

In the United States Court of Federal Claims

No. 11-295 C

(Filed December 20, 2011)

UNPUBLISHED

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ANTONIO DE CARLO SHEPPARD,\*  
Pro Se Plaintiff,

v.

THE UNITED STATES,

Defendant.

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Express or Implied Contract Claims;  
Constitutional Claims; Tucker Act,  
28 U.S.C. § 1491(a)(1) (2006);  
Unjust Conviction Statute, 28 U.S.C.  
§ 1495 (2006); Subject Matter  
Jurisdiction, RCFC 12(b)(1);  
Failure to State a Claim,  
RCFC 12(b)(6); Equitable Relief.

Antonio De Carlo Sheppard, Bruceton Mills, WV, pro se.

Joseph E. Ashman, United States Department of Justice, with whom were  
Tony West, Assistant Attorney General, Jeanne E. Davidson, Director, and  
Deborah A. Bynum, Assistant Director, Washington, DC, for defendant.

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OPINION

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Bush, Judge.

Now pending before the court are defendant’s motion to dismiss and  
plaintiff Antonio De Carlo Sheppard’s motion for summary judgment, both of  
which have been fully briefed and are ripe for a decision by the court. Because the  
court lacks subject matter jurisdiction over all but one of the claims raised in the  
complaint, those claims must be dismissed pursuant to Rule 12(b)(1) of the Rules  
of the United States Court of Federal Claims (RCFC). In addition, the remaining  
claim set forth in the complaint must be dismissed pursuant to RCFC 12(b)(6) for

failure to state a claim. Accordingly, Mr. Sheppard's motion for summary judgment is denied.

## BACKGROUND<sup>1</sup>

Mr. Sheppard is an inmate incarcerated at the Hazelton Federal Penitentiary in Bruceton Mills, West Virginia. In his complaint, plaintiff alleges that he is entitled to immediate release from prison and more than \$6 billion in damages. Plaintiff asserts that he is entitled to the requested relief under a private contract with the Attorney General of the United States and the United States Attorney for the Northern District of Illinois. The asserted contract was formed, according to plaintiff, when the Attorney General and the U.S. Attorney both failed to respond to a document plaintiff sent to them in December 2010. That document, entitled "Commercial Affidavit of Facts," challenged the legality of plaintiff's criminal conviction and subsequent incarceration. Plaintiff contends that his incarceration is in contravention of the Thirteenth Amendment to the United States Constitution, 28 U.S.C. § 2007 (2006), the state constitution of West Virginia, and the Universal Declaration of Human Rights.

On May 11, 2011, Mr. Sheppard filed his complaint in this case. In the complaint, plaintiff seeks a default judgment against the government pursuant to RCFC 55, as well as an injunction dismissing the indictment that forms the basis of his incarceration and ordering his immediate release from federal custody.<sup>2</sup>

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<sup>1/</sup> The facts recounted here are taken from Mr. Sheppard's submissions in this case and are undisputed unless otherwise noted. For the limited purpose of resolving the government's motion to dismiss, all of the factual allegations set forth in the complaint are assumed to be true. The court makes no findings of fact in this opinion.

<sup>2/</sup> The court notes that the complaint names "Eric Holder dba U[.]S[.] Attorney General" as the defendant in this case. This court is without subject matter jurisdiction to hear claims or render judgments against parties other than the United States. *See United States v. Sherwood*, 312 U.S. 584, 588 (1941) (holding that this court's subject matter 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") (citation omitted). This court has further held that the jurisdictional limitation of suits in this court to those against the United States precludes suits against individual officers of the federal government. *Stephenson v. United States*, 58 Fed. Cl.

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Plaintiff has also demanded that the court order his release within seventy-two hours of its receipt of his complaint.

Defendant filed a motion to dismiss the complaint on July 1, 2011. In its motion, defendant first argues that plaintiff has not alleged facts sufficient to establish the existence of an enforceable contract with the government. Even if the correspondence sent to the Attorney General and the United States Attorney could be construed as an offer to enter into a contract, defendant argues, it is clear that neither of those public officials accepted that offer or otherwise manifested their assent to the terms of the asserted contract. Next, the government contends that, with one exception, none of the constitutional or statutory provisions referenced by plaintiff are money-mandating sources of law for purposes of the Tucker Act, 28 U.S.C. § 1491(a)(1) (2006). Finally, the government argues that plaintiff cannot recover under the sole money-mandating statute cited by plaintiff, 28 U.S.C. § 1495 (2006), because he has failed to demonstrate that he has been exonerated of the crimes for which he was incarcerated, which is a jurisdictional prerequisite to recovery under that statute. For those reasons, defendant argues that all of the claims set forth in the complaint must be dismissed.

