

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

LINDSAY SPILSBURY,

Plaintiff,

v.

No. 2:24-cv-00404-MV-JHR

VERA DEMCHOK and
CARICE DEMCHOK,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

Plaintiff, who is proceeding *pro se*, alleged:

Carice Demchok has allowed her daughter Vera Demchok to breach confidential privacy Vera has been extremely dangerous about electronically or digitally harrassing me Vera has a brain exhibit on my brother's phone she knows what I think and shes using and sharing my thoughts digitally and harassing me to the extent of murder. Vera has war weapons w/ the exhibit and she uses them on my body and has made extremley sick. Shes threatning my freedom and shes violating my human rights. . . Vera Demchok raged war on me poisoned me . . . Carice allowed Vera to rape me . . . Vera Demchok . . . has taken my identity social security Indian cards naturalization documents college degree arrest records document on my divorce documents on my attorney . . . Donald Trump, the press, the media, the public, Vera Demchok is broadcasting me. Joe Biden can hear me due to Vera Demchok broadcasting me.

[sic] Doc. 1 (Civil Rights Complaint Pursuant to 42 U.S.C. § 1983, filed April 29, 2024)

("Complaint")) at 2-4.

United States Magistrate Judge Jerry H. Ritter notified Plaintiff:

There is no properly alleged federal-question jurisdiction because the Complaint does not allege that this action "aris[es] under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

"For a case to arise under federal law within the meaning of § 1331, the plaintiff's well-pleaded complaint must establish one of two things: either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a

substantial question of federal law” . . . “The complaint must identify the statutory or constitutional provision under which the claim arises, and allege sufficient facts to show that the case is one arising under federal law.”


Davison v. Grant Thornton LLP, 582 F. App'x 773, 775 (10th Cir. 2014) (quoting *Firstenberg v. City of Santa Fe*, 696 F.3d 1018, 1023 (10th Cir. 2012) and *Martinez v. U.S. Olympic Committee*, 802 F.2d 1275, 1280 (10th Cir. 1986)). Plaintiff filed her Complaint using the form “Civil Rights Complaint Pursuant to 42 U.S.C. § 1983.” Plaintiff has not shown that this case arises under Section 1983 because there are no factual allegations showing that Defendants were acting under color of state law. See *Schaffer v. Salt Lake City Corp.*, 814 F.3d 1151, 1155 (10th Cir. 2016) (“The two elements of a Section 1983 claim are (1) deprivation of a federally protected right by (2) an actor acting under color of state law.”).

There is no properly alleged diversity jurisdiction. To invoke diversity jurisdiction, “a party must show that complete diversity of citizenship exists between the adverse parties and that the amount in controversy exceeds \$75,000.” *Symes v. Harris*, 472 F.3d 754, 758 (10th Cir. 2006). “Complete diversity is lacking when any of the plaintiffs has the same residency as even a single defendant.” *Dutcher v. Matheson*, 733 F.3d 980, 987 (10th Cir. 2013). Plaintiff, who is a citizen of New Mexico, has not alleged that Defendants are citizens of a state other than New Mexico.

Doc. 5 (Order to Show Cause, filed May 1, 2024) at 3-4.

Judge Ritter ordered Plaintiff to show cause why the Court should not dismiss this case for lack of jurisdiction and to file an amended complaint. *Id.* at 6. Judge Ritter also notified Plaintiff that failure to timely show cause and file an amended complaint might result in dismissal of this case. *Id.* at 6. Plaintiff did not show cause, file an amended complaint, or otherwise respond to the Order to Show Cause by the May 22, 2024, deadline. For this reasons, this case will be dismissed.

IT IS ORDERED that this case is **DISMISSED** without prejudice.



MARTHA NAZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE