

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

SYLVAN GODFREY,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 16-954C  
(Judge Braden)

DEFENDANT'S MOTION TO DISMISS

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully submits this motion to dismiss plaintiff's complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. As discussed below, plaintiff, Sylvan Godfrey, fails to allege any cause of action that the Court possesses jurisdiction to entertain, and he fails to state a claim upon which relief can be granted.

STATEMENT OF THE ISSUES

1. Whether the Court possesses jurisdiction to entertain claims that collaterally attack the plaintiff's criminal conviction and civil commitment.
2. Whether the plaintiff has standing to raise claims relating to a settlement agreement with a Native American tribe and management of Native American lands.
3. Whether the plaintiff has failed to raise a cognizable claim for breach of a settlement agreement, a violation of a treaty provision, or a violation of the Fifth Amendment's Takings Clause.

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STATEMENT OF THE FACTS

Mr. Godfrey is incarcerated and is a member of the Sioux Tribe. *See* Compl., ECF No. 1. Mr. Godfrey asserts that he was a party to the Indian Trust Settlement entered by the United States District Court for the District of Columbia in *Cobell v. Jewell*, No. 96cv01285. *Id.* at 1. In general, Mr. Godfrey appears to allege that he was denied “fair and just compensation” related to the settlement (Count I), that he was wrongfully imprisoned (Count II), and that he was wrongfully certified for civil commitment (Count III). *Id.* at 1-4. Mr. Godfrey also appears to make claims related to violations of a “bad men” provision in the 1868 Fort Laramie Treaty and the poisoning of public drinking water. *Id.* at 1-3. Mr. Godfrey seeks damages exceeding \$2 billion. *Id.* at 4.

Mr. Godfrey asserts that this case is related to ten other cases filed by other incarcerated individuals in this Court or in the United States Court of Appeals for the Federal Circuit. *Id.* at 1. This Court has already dismissed many of these cases. *See e.g., Kenyon v. United States*, No. 16-CV-223, 2016 WL 4045434 (Fed. Cl. July 28, 2016); *Harrison v. United States*, No. 15-1271C, 2016 WL 3606066 (Fed. Cl. June 30, 2016); *Ballard v. United States*, No. 15-799C, 2016 WL 1057023 (Fed. Cl. Mar. 16, 2016); *Coyote v. United States*, No. 15-723C, 2016 WL 1057023 (Fed. Cl. Mar. 16, 2016); *Fourstar v. United States*, 122 Fed. Cl. 596 (2015); *Jones v. United States*, 122 Fed. Cl. 490 (2015); *Peters v. United States*, No. 15-528C, ECF No. 20 (Fed. Cl. Nov. 10, 2015) (Memorandum Opinion And Final Order).

## ARGUMENT

### I. The Court Does Not Possess Jurisdiction Over Mr. Godfrey's Claims

#### A. Standard Of Review

A claim may be dismissed pursuant to RCFC 12(b)(1) for a “lack of subject-matter jurisdiction.” RCFC 12(b)(1). When a Rule 12(b)(1) motion challenges the Court’s subject matter jurisdiction based upon the sufficiency of the pleading’s allegations, those allegations are taken as true and construed in a light most favorable to the complainant. *Cedars-Sinai Med. Ctr. v. Watkins*, 11 F.3d 1573, 1583 (Fed. Cir. 1993). While *pro se* plaintiffs are given more latitude in their pleadings and are not held to the rigid standards or formalities imposed upon parties represented by counsel, *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), a *pro se* plaintiff must still “comply with the applicable rules of procedural and substantive law,” *Walsh v. United States*, 3 Cl. Ct. 539, 541 (1983). Indeed, “the leniency afforded *pro se* litigants with respect to mere formalities does not relieve them of jurisdictional requirements.” *Demes v. United States*, 52 Fed. Cl. 365, 368 (2002) (citing *Kelley v. Sec., U.S. Dep’t of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987)).

#### B. The Court Should Dismiss Counts II and III For Lack Of Jurisdiction

Mr. Godfrey’s claims do not fall within this Court’s jurisdiction. This Court possesses jurisdiction to entertain monetary claims founded upon the Takings Clause of the United States Constitution, statutes, regulations, or contracts. 28 U.S.C. § 1491(a)(1); *see also United States v. Mitchell*, 463 U.S. 206, 215-18 (1983). The statutory or constitutional claims a plaintiff asserts must be “money-mandating” to come within the jurisdiction of the Court. *United States v. Testan*, 424 U.S. 392, 398 (1976). Because Mr. Godfrey does not allege a violation of a money-

mandating provision in Counts II or III of his complaint, those counts should be dismissed for lack of jurisdiction.

