MAIN APPENDIX
OF JUDICIAL OPINIONS
AND ORDERS

CASE NO. 20-4087 (10th Cir.)

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FILED
United States Court of Appeals
Tenth Circuit

June 8, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CARLOS VELASQUEZ,

Plaintiff - Appellant,

v.

STATE OF UTAH, et al.,

Defendants - Appellees.

No. 20-4087
(D.C. No. 2:20-CV-00205-DB)
(D. Utah)

ORDER

Before **MORITZ**, **BALDOCK**, and **EID**, Circuit Judges.

Appellant's petition for rehearing is denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

FILED
United States Court of Appeals
Tenth Circuit

June 3, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CARLOS VELASQUEZ,

Plaintiff - Appellant,

v.

STATE OF UTAH, et al.,

Defendants - Appellees.

No. 20-4087
(D.C. No. 2:20-CV-00205-DB)
(D. Utah)

ORDER

This matter is before the court sua sponte to correct a clerical error. The mandate issued on May 18, 2021, was issued in error. *See* Fed. R. App. P. 41(b). Accordingly, the mandate is recalled.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk

by: Lisa A. Lee
Counsel to the Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
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Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
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Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

May 18, 2021

Mr. D. Mark Jones
United States District Court for the District of Utah
351 South West Temple
Salt Lake City, UT 84101

RE: 20-4087, Velasquez v. State of Utah, et al
Dist/Ag docket: 2:20-CV-00205-DB

Dear Clerk:

Pursuant to Federal Rule of Appellate Procedure 41, the Tenth Circuit's mandate in the above-referenced appeal issued today. The court's April 26, 2021 judgment takes effect this date.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of the Court

cc: Carlos Velasquez

CMW/jm

FILED
United States Court of Appeals
Tenth Circuit

April 26, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CARLOS VELASQUEZ,

Plaintiff - Appellant,

v.

STATE OF UTAH; UTAH DEPARTMENT OF HUMAN SERVICES; UTAH DIVISION OF AGING AND ADULT SERVICES/APS; UTAH OFFICE OF ADMINISTRATIVE HEARINGS; GARY R. HERBERT, Utah Governor; SEAN REYES, Utah Attorney General; UTAH LEGISLATURE; UTAH OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL; THOMAS R. VAUGHN, Utah Attorney of General Counsel; NELS HOLMGREN, Utah Division of Aging and Adult Services Division Director; J. STEPHEN MIKITA, Utah Assistant Attorney General (Adult Protective Services); SONIA SWEENEY, Utah Office of Administrative Hearings Division Director; LAURA THOMPSON, Utah Assistant Attorney General (Utah Department of Human Services); AMANDA SLATER, Utah Office of Licensing Division Director; UNITED STATES ADMINISTRATION OF COMMUNITY LIVING,

Defendants - Appellees.

No. 20-4087
(D.C. No. 2:20-CV-00205-DB)
(D. Utah)

ORDER AND JUDGMENT*

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of

Before **MORITZ**, **BALDOCK**, and **EID**, Circuit Judges.

Carlos Velasquez, proceeding pro se, appeals the district court's judgment dismissing his action for failure to state a claim on which relief may be granted. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm the district court's judgment. As to the dismissal of his claims against certain defendants, we affirm on the alternative ground that Velasquez's claims are barred by issue preclusion.

I. Background

This is the second of two actions that Velasquez has filed in the district court related to certain administrative law proceedings in Utah. *See Velasquez v. Utah*, 775 F. App'x 420, 421 (10th Cir.) (noting the genesis of his first action), *cert. denied*, 140 S. Ct. 615 (2019). After these administrative law proceedings concluded, he filed suit in Utah state court asserting his original claims and challenging the fairness of the administrative law proceedings and the constitutionality of several Utah statutes and regulations. *See id.* Velasquez's state-court litigation proceeded through the trial court, the Utah Court of Appeals, and the Utah Supreme Court. *See id.*

> Unable to find success after exhausting his appeals in Utah state court, he sued the State of Utah and several state agencies in federal district court. In federal court he once again raised his constitutional claims from state court

this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

> while adding constitutional claims that the Utah Supreme Court sustained malice, refused to clarify the constitutional question, and refused to recognize evidence.

Id. (citation and internal quotation marks omitted).

The district court dismissed Velasquez's first action (*Velasquez I*) for lack of jurisdiction under the *Rooker-Feldman* doctrine,[1] concluding that Velasquez was asking the court to review decisions rendered in the Utah administrative law proceedings and by the Utah state courts. *See id.* We affirmed the district court's dismissal of *Velasquez I* for lack of jurisdiction, concluding that:

> he appears to challenge decisions by the Utah state courts reviewing his state administrative law appeal. He claims that the Utah state courts violated his constitutional rights in the course of that litigation and seems to seek reversal of decisions he lost on the merits. This is precisely the type of suit that Rooker-Feldman prevents federal district courts from hearing. Having already raised his various objections in state court and failed, [he] has now repaired to federal court to undo the state-court judgment against him.

Id. at 422 (brackets and internal quotation marks omitted). The United States Supreme Court denied Velasquez's petition for a writ of certiorari.

Several months later, Velasquez filed this action in the district court against the State of Utah and several state agencies and officials (collectively the State Defendants), and the United States Administration for Community Living (*Velasquez II*). Upon screening the new complaint pursuant to 28 U.S.C. § 1915(e)(2), the district court held it was subject to dismissal under subsection

[1] *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983).

(e)(2)(B)(ii) because it failed to state a claim on which relief may be granted. The court construed the complaint in *Velasquez II* as originating from the same administrative law proceedings as the prior complaint in *Velaquez I* and as seeking to void those proceedings. It stated that "it appears that Plaintiff's complaint alleges that his civil rights were violated in the proceedings in the Administrative Case and that certain Utah statutes and legislation are unconstitutional." R. at 596. The court therefore held that Velasquez's claims against the State Defendants in *Velasquez II* were barred by claim preclusion because (1) there was a final judgment on the merits in *Velasquez I*; (2) the parties in *Velasquez II* were the same as in *Velasquez I* or were in privity with the parties in *Velasquez I*; and (3) the claims or legal theories in *Velasquez II* arose from the same transaction, event, or occurrence as the claims or legal theories in *Velasquez I* and Velasquez was attempting to relitigate issues that were or could have been raised in *Velasquez I*.[2]

Velasquez filed two post-judgment motions. In one motion he cited Federal Rule of Civil Procedure 60(d)(3) and alleged fraud on the court. His second motion sought reassignment of the case to a different district court judge. The district court denied both motions.

[2] The district court also dismissed Velasquez's claims against the United States Administration for Community Living for failure to state a claim on which relief may be granted because "his complaint [was] entirely devoid of any allegations concerning that defendant." R. at 601. Velasquez does not challenge that ruling on appeal. Nor does he argue the court erred in holding that amendment of his complaint would be futile.

