

# In the United States Court of Federal Claims

No. 11-556C

(Filed October 31, 2011)

NOT FOR PUBLICATION

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ANGEL MARINE DELMORE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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## ORDER DISMISSING CASE

On August 31, 2011, plaintiff filed her complaint with the Court. On September 22, 2011, defendant's counsel entered her notice of appearance but has not yet submitted any other filing, including a motion to dismiss. Having reviewed plaintiff's complaint however, the Court has determined *sua sponte*, pursuant to Rule 12(h)(3) of the Rules of the United States Court of Federal Claims, that Ms. Delmore's complaint is not within our subject-matter jurisdiction. Therefore, defendant need not file any further documents as plaintiff's case is **DISMISSED**.

Plaintiff claims that the United States (which she appears to define to include, among others, the National Security Council, the Secret Service, the Federal Bureau of Investigation, the State of Iowa, the City of Dyersville, the Supreme Court, and several individuals) has violated her constitutional rights. Specifically, plaintiff claims that the United States has violated Article II Section 4, Article IV Section 3, Article VI, and the Fourth Amendment to the Constitution by engaging in illegal wiretapping and transmitting voices to her at all times, including while she was in her bathroom "during personal moments." Compl. at 1-2. Plaintiff also appears to be contending that these same acts violate unspecified portions of the USA PATRIOT Act. *Id.* at 2. As a result, plaintiff is seeking \$1 billion and termination of the PATRIOT Act. *Id.* at 3.

While *pro se* plaintiffs' filings are to be liberally construed, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007), this lenient standard cannot prevent a case outside our jurisdiction from being dismissed. *See, e.g., Wilson v. United States*, 404 F. App'x 499, 500 (Fed. Cir. 2010). Because the Tucker Act, 28 U.S.C. § 1491, does not create any substantive rights, a plaintiff must identify a separate source of law that creates a right to money damages for his claim to be within our jurisdiction. *Jan's Helicopter Serv., Inc. v. FAA*, 525 F.3d 1299, 1306 (Fed. Cir. 2008) (quoting *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc in relevant part)). The test

for determining whether a statute or regulation can support jurisdiction in our court is whether it can be fairly interpreted as mandating compensation. See, e.g., *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472-73 (2003); *United States v. Mitchell*, 463 U.S. 206, 216-17 (1983); *Fisher v. United States*, 402 F.3d 1167, 1173-74 (Fed. Cir. 2005); *Contreras v. United States*, 64 Fed. Cl. 583, 588-92 (2005).

Plaintiff has not presented a money-mandating source of law that would support subject-matter jurisdiction in our Court. None of the constitutional provisions cited by plaintiff can fairly be interpreted as mandating compensation. Article II Section 4 simply provides that federal officers, including the President and Vice-President, shall be removed from office upon impeachment for high crimes and misdemeanors. U.S. Const. art. II, § 4. Article IV Section 3 provides that Congress shall have the power to issue rules and regulations concerning federally-owned property or territory. U.S. Const. art. IV, § 3. Article VI provides, in the part relied upon by Ms. Delmore, that federal officers shall be bound by oath to support the Constitution. U.S. Const. art. VI. And finally, the Fourth Amendment protects citizens against unreasonable searches and seizures by the government. U.S. Const. amend. IV. These provisions do not create a right to money damages for their violations and therefore cannot be the basis of subject-matter jurisdiction in this Court. See, e.g., *Hanford v. United States*, 154 F. App'x 216, 216 (Fed. Cir. 2005) (Article VI and Fourth Amendment); *Brown v. United States*, 105 F.3d 621, 623-24 (Fed. Cir. 1997) (Fourth Amendment); *Tasby v. United States*, 91 Fed. Cl. 344, 346 (2010) (Fourth Amendment); *Marshall v. United States*, 2010 WL 125978, \*3 (Fed. Cl. 2010) (Article VI).

Moreover, Ms. Delmore's accusations sound in tort and for that reason also jurisdiction would not be proper in this Court. See 28 U.S.C. § 1491(a)(1); 18 U.S.C. § 2712 (provision of PATRIOT Act dealing with recovery for violations); see also, *Del Rio v. United States*, 2010 WL 2300538, \*2 (Fed. Cl. 2010); *Marshall v. United States*, 2009 WL 4884457, \*3 (Fed. Cl. 2009).

Plaintiff has failed to identify a money-mandating provision on which to base jurisdiction over her case, and has presented claims sounding in tort. It is clear to the Court that it lacks jurisdiction over the matter. The Court hereby **DISMISSES** this action without prejudice. The Clerk shall close the case. No costs shall be awarded.

**IT IS SO ORDERED.**

s/

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**VICTOR J. WOLSKI**

Judge