

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

MARIO MENDEZ,

Plaintiff,

v.

No. 20-cv-0680 MIS-KRS

THE GEO GROUP, INC., *et al*,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Plaintiff Mario Mendez's Amended Civil Rights Complaint (Doc. 6) (Amended Complaint). Also before the Court is his Motion to Release All Federal Claims against Defendants (Doc. 7). Plaintiff is incarcerated and proceeding *pro se*. He alleges prison officials failed to protect him from attack; housed him with friends of his original attacker; and then placed him in segregation for an extended period. Plaintiff originally filed this case in New Mexico's First Judicial District Court, and Defendants removed the matter. The Court (Hon. Kenneth Gonzales) liberally construed the original complaint to raise claims under the federal constitution and state law. Judge Gonzales directed Plaintiff to amend his original complaint to cure deficiencies in those claims. (Doc. 5).

Plaintiff filed the Amended Complaint on October 4, 2021. (Doc. 6). The factual allegations describe the same scenario as the original complaint. The Amended Complaint also cites cruel and unusual punishment, deliberate indifference to safety, and a series of federal cases. Such references would ordinarily raise a federal question, and this Court would exercise jurisdiction. *See Beneficial Nat'l Bank v. Anderson*, 539 U.S.

1, 6 (2003) (“To determine whether [a] claim arises under federal law, [courts] examine the ‘well[-]pleaded’ allegations of the complaint”). This is particularly true where the plaintiff is *pro se*; the Court liberally construes the allegations to raise all plausible claims. See *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (addressing *pro se* screening and noting: “if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff’s failure to cite proper legal authority [or] his confusion of various legal theories”).

Here, however, Plaintiff clarifies he wishes to dismiss all federal claims, return to state court, and proceed with his case under the state constitution and/or New Mexico Tort Claims Act. The Amended Complaint states he wants to: “drop[] all federal charges [and] claims from [the] complaint and ... maintain[] [his] case at state level and grounds.” Doc. 6 at 9. Plaintiff also filed a separate motion to “release all defendants ... on any federal charges that have been held against them.” Doc. 7 at 1. See *also* Doc. 6 at 9 (clarifying the motion was meant “to drop all federal claims”).

Plaintiff is “the master of [his] claim.” *Devon Energy Prod. Co., L.P. v. Mosaic Potash Carlsbad, Inc.*, 693 F.3d 1195, 1202 (10th Cir. 2012). “By omitting federal claims from a complaint, a plaintiff can [generally] guarantee an action will be heard in state court.” *Id.* (quoting *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1264 n. 1 (10th Cir. 2004)). Moreover, the Tenth Circuit counsels that federal courts should generally decline to exercise supplemental jurisdiction when no federal claims remain. See *Bauchman v. W. High Sch.*, 132 F.3d 542, 549 (10th Cir. 1997); *Brooks v. Gaenzle*, 614 F.3d 1213, 1229–30 (10th Cir. 2010). Based on this authority, the Court will grant Plaintiff’s Motion

to Release All Federal Claims against Defendants (Doc. 7). Any federal claims in the original complaint (Doc. 1-1) or Amended Complaint (Doc. 6) will be dismissed. The dismissal will be without prejudice. Plaintiff may ultimately obtain counsel, based on the nature of the allegations, and counsel may elect to raise federal claims. The Court also declines to exercise supplemental jurisdiction over the state law claims in the Amended Complaint and will remand this case to New Mexico's First Judicial District Court.

IT IS ORDERED that Plaintiff's Motion to Release All Federal Claims against Defendants (**Doc. 7**) is **GRANTED**; and any federal claims in Plaintiff Mario Mendez's original complaint (**Doc. 1-1**) and/or Amended Complaint (**Doc. 6**) are **DISMISSED without prejudice**.

IT IS FURTHER ORDERED that this action is **REMANDED** to New Mexico's First Judicial District Court, County of Santa Fe, Case No. D-101-CV-2020-00657; and the Clerk's Office is hereby directed to take all necessary steps to remand the case.

IT IS FINALLY ORDERED that the Court will enter a separate judgment closing the federal case.



MARGARET STRICKLAND
UNITED STATES DISTRICT JUDGE