II. Discussion

We review de novo a dismissal under § 1915(e)(2)(B)(ii). *See Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007). To the extent that Velasquez raises any claim of error in the district court's denial of his post-judgment motions, we review those rulings for an abuse of discretion. *See United States v. Buck*, 281 F.3d 1336, 1342-43 (10th Cir. 2002) (reviewing denial of relief on ground of fraud on the court for abuse of discretion); *United States v. Mobley*, 971 F.3d 1187, 1195 (10th Cir. 2020) (reviewing denial of motion to recuse for abuse of discretion). Because Velasquez is proceeding pro se, we liberally construe his complaint and his appeal brief. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (complaint); *Cummings v. Evans*, 161 F.3d 610, 613 (10th Cir. 1998) (brief). But we do not act as his advocate. *See Hall*, 935 F.2d at 1110.

"Res judicata, or claim preclusion, precludes a party or its privies from relitigating issues that were or could have been raised in an earlier action, provided that the earlier action proceeded to a final judgment on the merits." *King v. Union Oil Co. of Cal.*, 117 F.3d 443, 445 (10th Cir. 1997). "Claim preclusion requires: (1) a judgment on the merits in the earlier action; (2) identity of the parties or their privies in both suits; and (3) identity of the cause of action in both suits." *Yapp v. Excel Corp.*, 186 F.3d 1222, 1226 (10th Cir. 1999).

Velasquez raises no meritorious claim of error on appeal. It is unclear whether he challenges the district court's holdings on any of the claim preclusion elements,

and if so, what his contentions are.[3] He appears to argue primarily that *Velasquez I* should not have been dismissed on *Rooker-Feldman* grounds. But that issue was conclusively decided by the district court in *Velasquez I* and affirmed on appeal by this court. Moreover, Velasquez's assertions of fraud on the court and judicial bias are patently without merit.

We nonetheless conclude that the district court erred in dismissing *Velasquez II* based upon claim preclusion. Although Velasquez has forfeited review of this error by failing to raise it in his appeal brief, *see Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007), we exercise our discretion to address it, *see United States v. McGehee*, 672 F.3d 860, 873 n.5 (10th Cir. 2012).

In holding that the first element of claim preclusion was satisfied, the district court concluded that *Velasquez I* had resulted in "a final judgment on the merits" because that case was dismissed "with prejudice." R. at 599.[4] But the judgment in

[3] For example, regarding a judgment on the merits in *Velasquez I*, Velasquez states that the district court "does not develop the first requirement" and he asserts that "[s]aid first requirement is conspicuous against a civil IFP *deficiency* termination." Aplt. Br. at 21. Regarding the "finality of *Velasquez I*," *id.* at 22, he discusses the three strikes provision in 28 U.S.C. § 1915(g), which applies only to dismissals of actions or appeals by prisoners. Although Velasquez mentions privity, he does not develop an argument of error regarding the district court's holding on identity of parties in both actions. And he asserts "there is no original cause to find complete precedence for *transactional* claim preclusion," *id.* at 19, but fails to develop an argument that the district court erred in holding that the claims in both actions arose from the same transaction, event, or occurrence.

[4] The district court purported to dismiss *Velasquez I* with prejudice after holding that amendment of the complaint would be futile. *See* Mem. Decision & Order of Dismissal at 5-6, *Velasquez v. Utah*, No. 2:18-cv-00728-DN (D. Utah Feb. 25, 2019), ECF No. 27. But "[a] denial of leave to amend to repair a jurisdictional

Velasquez I was not on the merits of Velasquez's claims. Rather, the district court dismissed that action for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. *See Velasquez*, 775 F. App'x at 421-22. And a dismissal for lack of jurisdiction does not have a broad res judicata effect. *See Matosantos Com. Corp. v. Applebee's Int'l, Inc.*, 245 F.3d 1203, 1209 (10th Cir. 2001) ("[A] dismissal for lack of jurisdiction does not bar a second action as a matter of claim preclusion . . . ." (internal quotation marks omitted)). Thus, the district court erred in applying claim preclusion to dismiss *Velasquez II*.

But a dismissal for lack of jurisdiction still precludes a plaintiff from relitigating that ground for dismissal. *See id.* at 1209-10 (stating "a dismissal for lack of jurisdiction . . . preclude[s] relitigation of the issues determined in ruling on the jurisdiction question," *id.* at 1209 (internal quotation marks omitted)); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006) (holding the preclusive effect of a dismissal for lack of standing "is one of *issue preclusion* (collateral estoppel) rather than *claim preclusion* (res judicata)"); 18A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4436 (3d ed., Oct. 2020 update) ("Although a dismissal for lack of jurisdiction does not bar a second action as a matter of claim preclusion, it does preclude relitigation of the issues determined in ruling on the jurisdiction question unless preclusion is denied for some other

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defect, even on futility grounds, does not call for a dismissal with prejudice. The two concepts do not overlap in those cases where, although amendment would be futile, a jurisdictional defect calls for a dismissal without prejudice." *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006).

reason."). Because issue preclusion bars Velasquez's claims against the State Defendants in *Velasquez II*, we exercise our discretion to affirm the district court's dismissal of those claims on an alternative basis.[5]

The elements of issue preclusion are:

> (1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party, or in privity with a party, to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

Matosantos Com. Corp., 245 F.3d at 1207 (internal quotation marks omitted). All four elements for the application of issue preclusion are satisfied in this case.

The first element is met because *Velasquez II* raised the same *Rooker-Feldman* issue as *Velasquez I*. The district court held that both actions originated from the same administrative law case and subsequent state-court litigation in Utah. Both complaints also alleged that Velasquez's civil rights had been violated in those prior proceedings and that certain state statutes were unconstitutional. Further, the court

[5] "[W]e treat arguments for *affirming* the district court differently than arguments for *reversing* it. We have long said that we may affirm on any basis supported by the record, even if it requires ruling on arguments not reached by the district court or even presented to us on appeal." *Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1130 (10th Cir. 2011). Thus, we must affirm the district court's judgment "if the result is correct although the lower court relied upon a wrong ground or gave a wrong reason." *Id.* (internal quotation marks omitted). Moreover, Velasquez had the opportunity to address claim preclusion in the district court, and the doctrines of claim preclusion and issue preclusion are "closely related," *SIL-FLO, Inc. v. SFHC, Inc.*, 917 F.2d 1507, 1520 (10th Cir. 1990). Finally, issue preclusion presents a legal question. *See Bell v. Dillard Dep't Stores, Inc.*, 85 F.3d 1451, 1453 (10th Cir. 1996). Thus, the efficient use of judicial resources weighs against a remand for initial consideration by the district court.

construed the complaint in *Velasquez II* as seeking to void the Utah administrative proceedings. *See* R. at 596. Moreover, consistent with the district court's construction, Velasquez states in his appeal brief that, "if compared, the Opening Complaints from *Velasquez I* to this *Velasquez II* are largely the same question." Aplt. Br. at 17 (internal quotation marks omitted) (italics added).

