

Appendix "A"

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

JOSEPH JOHNSON,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2017-2569, 2018-1021, 2018-1091

Appeals from the United States Court of Federal
Claims in No. 1:17-cv-00353-BAF, Senior Judge Bohdan
A. Futey.

ON PETITION FOR REHEARING EN BANC

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

PER CURIAM.

O R D E R

Appellant Joseph Johnson filed a petition for rehearing en banc. The petition was first referred as a petition for rehearing to the panel that heard the appeals, 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 March 13, 2018.

FOR THE COURT

March 6, 2018

Date

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

Appendix "C"

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

JOSEPH JOHNSON,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2017-2569, 2018-1021, 2018-1091

Appeals from the United States Court of Federal
Claims in No. 1:17-cv-00353-BAF, Senior Judge Bohdan
A. Futey.

Decided: January 12, 2018

JOSEPH JOHNSON, St. Louis, MO, pro se.

AGATHA KOPROWSKI, Commercial Litigation Branch,
Civil Division, United States Department of Justice,
Washington, DC, for defendant-appellee. Also represent-
ed by CHAD A. READLER, ROBERT E. KIRSCHMAN, JR.,
PATRICIA M. MCCARTHY.

Before MOORE, WALLACH, and STOLL, *Circuit Judges*.

PER CURIAM.

Joseph Johnson appeals the U.S. Court of Federal Claims' ("Claims Court") dismissal of his complaint for lack of subject matter jurisdiction and denial of his motions for declaratory judgment. Because the Claims Court did not err in dismissing the complaint or denying Mr. Johnson's motions, we *affirm*.

BACKGROUND

On March 15, 2017, Mr. Johnson filed a complaint in the Claims Court alleging several causes of action against various federal and non-federal individuals and entities. The government moved to dismiss the complaint for lack of subject matter jurisdiction. The Claims Court granted the motion. It concluded that it lacked jurisdiction over the discernable allegations in Mr. Johnson's complaint. It concluded that all claims accruing before March 15, 2011 were barred by the six-year statute of limitations under 28 U.S.C. § 2501 and that it lacked jurisdiction over claims against entities that are not the United States. It concluded it lacked jurisdiction over Mr. Johnson's tort claims and claims relying on provisions that do not create a right for money damages against the United States. It concluded that it lacked jurisdiction over Mr. Johnson's state and common law claims, and that it lacked jurisdiction over Mr. Johnson's Civil Rights Act claims because they must be brought in a federal district court.

Mr. Johnson also moved for "Partial Declaratory Judgment-Default." The Claims Court denied the motions, holding that the government had timely moved to dismiss before the May 15, 2017 deadline to respond to Mr. Johnson's complaint pursuant to RCFC 12(a)(1)(A).

Mr. Johnson timely appealed. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(3).

DISCUSSION

We review the Claims Court's dismissal for lack of jurisdiction de novo and its fact findings for clear error. *Coast Prof'l, Inc. v. United States*, 828 F.3d 1349, 1354 (Fed. Cir. 2016). Mr. Johnson bears the burden of establishing jurisdiction by a preponderance of the evidence. *Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1163 (Fed. Cir. 2011). We accept his undisputed allegations as true and draw all reasonable inferences in his favor. *Id.* As Mr. Johnson is a pro se appellant, we liberally construe his filings. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). ~ 36

The jurisdiction of the Claims Court is set forth in the Tucker Act, 28 U.S.C. § 1491(a), but it does not itself create a right enforceable against the United States. *Alvarado Hosp., LLC v. Price*, 868 F.3d 983, 991 (Fed. Cir. 2017). To establish Claims Court jurisdiction under the Tucker Act, a plaintiff must identify a substantive law that creates the right to money damages against the United States. *Id.*

The Claims Court properly dismissed Mr. Johnson's complaint for lack of jurisdiction. Mr. Johnson argues the Claims Court erred by dismissing his complaint for failure to allege a contract between him and the government since his complaint alleges other actions that would grant jurisdiction, such as "civil injury and Title III felony." The Claims Court, however, did not dismiss Mr. Johnson's complaint simply because it failed to identify a contract between him and the government. It recognized that it has jurisdiction over certain non-contract claims against the United States and analyzed each of Mr. Johnson's allegations and concluded that it did not have jurisdiction over any of his claims. It concluded, for example, it lacked jurisdiction over Mr. Johnson's criminal allegations because they arise from statutes that do not create the right to money damages against the United States. *See*

Alvarado Hosp., 868 F.3d at 991. On appeal, Mr. Johnson does not identify a money-mandating criminal statute against the government that would establish jurisdiction. Mr. Johnson also does not identify which civil injury gives the Claims Court jurisdiction over his complaint. The Claims Court did not err by dismissing his complaint because Mr. Johnson failed to allege facts that would establish jurisdiction.

