

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X
WILLIAM RODRIGUEZ,	:
	:
Plaintiff,	:
v.	:
	:
GEORGE HERBERT WALKER BUSH, et al.	:
	:
Defendants.	:
-----	X

05 CV 5402 (DLC)

**MEMORANDUM OF LAW IN SUPPORT OF THE GOVERNMENT DEFENDANTS’  
MOTION TO DISMISS THE COMPLAINT**

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## **PRELIMINARY STATEMENT**

Defendants United States of America, Department of Homeland Security (“DHS”) and the Federal Emergency Management Agency (“FEMA”) (collectively, the “Government Defendants”) respectfully submit this Memorandum of Law in support of their motion to dismiss the Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

Plaintiff’s voluminous, 177-page complaint contains a litany of irrational and fantastic government conspiracy theories. Although ostensibly plaintiff seeks to recover for personal injuries and loss of employment he allegedly suffered as a result of the September 11, 2001 attacks upon the World Trade Center, the Complaint alleges far-flung misconduct by high-level Government officials ranging from the current military action in Iraq, see Complaint (“Compl.”) at ¶¶ 459-483, to the 2000 and 2004 presidential elections, see id. at ¶¶ 317-366. As relevant to this motion, the Complaint also alleges that FEMA has been maneuvering to impose martial law and thereby effect an overthrow of the elected Government under the guise of declaring a state of emergency.

The Complaint should be dismissed for lack of subject matter jurisdiction and for failure to state a claim. First, the Court lacks subject matter jurisdiction over the Complaint because the Government Defendants have not waived their sovereign immunity from this suit. Second, the allegations in the Complaint are so completely devoid of merit as to lack any arguable basis in fact. Finally, plaintiff lacks standing to seek the relief requested in the Complaint.

## **BACKGROUND**

### **A. The Allegations in the Complaint**

Plaintiff alleges that he was employed as a maintenance worker at the World

Trade Center for approximately 19 years. Compl. at ¶ 1.<sup>1</sup> Plaintiff further alleges that he was injured by the collapse of the North Tower on September 11, 2001, and received medical attention for his injuries at the World Trade Center site. Id. at ¶ 2.

The gravamen of plaintiff's complaint is that President George W. Bush conspired with various high-level government officials to bring about the September 11 attacks, that the World Trade Center buildings were destroyed by means of explosive charges placed by government officials in the sub-basements of the towers, and that these attacks were carried out with the President's approval and assistance for the purpose of giving the President a "blank check" to "conduct a war of aggression" against Iraq.<sup>2</sup> See Compl. at ¶¶ 5-14. Plaintiff claims that President Bush and the other defendants, excluding the Government Defendants, engaged in a criminal Enterprise within the meaning of the Racketeer Influenced and Corrupt Organizations ("RICO") Act that led to his injuries at the World Trade Center site. Compl. at ¶¶ 87, 391-437.

Plaintiff has not asserted any RICO claims against the Government Defendants,

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<sup>1</sup> For the Court's convenience, a copy of the Complaint is submitted herewith as Exhibit ("Ex.") A to the Declaration of Jeannette A. Vargas ("Vargas Decl."), dated September 30, 2005.

<sup>2</sup> Because these individual defendants are sued in their individual capacities only, see Compl. at ¶ 37; Vargas Decl., Ex. B, at 6-7, this Office does not represent these defendants, nor has it appeared on their behalf. The Government notes, however, that it appears from an examination of the docket sheet that these individual defendants have not yet been served pursuant to Rule 4, notwithstanding that more than 120 days have passed since the filing of the Complaint. See Vargas Decl, Ex. C.

To the extent that plaintiff has brought this action against any named defendant in his or her official capacity as a federal employee, the Government respectfully requests that all arguments made with respect to the Government Defendants be deemed to apply to those individually-named defendants as well. See Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 510 (2d Cir. 1994) ("an action against . . . federal officers in their official capacities is essentially a suit against the United States").

however. See Compl. at ¶¶ 82-84. Instead, with respect to the Government Defendants, plaintiff alleges that FEMA kept exclusive control over the World Trade Center site following the attacks, and removed the debris in order to hide evidence of the true nature of the September 11 attacks. Compl. at ¶ 114.

