

# In the United States Court of Federal Claims

No. 12-138 C  
(Filed: March 8, 2012)

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DINO J. SCHWERTZ,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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) Pro Se; Lack of Subject Matter  
) Jurisdiction; Sua Sponte Transfer  
) Pursuant to 28 U.S.C. § 1631  
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Dino J. Schwertz, West Feliciana Parish, LA, pro se.

## OPINION

Before the court is plaintiff's Complaint (Compl.), Docket Number 1, filed February 13, 2012.<sup>1</sup> Pro se plaintiff Dino J. Schwertz seeks review by the court of his criminal conviction in Louisiana state court. See Compl. 1-2. Plaintiff asserts that "[h]e can prove [that the] victims [r]ecanted and lied [a]bout the[ir] stor[ies]." Id. at 2. Plaintiff further alleges "errors in his case, unfair, prejudice, bias judicial" and that plaintiff's previous appeals have been denied. Id.

For the following reasons, the court finds that it lacks jurisdiction over plaintiff's claims and transfers this action to the United States District Court for the Middle District of Louisiana (Middle District of Louisiana).

### I. Legal Standards

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

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<sup>1</sup>Plaintiff also submitted an Application to Proceed in Forma Pauperis, Docket Number (Dkt. No.) 2, filed February 13, 2012. For the limited purpose of filing his Complaint, Dkt. No. 1, plaintiff's application is GRANTED. Accordingly, the Office of the Clerk of Court is directed to file the Complaint with no filing fee.

“Subject-matter jurisdiction may be challenged at any time by the parties or by the court sua sponte [(on its own)].” 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 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 (citation and quotation marks omitted). 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), 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). If the court determines that it does not have subject matter jurisdiction, it must dismiss the claim. RCFC 12(h)(3).

The United States Court of Federal Claims (Court of Federal Claims) “is a court of limited jurisdiction.” Southfork Sys., Inc. v. United States, 141 F.3d 1124, 1132 (Fed. Cir. 1998). The Tucker Act establishes and limits the jurisdiction of the Court of Federal Claims. 28 U.S.C. § 1491 (2006). The Tucker Act provides that the Court of Federal Claims has jurisdiction over “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).

## B. Transfer to a Court Where an Action Could Have Been Brought

Under 28 U.S.C. § 1631, a federal court may transfer an action to another federal court when (1) the transferring court lacks subject matter jurisdiction; (2) the action could have been brought in the transferee court at the time it was filed; and (3) such a transfer is in the interest of justice.<sup>2</sup> See Rodriguez v. United States, 862 F.2d 1558, 1559-60 (Fed. Cir. 1988) (citing Town of N. Bonneville, Wash. v. U.S. District Court, 732 F.2d 747, 750 (9th Cir. 1984)); Palacios v. United States, 100 Fed. Cl. 656, 658 (2011).

## II. Discussion

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<sup>2</sup>The transfer statute provides, in relevant part, that “[w]henver 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 or appeal to any other such court in which the action . . . could have been brought at the time it was filed.” 28 U.S.C. § 1631 (2006).

For the following reasons, the court finds that it lacks jurisdiction over plaintiff's claims and transfers this action to the Middle District of Louisiana.

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

Plaintiff seeks review by the court of his criminal conviction in Louisiana state court. See Compl. 1-2. "This [c]ourt does not have the power to review state court actions." Landers v. United States, 39 Fed. Cl. 297, 301 (1997) (citing, inter alia, D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983)). Furthermore, "The Court of Federal Claims does not have the power to review and overturn convictions or to review in detail the facts surrounding a conviction or imprisonment." Zakiya v. United States, 79 Fed. Cl. 231, 234-35 (2007), aff'd, 277 F. App'x 985 (Fed. Cir. 2008) (unpublished); see also Dethlefs v. United States, 60 Fed. Cl. 810, 814 (2004) (stating that the Court of Federal Claims lacks "authority to review and overturn convictions entered by a court of competent jurisdiction"). The court is therefore without jurisdiction to hear plaintiff's claims.

B. Transfer of Plaintiff's Claims Is 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 federal court under 28 U.S.C. § 1631. 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). Although plaintiff has not specifically requested a transfer, the court may "order[] transfer without being asked to do so by either party." Id. at 1375. 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 sua sponte whether to transfer the plaintiffs' claims), and because the transfer statute language "persuasively indicates that transfer, rather than dismissal, is the option of choice,"<sup>3</sup> Britell v. United States, 318 F.3d 70, 73 (1st Cir. 2003) (citing 28 U.S.C. § 1631).

Because transfer is the option of choice, id., and because plaintiff's Complaint, while informally presented, appears to contain claims cognizable in federal district court,

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<sup>3</sup>Although "[t]he Ninth and Second Circuits have held that a trial court must consider transfer as an alternative to dismissal for want of jurisdiction in cases in which transfer is authorized by section 1631, even in the absence of a request for transfer by the plaintiff," the United States Court of Appeals for the Federal Circuit, in Texas Peanut Farmers, reserved the issue of "whether to follow that line of authority." Tex. Peanut Farmers v. United States, 409 F.3d 1370, 1375 n.7 (Fed. Cir. 2005) (emphasis added).

the Clerk of Court shall TRANSFER this action to the United States District Court for the Middle District of Louisiana.

III. Conclusion

For the foregoing reasons, the court finds that it lacks jurisdiction over plaintiff's claims and TRANSFERS this action to the Middle District of Louisiana. No costs.

IT IS SO ORDERED.

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EMILY C. HEWITT  
Chief Judge