

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

OCT 08 2019

Clerk, U.S. District and  
Bankruptcy Courts

MAKUSHA GOZO,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,

Defendant.

Civil Action No. 19-2513 (UNA)

**MEMORANDUM OPINION**

This matter is before the Court on consideration of the plaintiff's application to proceed *in forma pauperis* and his *pro se* complaint. The plaintiff currently is in the custody of the Federal Bureau of Prisons ("BOP"), having been "arrested . . . on international tax matters, which is the subject of ongoing litigation." Compl. at 4. He alleges that the Secretary of Homeland Security "placed a 'detainer' against [him], which is the reason for the case at bar." *Id.* The plaintiff challenges the validity of the detainer, *see id.* at 5-8, and alleges that its existence renders him ineligible for certain programs BOP offers, *id.* at 9, and causes him physical, psychiatric and pecuniary harm, *id.* He seeks an order directing defendant to "rescind and delete [its] unlawful 'detainer,'" and an award of monetary damages. *Id.* at 10:


To the extent plaintiff seeks habeas relief, *see* Compl. at 2, he may not do so at this time or in this federal district court. It appears that plaintiff's current detention stems from his conviction on federal criminal charges, not the detainer, which "merely notifies prison officials that a decision regarding his deportation will be made . . . at some future date." *Campillo v.*

*Sullivan*, 853 F.2d 593, 595 (8th Cir. 1988). Only when plaintiff “is placed in the custody of the [DHS], an event which will not occur until [he] is released from his present term of confinement,” can he challenge the detainer by way of habeas corpus. *Id.*; see *Teran v. Johns*, No. 5:17-CV-9, 2017 WL 4678220, at \*5-\*6 (S.D. Ga. Oct. 17, 2017), *report and recommendation adopted*, No. 5:17-CV-9, 2017 WL 6028400 (S.D. Ga. Dec. 5, 2017) (dismissing § 2241 petition for lack of subject matter jurisdiction where detainer had been lodged but detainee was not yet in DHS custody). If the plaintiff were to seek habeas relief, he must name his custodian as the proper respondent and proceed in the federal district where his custodian is located. See *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004); *Stokes v. U.S. Parole Comm’n*, 374 F.3d 1235, 1239 (D.C. Cir. 2004).

Insofar as plaintiff demands compensatory damages for defendant’s “ongoing reciprocal constitutional violations and torts,” Compl. at 9, under the Federal Tort Claims Act (“FTCA”), see *id.*, Ex. (Standard Form 95, Claim for Damage, Injury, or Death), the claim fails. The FTCA is an express waiver of the federal government’s sovereign immunity for certain, but not all, torts. See *Richards v. United States*, 369 U.S. 1, 6 (1962). Because “the United States simply has not rendered itself liable under [the FTCA] for constitutional tort claims,” *FDIC v. Meyer*, 510 U.S. 471, 478 (1994), the Court must dismiss plaintiff’s constitutional tort claim against the federal government for lack of subject matter jurisdiction.

The Court will grant the plaintiff’s application to proceed *in forma pauperis* and dismiss the complaint. An Order accompanies this Memorandum Opinion.

DATE: October 7, 2019

  
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United States District Judge  
CHRISTOPHER R. COOPER  
United States District Judge

CHRISTOPHER R. COOPER  
United States District Judge