Mr. Johnson also argues the government defaulted on April 3, 2017, when it failed to timely respond to his motion filed on March 15, 2017. Claims Court Rule 55(a) provides that the clerk must enter default if the party “has failed to plead or otherwise defend.” The government’s response to Mr. Johnson’s complaint, however, was not due until May 15, 2017 under RCFC 12(a)(1)(A). The government timely moved to dismiss on May 12, 2017, and did not “fail[] to plead.” See RCFC 55(a). The Claims Court did not err in finding the government did not default or in denying Mr. Johnson’s two motions for declaratory judgment.

We have considered Mr. Johnson’s remaining arguments and find them unpersuasive.

CONCLUSION

For the foregoing reasons, the decision of the Claims Court is *affirmed*.

AFFIRMED

COSTS

No costs.

In the United States Court of Federal Claims

No. 17-353
(Filed: August 11, 2017)

App G

JOSEPH JOHNSON,

Pro Se Plaintiff,

v.

THE UNITED STATES,

Defendant.

Joseph Johnson, St. Louis, Missouri, Plaintiff, *pro se*.

Agatha Koprowski, U.S. Department of Justice – Civil Division, Washington DC, Counsel for defendant.

OPINION

FUTEY, Sr. Judge.

On March 15, 2017, plaintiff, Joseph Johnson, proceeding *pro se*, filed a one hundred and ten page complaint alleging a variety of purported causes of action against numerous Federal and non-Federal individuals and entities consisting of twenty-six counts accompanied by a listing of fifty-four state and federal statutes, constitutional provisions, executive orders and common law causes of action. Named defendants include the United States, Barack H. Obama, former President, c/o Donald J. Trump, President, executive agencies and their officers, federal judges

and clerks, Missouri cities, Missouri executive agencies and their officers, state judges and clerks, and private companies and their employees.

On May 12, 2017, defendant filed a motion to dismiss the complaint for lack of subject-matter jurisdiction.

BACKGROUND

The background presented here is taken entirely from plaintiff's complaint. The thrust of Johnson's complaint centers around four fact patterns that transpired over the past twenty-nine years. First, plaintiff alleges an ongoing conspiracy between state and federal governments to electronically surveil him using ISMI catchers¹ (also called "Stingrays," Def. Mot. to Dismiss 1 n.1) and pin register devices² without first obtaining proper warrants. These alleged actions deprived plaintiff of his Constitutional rights and violated a multitude of laws. Second, plaintiff's relative, of unknown kinship, allegedly died in the St. Louis University Hospital under suspicious circumstances. According to plaintiff, post-mortem, either the hospital or St. Louis University took the relative's brain during an unauthorized autopsy performed without the estate's consent. Local officials allegedly neglected their duty to properly investigate the death, brain theft, or autopsy. Third, plaintiff asserts claims on behalf of other relatives whose kinship is

¹ "An [ISMI] is a unique identifier that is carried on the phone . . . and is sent to the network for connectivity." Gus Hosein & Caroline Wilson Palow, *Modern Safeguards for Modern Surveillance: An Analysis of Innovations in Communications Surveillance Techniques*, 74 OHIO ST. L.J. 1071, 1081 n.50 (2013).

² Pin registers collect dialing information from phones. *See generally, In re Certified Question of Law*, No. 16-01, 2016 WL 8923919 (FISA Ct. Rev. Apr. 14, 2016).

also unknown, for example, a fourteen-year-old Social Security Administration (SSA) benefit recipient's father was denied the right to act as her guardian *ad litem*, and she lost her benefits during subsequent litigation. Finally, Mr. Johnson recounts numerous procedural and substantive defects allegedly arising in the course of prior litigation within the Eighth and D.C. Circuits, and during his petitions for writs of *certiorari* to the Supreme Court.

Plaintiff unsuccessfully filed multiple complaints, appeals and writs of *certiorari* within the Eastern District Court of Missouri, Eighth and D.C. Circuits, and U.S. Supreme Court, protesting the Government's actions. The courts dismissed the suits as "frivolous," "fanciful" or "malicious." Subsequently, the appeals and petitions for writs of *certiorari* were denied. *E.g.*, *Johnson v. United States*, No. 15-cv-00578-UNA (D.D.C. Apr. 13, 2015) (dismissing as frivolous); *Johnson v. Obama*, No. 4:14-cv-00504-SNLJ (E.D. Mo. Apr. 10, 2014) (dismissing as frivolous), *appeal dismissed*, No. 14-2074 (8th Cir. Jun. 13, 2014) (dismissing for failure to prosecute), *cert. denied*, No. 13-10381 (Oct. 6, 2014); *Johnson v. United States*, No. 4:12-cv-2155-CAS (E.D. Mo. Nov. 20, 2012) (dismissing as frivolous), *vacated by* No. 4:12-cv-2155-CAS (E.D. Mo. Dec. 3, 2012) (reassigning to another judge), *reh'g*, No. 4:12-cv-2155-AGF (E.D. Mo. Dec. 10, 2012) (dismissing as fanciful), *aff'd*, No. 13-1011 (8th Cir. Feb. 22, 2013); *Jeffrey Johnson, Joseph Johnson, Jasmine Johnson v. United States*, No. 4:12-cv-00896-JAR (E.D. Mo. May 23, 2012) (dismissing as malicious), *appeal dismissed*, No. 12-3700 (8th Cir. Nov. 20, 2012), *cert. denied*, No. 12-8617 (S. Ct. Apr. 1, 2013).

