



The letter, which the court will treat as the Complaint, alleges that on December 28, 1998, Plaintiff's residence was forcibly entered, his property was destroyed, and money and jewelry were stolen. *Id.* Plaintiff immediately reported this crime to the local police. *Id.*

The Complaint also alleges that on February 24, 1999, three masked individuals armed with handguns, entered Plaintiff's apartment, physically assaulted his brother-in-law, sexually assaulted Plaintiff's wife, and robbed both. *Id.* Then, Plaintiff's wife was forced, at gun point, to a store, owned by Plaintiff, where other money and jewelry were stolen. Before returning to Plaintiff's apartment, Plaintiff's wife was again physically assaulted. *Id.* Plaintiff also "immediately reported this second incident to the police." *Id.*

In addition, the Complaint alleges that the individuals were "arrested by the federal authorities [but] for other crimes they had committed." *Id.* They were, however, "star witnesses" against Plaintiff at his federal trial in exchange for "a reduction in their sentences for the different crimes they had committed." *Id.* at 1-2. Plaintiff has continued to petition the Charlotte Mecklenburg County Police Department and District Attorney's Office to arrest and prosecute these individuals for these crimes. *Id.* at 2.

## **II. PROCEDURAL BACKGROUND.**

On November 30, 2006, Plaintiff filed a *pro se* Complaint in the United States Court of Federal Claims. On February 5, 2007, the Government filed a Motion to Dismiss.

## **III. DISCUSSION.**

### **A. Standard For Decision On Motion To Dismiss Pursuant To RCFC 12(b)(1).**

A challenge to the "court's general power to adjudicate in specific areas of substantive law . . . is properly raised by a [Rule] 12(b)(1) motion." *Palmer v. United States*, 168 F.3d 1310, 1313 (Fed. Cir. 1999); *see also Fisher v. United States*, 402 F.3d 1167, 1173 (Fed. Cir. 2005) ("If the court's conclusion is that the source as alleged and pleaded is not money-mandating, the court shall so declare, and shall dismiss the cause for lack of jurisdiction, a Rule 12(b)(1) dismissal – the absence of a money-mandating source being fatal to the court's jurisdiction under the Tucker Act."); RCFC 12(b)(1).

In deciding a motion to dismiss, the court is "obligated to assume all factual allegations to be true and to draw all reasonable inferences in plaintiff's favor." *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995). Nevertheless, Plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. *See Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988) ("[O]nce the [trial] court's subject matter jurisdiction [is] put in question, it [is] incumbent upon [plaintiff] to come forward with evidence establishing the court's jurisdiction.").

**B. Pro Se Plaintiff Pleading Requirements.**

In the United States Court of Federal Claims, the pleadings of a *pro se* plaintiff are held to a less stringent standard than those of the litigants represented by counsel. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (*pro se* complaints, “however inartfully pleaded,” are held to “less stringent standards than formal pleadings drafted by lawyers”)). Indeed, it has been the tradition of the court to examine the record “to see if [a *pro se*] plaintiff has a cause of action somewhere displayed.” *Ruderer v. United States*, 188 Ct. Cl. 456, 468 (1969). However, a *pro se* plaintiff still bears the burden of establishing that jurisdiction is proper in this court. See *Giles v. United States*, 72 Fed. Cl. 335, 336 (2006) (citing *Tindle v. United States*, 56 Fed. Cl. 337, 341 (2003)).

**C. The Court’s Resolution Of The Government’s Motion To Dismiss.**

As the United States Supreme Court explained in *United States v. Sherwood*, 312 U.S. 584 (1941):

[I]t has been uniformly held, upon a review of the statutes creating the [United States Court of Claims, predecessor to the United States Court of Federal Claims] and defining its authority, that its jurisdiction is confined to the rendition of money judgments in suits brought for that relief *against the United States* . . . and if the relief sought is against others than the United States the suit as to them must be ignored as beyond the jurisdiction of the court.

*Id.* (citations omitted) (emphasis added); see also *Stephenson v. United States*, 58 Fed. Cl. 186, 190 (2003) (“[T]he *only* proper defendant for any matter before this court is the United States, not its officers, nor any other individual.” (citation omitted) (emphasis in original)).

The Complaint in this case does not seek relief against the United States, but instead alleges claims against a local police department and a local district attorney’s office. The court does not have jurisdiction over these defendants. With respect to Plaintiff’s claim against the individual Assistant United States Attorney, the actions at issue were undertaken in an official capacity and therefore are actionable, if at all, as tort claims, over which the United States Court of Federal Claims does not have jurisdiction. See *Sindram v. United States*, 67 Fed. Cl. 788, 792-93 (2005) (“Alleged wrongful conduct by governmental officials in their official capacity are tort claims over which the United States Court of Federal Claims does not have jurisdiction.” (citing 28 U.S.C. § 1346(b)); see also *Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997) (“The Tucker Act grants the [United States] Court of Federal Claims jurisdiction over suits against the United States, not against individual federal officials.”).

Moreover, the court does not have jurisdiction to review the decision of a federal prosecutor not to prosecute an alleged crime. As the United States Court of Appeals for the District of Columbia Circuit has stated:

It is assumed that the United States Attorney will perform his duties and exercise his powers consistent with his oaths; and while this discretion is subject to abuse or misuse just as is judicial discretion, deviations from his duty as an agent of the Executive are to be dealt with by his superiors.

The remedy lies ultimately within the establishment where power and discretion reside. The President has abundant supervisory and disciplinary powers-including summary dismissal-to deal with misconduct of his subordinates; *it is not the function of the judiciary to review the exercise of executive discretion whether it be that of the President himself or those to whom he has delegated certain of his powers.*

*Newman v. United States*, 382 F.2d 479, 482 (D.C. Cir. 1967) (emphasis added); *see also Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) (“[A] private citizen lacks a judicially cognizable interest in the prosecution or non prosecution of another.”); *United States v. Hall*, 559 F.2d 1160, 1163 (9th Cir. 1977) (“The power vested under [28 U.S.C. § 547] gives the United States Attorney broad discretion in determining which cases to file.”) (citations omitted).

Prosecutorial discretion is not unlimited and is subject to certain constitutional constraints. *See United States v. Armstrong*, 517 U.S. 456, 464 (1996) (quoting *Oyler v. Boles*, 368 U.S. 448, 456 (1962)). In this case, however, the Complaint has not asserted that the federal prosecutor’s decision not to prosecute violated any money-mandating provision of the United States Constitution. *See Khan*, 201 F.3d at 1377-78 (“[T]o invoke jurisdiction under the Tucker Act, a plaintiff must identify a contractual relationship, constitutional provision, statute, or regulation that provides a substantive right to money damages.”) (citation omitted). Accordingly, the United States Court of Federal Claims has no authority to adjudicate the claims presented in the Complaint.

#### **IV. CONCLUSION**

For the aforementioned reasons, the Government’s February 5, 2007 Motion to Dismiss is granted. The Clerk of the United States Court of Federal Claims is directed to dismiss Plaintiff’s November 30, 2006 Complaint.

**IT IS SO ORDERED.**

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**SUSAN G. BRADEN**  
**Judge**