be held to "less stringent standards than formal pleadings drafted by lawyers"), reh'g denied, 405 U.S. 948 (1972); see also Erickson v. Pardus, 551 U.S. 89, 94 (2007); Hughes v. Rowe, 449 U.S. 5, 9-10 (1980); Estelle v. Gamble, 429 U.S. 97, 106 (1976), reh'g denied, 429 U.S. 1066 (1977); Matthews v. United States, 750 F.3d 1320, 1322 (Fed. Cir. 2014); Jackson v. United States, 143 Fed. Cl. 242, 245 (2019); Diamond v. United States, 115 Fed. Cl. 516, 524 (2014), aff'd, 603 F. App'x 947 (Fed. Cir.), cert. denied, 135 S. Ct. 1909 (2015). However, "there is no 'duty [on the part] of the trial court . . . to create a claim which [plaintiff] has not spelled out in his [or her] pleading . . . .'" Lengen v. United States, 100 Fed. Cl. 317, 328 (2011) (alterations in original) (quoting Scogin v. United States, 33 Fed. Cl. 285, 293 (1995) (quoting Clark v. Nat'l Travelers Life Ins. Co., 518 F.2d 1167, 1169 (6th Cir. 1975))); see also Bussie v. United States, 96 Fed. Cl. 89, 94, aff'd, 443 F. App'x 542 (Fed. Cir. 2011); Minehan v. United States, 75 Fed. Cl. 249, 253 (2007). "While a pro se plaintiff is held to a less stringent standard than that of a plaintiff represented by an attorney, the pro se plaintiff, nevertheless, bears the burden of establishing the Court's jurisdiction by a preponderance of the evidence." Riles v. United States, 93 Fed. Cl. 163, 165 (2010) (citing Hughes v. Rowe, 449 U.S. at 9; and Taylor v. United States, 303 F.3d 1357, 1359 (Fed. Cir.), reh'g and reh'g en banc denied (Fed. Cir. 2002)); see also Kelley v. Secretary, U.S. Dep't of Labor, 812 F.2d 1378, 1380 (Fed. Cir. 1987) ("[A] court may not similarly take a liberal view of [] jurisdictional requirement[s] and set a different rule for pro se litigants only.").[2] Hale v. United States,

[2] Several recent, though unpublished, cases in the United States Court of Appeals for the Federal Circuit have cited Kelley v. Secretary, U.S. Dep't of Labor for the proposition

143 Fed. Cl. 180, 184 (2019) ("[E]ven pro se plaintiffs must persuade the court that jurisdictional requirements have been met." (citing Bernard v. United States, 59 Fed. Cl. 497, 499, aff'd, 98 F. App'x 860 (Fed. Cir. 2004))); Golden v. United States, 129 Fed. Cl. 630, 637 (2016); Shelkofsky v. United States, 119 Fed. Cl. 133, 139 (2014) ("[W]hile the court may excuse ambiguities in a pro se plaintiff's complaint, the court 'does not excuse [a complaint's] failures.'" (quoting Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995))); Harris v. United States, 113 Fed. Cl. 290, 292 (2013) ("Although plaintiff's pleadings are held to a less stringent standard, such leniency 'with respect to mere formalities does not relieve the burden to meet jurisdictional requirements.'" (quoting Minehan v. United States, 75 Fed. Cl. at 253)).

"Subject-matter jurisdiction may be challenged at any time by the parties or by the court sua sponte." Folden v. United States, 379 F.3d 1344, 1354 (Fed. Cir. 2004) (citing Fanning, Phillips & Molnar v. West, 160 F.3d 717, 720 (Fed. Cir. 1998)), reh'g and reh'g en banc denied (Fed. Cir. 2004), cert. denied, 545 U.S. 1127 (2005); see also St. Bernard Parish Gov't v. United States, 916 F.3d 987, 992-93 (Fed. Cir. 2019) ("[T]he court must address jurisdictional issues, even sua sponte, whenever those issues come to the court's attention, whether raised by a party or not, and even if the parties affirmatively urge the court to exercise jurisdiction over the case." (citing Foster v. Chatman, 136 S. Ct. 1737, 1745 (2016)); Int'l Elec. Tech. Corp. v. Hughes Aircraft Co., 476 F.3d 1329, 1330 (Fed. Cir. 2007). The Tucker Act, 28 U.S.C. § 1491 (2018), grants jurisdiction to this court as follows:

