

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FRANK MARTINEZ,

Plaintiff,

v.

CASE NO. 05-3192-SAC

UNITED STATES
OF AMERICA, et al.,

Defendants.

O R D E R

On May 23, 2006, this court entered a Memorandum and Order in this Federal Tort Claims Act case granting plaintiff time to show cause why this action should not be dismissed as time-barred and for lack of jurisdiction for the reasons stated in defendant's Motion to Dismiss (Docs. 15 & 16) and the court's Memorandum and Order of May 23, 2006¹. Plaintiff filed no response to the court's Order within the time provided. The court concludes defendant's Motion to Dismiss must be sustained, and this action dismissed with prejudice for lack of subject matter jurisdiction for the reasons stated in defendant's motion and memorandum and the court's prior Memorandum and Order.

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The court found the record plainly showed Mr. Martinez knew no later than November 9, 2001, and probably before, of both the injury and its alleged causes. The court accordingly found that Mr. Martinez' tort claim "accrued" on or before November 9, 2001. The record also clearly documented, and it was not disputed, that Mr. Martinez's administrative claim for damages under the FTCA was presented and received by the agency on January 20, 2004. Since plaintiff's claim accrued no later than November, 2001, and plaintiff presented his administrative claim after November, 2003, it is obvious his claim was not presented within the two-year statute of limitations.

IT IS THEREFORE BY THE COURT ORDERED that defendant's Motion to Dismiss (Doc. 15) is sustained, and this action is dismissed and all relief denied.

IT IS SO ORDERED.

Dated this 27th day of June, 2006, at Topeka, Kansas.

s/Sam A. Crow

U. S. Senior District Judge