

lacks jurisdiction over cases sounding in tort.”¹ Any portion of plaintiff’s complaints that claims negligence or gross negligence by the United States in failing to protect her rights alleges a wrong in tort that this Court cannot hear.

Merely alleging a violation of a constitutional provision or statute is not enough. In order to come within this court’s jurisdictional reach, a plaintiff must identify a separate source of substantive law, such as a statute, that creates a right to money damages for its violation. *Mitchell v. United States*, 463 U.S. 206, 216-17 (1983); *United States v. Testan*, 424 U.S. 392, 398 (1976); see also *Fisher v. United States*, 402 F.3d 1167, 1173 (Fed. Cir. 2005) (noting that “absence of a money-mandating source [is] fatal to the court’s jurisdiction”):

Plaintiff’s complaints refer to a number of constitutional provisions and statutes, but “[n]ot every claim invoking the Constitution [or] a federal statute . . . is cognizable” in this court. *Mitchell*, 463 U.S. at 216. For instance, the plaintiff has cited to the Seventh Amendment and Section 35 of the Judiciary Act of 1789,² but neither of these can fairly be read to mandate the payment of money if they are violated.³ The Due Process Clause of the Fifth Amendment likewise does not mandate monetary compensation for its violation and is thus outside this court’s jurisdiction.⁴ *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995); *Crocker v. United States*, 125 F.3d 1475, 1476 (Fed. Cir. 1997). Therefore, “[e]ven if [these] laws were violated, they are not laws that promise to pay plaintiff money, and thus are not within this Court’s power to address.”⁵ *Smith v. United States*, No. 04-1685C, 2005 WL 6114553, at *2

¹ A tort is a “civil wrong, other than breach of contract, for which a remedy may be obtained.” BLACK’S LAW DICTIONARY (8th ed. 2004).

² Section 35 of the Judiciary Act of 1789 reads, in pertinent part, that “in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein.” Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92. As subsequently amended, it is now 28 U.S.C. § 1654, which reads: “In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.”

³ Ms. O’Connor requests a jury trial for several of her cases. There are no jury trials in the Court of Federal Claims—all cases are decided by the judge as the trier of fact. *Persyn v. United States*, 34 Fed. Cl. 187, 194 (1995).

⁴ Plaintiff does not allege any facts even minimally suggesting a taking without just compensation in violation of the Takings Clause of the Fifth Amendment.

⁵ The court has “no jurisdiction whatsoever under the federal criminal code” and thus lacks the ability to hear any cases under criminal statutes such as the Racketeer Influenced and Corrupt Organizations Act. *Joshua v. United States*, 17 F.3d 387, 379 (Fed. Cir. 1994); *Fullard*

(Fed. Cl. May 31, 2005).

Ms. O'Connor also includes in her complaints several requests for "specific performance" requesting that the Court issue orders requiring various people or entities to take particular actions. "Except in strictly limited circumstances, which are inapplicable here," this Court does not possess authority to order "equitable relief such as specific performance, a declaratory judgment, or an injunction." *Smalls v. United States*, 87 Fed. Cl. 300, 307 (2009). The Court likewise simply lacks the power to enter any order to remove unconstitutional laws from the books in the Commonwealth of Massachusetts or disband the Equal Employment Opportunity Commission.

Furthermore, all courts follow the rule that once a case has been decided, it cannot be re-litigated. This rule is called *res judicata*, which is Latin for "a thing adjudicated," and it means that once one court has issued a judgment in a case and the time for appeal of the judgment is over, that case is finished, and it cannot be brought again in that court or in any other court. *Allen v. McCurry*, 449 U.S. 90, 94 (1980) ("Under *res judicata*, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action."). A new lawsuit is barred by *res judicata* when "(1) the prior decision was rendered by a forum with competent jurisdiction; (2) the prior decision was a final decision on the merits; and (3) the same cause of action and the same parties or their privies were involved in both cases." *Carson v. Dep't of Energy*, 398 F.3d 1369, 1375 (Fed. Cir. 2005). Several of Ms. O'Connor's lawsuits are attempts to "re-file" lawsuits in which she feels that she did not obtain due process in other courts. Each of those prior lawsuits resulted in final decisions on the merits that were issued by courts with proper jurisdiction. To the extent that they involve the same cause of action and the same parties, they cannot be re-filed in this court or any other court.

Some of these "re-filed" cases involve allegations of wrongdoing by the judges of the other courts, whom Ms. O'Connor believes mishandled her cases. These are complaints of judicial misconduct, which are not properly brought in this court. Judicial misconduct claims must be brought in the court of appeals for the circuit in which the alleged judicial misconduct occurred. Further, the pertinent statute is not money-mandating, so no such case may be brought in this court. *See* 28 U.S.C. §§ 351-355 (2006).

To the extent that Ms. O'Connor simply disagrees with the judges' decisions, the proper method of proceeding was to take an appeal. *In re Complaint of Judicial Misconduct*, 12 Cl. Ct. 763, 764 (1987) ("If complainants are correct on the merits of the underlying controversy then their proper course is to appeal the error in the judge's decision. This is the very reason why our system has appellate as well as trial courts. It is contrary to the most basic principles of our legal system to challenge a judge's legal conclusions or findings of fact by impugning his or her character."). Once the appellate court renders its decision, unless the Supreme Court allows a

v. United States, 77 Fed. Cl. 226 (2007).

further appeal, the case is over and the judgment is final. This court does not possess jurisdiction to review the decisions of other courts relating to proceedings in those courts. *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994). Furthermore, no one, including plaintiff, may sue judges for damages because she disagrees with the judge's decision—judges are immune from such lawsuits. *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967) (“Few doctrines [are] more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction.”); *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (“[J]udicial immunity is not overcome by allegations of bad faith or malice . . .”).

Pro se plaintiffs are entitled to liberal construction of their pleadings: *See Haines v. Kerner*, 404 U.S. 519, 520-21. But this leniency does not allow the court to hear cases outside of its jurisdiction. So the *pro se* plaintiff, like all plaintiffs, must meet jurisdictional requirements before her case can be heard. *Kelley v. Sec'y, U.S. Dep't. of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987); *Biddulph v. United States*, 74 Fed. Cl. 765, 767 (2006). If plaintiff fails to establish that the court possesses subject matter jurisdiction, then the Court must dismiss the complaint under Rule 12(h)(3) of the Rules of the Court of Federal Claims.

For the purposes of determining subject matter jurisdiction, the Court will assume that all undisputed facts alleged in the complaint filed in Case Number 09-116 are true and draw all reasonable inferences in Ms. O'Connor's favor. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). But even after doing so, Ms. O'Connor's complaint does not state any claim that is within the power of this court to hear.

Case Number 09-116 involves “Judge Robert E. Payne's handling of the Default Judgment on Defendant Mark Livermore” in a case filed in the District Court for the Eastern District of Virginia. Complaint ¶ 2 (docket entry 1, Feb. 24, 2009) (“Compl.”).⁶ In her complaint, Ms. O'Connor describes a lawsuit she first filed in Superior Court in the Commonwealth of Massachusetts, Civil Action Number ESCV 2005-1868, against defendants Robert A. Cornetta and Patrick Riley (both district court judges in Massachusetts), the Commonwealth of Massachusetts and Mark Livermore. Compl. ¶¶ 3-4. Ms. O'Connor asserts that all of these defendants defaulted in that lawsuit, but the “Massachusetts Superior Court did not or would not respond to any of the motions filed by Plaintiff.” Compl. ¶ 6. The defendant Commonwealth of Massachusetts asserted a defense of sovereign immunity to the lawsuit, which Ms. O'Connor asserts was “wrongfully extended” to include the individual defendant Mark

⁶ Ms. O'Connor filed four “amended complaints” in case number 09-116, but court staff ascertained through communications with Ms. O'Connor that she intended that each of those four amended complaints be treated as a separate lawsuit. The amended complaints were therefore removed from case number 09-116, leaving only the original complaint filed on February 24, 2009 remaining at issue. Order (docket entry 9, May 19, 2009).

Livermore.⁷ Compl. ¶¶ 7-8.

Ms. O'Connor then maintains that "[a]fter suppression of [her] rights in Massachusetts, [she] decided to change venue of this action, with the interest of obtaining rights in another venue. This case was refilled [sic] in the U.S. District Court, Eastern District of Virginia as case number 3:06 CV 339." Compl. ¶ 12. Judge Robert Payne of that court dismissed the lawsuit, due in part to a previous order of that court banning Ms. O'Connor from filing further lawsuits. *O'Connor v. Commonwealth of Massachusetts*, No. 06-339 (E.D. Va. June 5, 2006). Ms. O'Connor alleges that Judge Payne "lack[ed] the tolerance due a pro se litigant," "acted unethically as defense counsel" and "denied Plaintiff equal protection and equality under the law" by "intentionally deny[ing] Plaintiff's rights under federal law." Compl. ¶ 13.