> The United States Court of Federal Claims 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). As interpreted by the United States Supreme Court, the Tucker Act waives sovereign immunity to allow jurisdiction over claims against the United States (1) founded on an express or implied contract with the United States, (2) seeking a refund from a prior payment made to the government, or (3) based on federal constitutional, statutory, or regulatory law mandating compensation by the federal government for damages sustained. See United States v. Navajo Nation, 556 U.S. 287, 289-90 (2009); see also United States v. Mitchell, 463 U.S. 206, 216 (1983); Alvarado Hosp., LLC v. Price, 868 F.3d 983, 991 (Fed. Cir. 2017); Greenlee Cnty., Ariz. v. United States, 487 F.3d 871, 875 (Fed. Cir.), reh'g and reh'g en banc denied (Fed. Cir. 2007), cert. denied, 552 U.S. 1142 (2008); Palmer v. United States, 168 F.3d 1310, 1314 (Fed. Cir. 1999). "Not every claim invoking the Constitution, a federal statute, or a regulation is cognizable under the Tucker Act. The claim must be one for money damages against the United States . . . ." United States v. Mitchell, 463 U.S. at 216; see also United States v. White

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that pro se litigants are not relieved of the requirement to prove that their claims fall within the jurisdiction of the court. 812 F.2d 1378, 1380 (Fed. Cir. 1987). See Curry v. United States, No. 2019-1486, 2019 WL 4927020, at *2 (Fed. Cir. Oct. 7, 2019); Rojas-Vega v. United States, No. 2019-1475, 2019 WL 3731313, at *2, n. 3 (Fed. Cir. Aug. 8, 2019); Stekelman v. United States, 752 F. App'x 1008, 1010 (Fed. Cir. 2018).

Mountain Apache Tribe, 537 U.S. 465, 472 (2003); N.Y. & Presbyterian Hosp. v. United States, 881 F.3d 877, 881 (Fed. Cir. 2018); Smith v. United States, 709 F.3d 1114, 1116 (Fed. Cir.), cert. denied, 571 U.S. 945 (2013); RadioShack Corp. v. United States, 566 F.3d 1358, 1360 (Fed. Cir. 2009); Rick's Mushroom Serv., Inc. v. United States, 521 F.3d 1338, 1343 (Fed. Cir. 2008) ("[P]laintiff must . . . identify a substantive source of law that creates the right to recovery of money damages against the United States."); Jackson v. United States, 143 Fed. Cl. at 245. In Ontario Power Generation, Inc. v. United States, the United States Court of Appeals for the Federal Circuit identified three types of monetary claims for which jurisdiction is lodged in the United States Court of Federal Claims. The Ontario Power Generation, Inc. court wrote:

