

set forth below, plaintiff's complaint must be **DISMISSED** for lack of subject matter jurisdiction under Rule 12(h)(3)¹ of the Rules of the Court of Federal Claims ("RCFC").

I. BACKGROUND

The following factual allegations are taken from the complaint. Plaintiff alleges various "criminal federal felony offenses" afflicted on her by the State of Texas, in connection with her imprisonment in two Texas county jails and her stay in two Texas state hospitals. Compl. at 1, 3. Specifically, plaintiff argues that she was falsely accused, wrongfully arrested, and wrongfully imprisoned by the State of Texas. *Id.* at 4. Plaintiff also details several criminal and tortious allegations against the State of Texas and various Texas law enforcement personnel, social workers, doctors, and judges, including: felony criminal conspiracy, *id.* at 4; wrongful arrest, *id.*; assault, *id.* at 4, 8, 9-10, 11, 15, 19, 20; official misconduct, *see, e.g., id.* at 4, 5, 8, 18; breach of duty, *id.* at 4; libel and slander, *id.* at 4, 14; rape, *id.* at 6, 13, 19; harassment, *id.* at 7, 11; murder and attempted murder, *id.* at 9, 11; illegal confinement in a mental hospital, *id.* at 13; theft, *id.* at 16; and "fraudulent activity," *id.* at 19. To redress her alleged injuries, plaintiff seeks a declaration from this court that she is not mentally incompetent or incapacitated, a declaration from this court that the State of Texas is guilty of violating federal law, and \$700,000 in monetary damages. *Id.* at 22-23.

¹ Rule 12(h)(3) states: "If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action."

II. STANDARD OF REVIEW

Whether the court possesses jurisdiction to decide the merits of a case is a threshold matter the court must decide. See PODS, Inc. v. Porta Stor, Inc., 484 F.3d 1359, 1364 (Fed. Cir. 2007) (citing Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998)). Jurisdiction is a threshold matter because a case cannot proceed if a court lacks jurisdiction to hear it. See Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006) (“[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety.” (citation omitted)). The parties or the court sua sponte (on its own) may challenge the existence of subject matter jurisdiction at any time. Folden v. United States, 379 F.3d 1344, 1354 (Fed. Cir. 2004). A court’s decision to address jurisdictional issues is mandated by law. John R. Sand & Gravel Co. v. United States, 457 F.3d 1345, 1353 (Fed. Cir. 2006) (citing Consolidation Coal Co. v. United States, 351 F.3d 1374, 1378 (Fed. Cir. 2003)), aff’d, 552 U.S. 130 (2008). RCFC 12(h)(3) requires that “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”

When considering whether to dismiss a complaint for lack of jurisdiction, a court assumes that “the allegations stated in the complaint are taken as true and jurisdiction is decided on the face of the pleadings.” Folden v. United States, 379 F.3d 1344, 1354 (Fed. Cir. 2004) (quoting Shearin v. United States, 992 F.2d 1195, 1195-96 (Fed. Cir. 1993)). A pro se plaintiff is entitled to a liberal construction of the pleadings. See, e.g., Erickson v. Pardus, 551 U.S. 89, 94 (2007). However, a pro se plaintiff must still satisfy the court’s jurisdictional requirements. Bernard v. United States, 59 Fed. Cl. 497, 499

(2004) (“This latitude, however, does not relieve a pro se plaintiff from meeting jurisdictional requirements.”), aff’d, 98 Fed. App’x 860 (Fed. Cir. 2004). Accordingly, the burden is on plaintiff to establish, by a preponderance of the evidence, that this court has jurisdiction to hear her complaint. See M. Maropakis Carpentry, Inc. v. United States, 609 F.3d 1323, 1327 (Fed. Cir. 2010) (citing Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988)).