Ms. O'Connor's complaint ultimately alleges (1) negligence and gross negligence of the United States in failing to preserve her rights and in failing to eliminate the hostile and prejudicial attitude toward *pro se* litigants; and (2) that Judge Payne "approved of and forwarded the dishonest and bad faith dealings of the Commonwealth of Massachusetts" by "intentionally engag[ing] in Federal law/Constitutional violations and abuses" and "wrongfully twist[ing] and ingor[ing] the law," rendering the United States "jointly and severally liable." Compl. ¶¶ 19-22. Plaintiff seeks as damages the \$21,900,000 she maintains she is due to her as a result of the underlying default judgment in the state court case, along with \$3,000,000 in punitive damages. Compl. ¶¶ 23-24.

On June 18, 2009, the defendant United States, through its attorneys, the Department of Justice, filed a motion to dismiss Ms. O'Connor's complaint. Defendant's Motion to Dismiss (docket entry 11, June 18, 2009) ("Def.'s Mot."). Defendant observes, as is explained above, that this court does not have jurisdiction to hear tort claims, or claims involving violations of statutes that do not mandate the payment of money for their violation. Ms. O'Connor's complaint, construed in her favor, only alleges torts of negligence and intentional harm, and those allegations are not within the jurisdiction of this court. Def.'s Mot. at 4. Even if they were within the court's jurisdiction, Ms. O'Connor's complaint would be barred by the doctrine of *res judicata* because, even though she disagrees with the result, she has already had the opportunity to assert her claims in another court and has received a final judgment from a court with proper jurisdiction. Ms. O'Connor did not respond to defendant's motion to dismiss.

⁷ The Massachusetts Superior Court Case, *O'Connor v. Rodriguez*, No. 05-1868 (Essex Division) was a suit by Ms. O'Connor against Ida Rodriguez, Mark Livermore, Helene Levin, Melissa Graham, Michael Modowski, Commonwealth of Massachusetts, Patrick J. Riley and Robert Cornetta. The action appeared to originate in an excessive noise complaint by Ms. O'Connor against neighbors Melissa Graham and Michael Modrovsky, which resulted in, among other things, a criminal charge of harassment against Ms. O'Connor, upon which Judge Cornetta ruled against Ms. O'Connor. Defendant Judge Cornetta and the Commonwealth's Motion to Dismiss, *O'Connor v. Rodriguez*, No. 05-1868 (Sup. Ct. Mass., May 23, 2006). Defendant Mark Livermore appears to have been associated with the property management agency. Compl. ¶ 5.

Because the court does not have the power to hear any of the claims Ms. O'Connor asserts, the complaint in 09-116 is therefore **DISMISSED** without prejudice pursuant to Rule 12(h)(3) of the Rules of the Court of Federal Claims.

The Court further notes that Ms. O'Connor is a frequent litigator, filing ten lawsuits in this court in the space of seven months, who has been sanctioned for filing frivolous actions in the District Court for the District of Massachusetts, and barred from filing further lawsuits without leave of court in both the District of Massachusetts and the District Court for the Eastern District of Virginia. *See O'Connor v. Northshore Int'l Ins. Servs., Inc.*, Memorandum Opinion, No. 3:06CV295 (E.D. Va. May 19, 2006) (explaining *res judicata* bar to re-litigation and subjecting future lawsuits to pre-suit review); *O'Connor v. O'Toole*, C.A. No. 03-12200-RCL (D. Mass. Feb. 10, 2004) (sanctioning plaintiff \$500 and requiring her to obtain leave of court to file additional papers).