a. Alleged Conspiracy to Surveil Plaintiff

Plaintiff alleges his reasonable expectation to privacy was violated through long-term government surveillance. He first sought redress for the surveillance in State court in 1988 to no avail. More recently, in 2009 and 2010, disclosures obtained under the Freedom of Information

Act, 5 U.S.C. § 552, allegedly revealed the National Security Agency (NSA) was assisting the Central Intelligence Agency (CIA)'s domestic spying program and targeting plaintiff within the State of Missouri. The complaint further alleges that Verizon and AT&T provided the Government access to plaintiff's telephonic communications. The Federal Bureau of Investigation (FBI), Department of Justice (DOJ) and Department of Homeland Security (DHS) did not prevent or stop the NSA and CIA's ongoing surveillance. Likewise, neither the President of the United States nor Missouri's governor intervened on plaintiff's behalf. Plaintiff further alleges that Congress, by funding the offending government agencies, is also responsible for their wrongdoings.

b. Alleged Death Under Suspicious Circumstances

Plaintiff claims that during or just prior to 1987, P.D. Johnson, a member of plaintiff's family, passed away. Then, in 1988, that estate's administrator died under suspicious circumstances while under the care of an attending physician at St. Louis University Hospital. Subsequently, plaintiff alleges, the administrator's brain was taken during an unauthorized autopsy conducted by a hospital pathologist. Despite the estate's request, the administrator's brain was never returned.

Furthermore, the hospital allegedly failed to report the suspicious death occurring at the medical facility to the City of St. Louis's Medical Examiner. The estate reported the death, but the City's medical examiner found nothing unusual in the hospital's actions during the autopsy and did not investigate the death any further.

c. Alleged Social Security Administration Takings

The complaint alleges that in 2008, the SSA allegedly seized property from plaintiff's fourteen-year-old relative, a benefit recipient. During the SSA proceeding, the court denied her father's request to act as guardian *ad litem*. There is no explanation, however, why he was not already her guardian, or why he made the unusual request to act as his own daughter's guardian *ad litem*.

First, an Administrative Law Judge (ALJ) made a "fully favorable" ruling for the minor. Then, the SSA appealed and the case was remanded to another ALJ because the appeals court suspected the first ALJ of bias. The outcome on remand, however, is unclear in the complaint. Plaintiff claims the loss of benefits was a Fifth Amendment taking, among other allegations.

d. Alleged Procedural and Substantive Misconduct During Related Proceedings

Plaintiff's complaint is rife with accusations of alleged misconduct occurring throughout the prior litigation. Some examples include, *inter alia*, that: Supreme Court Justices showed racial animus and a lack of impartiality; Eighth Circuit's displayed political favoritism; a state court judge impersonated a federal magistrate; and judges and government lawyers secretly communicated about pending matters. A common theme of "racial and class animus" against the plaintiff also runs throughout the allegations.

e. Relief Sought

Plaintiff seeks \$16,100,000,000 relief from defendant United States; \$3,900,000,000 from the State of Missouri; \$2,000,000 from each of defendants St. Louis County, City of St. Louis, City of Dellwood and City of Pine Lawn, Missouri; the sum of \$400,000 from Angelia Corp., Verizon, and AT&T; the sum of \$100,000 from B&W Sensors, LLC and Missouri

Department of Revenue; \$48,000,000 from St. Louis University Hospital; \$5,500,000 from Andrew Berg, attorney; \$100,000 from Clyde Cahill and Kevin Kelly, attorneys; \$2,500,000 from Farrell, Hummel, Constance & Tucka, Attorneys at Law, of St. Louis, Missouri; \$1 from Rita Johnson; and an undisclosed amount of restitution from the Social Security Administration. Additionally, plaintiff seeks \$144,000,000 in attorney's fees pursuant to 42 U.S.C. § 1988 (permitting a court to award the prevailing party reasonable attorney's fees in a "proceedings in vindication of civil rights").

PROCEDURAL HISTORY

On March 15, 2017, plaintiff filed his complaint with this Court accompanied by a motion to proceed in *forma pauperis*. The Government replied with a motion to dismiss pursuant to Rule 12(b)(1) of the Rules of the Court of Federal Claims (RCFC) on May 12, 2017. Plaintiff's response to the motion was filed on June 19, 2017, and defendant's reply to that response was filed on June 27, 2017. Defendant's motion to dismiss is fully briefed before the Court at this juncture.

