United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5091 **September Term, 2017**

1:16-cv-01610-TSC

Filed On: March 8, 2018

Grant F. Smith,

Appellant

v.

United States of America, et al.,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Rogers, Griffith, and Kavanaugh, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's order filed February 27, 2017, be affirmed. The district court correctly concluded that appellant lacked standing to seek a writ of mandamus directing the President to determine, pursuant to the Arms Export Control Act of 1961, 22 U.S.C. § 2799aa-1, whether Israel has engaged in certain conduct related to the development of nuclear weapons, and an injunction prohibiting the distribution of foreign aid to Israel and ordering the recovery of prior payments. Appellant has not established that he suffered a particularized injury resulting from the President's alleged refusal to make such a determination or from the provision of foreign aid to Israel. See Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1548 (2016) ("For an injury to be particularized, it must affect the plaintiff in a personal and individual way.") (internal quotations omitted). Here, while appellant asserts that he has been harmed by the President's allegedly unlawful failure to exercise his authority under 22 U.S.C. § 2799aa-1, and by the misuse of tax dollars, such injuries are insufficient to impart standing on appellant in this case. See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 482-83 (1982) ("This 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.") (internal quotation omitted); Hein v. Freedom From Religion Found.,

551 U.S. 587, 593 (2007) ("[T]he payment of taxes is generally not enough to establish standing to challenge an action taken by the Federal Government.").

Finally, appellant has not established his standing to seek declaratory and injunctive relief against the government's alleged policy of "nuclear ambiguity" toward Israel. Because appellant has not shown that the government improperly classified or withheld any specific information to which he is entitled, he has not demonstrated a concrete injury in fact. See Hancock v. Urban Outfitters, Inc., 830 F.3d 511, 514 (D.C. Cir. 2016) ("The plaintiff must allege some 'concrete interest' that is 'de facto,' 'real,' and 'actually exist[s].'") (quoting Spokeo, 136 S. Ct. at 1548-49). Further, to the extent appellant relies on Freedom of Information Act ("FOIA") search, reproduction, or litigation fees to establish standing, he has provided no evidence that obtaining the requested relief will reduce such fees or eliminate the need to file FOIA requests. See West v. Lynch, 845 F.3d 1228, 1237 (D.C. Cir. 2017) ("When conjecture is necessary, redressability is lacking."). And even if appellant had standing to challenge a policy of "nuclear ambiguity," he has not shown that the remedies available under FOIA are inadequate. See 5 U.S.C. § 704 (agency actions subject to judicial review only if "there is no other adequate remedy in a court"); Citizens for Ethical Responsibility in Washington v. U.S. Dep't of Justice, 846 F.3d 1235, 1245-46 (D.C. Cir. 2017).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam