

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

**STATE OF NEW MEXICO ex rel KENNETH GOMEZ,**

Plaintiffs,

vs.

1:10-cv-594 JAP/LFG

**ELEVENTH JUDICIAL DISTRICT COURT,**

Defendant.

**MEMORANDUM BRIEF IN SUPPORT OF  
VERIFIED MOTION FOR SUMMARY JUDGMENT UNDER RULE 56**

**I. INTRODUCTION**

(a) Although opposed by Plaintiffs, discovery practice for the parties has been effectively closed by Court Order assigning the matter to an administrative tract until the Court becomes competent with jurisdiction to act. The Court cannot have competent jurisdiction to act and be simultaneously engaged in a criminal enterprise with the Defendant District Court as represented. Thus discovery practice is effectively and efficiently closed. Plaintiffs have *both* the "capacity" and "real party" interests with standing under state law to sue the Defendant District Court; the Defendant District Court only has "real party" interests to defend.

(b) Members of Defendant District Court, the Defendant District Court, and counsels of record knew of the criminal enterprise active in the Court; they, each one of them, chose voluntarily to entertain and exercise that criminal enterprise for their specific benefit in the instant case.

(c) The Defendant District Court has unwittingly confessed under provisions of 28 U.S.C. § 1441 *et seq* to the claims made by Plaintiffs, and that specific act on Defendant District Court's part, by and through counsels, justifies summary judgment, under Rule 56, on the whole case in Plaintiffs' favor when the Court acquires competent jurisdiction.

(d) The Court is invited to review and consider the justification for summary judgment provided below.

## II. FACTS, POINTS OF LAW, AND AUTHORITIES

(e) 28 U.S.C. § 1443 grants only the Defendant District Court - not the Plaintiffs - a right to remove a state court case from a state court to a federal court; to wit:

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed *by the defendant* to the district court of the United States for the district and division embracing the place wherein it is pending: (1) Against any person who *is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof*, (2) *For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.* [Emphasis added].

Source - (June 25, 1948, ch. 646, 62 Stat. 938.)

(f) Defendant District Court, by and through counsels, removed the case from state court under the authority of said Section 1443 along with other features; and thereby, Defendant District Court, as a state actor, confessed that: (1) state civil actions exists against Plaintiff Gomez, *as any person*, who is denied or cannot enforce in the courts of the State of New Mexico under any law providing for the equal civil rights or of all persons within the jurisdiction thereof; that is the gravamen of plaintiffs' claims; and (2) Plaintiff Gomez is deprived under color of authority derived from any law providing for the equal rights or for refusing to do any act on the ground it would be inconsistent with existing color of state law. See Docket No. 8-1, p. 3, ¶ 1b and 1c with specific reference to Section 34-6-22 NMSA 1978 and other laws.

(g) Plaintiffs could not and did not remove the instant case to this Court under said Section 1443; Defendant District Court, by and through counsels, did remove the case to federal court under said Section 1443 and said Defendant thereby admitted that Plaintiff Gomez is denied or cannot enforce in state courts laws providing for his equal civil rights within the jurisdiction of

such courts; Plaintiff Gomez therefore expresses his gratitude for Defendant District Court's confession.

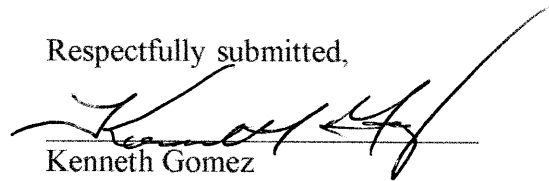
### **III. ARGUMENT**

Although opposed by Plaintiffs, discovery practice for the parties has been effectively closed by Court Order assigning the matter to an administrative tract until the Court becomes competent with jurisdiction to act. The Court cannot have competent jurisdiction to act and be simultaneously engaged in a criminal enterprise with the Defendant District Court as represent. Thus discovery practice is effectively and efficiently closed. Plaintiffs have both the "capacity" and "real party" interests with standing under state law to sue the Defendant District Court; the Defendant District Court only has "real party" interests to defend. Members of Defendant District Court, the Defendant District Court, and counsels of record knew of the criminal enterprise active in the Court; they, each one of them, chose voluntarily to entertain and exercise that criminal enterprise for their specific benefit in the instant case. The Defendant District Court has unwittingly confessed under provisions of 28 U.S.C. § 1441 *et seq* to the claims made by the Plaintiff, and that specific act on Defendant District Court's part, by and through counsels, justifies summary judgment, under Rule 56, on the whole case in Plaintiffs' favor when the Court acquires competent jurisdiction.

### **IV. CONCLUSION**

Pleadings and materials disclosed in the record proper, that exposed herein, and the verified motion for summary judgment under Rule 56 show that: (1) summary judgment can be rendered on the whole action under provisions of Rule 56(d)(1); (2) there is no genuine issue as to any material fact; and (3) movant is entitled to judgment as a matter of law when the Court acquires competent jurisdiction under provisions of Rule 56(c)(2).

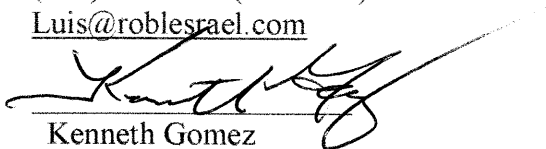
Respectfully submitted,



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I hereby certify that on this  
19<sup>th</sup> day of July 2010, the  
foregoing was electronically  
served through the CM/ECF  
system to the following:

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Kenneth Gomez