III. DISCUSSION

The Court of Federal Claims is a court of limited jurisdiction. Jentoft v. United States, 450 F.3d 1342, 1349 (Fed. Cir. 2006) (citing United States v. King, 395 U.S. 1, 3 (1969)). The Tucker Act, 28 U.S.C. § 1491(a)(1) (2006), sets forth the general jurisdiction of the Court of Federal Claims.² Under the Tucker Act, the court may only hear claims brought against the United States for federal constitutional or statutory violations when those violations authorize a claim for money damages. See 28 U.S.C. § 1491(a). Claims brought against defendants other than the United States, such as states, state agencies, or state officials, do not fall within the Court’s Tucker Act jurisdiction. United States v. Sherwood, 312 U.S. 584, 588 (1941). The Court of Federal Claims also does not have jurisdiction under the wrongful imprisonment statute, 28 U.S.C. § 1495, when the claim is against a state or local official. See § 1495 (“The United States Court

² 28 U.S.C. § 1491(a) states in relevant part: “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.”

of Federal Claims shall have jurisdiction to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.”) (emphasis added). In addition, the Court of Federal Claims does not have jurisdiction over federal criminal cases, Joshua v. United States, 17 F.3d 378, 379 (Fed. Cir. 1994) (“The [Court of Federal Claims] has no jurisdiction to adjudicate any claims whatsoever under the federal criminal code.”). Finally, the Court of Federal Claims also does not have jurisdiction over claims against the federal government sounding in tort, 28 U.S.C. § 1491(a)(1) (expressly limiting the jurisdiction of the Court of Federal Claims to claims not sounding in tort); Shearin v. United States, 992 F.2d 1195, 1197 (Fed. Cir. 1993) (“It is well settled that the United States Court of Federal Claims lacks . . . jurisdiction to entertain tort claims.”). Therefore, as discussed in greater detail below, the case must be dismissed.

A. The Court Does Not Have Jurisdiction Under The Wrongful Imprisonment Statute, 28 U.S.C. § 1495.

Allowing for her status as a pro se plaintiff and giving a most liberal reading of her complaint, the plaintiff appears to be asserting, at least in part, a possible claim for damages under 28 U.S.C. § 1495, which gives the Court of Federal Claims jurisdiction over “any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.” Giving plaintiff leeway as a pro se plaintiff, her allegations of wrongful arrest and imprisonment might suggest such a claim. See Compl. at 4 (“It was blatantly obvious that I, Kristi Denyse O’Neal, was innocent. Nonetheless, I was wrongfully arrested and wrongfully imprisoned.”). In addition, plaintiff alleges

several actions by the State of Texas in her complaint that could be construed as criminal claims, tort claims, or both. See, e.g., Compl. at 2 (“Plaintiff . . . [is] suing for \$700,000 . . . as compensation from criminal federal felony offenses.”); id. at 3 (“[Plaintiff] experienced felonious crimes in the State of Texas that are in violation of federal law.”); id. at 5 (alleging “wrongful arrest, aggravated assault, forcible assault, indecent assault, official misconduct, neglect of duty, breach of duty, breach of the peace, libel and slander”).

Plaintiff’s allegations regarding her arrest and imprisonment, however, fall outside the jurisdiction of the Court of Federal Claims under the wrongful imprisonment statute for several reasons. First, the Federal Circuit has held that “a claim under [28 U.S.C.] § 1495 is cognizable only if the claimant was unjustly convicted for a crime against the United States.” Robinson v. United States, No. 99-5120, 2000 WL 158487, at *1 (Fed. Cir. Feb. 11, 2000) (dismissing plaintiff’s § 1495 claim for lack of subject matter jurisdiction because plaintiff was tried and convicted in state court) (emphasis added). Here, plaintiff’s complaint is similarly defective because it does not assert a claim against the United States. Rather, plaintiff specifically identifies “The State of Texas, USA” as the defendant in this action. Compl. at 1. The caption and body of the complaint further identify Texas state agencies, officials, employees, and judges as defendants. See Compl. at 1, 17. However, under § 1495, the United States is the only proper defendant in the Court of Federal Claims. Robinson, 2000 WL 158487, at *1; see McGrath v. United States, 85 Fed. Cl. 769, 772 (2009) (citing United States v. Sherwood, 312 U.S. 584, 588 (1941)) (finding that the Court of Federal Claims lacked subject matter jurisdiction over

plaintiff's action seeking monetary damages based on his arrest and detention by state and county officials); Moore v. Pub. Defenders Office, 76 Fed. Cl. 617, 620 (2007) (dismissing a complaint seeking money damages for professional misconduct by county attorneys and several doctors, and finding that “[w]hen a plaintiff’s complaint names . . . local, county, or state agencies, rather than federal agencies, this court has no jurisdiction to hear those allegations.” (citing Stephenson v. United States, 58 Fed. Cl. 186, 190 (2003)). Because plaintiff’s complaint names only state or local entities and officials, the court has no jurisdiction to hear her claim under 28 U.S.C. § 1495.