On July 28, 2011, plaintiff filed a motion for summary judgment and his response to defendant's motion to dismiss. Plaintiff argues that defendant was required to file a response to the complaint, and that defendant violated that requirement when it filed a motion to dismiss instead. Plaintiff requests that the court enter a default judgment and summary judgment in its favor.

On August 29, 2011, defendant filed its response to Mr. Sheppard's motion for summary judgment and its reply to his response. Therein, defendant reiterates its assertion that plaintiff has failed to establish the existence of a binding contract. Defendant also argues that plaintiff may not seek damages in this court under the

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<sup>2</sup>/ ...continue

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.”). Because plaintiff is proceeding *pro se* and is entitled to a liberal construction of his pleadings, the court will construe his suit as one against the United States, as it has done in other similar cases. *See, e.g., Hernandez v. United States*, 96 Fed. Cl. 195, 198 (2010); *Parker v. United States*, 93 Fed. Cl. 159, 160 (2010); *Modena v. Neff*, 91 Fed. Cl. 29, 29 n.1 (2010); *Brown v. United States*, 88 Fed. Cl. 322, 322 n.1 (2009).

state constitution of West Virginia or the Universal Declaration of Human Rights. Finally, the government contends that plaintiff is not entitled to summary judgment in this proceeding.

Plaintiff filed a reply to defendant's response on September 12, 2011. In his reply, plaintiff references various purported maxims of commercial law in arguing that the failure of the government to rebut the allegations set forth in some unspecified affidavit prepared by plaintiff entitles him to judgment in this case.<sup>3</sup>

## DISCUSSION

### I. *Pro Se* Litigants

*Pro se* plaintiffs are entitled to a liberal construction of their pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (requiring that allegations contained in a *pro se* complaint be held to “less stringent standards than formal pleadings drafted by lawyers”). However, “[t]here is no duty on the part of the trial court to create a claim which [the plaintiff] has not spelled out in his pleading.” *Scogin v. United States*, 33 Fed. Cl. 285, 293 (1995) (quoting *Clark v. Nat’l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1994)) (punctuation omitted). Here, the court has thoroughly examined the complaint, the motion for summary judgment, and all of the attachments to those documents, and has attempted to discern all of the legal arguments contained therein.

### II. Jurisdiction and Standards of Review

#### A. Standard of Review under RCFC 12(b)(1)

In rendering a decision on a motion to dismiss for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1), this court must presume all undisputed factual allegations to be true and must construe all reasonable inferences in favor of the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *abrogated on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800, 814-15 (1982); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988). The relevant issue in

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<sup>3/</sup> Plaintiff attached several affidavits as exhibits to his complaint, including the “offer” sent to the Attorney General and the U.S. Attorney in December 2010.

a motion to dismiss under RCFC 12(b)(1) “is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” *Patton v. United States*, 64 Fed. Cl. 768, 773 (2005) (quoting *Scheuer*, 416 U.S. at 236). The plaintiff bears the burden of establishing subject matter jurisdiction, *Alder Terrace, Inc. v. United States*, 161 F.3d 1372, 1377 (Fed. Cir. 1998) (citing *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936)), and must do so by a preponderance of the evidence, *Reynolds*, 846 F.2d at 748 (citations omitted). Although “pro se plaintiffs are held to a lower standard of pleading than those represented by counsel, all those seeking to invoke this court’s subject matter jurisdiction ultimately retain the burden of establishing that the jurisdictional requirements are met.” *Searles v. United States*, 88 Fed. Cl. 801, 803 (2009) (citing *Keener v. United States*, 551 F.3d 1358, 1361 (Fed. Cir. 2009)); *see also Minehan v. United States*, 75 Fed. Cl. 249, 253 (2007) (“[T]he leniency afforded to a *pro se* litigant with respect to mere formalities does not relieve the burden to meet jurisdictional requirements.”).