A dismissal for lack of jurisdiction satisfies the second element—a judgment "on the merits"—if the jurisdictional issue was actually adjudicated in the previous action. *See Matosantos Com. Corp.*, 245 F.3d at 1209-10. As we have noted, the *Rooker-Feldman* issue was actually and finally adjudicated in *Velasquez I.*

The third element is met because Velasquez was the plaintiff in both actions.

And finally, Velasquez had a full and fair opportunity to litigate the *Rooker-Feldman* issue in *Velasquez I.* In particular, he challenged the district court's application of that doctrine in a post-judgment motion and he appealed the judgment to this court. *See Curley v. Perry*, 246 F.3d 1278, 1284 (10th Cir. 2001) (rejecting a due process challenge to dismissals on screening under § 1915(e)(2) based upon the "adequate procedural safeguards to avoid erroneous dismissals," including "a reasonable post-judgment opportunity to present . . . arguments to the district court and the appellate court"). Nor does Velasquez's disagreement with the *Rooker-Feldman* ruling in *Velasquez I* mean that he was denied a full and fair opportunity to litigate the issue in that case. *See SIL-FLO, Inc. v. SFHC, Inc.*, 917 F.2d 1507, 1521 (10th Cir. 1990).

III. Conclusion

The district court's judgment is affirmed. The court's dismissal of Velasquez's claims against the State Defendants is affirmed on the alternative basis of issue preclusion. Velasquez's application to proceed on appeal without prepayment of fees and costs is granted.

Entered for the Court

Nancy L. Moritz
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

April 26, 2021

Mr. Carlos Velasquez
P.O. Box 58486
2255 East Sunnyside
Salt Lake City, UT 84158

RE: 20-4087, Velasquez v. State of Utah, et al.
Dist/Ag docket: 2:20-CV-00205-DB

Dear Appellant:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of the Court

CMW/djd

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CARLOS VELASQUEZ, Plaintiff, **v.** **STATE OF UTAH, ET AL.,** Defendants.	**MEMORANDUM DECISION AND ORDER DENYING MOTION TO PROCEED IN FORMA PAUPERIS ON APPEAL** **Case No. 2:20-CV-205-DAK** **Judge Dale A. Kimball**

This matter is before the court on Plaintiff's motion for leave to proceed *in forma pauperis* on appeal [ECF No. 32] pursuant to Rule 24 of the Federal Rules of Appellate Procedure. Plaintiff proceeded *in forma pauperis* at the district court level.

Rule 24 provides that "a party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless: (A) the district court–before or after the notice of appeal is filed–certifies that the appeal is not taken in good faith . . . and states in writing its reasons for the certification." Fed. R. App. P. 24(a)(3)(A).

The court certifies that Plaintiff's current appeal is not taken in good faith. Plaintiff failed to plead plausible causes of action against Defendants. Despite filing a lengthy Complaint, Plaintiff's allegations were vague and difficult to decipher. Moreover, his claims were barred by claim preclusion. Therefore, his appeal lacks merit and his motion to appeal *in forma pauperis* [ECF No. 147] is DENIED. Pursuant to Federal Rule of Appellate Procedure 24(a)(4), the Clerk

of Court shall immediately notify the Tenth Circuit Court of Appeals of this denial. Plaintiff should either pay the appellate filing fee or file a motion in the Tenth Circuit Court of Appeals to proceed *in forma pauperis* pursuant to Rule 24(a)(5) of the Federal Rules of Appellate Procedure.

DATED this 1st day of February, 2021.

BY THE COURT:

Dale A. Kimball

DALE A. KIMBALL
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

CARLOS VELASQUEZ, **Plaintiff,** **v.** **STATE OF UTAH et al.,** **Defendants.**	**MEMORANDUM DECISION AND ORDER** **Case No. 2:20-cv-00205-DB-PMW** **District Judge Dee Benson** **Chief Magistrate Judge Paul M. Warner**

Before the court are Plaintiff Carlos Velasquez's ("Plaintiff") "Motion to Set Aside for Fraud on the Court" (Dkt. No. 20) and "Motion for Reassignment of the Judge" (Dkt. No. 25). . The court elects to determine the motions on the basis of the written memoranda and finds that oral argument would not be helpful or necessary. DUCivR 7-1(f).

Plaintiff's "Motion to Set Aside for Fraud on the Court" makes a variety of claims, citing the Older Americans Act and Section 1988 of the Civil Rights Act. Dkt. No. 20 at 2-3. Plaintiff argues that the court's decision dismissing this action "lacks subject-matter" and "is not related to any part of the petitioner's complaint." *Id.* at 4. Plaintiff also accuses this court of various procedural deficiencies such as a failure to notify "those parties served." *Id.* at 9. Under the heading "Conclusions," Plaintiff argues that this court is unduly prejudiced against Plaintiff and that this court's dismissal of Plaintiff's case was "fraudulent." *Id.* at 11-12. Plaintiff further criticizes the opinion of Judge Nuffer, upon which this court relied in part in dismissing this action, claiming that Judge Nuffer's opinion was "speculative." *Id.* at 12. Plaintiff contends that the Court of Appeals (seemingly the Tenth Circuit) "did not recognize any statutory question that

declared Velasquez seeks repair against the State court judgment, when it was a plenary challenge against a statute as stated most generally under the statement of jurisdiction." [sic] *Id.* at 11-12.

The core of Plaintiff's argument appears to be that this court's application of the *in forma pauperis* ("IFP") statute "distort[ed] the nature of the case" in an attempt to get rid of the suit and "reduce the time the court works upon it." *Id.* at 16. Plaintiff contends that this court and Judge Nuffer are therefore guilty of "conspiracy, contempt, fraud, obstruction, and perjury." *Id.* (emphasis removed). The "fraud on the court" complained of by Plaintiff, then, was allegedly committed by the court itself when it dismissed the case under the IFP statute.

Upon receipt of this motion, the court examined the complaint anew in light of the IFP statute. Under that statute, the court is required to "dismiss the case at any time if the court determines that the action . . . fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). After renewed examination, the complaint fails to state a claim on which relief may be granted. The court therefore determines that the prior decision dismissing the case was correct. No fraud was committed by either this court or Judge Nuffer in dismissing Plaintiff's actions because they were properly dismissed under the IFP statute.

Plaintiff's "Request for Reassignment of the Judge" questions this court's efficiency and impartiality in addressing the "Motion to Set Aside for Fraud on the Court." Plaintiff's complaints about efficiency apparently stem from the fact that the Motion to Set Aside was filed on May 7, 2020 and has not been resolved prior to this order. Plaintiff's allegation that this court is not impartial apparently stems solely from the fact this court decided against Plaintiff in

dismissing the underlying action. This court has no personal or professional connections that would call its impartiality into question in this matter. Any delay in disposing of Plaintiff's Motion to Set Aside did not prejudice Plaintiff's ability to seek justice from this court. Plaintiff's "Request for Reassignment of the Judge" is therefore denied.