Plaintiff additionally filed two motions for "Partial Declaratory Judgment-Default." The first motion accompanied the complaint on March 15, 2017. A second motion followed on April 10, 2017. In an Order dated June 7, 2017, the Court denied both motions. Pursuant to RCFC 12(a)(1)(A), defendant, was required to respond to plaintiff's complaint on or before May 15, 2017. The Government responded by filing a timely motion to dismiss on May 12, 2017. Furthermore, default judgments are governed by RCFC 55. Plaintiff cannot obtain such a judgment against the United States.

On June 5, 2017, plaintiff filed four additional motions: an amended motion for declaratory judgment, a motion to submit exhibits and for other purposes, a motion to strike

defendant's motion for leave to file out of time, and a motion to participate in proceedings by phone. On June 14, 2017, defendant filed a motion to stay briefing on plaintiff's June 5, 2017 motions. This Court granted defendant's motion on June 16, 2017, and stayed briefing on plaintiff's outstanding motions in order for the Court to first resolve the question it now addresses: whether it has jurisdiction.

Following the June 16, 2017 Order, plaintiff filed a "Motion to Vacate Order to Stay and Motion Enjoining Defendant's Ex Parte Filing to Stay Briefing-Strike Motion and Motion for Other Purposes 'Incorporated' Fed. R. Civ. Proc" on June 26, 2017. This motion was returned unfiled because there is no provision in the rules for the filing of such an item. Plaintiff's May 4 and 15, 2017, submissions, were also returned unfiled because they were missing the required proof of service.

DISCUSSION

Standard of Review for RCFC 12(b)(1) and Pro Se Litigants

In rendering a decision on a motion to dismiss for lack of subject-matter jurisdiction pursuant to RCFC 12(b)(1), this Court must presume all factual allegations to be true and must construe all reasonable inferences in plaintiff's favor. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 696 (2009); *Catawba Indian Tribe of S.C. v. United States*, 982 F.2d 1564, 1568–69 (Fed. Cir. 1993) ("In reviewing the propriety of this dismissal, we take as true the facts alleged [in the complaint].") (citing *W.R. Cooper General Contractor, Inc. v. United States*, 843 F.2d 1362, 1364 (Fed. Cir. 1988)).

The Court recognizes that plaintiff is proceeding *pro se* and his allegations should be "liberally construed" because he is without counsel's assistance. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)); *Haines v. Kerner*, 404 U.S.

519, 520 (1972), *reh'g denied* 405 U.S. 948 (1972) (requiring allegations in a *pro se* complaint, “however inartfully pleaded” be held “to less stringent standards than formal pleadings drafted by lawyers”). Here, an honest effort was put forth to understand plaintiff’s lengthy complaint and discern any legal arguments contained within it. “Indeed, it has been the tradition of this court to examine the record ‘to see if [a *pro se*] plaintiff has a cause of action somewhere displayed.’” *Gable v. United States*, 106 Fed. Cl. 294, 296–97 (2012) (quoting *Ruderer v. United States*, 412 F.2d 1285, 1292 (Ct. Cl. 1969) (alteration in original)). The Court will overlook ambiguity, but it will not “create a claim which [plaintiff] has not spelled out in his pleading.” *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)) (alteration in original).

“The United States, as sovereign, is immune from suit save as it consents to be sued, and the terms of its consent to be sued in any court define that court’s jurisdiction to entertain the suit.” *United States v. Sherwood*, 312 U.S. 584, 586 (1941) (citations omitted). Under the Tucker Act, this Court’s primary grant of jurisdiction, the Government consented to suit for three claim types: (1) those “pursuant to contracts with the United States;” (2) claims “to recover illegal exactions of money by the United States;” and (3) claims “brought pursuant to money-mandating statutes, regulations, executive orders, or constitutional provisions.” *Roth v. United States*, 378 F.3d 1371, 1384 (Fed. Cir. 2004).

The plaintiff bears the burden of establishing this court’s subject matter jurisdiction by a preponderance of the evidence. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988). “[T]he leniency afforded to a *pro se* litigant . . . does not relieve the burden to meet jurisdictional requirements.” *Minehan v. United States*, 75 Fed. Cl. 249, 253 (2007) (citing *Kelley v. Sec’y, U.S. Dep’t of Labor*, 812 F.2d, 1378, 1380 (Fed. Cir. 1987)). If the court does not

find jurisdiction, it must dismiss the action. *Matthews v. United States*, 72 Fed. Cl. 274, 278 (2006), *reconsideration denied* by 73 Fed. Cl. 524 (2006); *see also* RCFC 12(h)(3).

