IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WENDELL S. FORTSON, II, JD, PHD, Plaintiff, v. THE UNITED STATES, Defendant.	No. 25-2058 (Judge Edward H. Meyers)

DEFENDANT'S MOTION TO DISMISS

Pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully submits this motion to dismiss the complaint filed *pro se* by plaintiff Wendell S. Fortson, II, JD, PHD.

STATEMENT OF THE CASE

In his complaint, Mr. Fortson alleges that Supreme Court justices and other Government officials sanctioned a national ethnic cleansing program (and other programs) "targeting the American Negro Community with the stated aim of maintaining an ever-expanding enslaved Negro population" between 1790 and 1865. Compl. at 1-3. Mr. Fortson seeks between $18.6 trillion and $6.2 quadrillion in damages, among other forms of relief. Compl. ¶ 55.

ARGUMENT

I. Standard Of Review

Whether the Court possesses subject-matter jurisdiction is a threshold matter that the parties can raise at any time and that the Court has a continuing independent obligation to determine exists. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998); *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434–35 (2011). Without jurisdiction, "the court cannot

proceed at all in any cause, . . . [and] the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co.*, 523 U.S. at 94 (citation omitted).

The plaintiff bears the burden of proving by preponderant evidence that the Court possesses jurisdiction to entertain the claims in their complaint. *Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1163 (Fed. Cir. 2011). Although *pro se* pleadings are "held to less stringent standards than formal pleadings drafted by lawyers" and are to be "liberally construed," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citation omitted), the leniency to be accorded such pleadings does not relieve the *pro se* plaintiff of the obligation to establish jurisdictional requirements. *Riles v. United States*, 93 Fed. Cl. 163, 165 (2010); *see Kelley v. Sec'y of the U.S. Dep't of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987). Thus, the *pro se* plaintiff, like any plaintiff, must prove that the Court possesses jurisdiction to entertain their claims.

The defendant, in turn, may challenge whether the plaintiff met their burden through a Rule 12(b)(1) motion to dismiss. *See Palmer v. United States*, 168 F.3d 1310, 1313 (Fed. Cir. 1999). In evaluating a Rule 12(b)(1) motion, the Court "must accept as true all undisputed facts asserted in the plaintiff's complaint and draw all reasonable inferences in favor of the plaintiff." *Trusted Integration, Inc.*, 659 F.3d at 1163. The Court may also consider any relevant evidence outside the pleadings to determine its jurisdiction. *Newtech Rsch. Sys. LLC v. United States*, 99 Fed. Cl. 193, 200 (2011) (citations omitted), *aff'd*, 468 F. App'x 985 (Fed. Cir. 2012).

When confronted with such a jurisdictional challenge, the plaintiff may not "rely merely on the allegations in the complaint" but "must instead bring forth relevant competent proof to establish [the Court's] jurisdiction." *Vanquish Worldwide, LLC v. United States*, 134 Fed. Cl. 72, 76 (2017) (citing *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1998)).

If the plaintiff fails to proffer such proof, the Court must dismiss the plaintiff's claims. RCFC 12(h)(3); *see Feist v. United States*, 148 Fed. Cl. 168, 170 (2019).

II. The Complaint Should Be Dismissed For Lack Of Jurisdiction

As explained below, the complaint is jurisdictionally infirm and should be dismissed pursuant to Rule 12(b)(1).

As an initial matter, this Court has not been authorized to provide reparations for slavery. *See Jarvis v. United States*, 154 Fed. Cl. 712, 719–20 (2021) (citing *Obadele v. United States*, 52 Fed. Cl. 432, 442 (2002), *aff'd*, 61 F. App'x 705 (Fed. Cir. 2003) (table)), *aff'd*, No. 2022-1006, 2022 WL 1009728 (Fed. Cir. Apr. 5, 2022). Nor is Mr. Fortson, a *pro se* plaintiff, authorized to bring suit on behalf of the "American Negro Community." *Hymas v. United States*, 141 Fed. Cl. 144, 157 (2018) ("[A p]ro se plaintiff ... cannot represent a class") (citing RCFC 83.1(a)(3)), *appeal dismissed*, No. 19-1763, 2019 WL 12021685 (Fed. Cir. June 17, 2019); *accord* Rouse v. United States, No. 18-1980, 2022 WL 17821102, at *2 (Fed. Cl. Dec. 20, 2022); *Rodgers v. United States*, 153 Fed. Cl. 538, 541 (2021); *Ghaffari v. United States*, 125 Fed. Cl. 665, 668 (2016). But even if Mr. Fortson's complaint may be read to present a more nuanced theory of recovery, his claims remains well outside of this Court's jurisdiction for several reasons.