CONCLUSION

Based upon the foregoing, Plaintiff's Motions are hereby DENIED.

DATED this 8th day of July, 2020.

BY THE COURT:

Dee Benson

DEE BENSON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

CARLOS VELASQUEZ, **Plaintiff,** **v.** **STATE OF UTAH et al.,** **Defendants.**	**JUDGMENT IN A CIVIL CASE** **Case No. 2:20-cv-00205-DB-PMW** **District Judge Dee Benson** **Chief Magistrate Judge Paul M. Warner**

IT IS ORDERED AND ADJUDGED that this action is DISMISSED WITH PREJUDICE under the authority of the IFP Statute. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

DATED this 24th day of April, 2020.

BY THE COURT:

Dee Benson

DEE BENSON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

CARLOS VELASQUEZ, **Plaintiff,** **v.** **STATE OF UTAH et al.,** **Defendants.**	**MEMORANDUM DECISION AND ORDER** **Case No. 2:20-cv-00205-DB-PMW** **District Judge Dee Benson** **Chief Magistrate Judge Paul M. Warner**

Before the court are Plaintiff Carlos Velasquez's ("Plaintiff") complaint[1] and several motions.[2] The court notes that Plaintiff is proceeding pro se in this case. Consequently, the court will construe his pleadings liberally. *See, e.g.*, *Ledbetter v. City of Topeka*, 318 F.3d 1183, 1187 (10th Cir. 2003). The court also notes that Plaintiff has been permitted to proceed in forma pauperis under 28 U.S.C. § 1915 ("IFP Statute").[3] Accordingly, the court will review the sufficiency of Plaintiff's complaint under the authority of the IFP Statute.

BACKGROUND

On September 18, 2018, Plaintiff filed an action in this court against the State of Utah; the Utah Department of Human Services; the Utah Office of Administrative Hearings; and the Utah Division of Aging and Adult Services, Adult Protective Services. *See Velasquez v. State of*

[1] *See* ECF no. 4.

[2] *See* ECF nos. 2, 9, 11.

[3] *See* ECF no. 3.

Utah, 2:18-cv-00728-DN ("*Velasquez I*"). In a memorandum decision and order dated February 25, 2019, District Judge David Nuffer reviewed Plaintiff's complaint in *Velasquez I* under the authority of the IFP Statute.[4]

In that order, Judge Nuffer noted that Plaintiff's complaint in *Velasquez I* was "generally confusing and difficult to decipher."[5] Nevertheless, Judge Nuffer noted that the genesis of *Velasqez I* appeared to be an administrative action that was commenced against Plaintiff by the Utah Division of Aging and Adult Services.[6] In *Velasquez I*, Plaintiff identified that case as "Utah Administrative Case: 2246378"[7] ("Administrative Case"). Plaintiff's complaint in *Velasquez I* detailed "an extensive history of litigating the Administrative Case in Utah administrative agencies, the Utah Third District Court, the Utah Court of Appeals, and the Utah Supreme Court," which included a constitutional claim asserted in *Velasquez I*.[8] Plaintiff's complaint in *Velasquez I* sought (1) a declaration of unconstitutionality with respect to several statutes and regulations; (2) "[f]alsity" of the Administrative Case; (3) "[i]nterest to preference on [*Velasquez I*] case over ordinary civil cases"; (4) "[i]nterest to three applications for extraordinary writ[s], Mandamus, Prohibition, [and] Execution"; and (5) "[i]nterest to generate

[4] *See Velasquez I*, ECF no. 27.

[5] *Id.* at 1.

[6] *See id.* at 2.

[7] *See Velasquez I*, ECF no. 3 a 1.

[8] *Id.* at 2.

an effective ruling to prosecute original tortfeasors against a manner of conspiracy."[9] Plaintiff's complaint in *Velasquez I* also alleged that Plaintiff had "'a sustained interest to have some more impartial committee weigh whether' the Utah Supreme Court 'sustained procedural malice to wrongful decline of interest' when it issued certain orders in the course of his litigation of the Administrative Case."[10] The complaint in *Velasquez I* further alleged "that the Utah Supreme Court 'sustained malice,' 'refused to clarify the constitutional question,' and 'refused to recognize evidence.'"[11]

After reviewing Plaintiff's complaint in *Velasquez I*, Judge Nuffer concluded that Plaintiff's action was barred by the *Rooker-Feldman* doctrine.[12] Judge Nuffer also concluded that it would be futile to provide Plaintiff with an opportunity to amend his complaint.[13] Accordingly, Judge Nuffer dismissed *Velasquez I* with prejudice under the authority of the IFP Statute for failure to state claims upon which relief could be granted.[14] *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

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[9] *Id.* at 13-52; *see also Velasquez I*, ECF no. 27 at 2.

[10] *Velasquez I*, ECF no. 27 at 2 (quoting, *Velasquez I*, ECF no. 3 at 24-25).

[11] *Id.* (quoting *Velasquez I*, ECF no. 3 at 25)

[12] *See id.* at 4-5.

[13] *See id.* at 5.

[14] *See id.* at 5-6.

On March 8, 2019, Plaintiff filed a motion to reconsider Judge Nuffer's February 25, 2019 memorandum decision and order dismissing *Velasquez I*.[15] Judge Nuffer denied that motion on March 12, 2019, concluding that Plaintiff's arguments were "incorrect and without merit."[16]

On March 20, 2019, Plaintiff filed a notice of appeal in *Velasquez I*.[17] On June 11, 2019, the Tenth Circuit Court of Appeals issued an order and judgment on Plaintiff's appeal. *See Velasquez v. Utah*, 775 F. App'x 420, 421-23 (10th Cir. 2019). In that order and judgment, the Tenth Circuit stated:

> This appeal is the latest skirmish in a long-running legal battle between [Plaintiff] and various agencies and courts of the State of Utah. The saga appears to have begun with administrative law proceedings at the Utah Department of Human Services. After the administrative proceedings concluded, he took his fight to Utah state court, where in addition to his original claims he raised new constitutional claims regarding the fairness of his administrative proceedings and challenging the constitutionality of several Utah statutes and regulations. Unable to find success after exhausting his appeals in Utah state court, he sued the State of Utah and several state agencies in federal district court. In federal court he once again raised his constitutional claims from state court while adding constitutional claims . . . .

Id. at 421.

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[15] *See Velasquez I*, ECF no. 29.

[16] *Velasquez I*, ECF no. 31 at 2.

[17] *See Velasquez I*, ECF no. 33.

