

# In the United States Court of Federal Claims

No. 09-338C  
Filed October 28, 2009  
NOT FOR PUBLICATION

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TOMMY LEE STEVENS,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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Tommy Lee Stevens, Mount Olive, North Carolina, *pro se*.

Devin Andrew Wolak, United States Department of Justice, Washington, D.C., for defendant.

## OPINION AND ORDER

Plaintiff Tommy Lee Stevens has sued alleging violations of certain of his constitutional rights (specifically rights conferred by the Eighth, Thirteenth, and Fourteenth Amendments), claiming “deliberate indifference, denial of due process, involuntary servitude, . . . denial of access to the courts . . . and [the] use of a biological weapon.” Complaint (docket entry 1, May 26, 2009) (“Compl.”). Plaintiff asserts that in 1994 a man named Curtis Freeman attacked him and broke his leg and ankle as part of a conspiracy to implant him with an electronic chip, which Mr. Stevens maintains was inserted into his body during post-injury surgery at Wake Medical Hospital in Raleigh, North Carolina. *Id.*

*Pro se* plaintiffs are entitled to liberal construction of their pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). 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 his 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 (“RCFC”).

Plaintiff notes that he has filed state and federal court complaints seeking relief related to the alleged chip implantation but “[t]he courts told me usually that my allegations were fanciful, fantastic and delusional.” Compl. at 2; *see also, e.g., Stevens v. City of Mount Olive*, No. 09-283 (E.D.N.C. July 2, 2009) (dismissing complaint, which alleged refusal of police to assist him when the people he believes are monitoring him allegedly took control of his car, as delusional and wholly irrational); *Stevens v. Unknown Name Employees*, No. 09-233 (E.D.N.C. June 11, 2009) (dismissing complaint against employees of the Mount Olive Pickle Company requesting court order that they reveal who told them not to hire plaintiff because the allegations are “delusional, wholly irrational, and fail to state a claim upon which relief can be granted”); *Stevens v. Holder*, No. 09-554 (D.D.C. March 24, 2009) (dismissing complaint requesting a court order that the Attorney General acknowledge receipt of plaintiff’s request for investigation as failing to state a claim upon which mandamus could be granted); *Stevens v. Effler*, No. 08-618 (E.D.N.C. May 28, 2009) (dismissing complaint against detective and county for failure to investigate chip implantation as “delusional and wholly irrational”); *Stevens v. U.S. Senate Comm. on the Judiciary*, No. 08-2124 (D.D.C. Dec. 8, 2008) (dismissing complaint seeking a court order “mandating the House and Senate Committees on the Judiciary to investigate” plaintiff’s alleged implantation as failing to state a claim upon which mandamus could be granted); *Stevens v. Unknown Name Investigators*, No. 08-1404 (N.D. Ga. May 12, 2008) (dismissing complaint against city investigators for refusing to investigate plaintiff’s allegation of chip implantation because the “Court finds that Plaintiff’s claim that he is being controlled by an implanted electronic device is fanciful, delusional, wholly incredible, and may be dismissed on this basis”); *Stevens v. Wake Med. Hosp.*, No. 02-560 (E.D.N.C. Aug. 16, 2002) (dismissing complaint against doctor and hospital regarding allegations of chip implantation because “[t]he factual allegations in this complaint are delusional and clearly baseless”); *Stevens v. Georgia*, 01-345 (N.D. Ga. Mar. 26, 2001) (dismissing complaint alleging, among other things, the installation of the electronic chip and transmission of voices that screamed at and cursed at plaintiff, under 28 U.S.C. § 1915A as “fanciful, fantastic and delusional”); *Stevens v. United States*, 01-2826 (N.D. Ga. Dec. 13, 2001) (dismissing lawsuit as frivolous pursuant to 28 U.S.C. § 1915A); *Stevens v. Weeks*, 00-166 (N.D. Ga. May 3, 2000) (dismissing lawsuit seeking criminal prosecution of Rosaline Weeks for using a “mind reading machine” on plaintiff).

In his complaint in this court, plaintiff stated that he is “not asking for . . . monetary damages.” Compl. at 2. He believes that the Department of Justice and the Department of Health and Human Services are involved in a conspiracy to prevent investigation of his claims. *Id.* at 3. He asks the court for an investigation of these agencies and “for this court to request that the U.S. Congress allow me to testify before them . . . [to] request a congressional investigation or what ever this court think [sic] is an appropriate way to investigate this matter.” Compl. at 8.

Defendant moved to dismiss plaintiff’s complaint pursuant to RCFC 12(b)(1), asserting that the court lacks subject matter jurisdiction over plaintiff’s allegations. In support of its motion, defendant correctly observes that this court does not possess jurisdiction to provide

plaintiff an opportunity to testify before Congress. Defendant’s Motion for Summary Dismissal at 2 (docket entry 6, July 8, 2009) (“Def.’s Mot.”). “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 therefore simply lacks the power to issue an injunction (or writ of mandamus) requiring the United States Congress to hear Mr. Stevens’s testimony—a point he himself has acknowledged in previous court filings. Informal Brief, *Stevens v. Effler*, 09-1633 (4th Cir. June 22, 2009) (“I was attempting to get the Federal Court to help me get before the U.S. Congress by order. I realized I made a mistake before the Judge ruled on the mandamus because I discovered that a citizen can’t force Congress to hear them, it’s been tried before.”).