First, the claims alleged in the complaint are time-barred under 28 U.S.C. § 2501. Section 2501 mandates that any claim brought before this Court must be "filed within six years after such claim first accrues." 28 U.S.C. § 2501. A claim first accrues "when all the events which fix the government's liability have occurred and the plaintiff was or should have been aware of their existence." *San Carlos Apache Tribe v. United States*, 629 F.3d 1346, 1350 (Fed. Cir. 2011). Section 2501's six-year limitations is period is jurisdictional, and "[e]xceptions cannot be engrafted on the statute of limitations so as to allow claims to be asserted beyond the

six[-]year time limit." *Hart v. United States*, 910 F.2d 815, 818–19 (Fed. Cir. 1990); *see Abbas v. United States*, 842 F.3d 1371, 1375 (Fed. Cir. 2016). Here, the allegations in the complaint establish that plaintiff's claims accrued more than six years before the complaint was filed. Specifically, the focus of Mr. Fortson's complaint is upon acts that occurred between 1790 and 1865, well outside of this Court's six-year statute of limitations. *See* Compl. ¶¶ 5, 6, 7, 11, 15, 24, 25, 26, 28, 49. Plaintiff does not, and cannot, claim that the alleged acts of sexual violence that forms the basis of his claim were not reasonably known to the victims of this violence. Accordingly, the claims raised here are time-barred under section 2501 and should be dismissed for lack of jurisdiction. *See Marshall v. United States*, No. 24-1981, 2025 WL 457274, at *4 (Fed. Cl. Feb. 11, 2025) (holding that a claim based upon slavery "is hundreds of years beyond the statute of limitations").

Second, the Court lacks jurisdiction to entertain the claims in the complaint to the extent they are directed at any party other than the United States. In this Court, "[t]he *only* proper defendant . . . is the United States." *United States v. Sherwood*, 213 U.S. 584, 588 (1941); *see also Pikulin v. United States*, 97 Fed. Cl. 71, 75 (2011) (collecting cases). Mr. Fortson, however, bases his claims, in principal part, upon the wrongful acts of Supreme Court justices, Presidents, Members of Congress, and European Men, rather than the United States. *See* Compl. ¶¶ 17, 18, 19, 20, 21. To the extent that Mr. Fortson's claims are based upon the purported wrongful acts of these individuals, this Court does not possess jurisdiction to entertain such claims. *Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997).

Third, to the extent that the complaint is advancing claims sounding in tort, the Court lacks jurisdiction to entertain such claims. *See Sangaza v. United States*, 164 Fed. Cl. 188, 197 (2023) (quoting *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997)). Claims based upon

sexual assault "are, at their core, tort claims." *Canuto v. United States*, 673 F. App'x 982, 984 (Fed. Cir. 2016). The express "language of the Tucker Act excludes" tort claims from the Court's jurisdiction. *Rick's Mushroom Serv., Inc. v. United States*, 521 F.3d 1338, 1343 (Fed. Cir. 2008). Moreover, the Federal Tort Claims Act (FTCA) vests "exclusive jurisdiction" over tort claims against the Government in the United States district courts, not the Court of Federal Claims. 28 U.S.C. § 1346(b)(1); *U.S. Marine, Inc. v. United States*, 722 F.3d 1360, 1366 (Fed. Cir. 2013). Because the Court lacks both Tucker Act jurisdiction over claims sounding in tort and FTCA jurisdiction, the claims in the complaint should be dismissed.

Fourth, to the extent that the complaint relies upon 18 U.S.C. § 1091, Compl. ¶ 34, or otherwise raises claims of genocide, this Court "has no jurisdiction to adjudicate any claims whatsoever under the federal criminal code." *Joshua v. United States*, 17 F.3d 378, 379–80 (Fed. Cir. 1994); *see De La O v. United States*, No. 21-1329C, 2021 WL 3168879, at *3 (Fed. Cl. July 27, 2021) (dismissing genocide as a criminal claim outside of this Court's jurisdiction). Accordingly, those claims should be dismissed for lack of jurisdiction.

Fifth, although Mr. Fortson claims that his claims arise pursuant to a Fifth Amendment right to "sexual holiness" and the property interest over a one's physical body, this argument misapprehends the structure and nature of the rights protected by the Fifth Amendment. While the Due Process Clause of the Fifth Amendment of the Fifth Amendment protects individual bodily interests, the Takings Clause protects property interests. *See Stevens v. United States*, No. 09-338C, 2009 WL 3650874, at *4 (Fed. Cl. Oct. 28, 2009) ("Although the court has jurisdiction over taking claims, a claim relating to wrongful governmental control over a person is not a Fifth Amendment taking claim, but is instead a request for ... due process"). We are unaware of any cases that provide that the Takings Clause protects a right to "sexual holiness" or the property

interest in one's own physical body. *See Straw Est. of Stevens v. United States*, 710 F. App'x 881, 882 (Fed. Cir. 2017) ("We are not aware of any case that establishes a property interest in freedom from bodily harm."). As such, the claims asserted by Mr. Fortson arise pursuant to the Due Process Clause of the Fifth Amendment, not the Takings Clause. However, the Due Process Clause does not mandate the payment of money damages, and this Court does not possess jurisdiction to entertain such claims. *Smith v. United States*, 709 F.3d 1114, 1116 (Fed. Cir. 2013) ("The law is well settled that the Due Process clauses of both the Fifth and Fourteenth Amendments do not mandate the payment of money and thus do not provide a cause of action under the Tucker Act."). Accordingly, the constitutional claims advanced in the complaint do not provide a basis for this Court's jurisdiction.

CONCLUSION

For these reasons, the Government respectfully requests that the Court dismiss the complaint filed by Wendell S. Fortson, II, JD, PHD.

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

PATRICIA M. McCARTHY
Director

s/ Steven Michael Mager
STEVEN MICHAEL MAGER
Assistant Director
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
(202) 616-2377
Steven.Mager@usdoj.gov
Attorneys for Defendant

January 14, 2026