On October 1, 2019, Plaintiff filed a petition for a writ of certiorari with the United States Supreme Court with respect to *Velasquez I*.[18] On December 9, 2019, the Supreme Court denied Plaintiff's petition.[19]

On April 3, 2020, Plaintiff filed his complaint in the instant action.[20] Plaintiff's 91-page complaint names the following four parties as defendants, all of which were named as defendants in *Velasquez I*: the State of Utah, the Utah Department of Human Services, the Utah Division of Aging and Adult Services/Adult Protective Services, and the Utah Office of Administrative Hearings.[21] Plaintiff also names the following defendants: Utah Governor Gary R. Herbert; Utah Attorney General Sean Reyes; the Utah Legislature; the Utah Office of Legislative Research and General Counsel; Thomas R. Vaughn, Utah Attorney of General Counsel; Nels Holmgren, Utah Division of Aging and Adult Services Division Director; J. Stephen Mikita, Utah Assistant Attorney General (Adult Protective Services); Sonia Sweeney, Utah Office of Administrative Hearings Division Director; Laura Thompson, Utah Assistant Attorney General

[18] *See Velasquez I*, ECF no. 50.

[19] *See Velasquez I*, ECF no. 51.

[20] *See* ECF no. 4. The court's citations to Plaintiff's complaint will reference page numbers in sequence, regardless of how they are numbered by Plaintiff.

[21] *See id.* at 1.

(Utah Department of Human Services); Amanda Slater, Utah Office of Licensing Division Director; and the United States Administration for Community Living.[22]

In the first paragraph of the substantive portion of his complaint, Plaintiff alleges that this action originates from the Administrative Case.[23] Plaintiff also details the proceedings related to the Administrative Case,[24] references the Administrative Case in several other portions of his complaint,[25] and requests that the Administrative Case "must become voided, 'without merit.'"[26]

Like his complaint in *Velasquez I*, Plaintiff's complaint in this action is generally confusing and difficult to comprehend. As best the court can decipher, it appears that Plaintiff's complaint alleges that his civil rights were violated in the proceedings in the Administrative Case and that certain Utah statutes and legislation are unconstitutional.

LEGAL STANDARDS

Whenever the court authorizes a party to proceed without payment of fees under the IFP Statute, the court is required to "dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). In determining whether a complaint fails to state a claim for relief under the IFP Statute, the

[22] *See id.* at 14-15. Except for the United States Administration for Community Living, all of the defendants named in Plaintiff's complaint in this action will be referred to collectively as the "State Defendants."

[23] *See id.* at 22.

[24] *See id.* at 27-28.

[25] *See id.* at 25, 90.

[26] *Id.* at 90.

court employs the same standard used for analyzing motions to dismiss for failure to state a claim under rule 12(b)(6) of the Federal Rules of Civil Procedure. *See Kay v. Bemis*, 500 F.3d 1214, 1217-18 (10th Cir. 2007). Under that standard, the court "look[s] for plausibility in th[e] complaint." *Id.* at 1218 (quotations and citations omitted) (second alteration in original). More specifically, the court "look[s] to the specific allegations in the complaint to determine whether they plausibly support a legal claim for relief. Rather than adjudging whether a claim is 'improbable,' '[f]actual allegations [in a complaint] must be enough to raise a right to relief above the speculative level.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007)) (other quotations and citation omitted) (second and third alterations in original).

In undertaking that analysis, the court must be mindful that Plaintiff is proceeding pro se and that "[a] pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991); *see also, e.g.*, *Ledbetter*, 318 F.3d at 1187. At the same time, however, it is not "the proper function of the district court to assume the role of advocate for the pro se litigant," *Bellmon*, 935 F.2d at 1110, and the court "will not supply additional facts, nor will [it] construct a legal theory for [a pro se] plaintiff that assumes facts that have not been pleaded." *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989) (per curiam). Further,

> [t]he broad reading of [a pro se] plaintiff's complaint does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based . . . . [C]onclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based. This is so because a pro se plaintiff requires no special legal training to recount the facts surrounding his alleged injury, and he must provide such facts if the court is to determine whether he makes out a claim on which

> relief can be granted. Moreover, in analyzing the sufficiency of the plaintiff's complaint, the court need accept as true only the plaintiff's well-pleaded factual contentions, not his conclusory allegations.

Bellmon, 935 F.2d at 1110 (citations omitted).

After reviewing a pro se plaintiff's complaint under the IFP Statute, the court may dismiss the complaint for failure to state a claim "only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend." *See Kay*, 500 F.3d at 1217 (quotations and citation omitted).

ANALYSIS

I. Claim Preclusion

"Under res judicata, or claim preclusion, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in the prior action." *Satsky v. Paramount Commc'ns, Inc.*, 7 F.3d 1464, 1467 (10th Cir. 1993) (quotations and citation omitted). In the Tenth Circuit, "[c]laim preclusion requires: (1) a judgment on the merits in the earlier action; (2) identity of the parties or their privies in both suits; and (3) identity of the cause of action in both suits." *Yapp v. Excel Corp.*, 186 F.3d 1222, 1226 (10th Cir. 1999). In determining the third element, the Tenth Circuit has adopted the transactional approach to a cause of action, defining it to include "all claims or legal theories of recovery that arise from the same transaction, event, or occurrence." *Wilkes v. Wyo. Dep't of Emp't Div. of Labor Standards*, 314 F.3d 501, 504 (10th Cir. 2003).

Based upon the analysis set forth below, and the history of *Velasquez I* set forth above, the court concludes that all three of the above-referenced elements are satisfied in this action as

to the State Defendants Therefore, the court concludes that all of Plaintiff's claims in this action against the State Defendants are barred by the doctrine of claim preclusion.

First, there was a final judgment on the merits in an earlier action. The court previously dismissed *Velasquez I* with prejudice, and that dismissal was affirmed on appeal by the Tenth Circuit.

Second, the court concludes that, as to Plaintiff and the State Defendants, there is identity of the parties or their privies in both this action and *Velasquez I*. As in this action, Plaintiff was the sole named plaintiff in *Velasquez I*. Additionally, as indicated above, Plaintiff has included as named defendants in this action all four of the parties that were named defendants in *Velasquez I*, namely the State of Utah, the Utah Department of Human Services, the Utah Division of Aging and Adult Services/Adult Protective Services, and the Utah Office of Administrative Hearings.

As for the remaining State Defendants, the court concludes that they are in privity with the four defendants named in *Velasquez I*. In determining privity, courts have held that "parties nominally different may be, in legal effect, the same." *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 402 (1940). The Tenth Circuit has held that "[t]he general weight of authority appears to be that . . . government employees are in privity with their employer in their official capacities." *Gonzales v. Hernandez*, 175 F.3d 1202, 1206 (10th Cir. 1999). Furthermore, an action against a government official in his or her official capacity is "simply another way of pleading an action against an entity of which an officer is an agent." *McDonald v. Wise*, 769 F.3d 1202, 1215 (10th Cir. 2014) (quotations and citation omitted); *see also Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) ("[A] suit against a state official in his or her official

capacity is not a suit against the official but rather is a suit against the official's office."); *Baker v. Chisom*, 501 F.3d 920, 925 (8th Cir. 2007) ("[T]he real party in interest in an official-capacity suit is the governmental entity and not the named official. The doctrine of res judicata bars a plaintiff from suing a succession of public officials on the same official-capacity claim.") (quotations and citation omitted) (alteration in original).

