

**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.

**REPLY TO DEFENDANT'S RESPONSE TO MOTION FOR JUDICIAL NOTICE
UNDER RULE 201 OF DEFENDANT'S PART IN RACKETEERING ACTIVITY**

Plaintiffs hereby Reply to the Defendant District Court's Response to Plaintiffs' Motion for Judicial Notice under Rule 201 of Defendant's Part in Racketeering Activity in the following manner. Plaintiff shall submit statement refuting each entry of the 'Statement of Facts' provided by the Defendant District Court in their response which totally invalidates the 'Legal Argument submitted.

I. Statement of Facts: Response Page 2.

(a) First, Plaintiff Gomez has never stated in any of his pleading before the Court that:

... the judges who entered judgments against Gomez have done so without the corporate surety bond required by state law.

What Plaintiff Gomez has stated in many of his pleadings is that there are no persons holding positions as state public officers, which includes the persons holding positions as judges within the Defendant District Court, anywhere within the State of New Mexico who are covered by the penal bond mandated under powers in Article VI, Clause 3, Constitution of the United States of America, Article XXII, Section 19, Constitution of the State of New Mexico, and the authorities of NMSA 1978 Sections 10-2-5, 6, 7, and 9. *Corporate surety bonds do not qualify as penal*

bond required of the individual state public officer under the power of both constitutions and the authorities of attendant state laws giving those powers effect.

(b) Next, Defendant District Courts infers that Plaintiff Gomez seeks a total of \$100,000.00 in damages for the deprivation of his constitutional rights. The true fact is that Plaintiff Gomez seeks \$100,000.00: (1) for each denial and deprivation of his constitutional rights, and (2) for holding him, a free man, against his free will to conditions of involuntary servitude contrary to 42 U.S.C. § 1994 for each offense without recourse to any court of law, either state or federal, for legal remedies provided by the other civil rights statutes, 42 U.S.C. §§ 1983, 1985, and 1986.

II. Causes of Action Subject to Dismissal: Response Page 3.

(c) Next, the Defendant District Court claims the Plaintiff Gomez' Complaint does not plead his claim with greater clarity than that presented in the included paragraph. What this statement has to do with Plaintiffs' motion under Rule 201 that Defendant District Court plays a part in racketeering activity makes no sense whatsoever, and is believed to be employed in an attempt to avoid and to stray from the gravamen of Plaintiffs' motion.

III. Legal Argument: Response Page 3.

(d) Plaintiff did not request a finding from this Court that Defendant District Court *and other non-parties to the lawsuit* violated the Racketeer Influenced and Corrupt Organizations Act. Plaintiffs stated very clearly in the title of his motion of Defendant District Court *part in racketeering activity* be recognized by the Court under Rule 201. There is a huge difference between a part of the racketeering activity and the entire racketeering effort; only the Defendant District Court was to be recognized as a part of the racketeering activity. This part of Defendant

District Court's 'Legal Argument' is believed to be employed in an attempt to avoid and to stray from the gravamen of Plaintiffs' motion

(e) In Sub paragraph IA of Defendant District Court's 'Legal Argument' on page 4, they claim said court and judges in their official capacities amount to bringing suit against the State of New Mexico. The Defendant District Court is defined as a person under New Mexico state law, and the person holding positions as judges assigned duties therein *have no official capacities*: (1) for having denied the power of both constitution and the authorities of the attendant state statutes giving those powers effect as required by their oath of office, and (2) for having denied the power of Section 3, Fourteenth Amendment after taking an oath to support the United States Constitution and engaged in an insurrection against that constitution as defined in a case named and numbered: *In re Charge to Grand Jury*, 62 F. 828. The foregoing trumped the predicate acts of participating in money laundering, mail and wire fraud, and defrauding the United States, case law cited by the Defendant District Court to the contrary, notwithstanding.

(f) In Sub paragraph IB of Defendant District Court's 'Legal Argument' on pages 6 to 8, they aver that treble damages are punitive in nature and cannot be awarded against the Defendant District Court. Punitive damages under RICO statutes are not awarded against a component of a racketeer influenced and corrupt organizations, such punitive damages are awarded against the racketeering activity to thwart others actors of a similar nature from similar activity.

(g) In Section II of their 'Legal Argument', Defendant District Court claims Plaintiffs cannot state an actionable claim because one of the plaintiffs is a private citizen. Plaintiff simply sought the authority of the Court to recognize the Defendant District Court as part of the racketeering activity. Plaintiff Gomez represents the State of New Mexico and has authority in

an independent criminal cause in a competent court of law to press charges against any racketeer influenced and corrupt organization, case law cited therein to the contrary, notwithstanding.

