

**In the United States Court of Federal Claims**

No. 10-884 C

(Filed: January 18, 2011)

\_\_\_\_\_ )  
JAMES MCCREARY, )  
 )  
Plaintiff, )  
v. )  
 )  
THE UNITED STATES, )  
 )  
Defendant. )  
\_\_\_\_\_ )

ORDER

Before the court is the Complaint of James McCreary, pro se, filed on December 27, 2010. Compl., Docket Number 1, at 1. The Complaint was captioned by plaintiff as follows: “James McCreary Verses State of Mississippi.” Id. at 1. The official caption of the case (appearing above) was supplied by the office of the Clerk of Court in conformance with Rule 10(a) of the Rules of the United States Court of Federal Claims (RCFC), which states that “[t]he title of the complaint must name all the parties . . . with the United States designated as the party defendant.” RCFC 10(a). For the following reasons, the court DISMISSES plaintiff’s Complaint.

I. Background

Plaintiff characterizes his Complaint as a “Motion To Compel Respondent to obey State Laws and to Honor the United State[s] Constitution.” Compl. 1. Plaintiff alleges that the State of Mississippi illegally convicted him of crimes, see id. at 2, 4, and that, in turn, the State of Mississippi is guilty of kidnapping, id. Plaintiff states that he has “a right to be free of an illegal conviction.” Id. at 4. Plaintiff also appears to request

monetary damages for his alleged illegal convictions.<sup>1</sup> See id. at 3 (stating that, “[b]ecause of the State[’]s actions, [p]laintiff is now homeless, unemployed, and divorced” and that the “[\$]500,000 award that should have been granted back in February of 2010 . . . would help”); id. (referencing S.B. 3024, 2009 Reg. Sess. (Miss. 2009) (codified at Miss. Code Ann. §§ 11-44-1 to 11-44-15 (West 2009)), which is “[a]n act providing for claims for wrongful conviction and imprisonment”); id. at 4 (stating that “Mississippi ha[s] no plan of paying” plaintiff).

## II. Legal Standards

### A. Dismissal for Lack of Subject Matter Jurisdiction

“Subject-matter jurisdiction may be challenged at any time by the parties or by the court sua sponte.” Folden v. United States, 379 F.3d 1344, 1354 (Fed. Cir. 2004) (citing Fanning, Phillips & Molnar v. West, 160 F.3d 717, 720 (Fed. Cir. 1998)); see also Metabolite Labs, Inc. v. Lab. Corp. of Am. Holdings, 370 F.3d 1354, 1369 (Fed. Cir. 2004) (“Subject matter jurisdiction is an inquiry that this court must raise sua sponte, even where, as here, neither party has raised this issue.”) (citing Textile Prods., Inc., v. Mead Corp., 134 F.3d 1481, 1485 (Fed. Cir. 1998)). “In deciding whether there is subject-matter jurisdiction, ‘the allegations stated in the complaint are taken as true and jurisdiction is decided on the face of the pleadings.’” Folden, 379 F.3d at 1354 (quoting Shearin v. United States, 992 F.2d 1195, 1195-96 (Fed. Cir. 1993)).

Although complaints filed by pro se plaintiffs are generally held to “less stringent standards than formal pleadings drafted by lawyers,” Haines v. Kerner, 404 U.S. 519, 520 (1972); see Vaizburd v. United States, 384 F.3d 1278, 1285 n.8 (Fed. Cir. 2004) (noting that pleadings drafted by pro se parties “should . . . not be held to the same standard as [pleadings drafted by] parties represented by counsel”) (citation omitted), pro se plaintiffs nevertheless must meet jurisdictional requirements, Bernard v. United States, 59 Fed. Cl. 497, 499, aff’d, 98 F. App’x 860 (Fed. Cir. 2004) (unpublished); see also Kelley v. Dep’t of Labor, 812 F.2d 1378, 1380 (Fed. Cir. 1987) (“[A] court may not similarly take a liberal view of [a] jurisdictional requirement and set a different rule for pro se litigants only.”). If the court determines that it does not have subject matter jurisdiction, it must dismiss the claim. RCFC 12(h)(3).

## III. Discussion

For the following reasons, plaintiff’s Complaint is dismissed for lack of subject matter jurisdiction pursuant to RCFC 12(h)(3). The court also finds that transfer of plaintiff’s case to another federal court is inappropriate.