> The underlying monetary claims are of three types. . . . First, claims alleging the existence of a contract between the plaintiff and the government fall within the Tucker Act's waiver . . . . Second, the Tucker Act's waiver encompasses claims where "the plaintiff has paid money over to the Government, directly or in effect, and seeks return of all or part of that sum." Eastport S.S. [Corp. v. United States, 178 Ct. Cl. 599, 605-06,] 372 F.2d [1002,] 1007-08 [(1967)] (describing illegal exaction claims as claims "in which 'the Government has the citizen's money in its pocket'" (quoting Clapp v. United States, 127 Ct. Cl. 505, 117 F. Supp. 576, 580 (1954)) . . . . Third, the Court of Federal Claims has jurisdiction over those claims where "money has not been paid but the plaintiff asserts that he is nevertheless entitled to a payment from the treasury." Eastport S.S., 372 F.2d at 1007. Claims in this third category, where no payment has been made to the government, either directly or in effect, require that the "particular provision of law relied upon grants the claimant, expressly or by implication, a right to be paid a certain sum." Id.; see also [United States v.]Testan, 424 U.S. [392,] 401-02 [(1976)] ("Where the United States is the defendant and the plaintiff is not suing for money improperly exacted or retained, the basis of the federal claim-whether it be the Constitution, a statute, or a regulation-does not create a cause of action for money damages unless, as the Court of Claims has stated, that basis 'in itself . . . can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.'" (quoting Eastport S.S., 372 F.2d at 1009)). This category is commonly referred to as claims brought under a "money-mandating" statute.

Ont. Power Generation, Inc. v. United States, 369 F.3d 1298, 1301 (Fed. Cir. 2004); see also Samish Indian Nation v. United States, 419 F.3d 1355, 1364 (Fed. Cir. 2005); Twp. of Saddle Brook v. United States, 104 Fed. Cl. 101, 106 (2012).

To prove that a statute or regulation is money-mandating, a plaintiff must demonstrate that an independent source of substantive law relied upon "'can fairly be interpreted as mandating compensation by the Federal Government.'" United States v. Navajo Nation, 556 U.S. at 290 (quoting United States v. Testan, 424 U.S. at 400); see also United States v. White Mountain Apache Tribe, 537 U.S. at 472; United States v. Mitchell, 463 U.S. at 217; Blueport Co., LLC v. United States, 533 F.3d 1374, 1383 (Fed. Cir. 2008), cert. denied, 555 U.S. 1153 (2009). The source of law granting monetary relief

must be distinct from the Tucker Act itself. See United States v. Navajo Nation, 556 U.S. at 290 (The Tucker Act does not create "substantive rights; [it is simply a] jurisdictional provision[] that operate[s] to waive sovereign immunity for claims premised on other sources of law (*e.g.*, statutes or contracts)."). "'If the statute is not money-mandating, the Court of Federal Claims lacks jurisdiction, and the dismissal should be for lack of subject matter jurisdiction.'" Jan's Helicopter Serv., Inc. v. Fed. Aviation Admin., 525 F.3d 1299, 1308 (Fed. Cir. 2008) (quoting Greenlee Cnty., Ariz. v. United States, 487 F.3d at 876); see also N.Y. & Presbyterian Hosp. v. United States, 881 F.3d at 881; Fisher v. United States, 402 F.3d at 1173 (noting that the absence of a money-mandating source is "fatal to the court's jurisdiction under the Tucker Act"); Jackson v. United States, 143 Fed. Cl. at 245 ("If the claim is not based on a 'money-mandating' source of law, then it lies beyond the jurisdiction of this Court." (citing Metz v. United States, 466 F.3d 991, 997 (Fed. Cir. 2006)).