The court may look at evidence outside of the pleadings in order to determine its jurisdiction over a case. *Martinez v. United States*, 48 Fed. Cl. 851, 857 (2001) (citing *RHI Holdings, Inc. v. United States*, 142 F.3d 1459, 1461-62 (Fed. Cir. 1998); *Rocovich v. United States*, 933 F.2d 991, 993 (Fed. Cir. 1991)), *aff’d in relevant part*, 281 F.3d 1376 (Fed. Cir. 2002). “Indeed, the court may, and often must, find facts on its own.” *Id.* If jurisdiction is found to be lacking, this court must dismiss the action. RCFC 12(h)(3).

## **B. Standard of Review under RCFC 12(b)(6)**

It is well-settled that a complaint should be dismissed under RCFC 12(b)(6) “when the facts asserted by the claimant do not entitle him to a legal remedy.” *Lindsay v. United States*, 295 F.3d 1252, 1257 (Fed. Cir. 2002). When considering a motion to dismiss under this rule, “the allegations of the complaint should be construed favorably to the pleader.” *Scheuer*, 416 U.S. at 236. “[W]hen the allegations in a complaint, however true, could not raise a claim of entitlement to relief,” dismissal is warranted under RCFC 12(b)(6). *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558 (2007). To survive a motion to dismiss for failure to state a claim, a complaint must contain “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 555. While a complaint is not required to contain detailed factual allegations, it must

provide “enough facts to state a claim for relief that is plausible on its face.” *Id.* at 570. In order to meet the requirement of facial plausibility, the plaintiff must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

### C. Subject Matter Jurisdiction

The Tucker Act provides in relevant part that the

United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim 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(a)(1). While the Tucker Act constitutes a limited waiver of the government’s sovereign immunity, that statute “does not create a substantive cause of action; in order to come within the jurisdictional reach and the waiver of the Tucker Act, a plaintiff must identify a separate source of substantive law that creates the right to money damages.” *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (*en banc* in relevant part). In addition, “[n]ot every claim invoking the Constitution, a federal statute, or a regulation is cognizable under the Tucker Act.” *United States v. Mitchell*, 463 U.S. 206, 216 (1983). On the contrary,

[t]he claim must be one for money damages against the United States, *see United States v. King*, 395 U.S. 1, 2-3 (1969), and the claimant must demonstrate that the source of substantive law he relies upon “can be fairly interpreted as mandating compensation by the Federal Government for the damages sustained.”

*Id.* at 216-17 (quoting *United States v. Testan*, 424 U.S. 392, 400 (1976)) (internal quotations omitted). If the asserted constitutional or statutory basis of a claim does

not mandate the payment of money by the government, the court must dismiss the action because “the absence of a money-mandating source [is] fatal to the court’s jurisdiction under the Tucker Act.” *Fisher*, 402 F.3d at 1173.

### **III. Analysis of Plaintiff’s Claims**

Mr. Sheppard advances several claims in his complaint and motion for summary judgment. First, plaintiff argues that the government has breached an express or implied-in-fact contract under which the government was obligated to release plaintiff from prison and make specified payments for each day of his incarceration. Second, plaintiff asserts that he is entitled to damages under the unlawful conviction statute, 28 U.S.C. § 1495. Third, plaintiff argues that he is entitled to relief under other various constitutional and statutory provisions. Finally, plaintiff seeks an injunction releasing him from prison and dismissing his criminal indictment. For the reasons discussed below, all of his claims must be dismissed.<sup>4</sup>

#### **A. Contract Claims**

Under the Tucker Act, this court possesses subject matter jurisdiction over claims based “upon any express or implied contract with the United States . . . .” 28 U.S.C. § 1491(a)(1). The Federal Circuit has noted that a well-pleaded allegation of an express or implied-in-fact contract is sufficient to survive a motion to dismiss under RCFC 12(b)(1). *See Bank of Guam v. United States*, 578 F.3d 1318, 1325 (Fed. Cir. 2009) (“A well pleaded allegation of a breach of either an express or implied-in-fact contract is sufficient to overcome challenges to jurisdiction.”) (citing *Trauma Serv. Grp. v. United States*, 104 F.3d 1321, 1325 (Fed. Cir. 1997)). Because the complaint alleges the existence of an express or implied-in-fact contract between plaintiff and the government, the court will not dismiss that claim under RCFC 12(b)(1).