Plaintiff also alleges that FEMA is a “massive, secretive agency operated from a huge, fortified bunker in Virginia . . . established by unconstitutional means to carry out an unconstitutional and indeed anti-constitutional program.” Compl. at ¶ 116. Specifically, plaintiff alleges that FEMA “receives unknown sums in black-budget appropriations and . . . finances its secret operations in significant part by drug dealing, gun running and assassinations.” Id. at ¶ 115. Plaintiff claims that FEMA’s principal purpose is to “make sure that centralized federal control — if need be, in the hands of executives neither elected by, nor indeed known to, the electorate, who already function as a ‘shadow government’ — continue[s], no matter what.” Id.

Plaintiff alleges that “a framework for the effective abolition or suspension of republican government in the United States has been created, under color of law, primarily through the various Executive Orders creating FEMA and authorizing the abrogation of many rights guaranteed by the Constitution upon the declaration of a state of emergency.” Compl. at ¶ 445.

Plaintiff further alleges that “‘emergency’ plans are in existence, for which expansive logistical preparations have been made for suspending the Constitution, turning the reigns of government over to FEMA, and appointing military commanders to run state and local governments. FEMA would further be empowered to order the detention, indefinitely and without trial, of anyone whom it believes ‘might’ engage in, or conspire with others to engage in,

espionage or sabotage. A national police force, with the euphemistic name of the Multi Jurisdictional Task Force, wearing black uniforms and composed of specially-selected U.S. military personnel (those willing to fire on Americans), foreign military units with UN identification cards and specially-trained police groups from larger U.S. cities, will enforce martial law, under the direction and control of FEMA.” Id. at ¶ 139.

Plaintiff contends that FEMA houses at “its primary bunker, Mount Weather in Virginia,” “an entire parallel and unelected government — with a president, who by protocol must be addressed as ‘Mr. President,’ and a cabinet not confirmed by the Senate, nor known to the public, all ready to take over the country in an ‘emergency.’” Id. at ¶ 146. Plaintiff alleges that FEMA is prepared to take “control of the economy and infrastructure of the United States, and suspend the Constitution and the Bill of Rights,” once the President makes a declaration of martial law. Id. at ¶¶ 155, 163. According to the Complaint, FEMA has already prepared “detention centers” ready to receive large numbers of civilian detainees to be used as forced labor, in preparation for the declaration of martial law. Id. at ¶¶ 156-58.

With respect to the Government Defendants, plaintiff seeks declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that the Government Defendants have acted unlawfully in that they:

- a. Have received and continue to receive funds from tax revenues collected by the federal government, without disclosure to Congress of the amount of monies appropriated to, or expended by, FEMA from year to year;
- b. Have knowingly received and expended, and continue to receive and to expend funds that are, directly or indirectly, the proceeds (“laundered” or otherwise) of extortion and blackmail, assassinations or murder; trafficking in narcotics, unlawful drugs or controlled substances; piracy; the smuggling of aliens not authorized for entry to the United States into

this country; the abduction, kidnaping transport and/or unlawful confinement of persons for forced labor or “white slavery,” and other crimes;

- c. Have engaged in and continue to engage in the planning, preparation, design, construction, equipping, staffing and/or operation of prisons or concentration camps, detention centers, or places of confinement (under whatever guise or name) for the confinement, anywhere in the world, of United States citizens or persons lawfully admitted to residence or otherwise law fulling in the United States, which have not been duly convicted of crime as expressly authorized by act of Congress;
- d. Have engaged in and continue to engage in planning and preparations for the overthrow of the Bill of Rights and for the imposition of fiat rule or martial law, the seizure of property, confinement of persons, confiscation of firearms, the suspension of the Bill of Rights and/or other provisions of the Constitution of the United States, under color of any law of Executive Order or otherwise;
- e. Have engaged in and continue to engage in the unauthorized surveillance and the compiling, maintenance or sharing of any records concerning citizens of the United States or persons lawfully residing in the United States, their religious or political affiliations, sympathies or activities; there membership in any societies or organizations; their business, financial and/or credit status or histories; their sexual relations or histories; their ownership of any firearms; their travels, or any information concerning their use of the internet or electronic mail, website visited, persons or organizations contacted by electronic means, or goods purchased via “e-commerce;” or information obtained by the interception of any mail, telephone (including cellular or wireless telephones) or other unauthorized surveillance by any means whatsoever.

