

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 14-cv-03305-RPM

ANTHONY MARTINEZ,

Plaintiff,

v.

PATRICK BACKER,
CHERYL HERRERA,
MATTHEW MITCHELL,
LA PLATA COUNTY, COLORADO, and
UNITED STATES OF AMERICA,

Defendants.

**ORDER REJECTING NOTICE OF DISMISSAL OF DEFENDANT UNITED STATES OF
AMERICA WITHOUT PREJUDICE AND ORDER DISMISSING UNITED STATES OF
AMERICA**

The defendant United States of America filed a motion to dismiss this civil action against it pursuant to Rules 12(b)(1) and 12(b)(6). The plaintiff filed a response in opposition to the motion on July 9, 2015, (Doc. 23) and also filed a notice of dismissal without prejudice with the suit to be reinstated to comply with the exhaustion requirement (Doc. 24). The claims made in the complaint go beyond a federal tort claims act claim and assert respondeat liability for the conduct of the defendant tribal police officers but the actions brought against those officers are pursuant to 42 U.S.C. § 1983 which does not apply to federal officers. Additionally, the claims made under the FTCA are barred by the statute.

It is clear that the motion to dismiss should be granted independently of any failure to exhaust the administrative remedy. According, it is

ORDERED that the notice of dismissal is rejected and the fourth claim for relief in the complaint is dismissed for failure to state a claim against the defendant United States of America and it is dismissed from this civil action.

SO ORDERED.

DATED this 31st of July, 2015.

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch , Senior District Judge