Under those principles, the following State Defendants are in privity with the four named defendants in *Velasquez I* as follows: (1) the State of Utah is in privity with Utah Governor Gary R. Herbert; Utah Attorney General Sean Reyes; the Utah Legislature; the Utah Office of Legislative Research and General Counsel; Thomas R. Vaughn, Utah Attorney of General Counsel; and Amanda Slater, Utah Office of Licensing Division Director; (2) the State of Utah and/or the Utah Division of Aging and Adult Services/Adult Protective Services are in privity with Nels Holmgren, Utah Division of Aging and Adult Services Division Director; and J. Stephen Mikita, Utah Assistant Attorney General (Adult Protective Services); (3) the State of Utah and/or the Utah Department of Human Services are in privity with Laura Thompson, Assistant Attorney General (Utah Department of Human Services); and (4) the State of Utah and/or the Utah Office of Administrative Hearings are in privity with Sonia Sweeney, Utah Office of Administrative Hearings Division Director.

Third and finally, under the transactional approach adopted by the Tenth Circuit, the court concludes that all of Plaintiff's "claims or legal theories of recovery" in this action against the State Defendants "arise from the same transaction, event, or occurrence." *Wilkes*, 314 F.3d at 504. Plaintiff's complaint in this action make it clear that, as in *Velasquez I*, all of his claims and

legal theories have their genesis in the Administrative Case. As such, the court concludes that Plaintiff is attempting to relitigate issues related to the Administrative Case "that were or *could have been* raised" in *Velasquez I. Satsky*, 7 F.3d at 1467 (quotations and citation omitted) (emphasis added).

For those reasons, the court concludes that all of the foregoing elements are satisfied and, consequently, that all of Plaintiff's claims in this action against the State Defendants are barred by the doctrine of claim preclusion. Accordingly, the court concludes that Plaintiff has failed to state any claims upon which relief can be granted against the State Defendants. Therefore, all of Plaintiff's claims in this action against the State Defendants are dismissed with prejudice under the authority of the IFP Statute. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

II. United States Administration for Community Living

While Plaintiff has named the United States Administration for Community Living as a defendant in his complaint, his complaint is entirely devoid of any allegations concerning that defendant. As such, the court concludes that Plaintiff has failed to state any claims upon which relief can be granted against that defendant. Accordingly, all of Plaintiff's claims against the United States Administration for Community Living are dismissed with prejudice under the authority of the IFP Statute. *See id.*

III. Futility of Amendment

As previously noted, after reviewing a pro se plaintiff's complaint under the IFP Statute, the court may dismiss the complaint for failure to state a claim "only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an

opportunity to amend." *See Kay*, 500 F.3d at 1217 (quotations and citation omitted). The court has determined that Plaintiff could not provide any additional, plausible allegations that would save any of his claims from dismissal under the analysis set forth above. Accordingly, the court concludes that it would be futile to provide Plaintiff with an opportunity to amend his complaint.

IV. Plaintiff's Motions

As previously noted, Plaintiff has filed multiple motions in this case. The court has carefully reviewed those motions and determined that none of them has any effect on the analysis set forth above concerning the sufficiency of Plaintiff's complaint this action. Accordingly, the court concludes that all of Plaintiff's motions are moot.

CONCLUSION AND ORDER

Based upon the foregoing, IT IS HEREBY ORDERED:

1. All of Plaintiff's motions[27] are MOOT.
2. This action is DISMISSED WITH PREJUDICE under the authority of the IFP Statute. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

IT IS SO ORDERED.

DATED this 24th day of April, 2020.

BY THE COURT:

Dee Benson

DEE BENSON
United States District Judge

[27] *See* ECF nos. 2, 9, 11.

FILED
United States Court of Appeals
Tenth Circuit

June 21, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CARLOS VELASQUEZ,

Plaintiff - Appellant,

v.

STATE OF UTAH; UTAH DEPARTMENT OF HUMAN SERVICES AND AGENCIES; UTAH OFFICE OF ADMINISTRATIVE HEARINGS; DIVISION OF AGING AND ADULT SERVICES, ADULT PROTECTIVE SERVICES,

Defendants - Appellees.

No. 19-4041

ORDER

Before **McHUGH**, **KELLY**, and **MORITZ**, Circuit Judges.

This matter is before the court on the appellant's *Motion for Stay of Mandate with Interest the Panel Must Recuse.* Upon careful consideration, the motion is DENIED. The mandate will not be stayed, and this panel will not recuse itself from this matter.

Entered for the Court

Elisabeth A. Shumaker

ELISABETH A. SHUMAKER, Clerk

FILED
United States Court of Appeals
Tenth Circuit

June 11, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CARLOS VELASQUEZ,

Plaintiff - Appellant,

v.

STATE OF UTAH; UTAH DEPARTMENT OF HUMAN SERVICES AND AGENCIES; UTAH OFFICE OF ADMINISTRATIVE HEARINGS; DIVISION OF AGING AND ADULT SERVICES, ADULT PROTECTIVE SERVICES,

Defendants - Appellees.

No. 19-4041
(D.C. No. 2:18-CV-00728-DN)
(D. Utah)

ORDER AND JUDGMENT*

Before **McHUGH**, **KELLY**, and **MORITZ**, Circuit Judges.**

Plaintiff-Appellant Carlos Velasquez appeals from the district court's dismissal of his case as barred by the Rooker-Feldman doctrine. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Background

This appeal is the latest skirmish in a long-running legal battle between Mr. Velasquez and various agencies and courts of the State of Utah. The saga appears to have begun with administrative law proceedings at the Utah Department of Human Services. 1 R. 629. After the administrative proceedings concluded, he took his fight to Utah state court, where in addition to his original claims he raised new constitutional claims regarding the fairness of his administrative proceedings and challenging the constitutionality of several Utah statutes and regulations. Id. Unable to find success after exhausting his appeals in Utah state court, he sued the State of Utah and several state agencies in federal district court. Id. at 6. In federal court he once again raised his constitutional claims from state court while adding constitutional claims that the Utah Supreme Court "'sustained malice,' 'refused to clarify the constitutional question,' and 'refused to recognize evidence.'" Id. at 629 (quoting Compl. at 25).