Compl. at ¶ 442.

Plaintiff further seeks injunctive relief against the Government Defendants, prohibiting and enjoining the Government Defendants from invoking any of the Executive Orders creating and empowering FEMA to suspend republican government; requiring the full disclosure of, and the demolition of, any and all concentration camps built anywhere in the world for purposes of interning U.S. citizens in the event of a ‘state of emergency;’ and requiring the

Government Defendants to disclose what provisions are in place to supplant the duly-elected officials of the executive branch with unelected officials holding parallel posts in the event of a declaration of martial law. Compl. at ¶¶ 449-50.

**B. The Procedural History**

Plaintiff filed this Complaint in the United States District Court for the Eastern District of Pennsylvania on or about October 22, 2004. See Vargas Decl., Ex. C. On October 26, 2004, the United States Attorney for the Eastern District of Pennsylvania accepted service of the Complaint on behalf of the United States. See Vargas Decl., Ex. C.

On March 15, 2005, plaintiff filed a motion seeking a 60-day extension of time, nunc pro tunc, in which to effectuate service upon unspecified defendants. See Vargas Decl., Ex. E.

By Memorandum Order dated May 2, 2005, the United States District Court for the Eastern District of Pennsylvania, held that it lacked subject matter jurisdiction over the Complaint, because the Air Transportation Safety and System Stabilization Act of 2001 vested original and exclusive jurisdiction for all claims resulting from or related to the terrorist-related aircraft crashes of September 11, 2001, in the United States District Court for the Southern District of New York. See Vargas Decl., Ex. D. The United States District Court for the Eastern District of Pennsylvania therefore ordered that this case be transferred to the Southern District of New York pursuant to 28 U.S.C. § 1631. Id. The United States District Court for the Eastern District of Pennsylvania further denied plaintiff's request for an extension of time to effectuate service, without prejudice to a renewal of this motion in the Southern District of New York. Id. To date, plaintiff has not moved for such an extension of time. See Vargas Decl., Ex. C.

## ARGUMENT

### **I. THE COURT LACKS SUBJECT MATTER JURISDICTION OVER THE COMPLAINT BECAUSE THE GOVERNMENT HAS NOT WAIVED ITS SOVEREIGN IMMUNITY**

The United States enjoys sovereign immunity from lawsuits except “as it consents to be sued” and “the terms of its consent to be sued in any court define that court’s jurisdiction.” United States v. Mitchell, 445 U.S. 535, 538 (1980) (quoting United States v. Sherwood, 312 U.S. 584, 586 (1941)). A “waiver of sovereign immunity ‘cannot be implied but must be unequivocally expressed.’” Mitchell, 445 U.S. at 538 (quoting United States v. King, 395 U.S. 1, 4 (1969)). Such waivers, and their conditions, must be strictly applied against a claimant. See Library of Congress v. Shaw, 478 U.S. 310, 314, 318–21 (1986); see also Millares Guiraldes de Tineo v. United States, 137 F.3d 715, 719 (2d Cir. 1998) (“Any limitations imposed by the waiver statute, whether they be substantive, procedural, or temporal, are to be strictly applied against the claimant.”). Federal subject matter jurisdiction therefore does not exist unless the United States has waived its sovereign immunity and the specific conditions for such waiver have been met. See Federal Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 475 (1994) (“Sovereign immunity is jurisdictional in nature.”).