Nor may this court hear claims of wrongful infliction of pain, which sound in tort.<sup>1</sup> The judges of this court may only adjudicate “claim[s] 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; *Dachman v. United States*, 73 Fed. Cl. 508, 518 (2006) (“It is well and long established that the Court of Federal Claims lacks jurisdiction over cases sounding in tort.”). Because a complaint of “infliction of pain” states a claim in tort, this court lacks jurisdiction over those allegations in Mr. Stevens’s complaint or response to the motion to dismiss. See Plaintiff’s Response to Motion for Summary Dismissal at 3 (docket entry 7, Aug. 25, 2009) (“Pl.’s Resp.”); Defendant’s Reply in Support of Motion for Summary Dismissal at 4 (docket entry 8, Sept. 14, 2009) (“Def.’s Reply”).

Plaintiff’s response to defendant’s motion also contends that defendant has violated his privacy rights under the Fourth Amendment, and his complaint asserts violations of other amendments to the Constitution. Even if that were the case, the constitutional amendments cited by plaintiff are not “money mandating” provisions over which this Court can exercise jurisdiction. See *Mendez-Cardenas v. United States*, 88 Fed. Cl. 162, 167 (2009) (noting court’s lack of jurisdiction over claims arising out of the Eighth Amendment to the Constitution); *Stephanatos v. United States*, 81 Fed. Cl. 440, 445 (2008) (observing that this court lacks jurisdiction over cases arising out of the Fourth or Fourteenth Amendments to the Constitution); *Johnson v. United States*, 79 Fed. Cl. 769, 774 (2007) (stating court has no jurisdiction over Thirteenth Amendment violations).

Plaintiff also alleges in his response to the motion to dismiss that a letter from the Department of Health and Human Services answering a Freedom of Information Act request supported his claim that there was “some type of contract with the U.S. Government, although this contract may have been secret.” Response at 2 (docket entry 9, Aug. 25, 2009). Specifically, the letter stated that the agency was unaware of having any records regarding plaintiff, but

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<sup>1</sup> A tort is a “civil wrong, other than breach of contract, for which a remedy may be obtained.” BLACK’S LAW DICTIONARY 1526 (8th ed. 2004).

because he was “not a current or former (DHHS) employee” he “may have been involved in DHHS sponsored research.” *Id.* The letter requested that he provide additional information to assist the agency in determining whether he had been involved in any such program. Appendix to Def.’s Reply (docket entry 8, Sept. 11, 2009). Plaintiff asserts that this letter provides evidence of a contract between himself and the Government. Plaintiff’s Response to Defendant’s Reply (“Pl.’s Surreply”) at 1 (docket entry 10, Sept. 29, 2009). Defendant counters that the documents do not demonstrate the existence of any contract, and in any event the allegation is inconsistent with Mr. Stevens’s claim that he is being forced to participate in the alleged electronic chip program against his will. Def.’s Reply at 3.

The Court concludes that plaintiff and defendant are not parties to a contract. For a contract to exist, one party must make an offer that the other party then accepts. *Goist v. United States*, 85 Fed. Cl. 726, 740 (2009). Even assuming that plaintiff alleges that the Government made an offer to enter into a contract, he clearly maintains that he did not accept the offer. Thus, no contract was formed. Because there is no contract, the court has no jurisdiction over these allegations pursuant to its jurisdiction over contracts with the Government.

In plaintiff’s response, he claims that he is a third-party beneficiary of a contract between other persons, presumably the Government and those he alleges are monitoring him. Pl.’s Surreply at 2. Third-party beneficiary status arises when a third person *benefits* from the contract although not technically a party to it. Mr. Stevens alleges that he is harmed by the existence of the alleged contract and thus third-party beneficiary law is simply inapplicable.

Mr. Stevens’s response cites three statutes as forming the basis for jurisdiction in this court: the Federal Wiretap Act, 18 U.S.C. § 2511; the Electronic Communications Privacy Act, 18 U.S.C. § 2510; and the Federal Stored Communications Act, 18 U.S.C. § 2701. All of these statutes define crimes, and this court does not possess jurisdiction to hear cases arising under federal criminal law. *Joshua v. United States*, 17 F.3d 378, 379 (Fed. Cir. 1994); *McCullough v. United States*, 76 Fed. Cl. 1, 4 (2006). In his surreply, plaintiff contends that he is suing under the False Claims Act because “the United States Government has been cheated out of lots of money over the past nearly 15 years by illegal contracts and fraud” related to his alleged implantation and monitoring. Pl.’s Surreply at 3. In essence, plaintiff seeks to sue on behalf of the Government to recover the money he alleges was fraudulently claimed by others—a type of lawsuit called a “qui tam” action. Qui tam actions must be brought in the federal district courts, and this court lacks jurisdiction to hear them. *LeBlanc v. United States*, 50 F.3d 1025, 1031 (Fed. Cir. 1995) (“[Q]ui tam suits may only be heard in the district courts.”); *Giles v. United States*, 72 Fed. Cl. 335, 336-37 (2006).