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<sup>4</sup>/ Plaintiff asserts that defendant was required to respond to his complaint and appears to argue that the government should not have been allowed to move for dismissal of the complaint. However, the rules of this court expressly permit – and, in many cases, require – the government to file a motion to dismiss before filing an answer to the complaint. *See* RCFC 12(b) (noting that a “motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed”). In short, Mr. Sheppard’s argument in this regard is without merit.

Defendant argues, however, that Mr. Sheppard's contract claim must be dismissed for failure to state a claim because the complaint does not allege facts sufficient to meet the requirements of either an express or an implied-in-fact contract. Because the court concludes that plaintiff has failed to demonstrate the existence of an enforceable contract with the government, defendant's motion to dismiss the contract claim under RCFC 12(b)(6) is granted.

The elements of an implied-in-fact contract are the same as those required for an express contract: (1) mutuality of intent; (2) lack of ambiguity in offer and acceptance; (3) consideration; and (4) actual authority to bind the government. *See Hanlin v. United States*, 316 F.3d 1325, 1328 (Fed. Cir. 2003). Plaintiff carries the burden of demonstrating the existence of any contract alleged to have been breached by the government. *Id.* The Supreme Court has explained that “[a]n agreement implied in fact is ‘founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding.’” *Hercules, Inc. v. United States*, 516 U.S. 417, 424 (1996) (quoting *Baltimore & Ohio R.R. Co. v. United States*, 261 U.S. 592, 597 (1923)). In this case, plaintiff has failed to demonstrate the existence of a contract with the government because he has failed to meet at least three of the four elements of contract formation, all of which are required.

First, Mr. Sheppard has not established – nor even alleged – that the government has engaged in any affirmative conduct demonstrating its intent to enter into a binding contract with plaintiff. Rather, plaintiff asserts that the document he sent to government officials in December 2010 was an offer to enter into a contract, and that the failure of those officials to respond to his offer resulted in contract formation because an express clause in the offer stated that a failure to respond constituted an acceptance of its terms. It is clear, however, that silence does not, except in unusual circumstances not present here, constitute acceptance of an offer to enter into a contract. *Radioptics, Inc. v. United States*, 621 F.2d 1113, 1121 (Ct. Cl. 1980) (“Silence may not be construed as an acceptance of an offer in the absence of special circumstances existing prior to the submission of the offer which would reasonably lead the offeror to conclude otherwise.”); *Russell Corp. v. United States*, 537 F.2d 474, 482 (Ct. Cl. 1976) (“It is essential . . . that the acceptance of the offer be manifested by conduct that indicates assent to the proposed bargain.”); *cf. Harbert/Lummus Agrifuels Projects v. United States*, 142

F.3d 1429, 1434 (Fed. Cir. 1998) (“Silence in and of itself is not sufficient to establish a demonstrated acceptance of the contract by the [contracting officer].”).

Second, the allegations set forth in the complaint do not establish that the contract asserted by plaintiff in this case was supported by any consideration. The United States Court of Claims has noted that “[i]t is also fundamental that a contract must be supported by sufficient and valuable consideration, which has been defined as . . . [‘]detriment incurred by the promisee, or a benefit received by the promisor at the request of the promisor.[’]” *Estate of Bogley v. United States*, 514 F.2d 1027, 1033 (Ct. Cl. 1975) (quoting 1 Williston on Contracts § 102 (3d ed. 1957)). Here, the government would not derive any benefit from the asserted contract. Nor has Mr. Sheppard alleged that he would incur any detriment under the contract. The court notes that Mr. Sheppard’s incarceration cannot serve as the consideration exchanged for the government’s purported obligations under the asserted contract. *See id.* (“The general rule almost universally followed is that past consideration is no consideration.”).

