

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

STATE OF NEW MEXICO ex rel KENNETH GOMEZ,

Plaintiff,

vs.

No. CIV 10-00594 JP/LFG

ELEVENTH JUDICIAL DISTRICT COURT,

Defendant.

**DEFENDANT’S RESPONSE TO
VERIFIED DEMAND FOR ACTION AND SATISFACTION [Docket No. 19]**

Defendant, Eleventh Judicial District Court, through its attorneys Robles, Rael & Anaya, P.C. (Luis Robles, Esq.) states the following for its Response to Review e-mail from Gomez, requesting concurrence to his proposed Verified Demand for Action and Satisfaction [*Docket No. 19*]:

INTRODUCTION

In his motion, Plaintiff, Kenneth Gomez (“Gomez”) requests that the Federal Bureau of Investigation conduct an investigation into the unlawful actions of this Court. *See [Docket No. 19]*.

Specifically, Gomez charges the following:

An insurrection composed of those persons serving as judicial officers in both state and federal courts of law is currently active against the Constitution for the United States of America after taking the oath of office in support of said constitution deliberately denying the power of Section 3, Fourteenth Amendment, as self-executing provision of the said constitution.

* * *

All persons holding federal judicial officer position in the New Mexico Federal District Court since 1995 to present, and those persons holding federal

judicial officer positions in the Court of Appeals for the Tenth Circuit since 2001 to present, ought be required to return to the United States Treasury all federal publicly appropriated funds received by them during the period specified.

WHEREFORE, the State of New Mexico ex rel Kenneth Gomez demand immediate action be taken and satisfaction be provided:

- (a) To suppress the insurrection engaged in by all those identified herein;
- (b) To restore the integrity of the United States District Court for the District of New Mexico and the Court of Appeals for the Tenth Circuit;
- (c) To recover all federal publically appropriated funds received by the said insurgents for the period identified without delay; and,
- (d) To remove Plaintiff Gomez from the unconstitutional conditions of involuntary servitude under which he is held against his free will by those holding public officer positions within the State of New Mexico, the District of New Mexico, and Court of Appeals for the Tenth Circuit.

See [Docket No. 19, p. 2-3].

I. AS A MATTER OF LAW, GOMEZ CANNOT STATE AN ACTIONABLE CLAIM UNDER FEDERAL CRIMINAL STATUTE BECAUSE GOMEZ IS A PRIVATE CITIZEN, NOT A FEDERAL PROSECUTOR.

Generally, a private citizen has no authority to initiate a federal criminal prosecution. Keenan v. McGrath, 328 F.2d 610, 611 (1st Cir. 1964). Only the United States as prosecutor can bring a complaint under 18 U.S.C. §§ 241-242 (the criminal analogue of 42 U.S.C. § 1983), Dugar v. Coughlin, 613 F.Supp. 849, 852 (S.D.N.Y. 1985); Fiorino v. Turner, 476 F.Supp. 962, 963 (D.Ma. 1979). Suffice to say, Gomez is not a federal prosecutor, but only a private citizen.

As a matter of law, the statutes found under Title 18 of the United States Code are criminal statutes that do not give rise to a private civil cause of action. Kelly v. Rockefeller, 69 Fed. Appx. 414, 415 (10th Cir. 2003) (citing Newcomb v. Ingle, 827 F.2d 675, 677 n. 1 (10th Cir. 1987)); see also

Clements v. Chapman, 189 Fed.App. 688, 692 (10th Cir. 2006) (unpublished) (federal criminal statutes do not provide private causes of action and § 1983 does not allow a plaintiff to pursue violations of federal criminal law); Henry v. Albuquerque Police Dep't, 49 Fed.App. 272, 273 (10th Cir. 2002) (unpublished) (18 U.S.C. §§ 241 and 242 do not provide for a private civil cause of action). In addition to the Tenth Circuit, other circuits have reached the same conclusion. See, e.g., Cok v. Cosentino, 876 F.2d 1, 2 (1st Cir. 1989); United States v. Oguaju, 76 Fed.Appx. 579, 581 (6th Cir. 2003); Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 511 (2nd Cir. 1994). Thus, Gomez does not and cannot state a claim under federal criminal statutes and denial of Gomez' motion is proper.

WHEREFORE, Defendant respectfully requests that this Court enter an Order, which grants the following relief:

- A. Denies Gomez' Verified Demand for Action and Satisfaction [*Docket No. 19*];
- B. Awards Defendant its attorney's fees and costs; and
- C. Orders all other relief this Court deems just and proper.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

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

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/s/ Luis Robles
Luis Robles