In Counts II and III of his complaint, Mr. Godfrey appears to raise collateral attacks on his criminal conviction and his civil commitment. Compl. at 3-4. The Court does not possess jurisdiction to entertain these claims. *See Joshua v. United States*, 17 F.3d 378, 379-80 (Fed. Cir. 1994) (stating that “the Court of Federal Claims does not have jurisdiction to review the decisions of district courts or the clerks of district courts relating to proceedings before those courts”); *Schweitzer v. United States*, 82 Fed. Cl. 592, 596 (2008) (stating that this Court lacks jurisdiction to hear challenges to “indictments, arrests, prosecutions, convictions, imprisonment, or parole”).

Mr. Godfrey also alleges in Count II of his complaint that his prosecution and criminal conviction constitute a violation of the “bad men” clause of the 1868 Fort Laramie Treaty. *See* Compl. at 3. This Court does not possess jurisdiction to entertain claims under the “bad men” provision unless the plaintiff has exhausted his administrative remedies by filing a claim with the United States Department of Interior. *Kenyon*, 2016 WL 4045434, at \*7; *Harrison*, 2016 WL 3606066, at \*5. Because there is no allegation or indication that Mr. Godfrey filed a claim with the Department of Interior, this Court does not possess jurisdiction over this claim.

Mr. Godfrey appears to allege that he is owed monetary damages because he has been wrongfully imprisoned. *See* Compl. at 3-4. “To recover damages for wrongful imprisonment under 28 U.S.C. § 1495, [a plaintiff] must obtain a certificate of innocence from the district court in which he was convicted.” *United States v. Racing Servs., Inc.*, 580 F.3d 710, 712 (8th Cir. 2009). Because Mr. Godfrey is incarcerated and does not allege that he obtained a certificate of innocence, this Court does not possess jurisdiction over this claim. *See Abu-Shawish v. United*

*States*, 120 Fed. Cl. 812, 813 (2015) (dismissing complaint for lack of jurisdiction because plaintiff did not allege that he obtained a certificate of innocence); *Wood v. United States*, 91 Fed. Cl. 569, 577 (2009) (“[C]ompliance with § 2513, including submission of a certificate of innocence from the federal district court, is a prerequisite to the jurisdiction of the Court of Federal Claims.”).

In Count III of his complaint, Mr. Godfrey also alleges that the United States violated the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. *See* Compl. at 4. However, “[t]he [C]ourt does not have jurisdiction to adjudicate the alleged constitutional violations, because the Fourth, Sixth and Eighth Amendments, as well as the Due Process clauses of the Fifth and Fourteenth Amendments are not ‘money-mandating.’” *Kenyon*, 2016 WL 4045434, at \*6 (citations omitted).

Finally, to the extent that Mr. Godfrey is alleging tort claims for malicious prosecution, wrongful imprisonment, wrongful eviction, or some other alleged tortious conduct such as “tampering” with a drinking water system, this Court does not possess jurisdiction to entertain those claims. 28 U.S.C. § 1491(a)(1) (stating that this Court possesses “jurisdiction to render judgment upon any claim against the United States . . . in cases not sounding in tort”); *Shearin v. United States*, 992 F.2d 1195, 1197 (Fed. Cir. 1993).

Because Mr. Godfrey’s claims in Counts II and III of his complaint do not arise from money-mandating provisions, the Court should dismiss his claims for lack of jurisdiction.

#### C. Mr. Godfrey Lacks Standing To Pursue Claims Raised In Count I

Mr. Godfrey lacks standing to pursue claims set forth in Count I of his complaint. To establish standing, a plaintiff must show: “(1) it has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the

injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180-81 (2000).

In Count I of his complaint, Mr. Godfrey appears to raise claims related to the use of Native American land, the building of roads on the Sioux reservation, and the poisoning of a water system. Compl. at 2-3. But Mr. Godfrey does not allege that any wrongdoing has occurred in a location or in a manner that will affect his person or property. *Id.* Indeed, he cannot; because Mr. Godfrey remains imprisoned, the alleged wrongdoing related to the use of land, building of roads, or a water system has no effect on his person. Because he has not suffered an “injury in fact,” Mr. Godfrey lacks standing to bring these claims. *See Friends*, 528, U.S. at 180-81; *see also Coyote*, 2016 WL 1057023, at \*4 (finding that the plaintiff did not have standing to bring a Takings claim).