Plaintiff also argues that the Government has violated the Takings Clause of the Fifth Amendment to the Constitution by controlling his body. Pl.’s Resp. at 4. Although the court has jurisdiction over taking claims, a claim relating to wrongful governmental control over a person is not a Fifth Amendment taking claim, but is instead a request for a writ of habeas corpus or a due process claim, neither of which are within this court’s jurisdiction. *Ledford v. United States*,

297 F.3d 1378, 1381 (Fed. Cir. 2002) (habeas); *LeBlanc*, 50 F.3d at 1028 (due process); *Del Rio v. United States*, 87 Fed. Cl. 536, 540 (2009) (habeas); *Verdone v. United States*, 2005 WL 6112626, at \*3 (Fed. Cl. May 31, 2005) (control of person not within court's jurisdiction).

Finally, plaintiff contends that the people whom he believes are monitoring him have taken control of his car and caused it not to function properly in order to deprive him of its use. Pl.'s Resp. at 4. To bring suit in the Court of Federal Claims, a plaintiff "must concede the validity of the government action which is the basis of the taking claim." *Tabb Lakes, Ltd. v. United States*, 10 F.3d 796, 802-03 (Fed. Cir. 1993); accord *Reg'l Rail Reorg. Act Cases*, 419 U.S. 102, 126-27 & n.16 (1974) ("[T]he Government action must be authorized. 'The taking of private property by an officer of the United States for public use, without being authorized, expressly or by necessary implication, to do so by some act of Congress, is not the act of the government,' and hence recovery is not available in the Court of Claims." (quoting *Hooe v. United States*, 218 U.S. 322, 336 (1910))). Because plaintiff asserts that his alleged implantation is unauthorized, illegal, and involves a secret conspiracy, he does not assert the type of "authorized" government action that can support a Fifth Amendment taking claim. See Compl. ¶¶ 1, 2, 3, 4, 9; Pl.'s Resp. ¶¶ 1, 2. Because plaintiff does not argue that there was an authorized governmental taking of his private property for a public use, he is alleging a tort, and the court lacks jurisdiction to hear this claim. See, e.g., *Fry v. United States*, 72 Fed. Cl. 500, 509 (2006); ("Unauthorized acts by federal officials are torts, not takings."); *Betz v. United States*, 40 Fed. Cl. 286, 293 (1998) ("[I]f plaintiff claims that the alleged taking was unauthorized, that claim would sound in tort, and this court would not have jurisdiction.").

The Court thus concludes that it lacks jurisdiction over each of plaintiff's allegations. Because the court lacks subject matter jurisdiction, the defendant's motion to dismiss pursuant to RCFC 12(b)(1) is **GRANTED** and the complaint will therefore be **DISMISSED** without prejudice pursuant to RCFC 12(h)(3).

When finding a lack of subject matter jurisdiction, the court may transfer the complaint to another court if the transfer is "in the interest of justice." 28 U.S.C. § 1631. Each of the potential transferee venues has, however, previously dismissed Mr. Stevens's complaints relating to his alleged implantation as without merit. See *Stevens v. City of Mount Olive*, No. 09-283 (E.D.N.C. July 2, 2009); *Stevens v. Unknown Name Employees*, No. 09-233 (E.D.N.C. June 11, 2009); *Stevens v. Holder*, No. 09-554 (D.D.C. March 24, 2009); *Stevens v. Effler*, No. 08-618 (E.D.N.C. May 28, 2009); *Stevens v. U.S. Senate Comm. on the Judiciary*, No. 08-2124 (D.D.C. Dec. 8, 2008); *Stevens v. Unknown Name Investigators*, No. 08-1404 (N.D. Ga. May 12, 2008); *Stevens v. Wake Med. Hosp.*, No. 02-560 (E.D.N.C. Aug. 16, 2002); *Stevens v. United States*, 01-2826 (N.D. Ga. Dec. 13, 2001); *Stevens v. Georgia*, 01-345 (N.D. Ga. Mar. 26, 2001); *Stevens v. Weeks*, 00-166 (N.D. Ga. May 3, 2000). A transfer of this case would therefore be futile due to the weakness of plaintiff's claims on the merits. *Siegal v. United States*, 38 Fed. Cl. 386, 390-91 (1997). Transfer will therefore be **DENIED**.

The Clerk is directed to enter judgment in accord with this Opinion and Order, dismissing plaintiff's complaint pursuant to RCFC 12(b)(1) and 12(h)(3). 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 this Court's order will be final.

**IT IS SO ORDERED.**

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GEORGE W. MILLER  
Judge