"Determination of jurisdiction starts with the complaint, which must be well-pleaded in that it must state the necessary elements of the plaintiff's claim, independent of any defense that may be interposed." Holley v. United States, 124 F.3d 1462, 1465 (Fed. Cir.) (citing Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 9-10 (1983)), reh'g denied (Fed. Cir. 1997); see also Klamath Tribe Claims Comm. v. United States, 97 Fed. Cl. 203, 208 (2011); Gonzalez-McCaulley Inv. Grp., Inc. v. United States, 93 Fed. Cl. 710, 713 (2010). A plaintiff need only state in the complaint "a short and plain statement of the grounds for the court's jurisdiction," and "a short and plain statement of the claim showing that the pleader is entitled to relief." RCFC 8(a)(1), (2) (2019); Fed. R. Civ. P. 8(a)(1), (2) (2019); see also Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57, 570 (2007)). To properly state a claim for relief, "[c]onclusory allegations of law and unwarranted inferences of fact do not suffice to support a claim." Bradley v. Chiron Corp., 136 F.3d 1317, 1322 (Fed. Cir. 1998); see also McZeal v. Sprint Nextel Corp., 501 F.3d 1354, 1363 n.9 (Fed. Cir. 2007) (Dyk, J., concurring in part, dissenting in part) (quoting C. WRIGHT AND A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1286 (3d ed. 2004)); "A plaintiff's factual allegations must 'raise a right to relief above the speculative level' and cross 'the line from conceivable to plausible.'" Three S Consulting v. United States, 104 Fed. Cl. 510, 523 (2012) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. at 555), aff'd, 562 F. App'x 964 (Fed. Cir.), reh'g denied (Fed. Cir. 2014); see also Hale v. United States, 143 Fed. Cl. at 190. As stated in Ashcroft v. Iqbal, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' 550 U.S. at 555. Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Ashcroft v. Iqbal, 556 U.S. at 678 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. at 555).

Even a liberal construction of plaintiff's allegations that the NYCERS has wrongfully ignored his Form F-349 applications and that this court has jurisdiction to grant him unlimited hearings, order approval of his applications by the NYCERS, order the termination of the NYCERS' employees, and grant him damages of "the amt. I wrote in section (4) 900,000.000.000.000.00 $ (nine hundred Trillion dollars)" as well as "one hundred million zillion dollars" is entirely unavailing. Plaintiff has failed to make a plausible "short and plain statement of the grounds for the court's jurisdiction," and his statements

do not rise to allegations of coherent issues which fall within the jurisdiction of this court. In fact, plaintiff's complaint makes no mention of any statute or other basis for granting relief. Plaintiff simply states: "I respectfully submit this complaint Related to (2) federal Income Tax withholding change form 349 (Applications)," lists the date he alleges each application was filed and processed by the NYCERS, and, without further explanation, requests the relief previously mentioned. As noted above, a pro se plaintiff's complaint is afforded some degree of leniency by the court. Haines v. Kerner, 404 U.S. 519, 520–21 (1972) (finding that allegations of a pro se complaint are held to "less stringent standards than formal pleadings drafted by lawyers . . . ."); see also Hughes v. Rowe, 449 U.S. at 9. However, "such leniency . . . 'does not relieve the burden to meet jurisdictional requirements.'" Harris v. United States, 113 Fed. Cl. at 292 (quoting Minehan v. United States, 75 Fed. Cl. at 253). As discussed below, plaintiff's brief statement of grievances against the NYCERS and its employees does not fall within the court's jurisdiction and, therefore, must be dismissed. See Hopi Tribe v. United States, 782 F.3d 662, 671 (Fed. Cir. 2015) (Finding that because plaintiff failed to state a claim within the jurisdiction of the Court of Federal Claims, dismissal of the suit was proper.).

Addressing individual jurisdictional defects raised by plaintiff's complaint, although the United States is the named defendant, the complaint does not mention or implicate the United States government. Plaintiff's allegation of inaction is specifically directed at the NYCERS, a state agency created by and acting pursuant to New York's Retirement and Social Security Law, and the NYCERS' employees. See N.Y. Retire. & Soc. Sec. Law § 10 (McKinney 2019). It is well established that this court lacks jurisdiction to hear claims against state agencies or individuals. See United States v. Sherwood, 312 U.S. 584, 588 (1941) (noting that "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 Court of Claims]" (citing United States v. Jones, 131 U.S. 1, 9 (1889); Lynn v. United States, 110 F.2d 586, 588 (5th Cir. 1940); Leather & Leigh v. United States, 61 Ct. Cl. 388 (1925))); see also Weir v. United States, 141 Fed. Cl. 169, 177 (2018) ("[T]his court lacks jurisdiction 'over any claims alleged against states, localities, state and local government entities, or state and local government officials and employees.'" (quoting Anderson v. United States, 117 Fed. Cl. 330, 331 (2014))); Merriman v. United States, 128 Fed. Cl. 599, 602 (2016) ("The United States Court of Federal Claims does not have subject matter jurisdiction over claims against private individuals or state officials." (citing United States v. Sherwood, 312 U.S. at 588)); Hicks v. United States, 118 Fed. Cl. 76, 81 (2014); Cottrell v. United States, 42 Fed. Cl. 144, 148 (1998).[3] Therefore, the court controls that this court lacks subject matter jurisdiction