(h) One legal point needs to be made by the Plaintiffs. 18 U.S.C. § 4 grants Plaintiffs authority to notify the Court that they had knowledge of the actual commission of several felonies cognizable by a court of the United States, especially this Court because of its participation therein, and making that known to some judge in civil authority under the United States; Plaintiffs did so in their motion and Defendant District Court used its pleading to thwart the presentation of that specific knowledge. Furthermore, Plaintiffs included several paragraphs in their Second Amended Complaint, Doc. No. 8-1, Jurisdiction, pages 4 to 6, ¶¶ a, b, c, e; to wit:

II. JURISDICTION

a. Constitutional claims. – Without question, the district court has the authority to consider constitutional claims in the first instance. Maso v. State Taxation & Revenue Dep't, 2004-NMCA-025, 135 N.M. 152, 85 P.3d 276, aff'd 2004-NMSC-028, 136 N.M. 161, 96 P.3d 286.

b. Jurisdiction is acquired in criminal case by filing of information. State v. Vaughn, 74 N.M. 365, 393 P.2d 711 (1964).

c. Jurisdiction over state officers, boards and commissions. — Under this section and N.M. Const., art. VI, § 3, supreme and district courts each have original jurisdiction in quo warranto and mandamus against all state officers, boards and commissions in all cases, whether the proceeding was instituted by the attorney general ex officio, in behalf of the state for some prerogative purpose, or brought by some private person for the assertion of some private right; the supreme court will decline jurisdiction in absence of some controlling necessity therefor, and will do so in all cases brought at instance of a private suitor. State ex rel. Owen v. Van Stone, 17 N.M. 41, 121 P. 611 (1912).

(e) Those persons holding public office as judges within the Defendant District Court have engaged in a course of *liable* and *unfaithful* conduct, at all times relevant, in the clear absence of competent jurisdiction, Sections, (10-2-5, 6, 7, and 9, and said Art. XXII, Sec. 19), without judicial immunity, absolute or otherwise. Bradley v. Fisher, 13 Wall. 335, 351, cited in Stump v. Sparkman, 435 U.S. 349 which is cited in Ysais v NM Judicial Standards Com'n, 516 F. Supp 2d 1176 (D.N.M. 2009); and see State ex rel Evans v. Field, Com'r of Public Lands, et al., 27 N.M. 384, 390 for class of Plaintiff's complaint; to wit:

The other class is where a suit is brought against defendants who, claiming to act as officers of the state, and under the color of an unconstitutional statute, commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the state. Such suit, whether brought to recover money or property in

the hands of such defendants, unlawfully taken by them in behalf of the state, or for compensation in damages, or, in a proper case where the remedy at law is inadequate, for an injunction to prevent such wrong and injury, or for a mandamus, in a like case, to enforce upon the defendant the performance of a plain, legal duty, purely ministerial -- is not, within the meaning of the Eleventh Amendment, an action against the state. [Citing cases.]

f. Exercising jurisdiction where it is not given is a very serious matter. Chief Justice Marshall wrote in Cohens v. Virginia, 6 Wheat. 264, 5 L. Ed. 257 (1821), that a court:

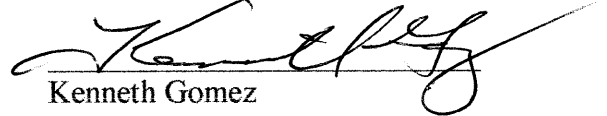
must take jurisdiction if it should. The judiciary cannot, as a legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by, because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. *We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.* The one gladly avoid; but we cannot avoid them." At 404 (emphasis added). or the other would be treason to the constitution.

III. Conclusion

Defendant Eleventh Judicial District Court, by and through counsel of record, has unwittingly confirmed that the 'invisible hand' guiding the racketeer influenced and corrupt organization, of which said Defendant District Court is but a part, is composed of many component parts, and that the Defendant District Court contributes to the continuing illegality, to the common purpose, and to the organizational need driving the racketeering effort. The 'invisible hand' manipulates the racketeering effort, as the common purpose, by simply filing pleadings with an organization, the Court, violable of 18 U.S.C. §§ 1341 and 1343; the said filings are supported by yet another organization laundering publicly appropriated funds, the Risk Management Division, General Services Department; and the entire effort is in furtherance of the continuing illegality to deny Plaintiff Gomez of his 42 U.S.C. §§ 1983, 1985, 1986, and 1994 civil rights. Plaintiff Gomez has been held against his free will by both courts, the racketeering organization, and two independent patterns of racketeering of racketeering activity. Plaintiffs simply sought the Court's recognition that the Defendant District Court is but a part of a huge organization of racketeering activity and reported information of its composition to a civil authority under the United States to avoid a charge of misprison of a felony.

WHEREFORE, Plaintiffs pray the Court will GRANT their motion and sign the Memorandum, Opinion, and Order provided.

Respectfully submitted,



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4 CR 5095

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I hereby certify that on this 11th day of August 2010, the foregoing was electronically served through the CM/ECF system to the following:

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