Mr. Godfrey similarly lacks standing to pursue claims predicated upon alleged violations of treaty or settlement provisions that provide for payment to Native American tribes or nations, and not to individual members of tribes or nations. *See New York v. Smith*, 952 F. Supp. 2d 426, 431 (E.D.N.Y. 2013) (holding that an individual plaintiff lacks standing to pursue claims pursuant to a treaty that secures rights to tribes, and not individuals). Furthermore, the Court’s rules prohibit Mr. Godfrey, as a *pro se* litigant, from representing anyone other than himself or members of his immediate family, and thus prohibit him from asserting claims that belong to the tribe or nation. *See* RCFC 83.1(a)(3).

Because Mr. Godfrey lacks standing to pursue the claims he attempts to assert in Count I of his complaint, the Court should dismiss that claim.

II. Mr. Godfrey Fails To State A Claim Upon Which Relief Can Be Granted

To the extent that Mr. Godfrey's claims survive RCFC 12(b)(1), they should be dismissed pursuant to RCFC 12(b)(6) for failure to state a claim.

A. Standard Of Review

Pursuant to RCFC 12(b)(6), a complaint may be dismissed for "failure to state a claim upon which relief can be granted." When considering whether to dismiss an action for failure to state a claim, the Court "must assess whether the complaint adequately states a claim and whether plaintiffs can allege facts plausibly suggesting (not merely consistent with) a showing of entitlement to relief." *Hutchens v. United States*, 89 Fed. Cl. 553, 562 (2009). The plaintiff's factual allegations must be substantial enough to raise the right to relief "above the speculative level," accepting all factual allegations in the complaint as true and "indulg[ing] all reasonable inferences in favor of the non-movant." *Id.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). However, the Court need not accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Anderson v. Kimberly-Clark Corp.*, 570 F. App'x 927, 932 (Fed. Cir. 2014).

B. Mr. Godfrey Has Not Stated A Breach Of Settlement Agreement Claim

In Count I of his complaint, Mr. Godfrey claims that the United States violated the terms of a settlement agreement between the Government and Native American tribes. *See* Compl. at 1-3. Mr. Godfrey asserts that he was a member of the Indian Trust Settlement entered by the United States District Court for the District of Columbia in *Cobell v. Jewell*, No. 96cv01285. *Id.* at 1. Mr. Godfrey appears to allege that the \$3.4 billion in settlement proceeds was not distributed fairly, and, in particular, that his \$880 payment under the settlement agreement was unfair. *See id.* at 2. He also appears to allege that the Government built roads on Sioux land and took "Indian oil, gas, coal, timber, resources, [and] minerals." *See id.*

The *Cobell* settlement has a long history. In brief, five Native American plaintiffs initiated a class action lawsuit in 1996 in the United States District Court for the District of Columbia “seeking to compel the United States Department of the Interior to perform a historical accounting of the hundreds of millions of dollars held by the Department in trust for Native Americans.” *Cobell v. Jewell*, 802 F.3d 12, 16 (D.C. Cir. 2015). The United States Court of Appeals for the District of Columbia Circuit “affirmed the district court’s conclusion that the Department had unreasonably and unlawfully delayed that statutorily mandated accounting.” *Id.* (citing *Cobell v. Norton*, 240 F.3d 1081, 1105 (D.C. Cir. 2001)). “For the next decade, the parties, the district court, and Congress all struggled to determine how the Department could feasibly discharge its legal duty to conduct an accounting of the hundreds of thousands of “Individual Indian Money” trust accounts under its control.” *Id.* The parties then settled the case, resulting in distributions of funds of at least \$500 to each class member and a waiver of members’ claims that the land on the reservations was mismanaged by the Government. *See id.* at 16-17; *see also Two Shields v. United States*, 119 Fed. Cl. 762, 769-73 (2015) (describing the *Cobell* litigation and settlement agreement in detail).