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<sup>1</sup> Plaintiff does not appear to be currently incarcerated. See Compl., Docket Number 1, at 3 (stating that “[p]laintiff is now homeless [and] unemployed”).

A. The Court Does Not Have Jurisdiction Over Plaintiff's Claims

This court has jurisdiction over “any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.” 28 U.S.C. § 1495 (emphasis added). “The jurisdiction of the [United States Court of Federal Claims] is limited to suits against the United States.” McGrath v. United States, 85 Fed. Cl. 769, 772 (2009) (citing United States v. Sherwood, 312 U.S. 584, 588 (1941)); see 28 U.S.C. § 1491. Because the allegations of the complaint state claims against the State of Mississippi--and not against the United States--the court lacks jurisdiction over plaintiff's complaint. See 28 U.S.C. § 1491; Moore v. Pub. Defender's Office, 76 Fed. Cl. 617, 620 (2007) (“When a plaintiff's complaint names private parties, or 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 does not bring a claim against the United States, plaintiff's Complaint must be dismissed pursuant to RCFC 12(h)(3) for lack of subject matter jurisdiction.

B. Transfer of the Case to Another Court Is Not Appropriate

Although not requested to do so by plaintiff, the court considers sua sponte whether “it is in the interest of justice” to transfer plaintiff's Complaint to another court of the United States under 28 U.S.C. § 1631.<sup>2</sup> See Tex. Peanut Farmers v. United States, 409 F.3d 1370, 1374-75 (Fed. Cir. 2005) (stating that the Court of Federal Claims should have considered whether transfer was appropriate once the court determined that it lacked jurisdiction). Section 1631 states in pertinent part:

Whenever a civil action is filed in a court as defined in section 610 of this title . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed or noticed . . . .

28 U.S.C. § 1631. Under 28 U.S.C. § 610, courts are defined as “courts of appeals and district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Federal Claims, and the Court of International Trade.” 28 U.S.C. § 610. Therefore, in order to transfer a case under section 1631, plaintiff must show, inter

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<sup>2</sup>Although plaintiff has not specifically requested a transfer, “the . . . court [may] order[] transfer without being asked to do so by either party.” Tex. Peanut Farmers v. United States, 409 F.3d 1370, 1375 (Fed. Cir. 2005). The court considers transfer in this case because plaintiff is proceeding pro se, see Skillo v. United States, 68 Fed. Cl. 734, 743 n.15 (2005) (considering transfer of plaintiffs' claims sua sponte), and because the transfer statute language “persuasively indicates that transfer, rather than dismissal, is the option of choice,” Britell v. United States, 318 F.3d 70, 73 (1st Cir. 2003) (citing 28 U.S.C. § 1631 (2000)).

alia, that the transferee court--as defined by section 610--has jurisdiction to hear the case. Acceptance Ins. Cos. v. United States, 503 F.3d 1328, 1332 (Fed. Cir. 2007).

The court determines that plaintiff's Compliant could not "have been brought at the time it was filed or noticed" in "any other such court." 28 U.S.C. § 1631; see 28 U.S.C. § 610 (defining "courts"). Plaintiff's claims do not fall within the jurisdiction of the federal courts listed in section 610. See 28 U.S.C. § 610 (defining "courts"). Federal district courts have original jurisdiction over "all civil actions arising under the Constitution, laws, and treaties of the United States." 28 U.S.C. § 1331 (emphasis added); see also U.S. Const. art. III, § 2, cl. 1 ("The judicial [p]ower shall extend to all [c]ases, in [l]aw and [e]quity, arising under this Constitution, [and] the [l]aws of the United States . . .") (emphasis added). Plaintiff's claim for monetary damages "arises under" a Mississippi statute that creates a right of action for wrongful conviction and imprisonment. See Compl. 3 (referencing S.B. 3024, 2009 Reg. Sess. (Miss. 2009) (codified at Miss. Code Ann. §§ 11-44-1 to 11-44-15 (West 2009))). Plaintiff's claim that he was kidnapped by the state--which is best understood as a state law tort claim--similarly does not "arise under" federal law, and does not create jurisdiction in the federal courts. See 28 U.S.C. § 1331. Because the courts listed in section 610 do not have jurisdiction over plaintiff's claims, the court does not have authority to transfer his case under 28 U.S.C. § 1631.

#### IV. Conclusion

The Clerk of Court is directed to DISMISS the complaint for lack of jurisdiction.

IT IS SO ORDERED.

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EMILY C. HEWITT  
Chief Judge