

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
MICHAEL ANDREW LEEPER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C. A. NO. 15-13791-NMG
	)	
BATTERY A THIRD DIVISION	)	
HOW. BN 11 <sup>TH</sup> ARTILLERY	)	
APO 29, U.S. FORCES, US	)	
ATTORNEY GENERAL,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS' MOTION TO DISMISS**

Defendants, by and through their attorney, Carmen M. Ortiz, United States Attorney for the District of Massachusetts, move to dismiss this case under Fed. R. Civ. P. 12(b)(1) and 12(b)(5). Plaintiff claims that the Army improperly discharged him and asks this Court to award him ten million dollars. He asserts jurisdiction under the diversity statute, but the United States is not considered a citizen under that statute. To the extent the Complaint can be interpreted as a Tucker Act claim for non-tort monetary damages, this Court lacks jurisdiction because Plaintiff seeks more than ten thousand dollars in damages. Additionally, Plaintiff did not serve the Secretary of the Army or the Attorney General of the United States. For these reasons, which are articulated in the accompanying memorandum of law, the Court should dismiss this case.

Respectfully submitted,

CARMEN M. ORTIZ  
United States Attorney

By: /s/Annapurna Balakrishna  
Annapurna Balakrishna  
Assistant United States Attorney  
One Courthouse Way - Suite 9200  
Boston, Massachusetts 02210  
(617) 748-3111  
annapurna.balakrishna@usdoj.gov

*For all of the reasons stated in defendants' memorandum in support (Docket No. 32), motion allowed. This case is dismissed.  
JAM Gorton, USDOJ 8/8/16*