

In the United States Court of Federal Claims
NOT FOR PUBLICATION
No. 07-677C

(Filed October 16, 2007)

DAVID E. HENDERSON,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

This *pro se* case comes before the court on plaintiff's "Complaint For Damages And Injunctive Relief." Plaintiff asserts tort claims under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346 (2007) and 28 U.S.C. §§ 2671-2680 (2007), as well as violations by defendant of the Privacy Act of 1974 ("PA"), 5 U.S.C. § 552a (2007), and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 (2007). Plaintiff seeks damages in the amount of \$4 billion under the FTCA, which plaintiff avers should be treble damages totaling \$12 billion under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964(c) (2007), because defendant conspired "to deny plaintiff his civil and human rights."¹ Plaintiff further requests injunctive relief against defendant's wiretap interception of plaintiff's telephone calls. The court deems it unnecessary to wait for a response from the government regarding plaintiff's complaint.

Factual Background

The precise facts alleged by plaintiff are difficult to ascertain from the short but nearly incomprehensible and illegible complaint. The complaint itself makes almost no factual allegations; rather, plaintiff discusses a suit previously dismissed by the U.S. Court of Appeals for the Fourth Circuit, *Henderson v. Christopher*, No. 96-1048, 1997 U.S. App. LEXIS 944 (4th Cir. Jan. 22, 1997), and a claim sent to

¹*Compl.* at 15.

Attorney General Alberto Gonzalez by letter in August 2007, demanding \$4 billion in damages for violations of the FTCA.

Nonetheless, the court has discerned the following alleged facts from the numerous documents, letters, and court pleadings attached to the complaint.

Plaintiff is an inactive member of the Texas Bar and a former U.S. State Department foreign service officer. Plaintiff's basic contention is that he has been harassed by various U.S. government agencies since 1981, in retaliation for his cooperation with the media concerning the October Surprise conspiracy. October Surprise refers to the theory that the 1980 Reagan presidential campaign conspired with the Islamic Republic of Iran to delay the release of U.S. hostages in Iran until after the 1980 election. Specifically, plaintiff claims that he has been subjected to death threats by FBI agents and U.S. attorneys; he has been the subject of an "harassing investigation" by U.S. Marshals and the FBI; U.S. attorneys have deliberately withheld critical information in plaintiff's previous cases; the Drug Enforcement Administration ("DEA") has attempted to entrap plaintiff with false charges of drug smuggling; DEA agents have broken plaintiff's arm; the U.S. government has stolen plaintiff's mail; FBI agents have seized personal effects from plaintiff's home; the U.S. government has tampered with plaintiff's grievance records and work file; the U.S. government and the October Surprise conspirators have intercepted plaintiff's telephone calls by wiretap; and plaintiff's PA and FOIA requests have either been ignored, or the responses plaintiff has received have been insufficient.

The numerous documents attached to plaintiff's complaint reveal that plaintiff has filed multiple lawsuits before various U.S. district courts. Most relevant of these to plaintiff's present action are *Christopher*, 1997 U.S. App. LEXIS 944, and plaintiff's letter demands to Attorney General Alberto Gonzalez for damages under the FTCA. In *Christopher*, plaintiff asserted tort, employment, PA and FOIA claims in the U.S. District Court for the Eastern District of Virginia against the Secretary of State, Director of the Central Intelligence Agency, Secretary of the U.S. Department of Agriculture, U.S. Attorney General, Secretary of the Treasury, Secretary of Defense, Executive Secretary of the Foreign Service Grievance Board, National Security Advisor, and the Director of the Federal Bureau of Investigation. *Id.* The U.S. Court of Appeals for the Fourth Circuit affirmed the district court's dismissal of plaintiff's tort and employment claims, and its grant of summary judgment for defendants concerning plaintiff's PA and FOIA claims. *See id.* In the letters to Attorney General Alberto Gonzalez, dated February 25, 2006 and August 22, 2007, plaintiff asserts tort claims under the FTCA in the amount of \$4 billion "due to the dereliction of duty and violations of [plaintiff's] constitutional rights by Assistant

U.S. District Attorney Eduardo Castillo.”² Plaintiff avers that Mr. Castillo ignored death threats to plaintiff, hid critical evidence from the court, and did nothing to stop the “harassing investigation” of plaintiff by U.S. Marshals or the theft of plaintiff’s mail.³ These claims are what plaintiff appears to be reasserting in the present action.

Discussion

United States courts provide *pro se* plaintiffs more latitude in their pleadings, and do not hold them to the rigid standards and formalities imposed upon parties represented by counsel.⁴ *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Against this backdrop, this court liberally construes a *pro se* plaintiff’s complaint and holds it to “less stringent standards than formal pleadings drafted by lawyers . . .” *Id.* (quoting *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)). The court, however, cannot extend this leniency to permit complete abdication of any pleading requirements. *Demes v. United States*, 52 Fed. Cl. 365, 372 n.9 (2002) (citing *Kelley v. U.S. Dept. of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987) (“[P]ro se status does not relieve plaintiffs of their jurisdictional burden[.]”). Plaintiff must still “comply with the applicable rules of procedural and substantive law.” *Walsh v. United States*, 3 Cl. Ct. 539, 541 (1983) (citing *Faretta v. California*, 422 U.S. 806, 835 n.46 (1975)).

