

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JUL 25 2008

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

Jerry Lewis Dedrick,

Plaintiff,

v.

United States Sentencing Commission,

Defendant.

Civil Action No. 08 1279


MEMORANDUM OPINION

This matter is before the Court on plaintiff's motion for a preliminary injunction, construed as a complaint, and his application to proceed *in forma pauperis*. The application will be granted and the complaint dismissed for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) (requiring dismissal of an action "at any time" the Court determines that it lacks subject matter jurisdiction).

Plaintiff is a prisoner at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*. He seeks an order to compel the United States Sentencing Commission to act on his administrative tort claim forwarded to that agency on March 18, 2008. *See* Compl. Attachment. This Court lacks subject matter jurisdiction over unexhausted claims brought under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671 *et seq.* To maintain an FTCA claim, plaintiff must "first present the claim to the appropriate Federal agency and [have] his claim . . . finally denied by the agency in writing " or wait six months without having received an agency disposition. 28 U.S.C. § 2675. Neither requirement is satisfied here. Because the FTCA's exhaustion requirement is jurisdictional, *GAF Corp. v. United States*, 818 F.2d 901, 917-20 (D.C. Cir. 1987); *Jackson v. United States*, 730 F.2d 808, 809 (D.C. Cir. 1984); *Stokes v. U.S. Postal Service*, 937 F. Supp. 11, 14 (D.D.C. 1996), the complaint must be dismissed. *See*

Abdurrahman v. Engstrom, 168 Fed.Appx. 445, 445 (D.C. Cir. 2005) (per curiam) (“[T]he district court properly dismissed case [based on unexhausted FTCA claim] for lack of subject matter jurisdiction.”). A separate Order accompanies this Memorandum Opinion.

Date: July 15, 2008


United States District Judge