Finally, plaintiff has not identified any statutory or other legal authority that might authorize the Attorney General or the U.S. Attorney to bind the government to the type of contract asserted here, which would subject the government to billions of dollars in damages in this case alone and would effectively overturn a criminal conviction based on no more than the government’s failure to respond to unsolicited correspondence from a federal inmate. Because actual authority to bind the government is essential to the formation of any contract with the government, Mr. Sheppard’s failure to establish the legal authority of either the Attorney General or the U.S. Attorney is fatal to his contract claim. *See Doe v. United States*, 100 F.3d 1576, 1584 (Fed. Cir. 1996). For the foregoing reasons, plaintiff has failed to establish the existence of a contract – either express or implied – with the government.<sup>5</sup>

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<sup>5</sup>/ The court also notes that it is far from clear whether plaintiff can meet the second element of contract formation, *i.e.*, a lack of ambiguity in offer and acceptance. Here, however, the court need not determine whether the correspondence plaintiff sent to the Attorney General and the U.S. Attorney might be viewed as an unambiguous offer to enter into a contract because it is clear that neither of those officials accepted the terms of that purported offer. As explained above, the government did not assent to the terms of Mr. Sheppard’s offer through its mere failure to respond to that offer. *See Radioptics*, 621 F.2d at 1121.

It is appropriate, at this juncture, to point out that this court does not, as a general matter, have jurisdiction over claims related to the administration or management of the criminal justice system. *See Joshua v. United States*, 17 F.3d 378, 379 (Fed. Cir. 1994) (noting that “[t]he court has no jurisdiction to adjudicate any claims whatsoever under the federal criminal code”); *Kania v. United States*, 650 F.2d 264, 268 (Ct. Cl. 1981) (“[T]he role of the judiciary in the high function of enforcing and policing the criminal law is assigned to the courts of general jurisdiction and not to this court. . . . It is particularly unreasonable to suppose that Congress in enacting the Tucker Act intended for this court to intervene in the delicate and sensitive business of conducting criminal trials.”); *Reid v. United States*, 95 Fed. Cl. 243, 249 (2010) (“The Court of Federal Claims does not possess jurisdiction over criminal claims.”); *Hufford v. United States*, 87 Fed. Cl. 696, 702 (2009) (“This court lacks jurisdiction to adjudicate criminal claims.”).

Thus, this court has held that it does not have jurisdiction over contracts that involve the administration of the criminal justice system. *See Sanders v. United States*, 252 F.3d 1329, 1335 (Fed. Cir. 2001) (affirming the dismissal of a contract claim based on a written agreement governing the terms of the plaintiff’s release on bail during post-trial proceedings following his conviction for mail fraud); *Kania*, 650 F.2d at 268 (holding that there is no jurisdiction under the Tucker Act for the government’s alleged breach of an immunity agreement with a grand jury witness); *Doe v. United States*, 37 Fed. Cl. 74 (1996) (holding that this court did not possess jurisdiction over a claim based on an alleged breach of a cooperation agreement between an inmate and the federal government); *Drakes v. United States*, 28 Fed. Cl. 190 (1993) (holding that this court lacked jurisdiction over a contract claim based on a criminal plea agreement); *Grundy v. United States*, 2 Cl. Ct. 596 (1983) (holding that this court did not have jurisdiction over a contract claim based on an agreement governing the operation of a safehouse for the protection of federal witnesses in criminal prosecutions). Because it is clear that plaintiff has failed to establish the existence of any contract with the government, the court need not determine whether it may exercise subject matter jurisdiction over claims alleging a breach of the type of contract asserted here.

## **B. Unjust Conviction Claims**

This court does have subject matter jurisdiction in limited circumstances over claims seeking damages caused by unjust conviction and imprisonment. *See*

28 U.S.C. § 1495 (“The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.”). For the reasons discussed below, however, the court concludes that plaintiff cannot prevail under section 1495.

