

In the United States Court of Federal Claims

he is entitled to relief on the grounds that his criminal conviction violates the Thirteenth Amendment's prohibition against slavery, that none of the attorneys involved in his criminal case were qualified, that his conviction was due to fraud and that he was deprived of his right under the Sixth Amendment and federal and state statutes to know the nature of the case against him, and that the state court lacked jurisdiction over him as a "sovereign American."

Pursuant to Rule 12(h)(3) of the Rules of the Court of Federal Claims, "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." A plaintiff has the burden of establishing the court's subject matter jurisdiction by a preponderance of the evidence. *See Fid. & Guar. Ins. Underwriters, Inc. v. United States*, 805 F.3d 1082, 1087 (Fed. Cir. 2015) (citing *Brandt v. United States*, 710 F.3d 1369, 1373 (Fed. Cir. 2013); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988). Although pro se plaintiffs are held to less stringent pleading standards, they must still demonstrate that the court has jurisdiction to hear their claims. *See Matthews v. United States*, 750 F.3d 1320, 1322 (Fed. Cir. 2014) (citation omitted).

The Tucker Act, 28 U.S.C. § 1491(a)(1), grants this court jurisdiction to hear "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*."

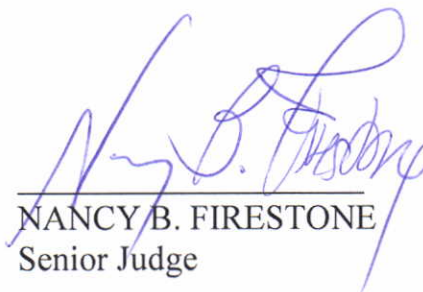
This court lacks jurisdiction over claims where the defendant is any entity other than the United States. *See, e.g., Conner v. United States*, 641 F. App'x 972, 975 (Fed. Cir. 2016) (per curiam) (citing 28 U.S.C. § 1491(a)(1); *United States v. Sherwood*, 312 U.S. 584, 588 (1941); *Berdick v. United States*, 612 F.2d 533, 536 (Ct. Cl. 1979)). Therefore, Mr. Elleby's claims against state officials and private individuals are outside this court's jurisdiction and must be dismissed.

In addition, this court is bound by Supreme Court and Federal Circuit precedent holding that the court's jurisdiction under the Tucker Act "is limited to claims against the United States based on sources of law that mandate monetary relief." *Id.* (citing *United States v. Navajo Nation*, 556 U.S. 287, 289-90 (2009)). A plaintiff must show that "the source of substantive law he relies upon 'can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.'" *Id.* (quoting *United States v. Mitchell*, 463 U.S. 206, 216-17 (1983)). Even if the court were to read Mr. Elleby's complaint as against the United States, the court lacks jurisdiction to hear Mr. Elleby's claims because the Federal Circuit has found that the authorities Mr. Elleby relies on are not money mandating. *See id.* (citing, e.g., *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995); *Harris v. United States*, 118 Fed. Cl. 180, 190 (2014); *Ogden v. United States*, 61 Fed. Cl. 44, 47 (2004); *Carter v. United States*, 228 Ct. Cl.

898, 900 (1981)). In addition, this court lacks authority under the Tucker Act to hear claims “sounding in tort.” 28 U.S.C. § 1491(a)(1). Therefore, the court lacks jurisdiction over Mr. Elleby’s tort claims, including his allegations of fraud.

For the reasons above, Mr. Elleby’s complaint must be **DISMISSED**.¹ The clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.



NANCY B. FIRESTONE
Senior Judge

¹ On November 16, 2016, Mr. Elleby filed a motion to proceed in forma pauperis and a “promissory note” for \$410. Mr. Elleby’s motion to proceed in forma pauperis is **GRANTED** for the limited purpose of filing the complaint.