[3] Although also in unpublished opinions, the United States Court of Appeals for the Federal Circuit has held that under the Tucker Act, the United States Court of Federal Claims does not have jurisdiction over individuals or state agencies as defendants. See Jaye v. United States, No. 2019-1458, 2019 WL 3564174, at *3 (Fed. Cir. Aug. 6, 2019) ("To the extent [plaintiff's] complaint seeks relief against defendants other than the United States, including state officials, state agencies, and other individuals, the Court of Federal Claims lacks jurisdiction over those claims." (citing Smith v. United States, 99 Fed. Cl. 581, 583 (2011))); Conner v. United States, 641 F. App'x 972, 975 (Fed. Cir. 2016) ("Under the Tucker Act, 'if the relief sought is against others than the United

over plaintiff's claims against the New York state agency, the NYCERS, and such claims must be dismissed.

The court also notes that in addition to "100,000.000.000.000.000.00.$ one hundred million zillion dollars for True Complaint Info . . .," plaintiff seeks "unlimited court hearings . . . [and] the amt. I wrote in section (4) 900,000.000.000.000.00. $ (nine hundred trillion dollars) be Approved claimed . . . . Plused All Employees Involved with Ignoring Section (4) Amt. Terminated for discourtesy and discredit while performing his/her duties." Inherent in every court is the power "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). Therefore, trial judges are given broad discretion to control and manage their dockets, including with respect to procedural matters. See, e.g., Amado v. Microsoft Corp., 517 F.3d 1353, 1358 (Fed. Cir. 2008) (citing Nolan v. de Baca, 603 F.2d 810, 812 (10th Cir. 1979), cert. denied, 446 U.S. 956 (1980)); Nutrinova Nutrition Specialties and Food Ingredients GMBH v. Int'l Trade Comm'n, 224 F.3d 1356, 1360 (Fed. Cir. 2000); Remote Diagnostic Techs. LLC v. United States, 133 Fed. Cl. 198, 203 (2017). "[T]he parties' right to be heard may be fulfilled by the court's review of the briefs and supporting affidavits and materials submitted to the court." Geear v. Boulder Cmty. Hosp., 844 F.2d 764, 766 (10th Cir.), cert. denied, 488 U.S. 927 (1988); see also Toquero v. I.N.S., 956 F.2d 193, 196 n.4 (9th Cir. 1992) ("It is well-settled that oral argument is not necessary to satisfy due process."); Lake at Las Vegas Inv'rs Grp. v. Pac. Malibu Dev. Corp., 933 F.2d 724, 729 (9th Cir.) (affirming and discussing the court's interpretation of a local District Court rule, finding no prejudicial error based on the denial of oral argument in a summary judgment motion because the party "had the opportunity to apprise the district court of any arguments it believed supported its position"), reh'g denied (9th Cir. 1991), cert. denied, 503 U.S. 920 (1992); Young v. United States, 94 Fed. Cl. 671, 675 (2010) ("There is no blanket due process right to oral argument." (citing FCC v. WJR, The Goodwill Station, 337 U.S. 265, 276 (1949)). Therefore, a trial court is not required to hold a hearing, but may do so if the court believes the hearing would assist the court to resolve the case. The decision of whether or not to hold oral argument is made in each case, based on the filings and issues raised in that particular case. After reviewing the allegations in the complaint filed by plaintiff, the court finds no reason to hold even one hearing, let alone the "unlimited court hearings" plaintiff seeks, because as discussed above, the court lacks jurisdiction over plaintiff's claims.