Because Mr. Velasquez proceeded pro se and in forma pauperis (IFP), the district court construed his complaint liberally, but found the claims to be "generally confusing and difficult to decipher." Id. at 628. Ultimately, the court dismissed his complaint as barred by the Rooker-Feldman doctrine because it "to one extent or another" asked the court to review "certain decisions rendered concerning the Administrative Case by Utah administrative agencies, the Utah Third District Court, the Utah Court of Appeals, and the Utah Supreme Court." Id. at 631. Following that

order, Mr. Velasquez filed a motion for reconsideration,[1] which the district court denied. Id. at 712. The district court denied Mr. Velasquez leave to proceed on appeal IFP, certifying that the appeal was not taken in good faith because it "presents no substantial question for review" and "there is no reasonable basis for his claims of error." Id. at 728. Mr. Velasquez has renewed his motion to proceed IFP on appeal in this court.

Discussion

We review a district court's dismissal for lack of subject matter jurisdiction de novo, and any factual findings for clear error. Stuart v. Colo. Interstate Gas Co., 271 F.3d 1221, 1225 (10th Cir. 2001). The denial of a motion for reconsideration under Rule 59(e) is reviewed for abuse of discretion. Nelson v. City of Albuquerque, 921 F.3d 925, 929 (10th Cir. 2019).

First, Mr. Velasquez challenges the dismissal of his case. The premise of the Rooker-Feldman doctrine is that 28 U.S.C. § 1257(a) gives only the United States Supreme Court jurisdiction to review appeals from state court judgments. See Dist. of Columbia Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fid. Trust

[1] While Mr. Velasquez identified Federal Rule of Civil Procedure 60(a) as the basis for his reconsideration motion, that rule is usually reserved for correcting clerical errors or inadvertent mistakes. See McNickle v. Bankers Life and Cas. Co., 888 F.2d 678, 682 (10th Cir. 1989); 11 Charles Allen Wright & Arthur R. Miller, Federal Practice & Procedure § 2854 (3d ed., April 2019 update) ["Wright & Miller"]. Instead, Rule 59(e) is the mechanism typically used to correct a substantive error in a court's legal determination after judgment has been entered. See Nelson, 921 F.3d at 928–29; Servants of the Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000); 11 Wright & Miller § 2810.1. Accordingly, for purposes of this appeal we construe his motion as one under Rule 59(e).

Co., 263 U.S. 413 (1923). By negative inference, inferior federal courts lack subject matter jurisdiction to hear appeals from state court. Mo's Express, LLC v. Sopkin, 441 F.3d 1229, 1233 (10th Cir. 2006). The scope of the doctrine, however, is narrow. Rooker-Feldman only bars federal district courts from hearing cases "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). Where the relief requested would necessarily undo the state court's judgment, Rooker-Feldman deprives the district court of jurisdiction. Mo's Express, 441 F.3d at 1237.

In Mr. Velasquez's case, he appears to challenge decisions by the Utah state courts reviewing his state administrative law appeal. He claims that the Utah state courts violated his constitutional rights in the course of that litigation and seems to seek reversal of decisions he lost on the merits. This is precisely the type of suit that Rooker-Feldman prevents federal district courts from hearing. Having already raised his various objections in state court and failed, Mr. Velasquez has now "repaired to federal court to undo the [state-court] judgment" against him. Exxon, 544 U.S. at 293. If he wants to receive federal review of his constitutional claims from Utah court, his only remedy is an appeal to the United States Supreme Court. The district court properly dismissed this action for lack of subject matter jurisdiction.

Second, Mr. Velasquez challenges the district court's denial of his motion for reconsideration. We review such a denial for an abuse of discretion, and a district

court only abuses its discretion when its decision was "arbitrary, capricious, whimsical, or manifestly unreasonable." Nalder v. West Park Hosp., 254 F.3d 1168, 1174 (10th Cir. 2001) (internal quotation marks omitted). Here, Mr. Velasquez's motion was impermissibly overlong and entirely "without merit." 1 R. 712–13. The district court did not abuse its discretion by denying a motion that raised no new arguments and did not reveal any defect in the court's original decision. See Nelson, 921 F.3d at 929–30; Servants, 204 F.3d at 1012.

Finally, we deny Mr. Velasquez's motion to proceed IFP; he has not advanced a rational argument on the law and facts to warrant such status. See DeBardeleben v. Quinlan, 937 F.2d 502, 505 (10th Cir. 1991).

AFFIRMED. All pending motions are DENIED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CARLOS VELASQUEZ, Plaintiff, v. STATE OF UTAH; UTAH DEPARTMENT OF HUMAN SERVICES AND AGENCIES; UTAH OFFICE OF ADMINISTRATIVE HEARINGS; and DIVISION OF AGING AND ADULT SERVICES, ADULT PROTECTIVE SERVICES, Defendants.	**JUDGMENT IN A CIVIL CASE** Case No. 2:18-cv-00728-DN District Judge David Nuffer

IT IS HEREBY ORDERED AND ADJUDGED that this action is DISMISSED WITH PREJUDICE under the authority of 28 U.S.C. § 1915(e)(2)(B)(ii).

The clerk is directed to close this action.

Signed February 25, 2019.

BY THE COURT:

David Nuffer
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CARLOS VELASQUEZ, Plaintiff, v. STATE OF UTAH, et al., Defendants.	**MEMORANDUM DECISION AND ORDER OF DISMISSAL** Case No. 2:18-cv-00728-DN District Judge David Nuffer

Plaintiff Carlos Velasquez filed the complaint[1] and several motions (the "Motions")[2] as a pro se litigant. Because he is proceeding pro se, his pleadings are construed liberally.[3] He was also permitted to proceed in form pauperis under 28 U.S.C. § 1915 (the "IFP Statute");[4] accordingly, the sufficiency of his complaint is reviewed under the authority of that statute.

BACKGROUND

Velasquez's complaint is generally confusing and difficult to decipher. It is addressed to the "Tenth District" and captioned as a "Petition for Writ of Certiorari" to appeal "Utah Administrative Case: 2246378" (the "Administrative Case").[5] In the portion entitled, "Notice of

[1] Appellant's Petition for Writ of Certiorari (the "Complaint"), docket no. 3, filed September 18, 2018.

[2] Pre-Trial Motions, docket no. 4, filed September 18, 2018; Motion to Amend Filing Previously Made, docket no. 7, filed under seal September 25, 2018; Motion to Request an Immediate Hearing, docket no. 10, filed October 24, 2018; Non-Dispositive Motion to Issue Summons, docket no. 11, filed October 24, 2018; Motion to Amend the Docket to Let the Docket Show the Specific Titles of Papers Submitted, docket no. 13, filed November 20, 2018; Motion to Amend as Correct a Stated Venue of Petition, docket no. 18, filed December 17, 2018; Motion to Vacate a Referral to a Magistrate Judge, docket no. 22, filed January 28, 2019; Motion to Amend a Proposed Order/Query of Amend, docket no. 23, filed January 29, 2019; Motion for Hearing, docket no. 26, filed February 15, 2019 (collectively, the "Motions").

[3] *See Ledbetter v. City of Topeka*, 318 F.3d 1183, 1187 (10th Cir. 2003).