In addition, the Court of Federal Claims “has jurisdiction under § 1495 only if a plaintiff alleges facts sufficient to meet the requirements of [28 U.S.C.] § 2513.” Johnson v. United States, 411 Fed. App’x 303, 306 (Fed. Cir. 2010) (citing Zakiya v. United States, 79 Fed. Cl. 231, 234 (2007), aff’d, 277 Fed. App’x 985 (Fed. Cir. 2008)). Section 2513 requires that:

(a) Any person suing under § 1495 of this title must allege and prove that:

(1) His conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing he was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction and

(2) He did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charge constituted no offense against the United States, or any State, Territory or the District of Columbia, and he did not by misconduct or neglect cause or bring about his own prosecution.

(b) Proof of the requisite facts shall be by a certificate of the court or pardon wherein such facts are alleged to appear, and other evidence thereof shall not be received.

28 U.S.C. § 2513(a)-(b). Based on the facts provided in her complaint, plaintiff does not satisfy the requirements of §§ 2513(a) and (b). Plaintiff does not allege that her conviction had been reversed or set aside under § 2513(a), nor does she provide any certificate of innocence under § 2513(b). Yet, “when [§§ 1495 and 2513] are read together it becomes manifest that the sections confer jurisdiction on [the Court of Federal Claims] only in cases where there has been [federal] conviction and in which the other conditions set out in section 2513 are complied with.” Grayson v. United States, 141 Ct. Cl. 866, 869 (1958) (per curiam); Johnson v. United States, 411 Fed. App’x at 306. Therefore, for this added reason, § 1495 does not provide the Court of Federal Claims with jurisdiction over plaintiff’s claims.

B. Plaintiff’s Remaining Claims are Outside the Court’s Tucker Act Jurisdiction

As noted above, plaintiff charges the State of Texas, its officials, and its employees with criminal offenses in violation of federal law, including criminal conspiracy, assault, rape, and murder. See, e.g., Compl. 5; id. at 3 (“I, Kristi Denyse O’Neal, experienced felonious crimes in the state of Texas that are in violation of federal law.”). At the outset, the Court of Federal Claims lacks jurisdiction over claims brought against a state, local, or private party. United States v. Sherwood, 312 U.S. 584, 588 (1941) (noting that “if the relief sought [in the Court of Federal Claims] is against others than the United States the suit as to them must be ignored as beyond the jurisdiction of the court”). In addition, the Court of Federal Claims has no jurisdiction over federal criminal claims, even if they are alleged against the United States. Joshua, 17 F.3d at 379

(“The [Court of Federal Claims] has no jurisdiction to adjudicate any claims whatsoever under the federal criminal code.”). Plaintiff also describes actions by the State of Texas that could be construed as tort claims. See, e.g., Compl. at 5 (asserting “assault, . . . libel and slander”). Finally, to the extent that plaintiff’s claims sound in tort, the Tucker Act expressly prohibits the Court of Federal Claims from hearing tort cases. See 28 U.S.C. § 1491(a)(1) (precluding jurisdiction for cases “sounding in tort”); Shearin v. United States, 992 F.2d 1195, 1197 (Fed. Cir. 1993) (“It is well settled that the United States Court of Federal Claims lacks . . . jurisdiction to entertain tort claims.”). Thus, even if her complaint could be construed as alleging criminal or tortious conduct by the United States, the court also lacks jurisdiction over the claims. Plaintiff’s complaint, therefore, must be dismissed.

IV. CONCLUSION

For the reasons stated above, the court **DISMISSES** plaintiff’s complaint for lack of subject matter jurisdiction under RCFC 12(h)(3).

IT IS SO ORDERED.

NANCY B. FIRESTONE
Judge