Plaintiff fails to state a claim that establishes this Court's jurisdiction by a preponderance of the evidence. All discernable allegations in the complaint are either barred by the statute of limitations, against defendants outside the Court's jurisdiction, or rely on provisions which are either not money-mandating or explicitly convey original jurisdiction to other courts.

A. Several Allegations are Barred by the Statute of Limitations

All actions in the Court of Federal Claims must be filed within six years of the date the claim first accrued. 28 U.S.C. § 2501. Any claims that accrued more than six years before the complaint's filing date are barred and cannot be heard by this Court. *Id.* Plaintiff filed his complaint on March 15, 2017, therefore all claims accruing before March 15, 2011, can no longer be raised here. The complaint contains several alleged claims, including mail fraud in 2010 and various complaints against the Social Security Administration from 2008, which accrued more than six years ago and must be dismissed.

B. The Complaint States Claims Against Defendants Outside this Court's Jurisdiction

I. This Court Lacks Jurisdiction over Plaintiff's Claims Against Entities that are not the United States

The United States is the only proper defendant in this Court. *United States v. Sherwood*, 312 U.S. 584, 588 (1941); *Stephenson v. United States*, 58 Fed. Cl. 186, 190 (2003); *Stewart v. United States*, 130 Fed. Cl. 172, 178 (2017) ("It is . . . well-established that this court does not have jurisdiction to hear any claims against defendants other than the United States").

Additionally, the Tucker Act does not grant jurisdiction over suits against federal officers or any

other individuals because they are not the United States. *Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997); *Stephenson v. United States*, 58 Fed. Cl. 186, 190 (2003), 28 U.S.C. § 1491(a). “Claims for relief sought against any other party, including officers of the United States government and any other individual, ‘must be ignored as beyond the jurisdiction of the court.’” *Matthews*, 72 Fed. Cl. at 279 (quoting *Sherwood*, 312 U.S. at 588, 61 S.Ct.767).

Almost all of plaintiff’s allegations are against individuals and organizations that cannot properly be characterized as the United States. Count 1, for example, lists as defendants the President, Congress, Missouri’s Governor and General Assembly, judges, clerks, Attorney Generals, prosecutors, directors of executive agencies, Verizon, AT&T, Charter Communications, and Angelica Corp. None of those defendants are the United States for the purposes of Tucker Act jurisdiction.

Plaintiff mistakenly relies on a *Bivens* theory to allege the United States’ responsibility for constitutional violations by federal officials. In *Bivens*, the Supreme Court held that a party whose Fourth Amendment rights were violated could, under certain circumstances, bring an action against a government official. *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 395–97 (1971). A *Bivens* action is against individuals, not the United States, and falls outside the Tucker Act’s reach and outside this Court’s jurisdiction. *Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997); 28 U.S.C. § 1491(a).

II. This Court Lacks Jurisdiction to Review Other Court’s Actions, even when the Complaint States a Claim for Damages

Plaintiff appears to seek damages for the actions and decisions of other court’s judges and clerks, both state and federal, but does not ask directly this Court to review their decisions. Plaintiff’s complaint includes, among others, the following allegations: federal judges obstructed

justice and violated RICO; officers and clerks of federal and state courts denied plaintiff's right to honest service by those courts; judges falsely assumed the identity of another federal or state employee or office holder; judicial officers engaged in illegal contacts or communications and altered official records; judicial impartiality was effected by a person exercising undue influence over a judicial officer; judges made false assertions and engaged in corrupt practices; and judges violated Executive Order 11222 prescribing ethical standards. Nevertheless, this Court's jurisdiction prevents review of other courts' decisions and adjudicating the appropriateness of their officers' actions, even when the action is brought as a claim for damages. *Jones v. United States*, 655 F. App'x 839, 841 (Fed. Cir. 2016).

C. The Complaint Relies on Provisions that are not Money-Mandating or are Otherwise Statutorily Outside the Court of Federal Claims' Jurisdiction

Plaintiff nowhere alleges a cognizable claim related to a contract with the United States nor an illegal exaction of money by the United States.³ He is obliged to rely on the Court's jurisdiction over money-mandating provisions. Unless a provision mandates the payment of money damages, there is no jurisdiction to hear the claim. *United States v. Testan*, 424 U.S. 392, 398–99 (1976). The plaintiff must therefore identify an independent source that can fairly be interpreted as creating a right to money damages from the United States arising out a statute,

³ Plaintiff alleges the Government "infringed" a contract in violation of 42 U.S.C. § 1981 and 18 U.S.C. § 371, but the particulars of the allegation and any related claims are incognizable. Furthermore, § 1981 is a civil rights provision and § 371 is a criminal provision, neither of which are appropriate basis for this Court's jurisdiction.

regulation, or constitutional provision. *Id.* at 400; *Jan's Helicopter Serv., Inc. v. Fed. Aviation Admin.*, 525 F.3d 1299, 1306 (Fed. Cir.2008).