With respect to the Government Defendants, plaintiff asserts that subject matter jurisdiction exists pursuant to the Federal Question Act, 28 U.S.C. § 1331 and the Declaratory Judgment Act, 28 U.S.C. § 2201. Compl. at ¶ 34.<sup>3</sup> The Declaratory Judgment Act does not

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<sup>3</sup> Plaintiff also cites various federal criminal statutes, which do not confer a private right of action, see Vargas Decl., Ex. D, at 2, never mind a waiver of sovereign immunity, and the RICO Act. Even if plaintiff had asserted his RICO claims against the Government Defendants, which he has not, RICO does not waive the Government’s immunity from suit. United States v. Bonanno Organized Crime Family, 879 F.2d 20, 23 (2d Cir. 1989).

waive the Government's sovereign immunity, however, and thus does not operate to confer the Court with subject matter jurisdiction over this action. See, e.g., Progressive Consumers Federal Credit Union v. United States, 79 F.3d 1228, 1230 (1st Cir. 1996); United Tribe of Shawnee Indians v. United States, 55 F. Supp. 2d 1238, 1243 (D. Kan. 1999); Serra v. United States General Services Administration, 667 F. Supp. 1042, 1051 n.4 (S.D.N.Y. 1987); Benvenuti v. Department of Defense, 587 F.Supp. 348, 352 (D.D.C. 1984).<sup>4</sup> Indeed, because the "Declaratory Judgment Act does not confer independent jurisdiction" a claim for declaratory judgment cannot survive in the absence of an independent, underlying claim satisfying jurisdictional requirements. See Bunn v. Conley, 309 F.3d 1002, 1009 (7th Cir. 2002); Fleet Bank, Nat. Ass'n v. Burke, 160 F.3d 883, 886 (2d Cir. 1998); Zheng v. Reno, 166 F. Supp. 2d 875, 878 (S.D.N.Y. 2001).

No such independent basis for the exercise of subject matter jurisdiction exists in the present case. Although plaintiff also references 28 U.S.C. § 1331, this provision "is in no way a general waiver of sovereign immunity. Such a waiver, if it exists at all, must be sought in the statute giving rise to the cause of action." Doe v. Civiletti, 635 F.2d 88, 94 (2d Cir. 1980).

Because there is no applicable waiver of sovereign immunity, the claims against the Government Defendants must be dismissed for lack of subject matter jurisdiction.

## **II. THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE FACTUAL ALLEGATIONS ARE PATENTLY FRIVOLOUS**

It is well established that federal courts lack subject matter jurisdiction over complaints that have no arguable basis in fact or law. Thus, a district court may dismiss a complaint for lack of subject matter jurisdiction "when the allegations of a complaint are totally

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<sup>4</sup> To the extent that plaintiff seeks declaratory relief regarding the collection of federal taxes, the Declaratory Judgment Act explicitly precludes declaratory relief in cases involving federal taxes. See 28 U.S.C. § 2201(a); S.E.C. v. Credit Bancorp, Ltd., 297 F.3d 127, 137 (2d Cir.2002).

implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion.” Apple v. Glenn, 183 F.3d 477, 479 (6th Cir. 1999); see also Hagans v. Lavine, 415 U.S. 528, 536 (1974) (“Over the years this Court has repeatedly held that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are ‘so attenuated and unsubstantial as to be absolutely devoid of merit . . . .’”). Similarly, district courts possess the inherent authority to dismiss a patently frivolous complaint for failure to state a claim. See Fitzgerald v. First East Seventh Street Tenants Corp., 221 F.3d 362, 363 (2d Cir. 2000); Tennessee v. Commissioner, No. 3:04 Civ. 494, 2004 WL 3079879, at \*1 (E.D. Tenn. Nov. 4, 2004); Hilska v. Jones, 297 F. Supp. 2d 82, 87-88 (D.D.C. 2003).

“Plaintiff’s allegations concerning conspiracy, fraud, and other malfeasance by government entities are irrational and clearly baseless. Courts have dismissed complaints alleging similarly unbelievable scenarios.” Kemp v. United States, 05 CV 72160, 2005 WL 2177101, at \*1 (E.D. Mich. Sept. 8, 2005). Plaintiff’s allegations here are so fanciful and irrational as to warrant dismissal for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. See, e.g., Selvy v. U.S. Dep’t of Housing and Urban Development, 371 F. Supp. 2d 905 (E.D. Mich. 2005) (dismissing complaint premised on the existence of a Freemasonry conspiracy intent on persecuting the plaintiff).

### **III. THE COMPLAINT SHOULD BE DISMISSED FOR LACK OF STANDING**

“No principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.” Raines v. Byrd, 521 U.S. 811, 818 (1997) (quoting Simon v. Eastern Ky.