Finally, the court notes that plaintiff Walter Allen has filed nine other complaints with this court alone since May 23, 2019. See Allen v. United States, Case Nos. 19-1305C, 19-1304C, 19-1302C, 19-1272C, 19-1260C, 19-1171C, 19-1151C, 19-1123C, and 19-791C. To date, three of these complaints are still pending, and six have been dismissed for lack of subject matter jurisdiction. See Allen v. United States, Case No. 19-1305C (Fed. Cl. Sept. 11, 2019) (finding the court lacked subject matter jurisdiction to

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States the suit as to them must be ignored as beyond the jurisdiction of the [Court of Federal Claims].'" (quoting United States v. Sherwood, 312 U.S. at 588)); see also May v. United States, 534 F. App'x 930, 934 (Fed. Cir. 2013); Powell v. United States, 151 F. App'x 938, 940 (2005).

hear plaintiff's unjust conviction and imprisonment claim when his complaint failed to mention conviction for a federal crime and that such a conviction had been reversed or set aside); Allen v. United States, Case No. 19-1272C (Fed. Cl. Sept. 11, 2019) (finding no subject matter jurisdiction over the plaintiff's verbal domestic violence claims where there was "no comprehensible claim for monetary damages against the United States"); Allen v. United States, Case No. 19-1302C, 2019 WL 4271999 (Fed. Cl. Sept. 10, 2019) (finding that plaintiff failed to identify any federal statutes or money-mandating constitutional violations in his complaint alleging discrimination by the United States Department of Health and Human Services); Allen v. United States, Case No. 19-1260C, 2019 WL 4054018 (Fed. Cl. Aug. 28, 2019) (finding no claim made against the United States under any money-mandating statute that would give the court jurisdiction to hear plaintiff's domestic dispute claim); Allen v. United States, Case No. 19-1151C, 2019 WL 4054011 (Fed. Cl. Aug. 27, 2019) (finding the court lacked subject matter jurisdiction to hear plaintiff's claim alleging discrimination and violation of access to public services by the New York City Metropolitan Transportation Authority); Allen v. United States, Case No. 19-791C, 2019 WL 2613171 (Fed. Cl. June 5, 2019) (finding the court lacked subject matter jurisdiction to hear plaintiff's complaint requesting money damages and injunctive relief for allegedly wrongful denial of his application for disability retirement by NYCERS), appeal filed (Fed. Cir. June 6, 2019).

Finally, Rule 11 of the Rules of The United States Court of Federal Claims (RCFC) 2019 requires that, by filing a complaint in this court, the plaintiff represents that "the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for the establishment of new law." RCFC 11(b)(3) (2019). RCFC 11 provides that the court may "impose sanctions on parties who file frivolous lawsuits with no basis in fact or law." Kissi v. United States, 102 Fed. Cl. 31, 36 (2011), aff'd, 493 F. App'x 57 (Fed. Cir. 2012).[4] RCFC 11 states that sanctions should be limited to what is "sufficient to deter repetition of such conduct or comparable conduct by others similarly situated," and permits the imposition of nonmonetary sanctions.

In an order filed recently on September 11, 2019 in Allen v. United States, Case No. 19-1305C (Fed. Cl. Sept. 11, 2019), Judge Campbell-Smith of this court issued an anti-filing injunction barring the plaintiff, Walter Allen, from filing any new complaints with this court without first obtaining leave from the Chief Judge of the United States Court of Federal Claims "[b]ecause plaintiff has repetitively filed complaints which needlessly consume the resources of the court . . . ." Allen v. United States, Case No. 19-1305C (Fed. Cl. Sept. 11, 2019). As in Judge Campbell-Smith's case, this court finds no plausible or colorable claim within its jurisdiction in the case currently before this court, Case No. 19-1303C. Moreover, plaintiff's request for "the amt. I wrote in section (4) 900,000.000.000.000.00 $ (nine hundred Trillion dollars)" as well as "one hundred million