When a complaint is filed, this Court must first determine whether the provisions relied upon within it are indeed money-mandating. *Fisher v. United States*, 402 F.3d 1167, 1173 (Fed. Cir. 2005). If the provisions are money-mandating, the action can proceed, but if not, it must be dismissed under RCFC 12(b)(1) for lack of subject matter jurisdiction. *Id.* To earn this Court's ear, a claimant shall only rely on a provision which "can[] be held to command, in itself and as correctly interpreted, the payment of money to the claimant." *Eastport S. S. Corp. v. United States*, 372 F.2d 1002, 1008 (Ct. Cl. 1967) *abrogated in part on other grounds by Malone v. United States*, 849 F.2d 1441, 1444–45 (Fed.Cir.1988). He cannot invoke any "other principle of damages . . . for recovery." *Id.*

I. This Court Lacks Jurisdiction to Hear Claims Arising Under the Administrative Procedures Act

The Administrative Procedure Act (APA) is not a money-mandating statute. 5 U.S.C. § 702. It provides that actions "seeking relief *other than money damages* . . . shall not be dismissed" on the ground that the United States is a defendant. *Id.* (emphasis added). The APA is squarely outside Tucker Act jurisdiction because it only authorizes claims against the United States seeking non-monetary relief. *Wopsock v. Natchees*, 454 F.3d 1327, 1333 (Fed. Cir. 2006); *Faison v. United States*, 102 Fed. Cl. 637, 641 (2012). Plaintiff alleged APA violations cannot be heard by this Court. *Wopsock*, 454 F.3d at 1333; *Faison*, 102 Fed. Cl. at 641.

II. This Court Lacks Jurisdiction to Adjudicate Criminal Code Violations

Accepting plaintiff's multifarious criminal allegations as true and properly founded in the criminal codes relied on, those statutes "do not provide for the payment of monies, even if there

was a violation.” *Upshaw v. United States*, 599 F. App’x 387, 388 (Fed. Cir.) (*per curiam*), *cert. denied*, 136 S. Ct. 244 (2015) (quoting *Joshua v. United States*, 17 F.3d 378, 379 (Fed. Cir. 1994)). All accusations of criminal conduct in the complaint are outside this Court’s subject-matter jurisdiction because criminal statutes are not money-mandating. *See id.*

III. This Court Lacks Jurisdiction to Hear Plaintiff’s Claims Founded in Constitutional Amendments, Except the Fifth Amendment’s Takings Clause, Because they are not Money-Mandating Provisions

“A suit, even one which may ‘intimately involve the Constitution,’ is beyond the jurisdiction of this court unless based on a provision that ‘command[s], in itself and as correctly interpreted, the payment of money to the claimant.’” *Featheringill v. United States*, 217 Ct. Cl. 24, 32 (1978) (quoting *Eastport S.S. Corp. v. United States*, 178 Ct. Cl. 599, 607 (1967), *abrogated in part on other grounds by Malone v. United States*, 849 F.2d 1441, 1444–45 (Fed. Cir.1988)). This Court has previously summarized its jurisdiction over those claims: “the Court of Federal Claims has clear jurisdiction only with respect to constitutional claims founded on the Takings Clause of the Fifth Amendment, as other amendments to the Constitution do not, of themselves, mandate payment for violations.” *Ogden v. United States*, 61 Fed. Cl. 44, 47 (2004) (citing *Rosano v. United States*, 9 Cl. Ct. at 142 (1985)).

Mr. Johnson alleges numerous violations of constitutional amendments throughout the complaint, including: the First Amendment’s right to free speech; Fourth Amendment’s prohibition of unreasonable searches and seizures; Fifth and Fourteenth Amendment’s Due Process and Equal Protection clauses; Sixth Amendment’s guarantees providing accused persons certain rights in criminal prosecutions; Seventh Amendment’s right to a jury trial in civil cases; Eighth Amendment’s guarantees against excessive bail, excessive fines, and cruel and unusual

punishment in criminal cases; Ninth Amendment's right to privacy; and the Tenth Amendment's mandated separation of state and federal powers.