Although plaintiff objects to the requirement imposed in these other courts that she obtain permission before filing complaints, the Court finds it necessary to prescribe a similar bar here because plaintiff refuses to recognize that she may not re-litigate issues or claims, and files (or re-files) complaints that lack any basis in law and/or are outside the jurisdiction of the court. Courts may prevent such prolific litigants from filing documents without court approval. *See, e.g., May v. United States*, No. 07-726L (Fed. Cl. Feb. 12, 2008) ("Given the repetitive nature of [plaintiff's] filings, none of which has been found to be meritorious . . . the Clerk of the Court shall not file any future complaint tendered by plaintiff absent written permission granted by a judge of this court."); *Carroll v. United States*, No. 07-075C (Fed. Cl. Aug. 7, 2007) (forbidding further filings from plaintiff without permission from a judge); *Demos v. United States*, No. 07-254C (Fed. Cl. April 30, 2007) (where plaintiff filed seven nonmeritorious complaints in four months, and had previously filed myriad unsupported complaints in other courts, the clerk was "directed to return unfiled any further complaints from this plaintiff"); *Demos v. United States*, No. 07-100C (Fed. Cl. March 6, 2007) (same); *Nalette v. United States*, 72 Fed. Cl. 198, 204 (2006) (imposing Rule 11 sanction requiring permission of the court before any future filings due to propensity for frivolous litigation); *Tinsley v. United States*, 72 Fed. Cl. 326, 334 (2006) (sanctioning filing of fourth frivolous complaint under Rule 11 by forbidding further filings without permission from the court); *Aldridge v. United States*, 67 Fed. Cl. 113, 123 (2005) (requiring permission from the court for any future filings, as sanction under Rule 11 of the Rules of the Court of Federal Claims, where plaintiff had been warned by other courts to stop filing frivolous litigation); *Hornback v. United States*, 62 Fed. Cl. 1 (Fed. Cl. 2004) (forbidding plaintiff from filing additional documents without written permission of court where plaintiff had previously litigated the same claims on multiple occasions); *Tinsley v. United States*, No. 00-283C (Fed. Cl. May 31, 2000) (where plaintiff filed three unsupported complaints in five months, he was forbidden to file future complaints without an order from the court); *Anderson v. United States*, 46 Fed. Cl. 725, 731 (2000) (forbidding plaintiff from filing documents with court where present suit was frivolous and plaintiff had been previously sanctioned by another court for filing similar lawsuits); *Sterner v. United States*, 2 Cl. Ct. 253 (1983) ("Just as the resources of the court are poorly spent by reconsideration of meritless claims, so too are those of defendant. To

the extent those resources are used defending a case of a plaintiff who shows a propensity for repetitious litigation, they are not available for the disposition of the claims of others. In these circumstances, a protective order is appropriate.”); *see also*; *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007) (“Under the All Writs Act, 28 U.S.C. § 1651(a), district courts retain the “inherent power to enter pre-filing orders against vexatious litigants.”); *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998); *McEnery v. Merit Sys. Protection Bd.*, 963 F.2d 1512 (Fed. Cir. 1992); *Constant v. United States*, 929 F.2d 654 (Fed. Cir. 1991).

Such pre-filing review is warranted here due to Ms. O’Connor’s history of filing vexatious, harassing and duplicative lawsuits, leading to sanctions and pre-filing review in other courts, and because that history appears to be repeating itself in this court. *See Safir v. U.S. Lines, Inc.*, 792 F.2d 19, 24 (2d Cir. 1986) (“We therefore cannot ignore the obvious fact that mere dismissal of this action will not hinder [plaintiff] from initiating further similar proceedings. [Plaintiff’s] abuse of the judicial process, despite his subjective conviction that he has suffered an unremedied injury, cannot be countenanced.”).

The Clerk is therefore **ORDERED** to refuse to accept for filing any new complaints from plaintiff unless a motion for leave to file has been granted by a judge of this court. The court will grant leave to file when the plaintiff demonstrates, through a properly filed motion, that her proposed filing (1) can survive a challenge under Rule 12 of the Rules of the Court of Federal Claims (including a showing that the subject matter of the complaint is properly within the jurisdiction of this court); (2) is not a re-litigation of issues or claims already filed and ruled upon in any other court; (3) is not repetitive or in violation of any court order; and (4) complies with Rule 11 of the Rules of the Court of Federal Claims. This prohibition will not apply to documents filed in cases plaintiff has currently pending in this court, nor to the filing of proper appeals in those cases to the Court of Appeals for the Federal Circuit. Ms. O’Connor is warned that if she attempts to file new complaints or other documents, except documents filed in her pending cases, without requesting such leave of court, in violation of this order, the court will reject any such proposed filings and may impose a sanction, such as a monetary fine. *Aldridge v. United States*, 67 Fed. Cl. 113 (2005).

The Clerk is directed to enter judgment in accord with this order. Plaintiff may appeal the Court’s judgment to the Court of Appeals for the Federal Circuit within sixty (60) days of the date of entry of judgment. Failure to file a timely notice of appeal will waive the right to an appeal, and the Court’s order will be final.

IT IS SO ORDERED.


GEORGE W. MILLER
Judge