Mr. Godfrey does not identify any statutory or contractual provision, or condition of the settlement agreement, that entitles him to more than the \$880 he allegedly received. *See id.* His dissatisfaction with the terms of the settlement agreement amounts to nothing more than a collateral attack on the terms of the agreement, which this court does not have jurisdiction to review. *See Two Shields*, 119 Fed. Cl. at 782. Nor does Mr. Godfrey identify a statutory or contractual provision that precludes the Government from building roads on the Sioux reservation, or that if such a provision does exist, that the Government did so without any required permission. Moreover, the terms of the settlement agreement itself, state that class

members, such as Mr. Godfrey, “shall be deemed to have released, waived and forever discharged” the United States from land administration claims, such as Mr. Godfrey’s claim regarding the building of roads or the taking of oil and other resources. *See Two Shields*, 119 Fed. Cl. at 773, 777. Accordingly, because Mr. Godfrey has failed to identify any statutory or contractual provisions the Government purportedly has violated and because by being a member of the class action, he has waived any land administration claim, he has failed to state a claim for which relief can be granted. *See Delhur Indus. v. United States*, 95 Fed. Cl. 446, 465 (2010) (stating that because the plaintiff “has not identified any contract provision that the [Government] may have breached,” the plaintiff “is not entitled to any damages on its contract claims against the Government”).

C. Mr. Godfrey Has Not Stated A Claim Under A Treaty

Mr. Godfrey also fails to state a claim under the “bad men” provision of the 1868 Fort Laramie Treaty. This provision provides for reimbursement for injuries committed by “bad men among the whites, or among other people subject to the authority of the United States.” 1868 Fort Laramie Treaty, art. I. As the Court recently explained, a claim under the “bad men” provision requires a Court to determine: “1) whether the man is a ‘bad man’ within the meaning of the treaty; and 2) whether he committed a ‘wrong’ within the meaning of the treaty.” *Jones*, 122 Fed. Cl. at 519; *see also Hernandez v. United States*, 96 Fed. Cl. 195, 202 (2010). Thus, as the Court explained, a plaintiff must first identify a particular individual as a “bad” man whose actions have harmed the plaintiff. *Jones*, 122 Fed. Cl. at 519.

In his complaint, Mr. Godfrey fails to identify a particular “bad” actor or a criminal act. *See generally* Compl. Mr. Godfrey may be alleging that the “bad men” who harmed him are the unnamed prosecutors from his prior criminal cases. *See* Compl. at 3 (alleging “knowingly and willfully perpetrating vague and discriminatory charges” and a policy “of lowering the

evidentiary threshold in Indian cases from plausible to viable”). Even if this was sufficiently particular, this Court would not have jurisdiction to entertain these claims of alleged prosecutorial misconduct. *See Hernandez*, 96 Fed. Cl. at 203-04 (finding the Court did not have jurisdiction over claims of prosecutorial misconduct when raised in the context of a “bad man” claim). Thus, any claims based on the “bad men” provision should be dismissed because Mr. Godfrey has not identified specific bad actors or any criminal acts.

D. Mr. Godfrey Has Not Stated A Takings Claim

To the extent that Mr. Godfrey attempts to allege a Takings Claim under the Fifth Amendment by being denied “fair and just compensation” from the Indian Trust Settlement, the Court should dismiss that claim. “In order to have a cause of action for a Fifth Amendment takings, the plaintiff must point to a protectable property interest that is asserted to be the subject of the takings.” *Abbas v. United States*, 124 Fed. Cl. 46, 51 (2015) (citing *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998)). Because Mr. Godfrey does not identify property in which he allegedly had a property interest that was the subject of a taking, *see* Compl. at 1-2, he has failed to state a claim under the Takings Clause. *See Abbas*, 124 Fed. Cl. at 51; *Coyote*, 2016 WL 1057023, at \*4.

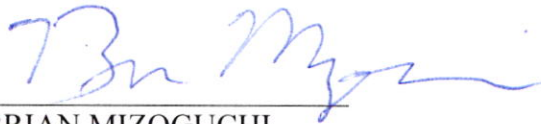
CONCLUSION

For the reasons given above, we respectfully request the Court to dismiss the complaint for lack of jurisdiction or for failure to state a claim for which relief can be granted.

Respectfully submitted,

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September 30, 2016


~~October 3, 2016~~

Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on this ~~3rd~~ <sup>30th</sup> day of ~~October~~ <sup>September</sup>, 2016, I caused to be placed in the United States mail (first-class, postage prepaid), copies of "DEFENDANT'S MOTION TO DISMISS" addressed as follows:

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Federal Correctional Institution  
11060-073  
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MARIANNA, FL 32447

  
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COURTNEY D. ENLOW