The Court previously considered each Amendment plaintiff relies on and determined that none support jurisdiction. *United States v. Connolly*, 716 F.2d 882, 887 (Fed. Cir. 1983) (First Amendment “does not provide persons aggrieved by governmental action with an action for damages. . . .”); *Dupre v. United States*, 229 Ct. Cl. 706, 706 (1981) (Fourth Amendment “do[es] not . . . obligate the United States to pay money damages . . . therefore, we have no jurisdiction”) (quoting *Eastport Steamship Corp. v. United States*, 178 Ct. Cl. 599, 372 F.2d 1002 (1967)); *Smith v. United States*, 709 F.3d 1114, 1116 (Fed. Cir. 2013) (Fifth and Fourteenth Amendments' Due Process and Equal Protection clauses “do not mandate the payment of money and thus do not provide a cause of action under the Tucker Act”) (citing *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed.Cir.1995)); *Alston-Bullock v. United States*, 122 Fed. Cl. 38, 44 (2015) (Sixth Amendment “is not money-mandating and, therefore, jurisdiction to review these claims does not lie in this court”) (collecting cases); *Jaffer v. United States*, 67 F.3d 319 at *2 (Fed. Cir. 1995) (unpublished table decision) (*per curiam*) (Seventh Amendment does not “explicitly or implicitly obligate[] the federal government to pay damages . . . [this Amendment cannot] support a claim for relief in the Court of Federal Claims”) (citing *United States v. Connolly*, 716 F.2d 882, 886-87 (Fed. Cir.1983) (*en banc*), *cert. denied*, 465 U.S. 1065 (1984)); *Trafny v. United States*, 503 F.3d 1339, 1340 (Fed. Cir. 2007) (*per curiam*) (Eighth Amendment “is not a money mandating provision” and “[t]he Court of Federal Claims does not have jurisdiction over claims arising under [it].”) (collecting cases); *Patterson v. United States*, 218 F. App'x 987, 988 (Fed. Cir. 2007) (Ninth Amendment cannot support “a claim for money damages against the United States.”) (citing *Hamlet v. United States*, 63 F.3d 1097, 1107 (Fed.Cir.1995));

Milgroom v. United States, 651 F. App'x 1001, 1005 (Fed. Cir. 2016) (Tenth Amendment is “not tied to [a] money-mandating source[] of law, and the Claims Court does not possess jurisdiction to entertain [it].”) (collecting cases).

Plaintiff's only cognizable Constitutional claims fall under the Fifth Amendment's Takings clause, but they are outside this Court's jurisdiction for other reasons. First, plaintiff claims the alleged 1988 brain theft was a constitutional taking by the State of Missouri. Then, in 1996, \$937.50 from the deceased's estate was allegedly transferred by the Probate Division of Missouri to the State Treasury Escheat Fund in plaintiff's name but against his will. This Court, as previously stated, only has jurisdiction over claims against the United States, not the State of Missouri. Furthermore, the claims accrued before March 15, 2011 are outside the statute of limitations and are therefore untimely. 28 U.S.C. § 2501. The most recent takings claim, the 1996 funds transfer, is fifteen years too late.

IV. This Court Lacks Jurisdiction to Hear Claims Alleging Violations of the Universal Declaration of Human Rights

Plaintiff alleges violations of The Universal Declaration of Human Rights (UDHR), G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948) in Count 16. The UDHR contains exhortatory statements encouraging the signatories to abstain from any discriminatory or rights-depriving practices. It does not, however, contain any obligations enforceable against the United States. *See Pikulin v. United States*, 97 Fed. Cl. 71, 77 (2011). Nothing in the UDHR can be construed as mandating money damages because it does not create any substantive rights. *Id.*; *Gimbernati v. United States*, 84 Fed. Cl. 350, 354 (2008); *Phaidin v. United States*, 28 Fed. Cl. 231, 234 (1993). Plaintiff's claims under the UDHR, therefore, fall outside the Court's Tucker Act jurisdiction.

*V. This Court Lacks Jurisdiction to Hear Plaintiff's Claims Arising Under
Executive Orders 11222 and 12333*

The complaint sets forth alleged violations of Executive Order 11222. As a preliminary matter, Executive Order 11222 was revoked and replaced by Executive Order 12731, 55 FR 42547 (Oct. 17, 1990). The two orders, however, have the same purpose: setting standards of ethical conduct for government officers and employees. This Court considered plaintiff's allegations of Executive Order 11222 violations as directed towards Executive Order 12731.

The bulk of plaintiff's complaint is comprised of allegations that, if true, are potential Executive Order 12731 violations. Whether any violations occurred, however, is not a question for this Court. The order, by its own terms, "is intended only to improve the internal management of the executive branch." Executive Order 12731 § 504. There is no language within the order supporting the conclusion that it creates a right of recovery in damages and plaintiff points to none in his complaint. *See Fisher v. United States*, 402 F.3d 1167, 1173–74 (Fed. Cir. 2005) ("[A] statute creating a Tucker Act right [must] be reasonably amenable to the reading that it mandates a right of recovery in damages . . .") (citing *White Mountain*, 537 U.S. 465, 472–73 (2003)).

Additionally, plaintiff alleges that government actions taken under the direction of Executive Order 12333 violated his reasonable expectation to privacy, among other things. Executive Order 12333, as amended by Executive Orders 13284 (2003) and 13470 (2008), is directed towards intelligence activities. Particularly, it relates to the duties of various executive officers and the collection and dissemination of intelligence between government agencies. Like Executive Order 12731, Executive Order 12333 contains only provisions pertaining to internal executive branch management and actions, and it does not lend itself to a reading that it

“mandates a right of recovery in damages.” *See Fisher v. United States*, 402 F.3d 1167, 1173–74 (Fed. Cir. 2005).

