

NOT FOR PUBLICATION

**UN§ITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SANTOS ESCOBAR,

Plaintiff,

v.

TOWNSHIP OF WEST ORANGE et al.,

Defendants.

:

Civil Action No. 12-1729 (SRC)

OPINION & ORDER

CHESLER, District Judge

This matter comes before this Court on the motion to dismiss the Complaint by Defendant Township of West Orange (the “Township”). In brief, the Township contends that Plaintiff’s case is barred by his failure to comply with the mandatory notice provisions of the New Jersey Tort Claims Act (“NJTCA”). In opposition, Plaintiff argues that, because he asserts only claims under 42 U.S.C. § 1983, the state statute is pre-empted by federal law. Plaintiff aptly quotes from the Third Circuit’s decision in County Concrete Corp. v. Twp. of Roxbury, 442 F.3d 159, 174 (3d Cir. 2006): “The NJTCA does not apply to federal and state constitutional claims because a state statute may not abrogate an individual’s constitutional rights.”

Plaintiff is correct. The motion to dismiss will be denied.

For these reasons,

IT IS on this 17th day of October, 2012

ORDERED that the Township's motion to dismiss (Docket Entry No. 10) is **DENIED**.

s/Stanley R. Chesler
STANLEY R. CHESLER, U.S.D.J.