This court may exercise jurisdiction under section 1495 only when the plaintiff has been pardoned or when the original conviction has been reversed or set aside on the basis that the plaintiff was not guilty of the crime that resulted in the conviction and incarceration. *See* 28 U.S.C. § 2513 (2006). Moreover, the reversal or pardon must be demonstrated with “a certificate of the court [that set aside the conviction] or pardon . . . .” *Id.* Mr. Sheppard does not contend that he has been pardoned or that any court has determined that he did not commit the crimes of which he was convicted. In the absence of such documentation, the court has no jurisdiction under section 1495. *See Grayson v. United States*, 141 Ct. Cl. 866, 869 (1958) (“It is clear that [sections 1495 and 2513] must be read together, since the one refers to the other. When they are read together it becomes manifest that the sections confer jurisdiction on this court only in cases where there has been conviction and in which the other conditions set out in section 2513 are complied with.”); *Lott v. United States*, 11 Cl. Ct. 852, 853 (1987) (“[Sections 1495 and 2513] do not confer upon the Claims Court the power to review and overturn convictions. Rather, the court’s jurisdiction to entertain a claim for money damages for unjust conviction arises only *after* the challenged conviction has been reversed, on grounds of innocence, by a court of competent jurisdiction or by Presidential pardon.”); *see also Vincin v. United States*, 468 F.2d 930, 933 (Ct. Cl. 1972) (noting that the exercise of jurisdiction under the unjust conviction statute requires strict adherence to the requirement that a plaintiff produce a certificate of innocence or documentation of a pardon).<sup>6</sup> Plaintiff has failed to meet the

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<sup>6/</sup> In *Grayson*, the Court of Claims held that it did not possess jurisdiction over a claim under the unjust conviction statute when a plaintiff neglected to provide the required certificate of exoneration or pardon. However, the court notes that a failure to meet the requirements of section 2513 might be more appropriately viewed as a failure to state a claim – rather than a failure to meet a jurisdictional prerequisite – in light of the Federal Circuit’s *en banc* holding in *Fisher*, 402 F.3d at 1175-76 (“Assuming the Court of Federal Claims has taken jurisdiction over the cause as a result of the initial determination that plaintiff’s cause rests on a money-mandating source, the consequence of a ruling by the court on the merits, that plaintiff’s case does not fit

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jurisdictional prerequisites of sections 1495 and 2513.

### C. Constitutional and Statutory Claims

In addition to section 1495, plaintiff references a number of constitutional, statutory, and other miscellaneous provisions in his complaint and motion for summary judgment. The complaint, for example, includes a claim under the Thirteenth Amendment of the United States Constitution. This court does not, however, have subject matter jurisdiction over claims raised under that constitutional provision. *See Nwogu v. United States*, 94 Fed. Cl. 637, 650 (2010) (holding that the Thirteenth Amendment does not require the payment of money for its violation and thus provides no basis for this court’s jurisdiction); *Johnson v. United States*, 79 Fed. Cl. 769, 774 (2007) (“This court . . . cannot entertain claims brought under the Thirteenth Amendment because it does not mandate the payment of money damages for its violation.”).

Mr. Sheppard also seeks relief under the state constitution of West Virginia, W. Va. Const. of 1872, as well as the Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948). But this court does not have jurisdiction over claims based on state law, constitutional or otherwise, *see Souders v. S.C. Pub. Serv. Auth.*, 497 F.3d 1303, 1307 (Fed. Cir. 2007) (“Claims founded on state law are also outside the scope of the limited jurisdiction of the Court of Federal Claims.”), nor do the federal courts have jurisdiction over claims based on the Universal Declaration of Human Rights, *see Pikulin v. United States*, 97 Fed. Cl. 71, 77-78 (2011) (holding that the Universal Declaration of Human Rights is an aspirational document and does not create any substantive rights enforceable against the government); *Gimbernat v. United States*, 84 Fed. Cl. 350, 354 (2008) (same); *Phaidin v. United States*, 28 Fed. Cl. 231, 234 (1993) (same).

Mr. Sheppard cites, without explanation, the decision of the United States Court of Appeals for the Eleventh Circuit in *Trezevant v. City of Tampa*, 741 F.2d

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<sup>6/</sup> ...continue

within the scope of the source, is simply this: plaintiff loses on the merits for failing to state a claim upon which relief can be granted.”). Regardless of whether the unjust conviction claim in this case is reviewed under RCFC 12(b)(1) or RCFC 12(b)(6), the result is the same: the claim must be dismissed.

336 (11th Cir. 1984). In that case, the Eleventh Circuit reviewed a district court's award of damages and attorneys' fees under federal civil rights statutes, 42 U.S.C. §§ 1983, 1988 (2006). Because this court has no jurisdiction over claims under the civil rights statutes, *Trezevant* is inapplicable here. See *Elkins v. United States*, 229 Ct. Cl. 607, 608 (1981) (holding that this court does "not have jurisdiction over claims based upon alleged violations of the civil rights laws"). In addition, section 1983 applies only to the actions of state and local officials and local governments; it does not apply to the activities of the federal government. See 42 U.S.C. § 1983 (creating a cause of action for deprivations of civil rights by those acting "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia") (emphasis added). Finally, Congress has vested exclusive jurisdiction over such claims within the federal district courts. See 28 U.S.C. § 1343 (2006); *Modena v. Neff*, 91 Fed. Cl. 29, 34 (2010) (holding that "[e]xclusive jurisdiction to hear civil rights claims resides in the federal district courts"); *Hufford*, 87 Fed. Cl. at 703 (holding that "Congress has committed jurisdiction of § 1983 'constitutional tort' actions to the district courts").

Finally, plaintiff requests relief under 28 U.S.C. § 2007, which provides in part that "[a] person shall not be imprisoned for debt on a writ of execution or other process issued from a court of the United States in any State wherein imprisonment for debt has been abolished." *Id.* § 2007(a). That section further states that any person imprisoned for debt by a federal court, in those states where such imprisonment is still permitted, is entitled to the same jail privileges and is governed by the same regulations as persons imprisoned for debt by a state court. *Id.* § 2007(b). However, nothing in that section either mandates or authorizes the payment of money by the government for its violation. For that reason, this court is without subject matter jurisdiction over any claims under section 2007.

#### **D. Requests for Declaratory and Injunctive Relief**

In connection with the claims discussed above, Mr. Sheppard also requests an injunction dismissing the indictment that forms the basis of his incarceration and ordering his immediate release from federal custody. However, this court is authorized to grant injunctive relief in only two limited circumstances. First, the court may award injunctive relief in bid protest cases. 28 U.S.C. § 1491(b)(2) (2006). In addition, the court may award injunctive relief when it is "an incident of

and collateral to” a money judgment. *James v. Caldera*, 159 F.3d 573, 580 (Fed. Cir. 1998). Because Mr. Sheppard is not entitled to any monetary damages in this case, however, the court is unable to award the additional equitable relief he has requested. This court has no general authority to award equitable relief, *see Bowen v. Massachusetts*, 487 U.S. 879, 905 (1988) (“The Claims Court does not have the general equitable powers of a district court to grant prospective relief.”), and it has no specific authority to review the decisions of a district court, *see Joshua*, 17 F.3d at 380 (noting that “the Court of Federal Claims does not have jurisdiction to review the decisions of district courts . . . relating to proceedings before those courts”). The request for injunctive relief must be denied because it is not within this court’s jurisdiction or authority.

## CONCLUSION

The court concludes that, with one exception, there is no jurisdictional basis in this court for any of the claims raised by plaintiff. For that reason, those claims must be dismissed under RCFC 12(b)(1) for lack of subject matter jurisdiction. Furthermore, the court holds that the remaining claim must be dismissed under RCFC 12(b)(6) for failure to state a claim upon which relief can be granted. The court has considered transfer of the claims over which this court lacks jurisdiction, but concludes that it is not in the interest of justice to do so.<sup>7</sup>

Accordingly, it is hereby **ORDERED** that

- (1) Defendant’s Motion to Dismiss, filed July 1, 2011, is **GRANTED**;
- (2) Plaintiff’s Motion for Summary Judgment, filed July 28, 2011, is **DENIED**;

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<sup>7/</sup> Although plaintiff does not request that the court transfer his case to an appropriate district court, that is the action that this court would normally take if it appeared that a particular district court had jurisdiction over the claims raised in the complaint. Under the transfer statute, “[w]henever a civil action is filed in a court . . . 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 . . .” 28 U.S.C. § 1631 (2006). In order to transfer a claim to a district court, this court must first determine that the district court has jurisdiction to hear and decide the transferred claim on the merits. In the circumstances presented here, it is clear that transfer of this suit would not be in the interest of justice.

- (3) The Clerk's Office is directed to **ENTER** final judgment in favor of defendant, **DISMISSING** the claims set forth in the complaint as follows:
- (a) The breach-of-contract claim shall be dismissed under RCFC 12(b)(6) for failure to state a claim, with prejudice; and
  - (b) All remaining claims shall be dismissed under RCFC 12(b)(1) for lack of subject matter jurisdiction, without prejudice;
- (4) No costs.

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LYNN J. BUSH  
Judge