[4] Order on Application to Proceed Without Prepayment of Fees, docket no. 2, filed September 18, 2018.

[5] Complaint, *supra* note 1, at 1.

Appeal," he states that he is seeking (1) a declaration of unconstitutionality with respect to several statutes and regulations; (2) "[f]alsity" of the Administrative Case; (3) "[i]nterest to preference on this case over ordinary civil cases"; (4) "[i]nterest to three applications for extraordinary writ[s], Mandamus, Prohibition, [and] Execution"; and (5) "[i]nterest to generate an effective ruling to prosecute original tortfeasors against a manner of conspiracy."[6]

The genesis of this action appears to be the Administrative Case, which the Utah Division of Aging and Adult Services, Adult Protection Services, apparently commenced against Velasquez. According to the complaint, the Administrative Case was based on "an incidence of Abuse of a Vulnerable Adult."[7] The complaint details an extensive history of litigating the Administrative Case in Utah administrative agencies, the Utah Third District Court, the Utah Court of Appeals, and the Utah Supreme Court. That litigation history includes the constitutional claim Velasquez asserts in this action.

The complaint goes on to allege that Velasquez has "a sustained interest to have some more impartial committee weigh whether" the Utah Supreme Court "sustained procedural malice to wrongful decline of interest" when it issued certain orders in the course of his litigation of the Administrative Case.[8] The complaint further alleges that the Utah Supreme Court "sustained malice," "refused to clarify the constitutional question," and "refused to recognize evidence."[9]

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[6] *Id.* at 13-52.

[7] *Id.* at 15.

[8] *Id.* at 24-25.

[9] *Id.* at 25.

LEGAL STANDARDS

Whenever a party is authorized to proceed without payment of fees under the IFP Statute, the court is required to "dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim on which relief may be granted."[10] In determining whether a complaint fails to state a claim for relief under the IFP Statute, courts employ the same standard used for analyzing motions to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6).[11] Under that standard, courts "look for plausibility in th[e] complaint."[12] More precisely, courts "look to the specific allegations in the complaint to determine whether they plausibly support a legal claim for relief. Rather than adjudging whether a claim is 'improbable,' '[f]actual allegations [in a complaint] must be enough to raise a right to relief above the speculative level.'"[13]

In undertaking that analysis here, it is recognized that Velasquez is proceeding pro se and that "[a] pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers."[14] However, it is not "the proper function of the district court to assume the role of advocate for the pro se litigant,"[15] and the court "will not supply additional facts, nor will [it] construct a legal theory for [a pro se] plaintiff that assumes facts that have not been pleaded."[16] Further,

> [t]he broad reading of [a pro se] plaintiff's complaint does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based. . . . [C]onclusory allegations without supporting factual averments are

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[10] 28 U.S.C. § 1915(e)(2)(B)(ii).

[11] *See Kay v. Bemis*, 500 F.3d 1214, 1217-18 (10th Cir. 2007).

[12] *Id.* at 1218 (citations and internal quotation marks omitted).

[13] *Id.* (citations and internal quotation marks omitted).

[14] *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991); *see Ledbetter*, 318 F.3d at 1187.

[15] *Bellmon*, 935 F.2d at 1110.

[16] *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989).

> insufficient to state a claim on which relief can be based. This is so because a pro se plaintiff requires no special legal training to recount the facts surrounding his alleged injury, and he must provide such facts if the court is to determine whether he makes out a claim on which relief can be granted. Moreover, in analyzing the sufficiency of the plaintiff's complaint, the court need accept as true only the plaintiff's well-pleaded factual contentions, not his conclusory allegations.[17]

After reviewing a pro se plaintiff's complaint under the IFP Statute, courts may dismiss the complaint for failure to state a claim "only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend."[18]

ANALYSIS

The *Rooker-Feldman* doctrine bars this action.

Velasquez's complaint makes it clear that he is asking this court to review, to one extent or another, certain decisions rendered concerning the Administrative Case by Utah administrative agencies, the Utah Third District Court, the Utah Court of Appeals, and the Utah Supreme Court. This is not allowed under the *Rooker-Feldman* doctrine.

"The *Rooker-Feldman* doctrine prohibits federal suits that amount to appeals of state-court judgments."[19] It "establishes, as a matter of subject-matter jurisdiction, that only the United States Supreme Court has appellate authority to review a state-court decision."[20] "Thus, in applying the Rooker-Feldman doctrine, [a federal court of appeals] focus[es] on whether the lower federal court, if it adjudicated [the] plaintiff's claims, would effectively act as an appellate court reviewing the state court disposition."[21]

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[17] *Bellmon*, 935 F.2d at 1110 (citations omitted).

[18] *See Kay*, 500 F.3d at 1217 (citation and internal quotation marks omitted).

[19] *Bolden v. City of Topeka*, 441 F.3d 1129, 1139 (10th Cir. 2006).

[20] *Merrill-Lynch Bus. Fin. Servs. v. Nudell*, 363 F.3d 1072, 1074-75 (10th Cir. 2004); *see* 28 U.S.C. § 1257(a) (providing that the Supreme Court has jurisdiction to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had").

[21] *Nudell*, 363 F.3d at 1075.

All of the allegations in Velasquez's complaint center around proceedings related to the Administrative Case. Furthermore, Velasquez admits in the complaint that he has already litigated all of the issues raised in the complaint (including the constitutional issues) in Utah administrative agencies, the Utah Third District Court, the Utah Court of Appeals, and the Utah Supreme Court. If Velasquez's claims were adjudicated in this action, the court would "effectively act as an appellate court reviewing" the decisions of those state agencies and tribunals.[22] Thus, the *Rooker-Feldman* doctrine bars this action, and it must be dismissed under the IFP Statute for failure to state a claim on which relief can be granted.[23]

Amendment would be futile.

As previously noted, after reviewing a pro se plaintiff's complaint under the IFP Statute, the complaint may be dismissed for failure to state a claim "only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend."[24] Here, there is no additional plausible allegations that would save any of Velasquez's claims from dismissal. Accordingly, it would be futile to provide Velasquez with an opportunity to amend the complaint.

The Motions are moot.

After carefully reviewing the Motions, it is determined that none of the Motions has any effect on the analysis set forth above concerning the sufficiency of Velasquez's complaint. Accordingly, all of the Motions will be denied as moot.

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[22] *Id.*

[23] *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

[24] *See Kay*, 500 F.3d at 1217 (citation and internal quotation marks omitted).

ORDER

THEREFORE, IT IS HEREBY ORDERED as follows:

1. All of the Motions[25] are DENIED as moot.

2. This action will be DISMISSED WITH PREJUDICE under the authority of the IFP Statute.[26]

Signed February 25, 2019.

BY THE COURT:

David Nuffer
United States District Judge

[25] *See supra* note 2.

[26] *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

Additional material from this filing is available in the Clerk's Office.