Welfare Rights Org., 426 U.S. 26, 37 (1976)). One core element of Article III's case-or-controversy requirement is that a plaintiff must establish that he or she has standing to sue. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). To satisfy his burden of establishing standing, the "plaintiff must allege a personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Allen v. Wright, 468 U.S. 737, 751 (1984). The Supreme Court has "consistently stressed that a plaintiff's complaint must establish that he has a 'personal stake' in the alleged dispute, and that the alleged injury is particularized as to him." Raines, 521 U.S. at 819; see also Baur v. Veneman, 352 F.3d 625, 632 (2d Cir. 2003) ("[I]n evaluating whether the alleged injury is concrete and particularized, we assess whether the injury 'affect[s] the plaintiff in a personal and individual way,' to confirm that the plaintiff has a personal stake in the controversy and avoid having the federal courts serve as 'merely publicly funded forums for the ventilation of public grievances or the refinement of jurisprudential understanding.'" (internal citations omitted)).

In sum, "to satisfy Article III's standing requirements, 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. (TOC), Inc., 528 U.S. 167, 180-181 (2000).

Plaintiff's only alleged injuries are physical injuries, emotional distress and lost wages arising from the attacks on the World Trade Center. See Compl. at ¶ 35. Yet plaintiff does not seek any relief which could redress these alleged injuries. Indeed, there is no

connection between the injuries allegedly suffered by plaintiff in the September 11, 2001 attacks and the fanciful conspiracy theories that are the focus of plaintiff's allegations against the Government Defendants regarding FEMA's alleged plan to declare martial law and assume control of the federal Government at some unspecified point in the future.<sup>5</sup> Rather than seek any relief from the Government Defendants for the injuries he allegedly suffered as a result of the September 11 attacks, plaintiff instead seeks declaratory and injunctive relief relating to, inter alia, FEMA's alleged operation of concentration camps, operation of a shadow government, and plan to overthrow the Bill of Rights and impose martial law. This relief is in no way connected to the harm that plaintiff allegedly suffered.

Nor does plaintiff possess standing to seek the requested relief based on his status as a United States citizen who would be adversely affected by the alleged Government conspiracy. The Supreme Court has "consistently held that a plaintiff raising only a generally available grievance about government — claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large — does not state an Article III case or controversy." Lujan, 504 U.S. at 573-74; Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 482-83 (1982) (noting that the Supreme Court "repeatedly has rejected claims of standing predicated on the right possessed by every citizen to require that the Government be administered according to law"); Perkel v. United

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<sup>5</sup> Plaintiff conceded as much in arguing against the transfer of this case from the Eastern District of Pennsylvania to the Southern District of New York: "The Government is a defendant in this action only as to counts in the complaint that are not directly related to the occurrences of 9-11." Vargas Decl., Ex. B at 16.

States, No. C 00-4288 (SI), 2001 WL 58964, at \*2 n.2 (N.D. Cal. Jan. 9, 2001) (voter’s claim of “harm by the possibility that the outcome of the presidential election may not reflect the will of the people” was too generalized to confer standing to challenge electoral college system).

Because plaintiff has not alleged a particularized harm that arises out of any of the Government Defendants’ alleged conduct, nor has he sought any relief that could redress the separate and unconnected harm that he has allegedly suffered, the Complaint against the Government Defendants must be dismissed for lack of standing.

### CONCLUSION

For the reasons stated above, the Government Defendants respectfully request that the Court dismiss the Complaint for lack of subject matter jurisdiction and for failure to state a claim.

Dated: September 30, 2005  
New York, New York

Respectfully submitted,

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By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I, Jeannette A. Vargas, Assistant United States Attorney for the Southern District of New York, hereby certify that on September 30, 2005, I caused a copy of the foregoing Notice of Motion, Memorandum of Law in Support of the Government Defendants' Motion to Dismiss the Complaint, and the Declaration of Jeannette A. Vargas, to be served by Federal Express upon the following:

Philip J. Berg, Esq.  
706 Ridge Pike  
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Dated: September 30, 2005  
New York, New York

\_\_\_\_\_  
JEANNETTE A. VARGAS (JV-7111)  
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