The jurisdiction of the United States Court of Federal Claims is set forth in the Tucker Act. 28 U.S.C. § 1491 (2007). Under the Tucker Act, the court “shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” *Id.* § 1491(a)(1). The Tucker Act is jurisdictional only, and “does not create any substantive right enforceable against the United States for money damages.” *United States v. Testan*, 424 U.S. 392, 398 (1976); *Tippett v. United States*, 185 F.3d 1250, 1254 (Fed. Cir. 1999). Rather, the Tucker Act “merely confers jurisdiction upon [this court] whenever the substantive right exists.” *Testan*, 424 U.S. at 398. “When a contract is not involved, to invoke jurisdiction under the Tucker Act, a plaintiff must

²*Compl.* at 21. Mr. Castillo is an Assistant U.S. Attorney who represented Robert Mueller, Director of the Federal Bureau of Investigation, in an action filed by plaintiff in the U.S. District Court for the Western District of Texas. *See Henderson v. Mueller*, No. 3:04-cv-00402-DB, 2006 U.S. Dist. LEXIS 18879 (W.D. Tex. Apr. 10, 2006).

³*Id.* at 21-22.

⁴The court notes, however, that plaintiff identifies himself as a former attorney. *Id.* at 17, 20, 39-40, 92, 105, 119.

identify a constitutional provision, a statute, or a regulation that provides a substantive right to money damages.” *Tippett*, 185 F.3d at 1254-55.

Here, plaintiff has only cited the FTCA, PA and FOIA to support this court’s jurisdiction over his claims. None of these statutes support the jurisdiction of this court. Moreover, plaintiff requests that this court provide him equitable relief, which this court has no power to do.

Plaintiff asserts tort claims against defendant under the FTCA. Nevertheless, this court lacks jurisdiction over any cases sounding in tort. Under the FTCA, “[j]urisdiction to hear tort claims is exclusively granted to the United States District Courts[.]” *McCauley v. United States*, 38 Fed. Cl. 250, 264 (1997), *aff’d*, 152 F.3d 948 (Fed. Cir. 1998); *see also* 28 U.S.C. § 1346(b); *Wood v. United States*, 961 F.2d 195, 197 (Fed. Cir. 1992) (“[D]istrict courts have . . . exclusive jurisdiction over tort claims for any amount if they fall within the Federal Tort Claims Act[.]”); *Martinez v. United States*, 26 Cl. Ct. 1471, 1476 (1992) (“The district courts have exclusive jurisdiction in FTCA actions.”), *aff’d*, 11 F.3d 1069 (Fed. Cir. 1993).

The language of the Tucker Act clarifies further that cases sounding in tort are beyond the jurisdiction of this court. The Tucker Act specifically limits its jurisdiction to claims for “liquidated or unliquidated damages *in cases not sounding in tort.*” 28 U.S.C. § 1491(a)(2) (emphasis added). The Supreme Court has explained that “[t]he language of the statutes which confer jurisdiction upon the Court of Claims, excludes by the strongest implication demands against the Government founded on torts.” *Bigby v. United States*, 188 U.S. 400, 404 (1903) (quoting *Gibbons v. United States*, 75 U.S. 269, 275 (1869)). “[T]ort cases are outside the jurisdiction of the Court of Federal Claims[.]” *Keene Corp. v. United States*, 508 U.S. 200, 214 (1993); *see also Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997); *Shearin v. United States*, 992 F.2d 1195, 1197 (Fed. Cir. 1993); *Whyte v. United States*, 59 Fed. Cl. 493, 497 n.4 (2004); *Cottrell v. United States*, 42 Fed. Cl. 144, 149 (1998). Therefore, this court has no jurisdiction over plaintiff’s FTCA claims.

This court similarly lacks jurisdiction over claims under the PA or FOIA. The PA provides civil monetary remedies for violations of the PA by government agencies; however, the PA expressly states that “the *district courts* of the United States shall have jurisdiction in [such] matters” 5 U.S.C. § 552a(g)(1) (emphasis added). Thus, the U.S. Court of Federal Claims has no jurisdiction over claims arising under the PA. *See Parker v. United States*, 77 Fed. Cl. 279, 291-92 (2007) (finding that jurisdiction under the PA is vested in the U.S. District Courts, not the U.S. Court of Federal Claims). Jurisdiction over claims under the FOIA is likewise vested in “the *district court* of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency

records are situated, or in the District of Columbia[.]” 5 U.S.C. § 552(a)(4)(B) (emphasis added). Furthermore, the FOIA provides solely for injunctive remedies. Consequently, this court has no jurisdiction over plaintiff’s alleged FOIA claims. *See McNeil v. United States*, No. 06-747, 2007 U.S. Claims LEXIS 258, at *88 (Aug. 9, 2007) (finding that the U.S. Court of Federal Claims “lacks jurisdiction to consider the merits of any FOIA claim.”); *Bernard v. United States*, 59 Fed. Cl. 497, 503 (2004) (“The [Court of Federal Claims] does not have jurisdiction over FOIA claims.”).

Finally, plaintiff requests injunctive relief regarding the alleged illegal phone interceptions. Nevertheless, this court has no power to grant equitable relief. *See Bowen v. Massachusetts*, 487 U.S. 879, 905 n.40 (1988) (citing *Glidden Co. v. Zdanok*, 370 U.S. 530, 557 (1962) (Harlan, J., plurality opinion) (“From the beginning [the Court of Claims] has been given jurisdiction only to award damages, not specific relief[.]”)); *Richardson v. Morris*, 409 U.S. 464, 465 (1973) (“[T]he [Tucker] Act has long been construed as authorizing only actions for money judgments and not suits for equitable relief against the United States.”). Therefore, even if plaintiff had asserted a proper statutory basis for his claims, this court is without the power to grant plaintiff’s requested relief.

Conclusion

For the above-stated reasons, plaintiff’s Complaint For Damages And Injunctive Relief is hereby dismissed. The Clerk of the Court is directed to DISMISS the complaint for lack of subject matter jurisdiction. No costs.

IT IS SO ORDERED.

BOHDAN A. FUTEY
Judge