[4] Although in an unpublished opinion, the United States Court of Appeals for the Federal Circuit has recently affirmed the imposition of sanctions on pro se parties who file frivolous claims. See O'Diah v. United States, 722 F. App'x 1001, 1004 (Fed. Cir. 2018) ("[W]e have previously imposed anti-filing sanctions where a pro se litigant has engaged in repeated and frivolous lawsuits.").

zillion dollars" is unreasonable on its face. This court agrees that based on plaintiff's litigation history and review of the case currently before this court, the appropriate sanction is to bar plaintiff from filing any future complaints without first obtaining leave to file from the Chief Judge of the United States Court of Federal Claims. This court, therefore, instructs the Clerk of the Court to strictly enforce this policy and require the referral of any cases filed by Mr. Walter Allen to the Chief Judge before any future cases submitted by him are filed and placed on the docket of this court. See Bergman v. Dep't of Comm., 3 F.3d 432, 435 (Fed. Cir. 1993) (barring the filing of future appeals by plaintiff without judicial review and approval of the appeal after referral to a judge for screening); Leffebre v. United States, 129 Fed. Cl. 48, 55 (2016) ("The Clerk is further directed to accept no other actions or filings by [plaintiff] without an order from the Chief Judge of the United States Court of Federal Claims."); Aldridge v. United States, 67 Fed. Cl. 113, 124 (2005) ("Plaintiff is further ORDERED to cease filing any further action related to Plaintiff's eviction from the Property in the United States Court of Federal Claims. The Clerk of the Court is directed to accept no filing from Plaintiff, without an Order of the court approving the filing.") (emphasis in original); Hornback v. United States, 62 Fed. Cl. 1, 6 (2004) ("To prevent abuse of the judicial process by plaintiff," the court barred future filings by plaintiff "absent advance written permission by a judge of this court."), aff'd, 405 F.3d 999 (Fed. Cir.), reh'g en banc denied (2005); Anderson v. United States, 46 Fed. Cl. 725, 731 (2000) ("The clerk of the court is further directed not to file any pleadings or documents of any kind, submitted by plaintiff in this court, without the advance written permission of a judge from this court."), aff'd, 4 F. App'x 871 (Fed. Cir.), cert. dismissed, 533 U.S. 926, reconsid. denied, 534 U.S. 809 (2001).

CONCLUSION

For the reasons discussed above, plaintiff's complaint is **DISMISSED**, with prejudice, for lack of subject matter jurisdiction. The Clerk of the Court shall enter **JUDGMENT** consistent with this Order dismissing plaintiff's complaint and is further directed to accept no future filings from this plaintiff without first obtaining leave from the Chief Judge of the United States Court of Federal Claims.

IT IS SO ORDERED.

MARIAN BLANK HORN
Judge

In the United States Court of Federal Claims

No. 19-1303 C
Filed: October 22, 2019

WALTER ALLEN

v.

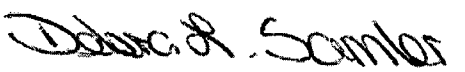
JUDGMENT

UNITED STATES

Pursuant to the court's Order, filed October 22, 2019,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff's complaint is dismissed, with prejudice, for lack of subject-matter jurisdiction.

Lisa L. Reyes
Clerk of Court

By: 

Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is $505.00.

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

WALTER L. ALLEN,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1945

Appeal from the United States Court of Federal Claims in No. 1:19-cv-01303-MBH, Senior Judge Marian Blank Horn.

ON MOTION

PER CURIAM.

ORDER

Walter L. Allen moves for leave to proceed *in forma pauperis*. The court considers whether this appeal must be dismissed as untimely.

On October 22, 2019, the United States Court of Federal Claims issued an order dismissing Mr. Allen's complaint. The Court of Federal Claims entered judgment the

Appendix C.