

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

GERALD DeMARSH,

Plaintiff,

V.

ARTURO DELAMORA, and MARCOS
DELAMORA, THE HONORABLE BECKY
KERBOW, THE HONORABLE ROBERT
RAMIREZ,

Defendants.

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CASE NO. 4:14-CV-74
Judge Clark/Judge Mazzant

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On June 12, 2014, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations regarding Defendants' Motion to Dismiss [Doc. #4]. The Magistrate Judge recommended that Defendants' motion be granted. The Magistrate Judge recommended that Defendants Judge Kerbow and Judge Ramirez be dismissed under Fed. R. Civ. P. 12(b)(6) because Plaintiff fails to present any factual allegations to support any claims against these defendants. The Magistrate Judge also recommended that Defendants Judge Kerbow and Judge Ramirez be dismissed because they are entitled to absolute judicial immunity. The Magistrate Judge recommended that Defendants Arturo and Marcos Delamora be dismissed for lack of federal jurisdiction as to any claims being asserted against them.

On July 8, 2014, Plaintiff filed a pleading that the court will treat as objections [Doc. #7]. Plaintiff does not address the recommended dismissal of Defendants Judge Kerbow and Judge Ramirez. Plaintiff only objects to the recommended dismissal of Defendants Arturo and Marcos Delamora for lack of subject matter jurisdiction, asserting that he cannot get a fair trial in Texas courts and that he is demanding that this court hear the case since he is a United States citizen. Plaintiff also asserts that this court has jurisdiction to hear the case because as a citizen, Plaintiff has a right to exercise his rights under the Constitution and Bill of Rights.

Since Plaintiff does not object to the dismissal of Judge Kerbow and Judge Ramirez, the court will dismiss them from the case with prejudice. As to Defendants Arturo and Marcos Delamora, the Magistrate Judge correctly found that there is no diversity jurisdiction and there are no federal claims. Since this court is one of limited jurisdiction, Plaintiff is required to assert a basis for this court to exercise jurisdiction. Plaintiff has failed to do so, and the mere fact that he is a United States citizen is not a basis for jurisdiction.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by Plaintiff, this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.

It is, therefore, **ORDERED** that Defendants the Honorable Becky Kerbow's and the Honorable Robert Ramirez Motion to Dismiss [Doc. #4] is **GRANTED** and Defendants Judge Kerbow and Judge Ramirez are **DISMISSED** with prejudice.

It is further **ORDERED** that Plaintiff's claims against Defendants Arturo and Marcos Delamora are **DISMISSED** without prejudice for lack of subject matter jurisdiction.

All relief not previously granted is **DENIED**.

The Clerk is directed to **CLOSE** this civil action.

So **ORDERED** and **SIGNED** this **11** day of **August, 2014**.

A handwritten signature in black ink, appearing to read "Ron Clark". The signature is written in a cursive, slightly slanted style.

Ron Clark, United States District Judge