

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

LUKIS J. CRUZ,

Plaintiff,

v.

No. 18cv204 WJ/KK

STATE OF NEW MEXICO,  
SUSANA MARTINEZ,  
TAOS COUNTY, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER OF DISMISSAL**

**THIS MATTER** comes before the Court on *pro se* Plaintiff's Complaint and Legal Suit against Criminal Defendant, Doc. 7, filed April 23, 2018 ("Amended Complaint"), and on his Request for Judge, Doc. 8, filed April 23, 2018. For the reasons stated below, the Court **DENIES** Plaintiff's Request for Judge and **DISMISSES** this case **without prejudice**.

Plaintiff's original Complaint asserted claims against the State of New Mexico, Governor Martinez, and the State Court for violations of his civil rights. *See* Doc. 1 at 3-5. Plaintiff also sought to have this Court review the State Court's judgment and appeared to be asserting a civil rights claim against the State Court Judge. *See* Complaint at 2, 5. The Court dismissed the claims against the State of New Mexico, Susana Martinez, and the State Court without prejudice for lack of jurisdiction and the civil rights claim against the State Court Judge with prejudice. *See* Mem. Op. and Order at 4, Doc. 6, filed April 3, 2018.

The original Complaint also asserted federal claims against various "Private Parties," some of whom may be state actors. *See* Complaint at 2-5. The Court dismissed the federal claims against the "Private Parties" without prejudice for failure to state a claim because the allegations were vague and conclusory. *See* Doc. 6 at 5.

The Court, having dismissed all of the federal law claims, declined to exercise supplemental jurisdiction on Plaintiff's state law claims and dismissed the Complaint. The Court granted Plaintiff leave to file an amended complaint for those claims that have been dismissed without prejudice. Plaintiff timely filed his Amended Complaint along with a Request for Judge.

Plaintiff's Request for Judge, which the Court construes as a motion to reassign this case to another judge, states in its entirety:

The Plaintiff is making request for a judge without bias nor prejudice [sic] in the case at hand. The judge must know the rights afforded an American and see himself or herself as equal to all Americans and able to simply arrange a trial where testimony can be given before an unbiased jury which has no preferrance [sic] between the parties stated above and make a decision based upon the charges and damage amounts requested.

Doc. 8 at 1. The Court will deny Plaintiff's request to assign this case to another judge because he has not asserted any facts or law indicating that the assigned Judge is biased and should disqualify himself. *See Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 659 (10th Cir. 2002) ("a judge also has as strong a duty to sit when there is no legitimate reason to recuse as he does to recuse when the law and facts require").

Plaintiff's Amended Complaint asserts that the "State of New Mexico is monetarily [sic] liable for criminal activity on the part of the judicial system as it pertains to my case." Amended Complaint at 3. The State of New Mexico is the only Defendant in Amended Complaint.<sup>1</sup> In its

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<sup>1</sup> Plaintiff does not name any other persons as Defendants in the caption of the Amended Complaint. While the Amended Complaint does base the State's alleged liability on the actions of its employees and officials, it does not appear that Plaintiff is asserting any claims against any other persons. *See* Amended Complaint at 1. To the extent that Plaintiff is asserting claims against any Defendants other than the State, the Court dismisses those claims for failure to state a claim because, despite the Court's explanation of the allegations necessary to state a claim, Plaintiff's Amended Complaint does not state with particularity what each of those persons did to Plaintiff or when they committed those actions. *See* Doc. 6 at 5 (explaining that to "state a claim

Order dismissing Plaintiff's original Complaint, the Court explained that it did not have jurisdiction over Plaintiff's claims against the State, Governor Martinez, the State Court and the State Judge ("State Defendants"), and cited Tenth Circuit case law to support its explanation that the State Defendants are immune from suit unless Congress abrogates the State's immunity or the State waives its immunity and consents to be sued. *See* Doc. 6 at 3-4. The Amended Complaint does not allege that Congress abrogated New Mexico's immunity or that New Mexico waived its immunity. *See* Amended Complaint. Instead, Plaintiff argues, without citation to any legal authority, that the State is not immune from suits for, and is liable for, damages resulting from civil and criminal violations of its employees. *See* Amended Complaint.

The Court will dismiss the claims in the Amended Complaint for lack of jurisdiction. Plaintiff, by asking the Court to exercise jurisdiction over his claims against the State, asks the Court to proceed contrary to established case law from the Supreme Court of the United States and the United States Court of Appeals for the Tenth Circuit. United States Judges swear that they will perform all the duties incumbent upon them under the Constitution and the laws of the United States. *See* 28 U.S.C. § 453, Oaths of justices and judges. The laws of the United States include the case law of the Supreme Court of the United States and the United States Court of Appeals for the Tenth Circuit in which this District sits. The Court will not proceed in a manner that is clearly contrary to case law from the Supreme Court of the United States and the United States Court of Appeals for the Tenth Circuit.

Having dismissed all of the claims in the Amended Complaint, the Court dismisses this

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in federal court, a complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant's action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated").

case without prejudice.

**IT IS ORDERED** that:

(i) Plaintiff's Request for Judge, Doc. 8, filed April 23, 2018, is **DENIED**.

(ii) This case is **DISMISSED without prejudice**.



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**WILLIAM P. JOHNSON**  
**CHIEF UNITED STATES DISTRICT JUDGE**