VI. This Court Lacks Jurisdiction to Hear Plaintiff’s State Law Claims and Common Law Causes of Action

Plaintiff seeks redress for a multitude of claims arising under the laws and constitutions of the States of Missouri and Ohio, as well as common law causes of action. For example, count one alleges state and government actors failed to investigate or prosecute an offense that violated Missouri laws against criminal conspiracy, and count ten alleges state and federal government agents installed wiretaps at plaintiff’s residence, violating Missouri laws against unlawful entry. “Except as Congress has consented there is no jurisdiction in the Court of [Federal] Claims . . . to entertain suits against the United States,” and Congress has not consented to suit for violations of the laws of Missouri or any other state in this Court. *Sherwood*, 312 U.S. 584, 586–88 (1941); *Souders v. S.C. Pub. Serv. Auth.*, 497 F.3d 1303, 1307 (Fed. Cir. 2007) (“Claims founded on state law are also outside the scope of the limited jurisdiction of the Court of Federal Claims.”); *see also* 28 U.S.C. § 1491(a)(1). Nor, does the Tucker Act’s consent to suit “extend to common law causes of action.” *Ramirez v. United States*, 36 Fed. Cl. 467, 472 (1996). Until Congress provides consent, this Court has no jurisdiction over state law and common law actions.

VII. This Court Lacks Jurisdiction to Hear Tort Claims

The Tucker Act explicitly excludes tort claims from this Court’s jurisdiction. 28 U.S.C. § 1491(a)(1) (“The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States . . . in cases *not sounding in tort*.”) (emphasis added). Plaintiff relies on the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, to argue for jurisdiction. This Court, however, lacks jurisdiction over claims under the FTCA.

Rothing v. United States, 132 Fed. Cl. 387, 390 (2017). Plaintiff's tort claims, like all tort claims, do not fall under this Court's jurisdiction because "[t]he plain language of the Tucker Act excludes from the Court of Federal Claims jurisdiction claims sounding in tort." *Rick's Mushroom Serv., Inc. v. United States*, 521 F.3d 1338, 1343 (Fed. Cir. 2008).

VIII. This Court Lacks Jurisdiction over Civil Rights Act Claims Because they Must be Brought in District Court

Section 1343 of Title 28 provides the federal District Courts original jurisdiction over any relief requested under an "Act of Congress providing for the protection of civil rights." 28 U.S.C. § 1343(a)(4). Plaintiff rests claims on various provisions of the Civil Rights Act, including 28 U.S.C. §§ 1981, 1983, 1985, 1986, and 2000e. The Civil Rights Act is an Act of Congress and provides for the protection of civil rights. *See Rogers v. United States*, 14 Cl. Ct. 39, 50 (1987), *aff'd*, 861 F.2d 729 (Fed.Cir.1988), *cert. denied*, 490 U.S. 1034 (1989). This Court has no jurisdiction to consider those claims because they are exclusively within the jurisdiction of the district courts. 28 U.S.C. § 1343(a)(4); *see also Pikulin v. United States*, 97 Fed. Cl. 71, 77 (2011); *Marlin v. United States*, 63 Fed. Cl. 475, 476 (2005).

Plaintiff also demands a jury trial, however, "[b]y filing in the Court of Federal Claims, one waives the right to a jury trial." *Arunga v. United States*, 465 F. App'x 966, 967 n.2 (Fed. Cir. 2012) (citing *James v. Caldera*, 159 F.3d 573, 589–90 (Fed. Cir. 1998)).

CONCLUSION

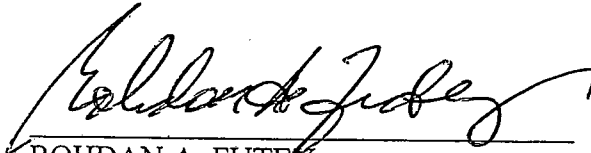
Plaintiff's motion to proceed *in forma pauperis* is hereby GRANTED for the limited purpose of permitting the Court to examine whether it has jurisdiction as to plaintiff's claims.

For the above-stated reasons, this Court has no subject-matter jurisdiction over any discernable claims in plaintiff's complaint. Therefore, defendant's Motion to Dismiss is GRANTED and plaintiff's complaint is hereby DISMISSED.

Furthermore, IT IS ORDERED that Mr. Johnson is enjoined from filing any new documents with this Court without first obtaining leave to do so. In the event that the Court grants a motion for leave to file, Mr. Johnson will be required to pay, in full, the Court's filing fee in order to proceed.

The Clerk of the Court is directed to enter judgement accordingly. No costs.

IT IS SO ORDERED.


BOHDAN A. FUTEY
Senior Judge

**Additional material
from this filing is
available in the
Clerk's Office.**