FILED
United States Court of Appeal
Tenth Circuit

June 20, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CARLOS VELASQUEZ,

Plaintiff - Appellant,

v.

ROBERT BALDOCK; DEE BENSON; ALLISON EID; PAUL KELLY; DALE KIMBALL; CAROLYN MCHUGH; NANCY MORITZ; DAVID NUFFER; PAUL WARNER,

Defendants - Appellees.

No. 22-4098
(D.C. No. 2:22-CV-00133-HCN)
(D. Utah)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **BACHARACH**, and **ROSSMAN**, Circuit Judges.

Carlos Velasquez, pro se,[1] filed this appeal from an underlying civil action he brought against nine district and appellate judges. We dismiss the appeal in part for

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* 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. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

[1] Because Mr. Velasquez is pro se, we construe his arguments liberally, but we "cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

lack of jurisdiction and, exercising jurisdiction under 28 U.S.C. § 1291, affirm in remaining part.

BACKGROUND

In two prior actions, Mr. Velasquez brought claims against the State of Utah and various state agencies. The district courts dismissed those actions, this court affirmed the dismissals, and the United States Supreme Court denied Mr. Velasquez's petitions for certiorari and petition for rehearing. *See Velasquez v. Utah* ("*Velasquez I*"), 775 F. App'x 420, 421 (10th Cir.), *cert. denied*, 140 S. Ct. 615 (2019), *reh'g denied*, 140 S. Ct. 1254 (2020); *Velasquez v. Utah* ("*Velasquez II*"), 857 F. App'x 971, 972 (10th Cir.), *cert. denied*, 142 S. Ct. 469 (2021).

In the action underlying this appeal, Mr. Velasquez sued the district and appellate judges in *Velasquez I* and *Velasquez II*. He asserted the adverse decisions the district judges entered in two prior district court cases contained "false conclusion[s]" and constituted "perjury and . . . fraud on the court." R. at 127 (italics omitted). He further asserted the judges from this court who presided over the subsequent appeals had "proven to be opaque and hostile to the questions [he] consistently presented" and that there had been an "absolute avoision [sic] of [his] pleadings," *id.* at 128 (italics omitted). He sought as relief an order setting aside the judgments in both prior cases and reinstating the second case.

On June 2, 2022, the district court dismissed the complaint with prejudice as frivolous and entered judgment the same day. On July 29, 2022, Mr. Velasquez filed a "Motion for Extraordinary Relief and New Trial," in which he requested

reconsideration of the dismissal and recusal of the district court judge. The district court denied that motion on August 25, 2022, and Mr. Velasquez filed a notice of appeal on October 18, 2022.

DISCUSSION

We "have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party," so we "may sua sponte raise the question of whether there is subject matter jurisdiction at any stage in the litigation." *Image Software, Inc. v. Reynolds & Reynolds Co.*, 459 F.3d 1044, 1048 (10th Cir. 2006) (italics and internal quotation marks omitted). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Mr. Velasquez filed his "Motion for Extraordinary Relief and New Trial" more than 28 days after the district court entered judgment, so it did not extend the time to file his notice of appeal. *See* Fed. R. App. P. 4(a)(4)(A)(iv)–(vi); Fed. R. Civ. P. 59(b). And because Mr. Velasquez did not file his notice of appeal until 138 days after the underlying dismissal order, we lack jurisdiction to review it. *See* Fed. R. App. P. 4(a)(1)(B)(iii) (allowing 60 days to file notice of appeal where one of the parties is a United States employee). But we have jurisdiction to consider the denial of the motion for a new trial because he filed his notice of appeal within 60 days of the order denying that motion, *see id.*, and orders denying such motions are appealable even where, as here, there is no timely appeal from the underlying ruling, *see Servants of the Paraclete v. Does*, 204 F.3d 1005, 1008 (10th Cir. 2000).

We review the denial of the motion for a new trial for abuse of discretion. *See Price v. Philpot*, 420 F.3d 1158, 1167 n.9 (10th Cir. 2005). Mr. Velasquez does not demonstrate the district court abused its discretion when it denied his "Motion for Extraordinary Relief and New Trial." At most, his submissions before this court establish disagreement with the district court's underlying dismissal order, but as set forth above, we do not have jurisdiction to review that order. To the extent Mr. Velasquez articulated that disagreement in his motion for reconsideration and thereby seeks appellate review, "a motion for reconsideration . . . is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing." *Servants of the Paraclete*, 204 F.3d at 1012.

CONCLUSION

We affirm the denial of Mr. Velasquez's "Motion for Extraordinary Relief and New Trial." We dismiss the remainder of the appeal for lack of jurisdiction. We also deny Mr. Velasquez's

- "Motion for Review En Banc" and
- "Motion for Efficient Review."

Entered for the Court
Per Curiam

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
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Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

June 20, 2023

Mr. Carlos Velasquez
P.O. Box 581365
Salt Lake City, UT 84158

RE: 22-4098, Velasquez v. Baldock, et al
Dist/Ag docket: 2:22-CV-00133-HCN

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 Court

CMW/djd

FILED
United States Court of Appeals
Tenth Circuit

July 10, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CARLOS VELASQUEZ,

Plaintiff - Appellant,

v.

ROBERT BALDOCK, et al.,

Defendants - Appellees.

No. 22-4098
(D.C. No. 2:22-CV-00133-HCN)
(D. Utah)

ORDER

Before **TYMKOVICH**, **BACHARACH**, and **ROSSMAN**, Circuit Judges.

This matter is before the court on appellant's Motion for Reconsideration, which we have construed as a petition for panel rehearing. *See* Fed. R. App. 40. As construed, and upon full consideration, the petition for panel rehearing is denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

CARLOS VELASQUEZ, **Plaintiff,** **v.** **ROBERT BALDOCK, et al.,** **Defendants.**	**MEMORANDUM DECISION AND ORDER** **Case No. 2:22-cv-00133-HCN-JCB** **District Judge Howard C. Nielson, Jr.** **Magistrate Judge Jared C. Bennett**

This case was referred to Magistrate Judge Jared C. Bennett under 28 U.S.C. § 636(b)(1)(B).[1] Before the court is pro se Plaintiff Carlos Velasquez's ("Mr. Velasquez") "Emergency Motion [for] Reassignment of the Magistrate,"[2] in which he seeks to disqualify the undersigned. Based upon the analysis set forth below, the undersigned denies Mr. Velasquez's motion.

BACKGROUND

Mr. Velasquez filed his complaint in this action on February 25, 2022,[3] which names as defendants numerous judges in both this court and the United States Court of Appeals for the

[1] ECF No. 7.

[2] ECF No. 32.

[3] ECF No. 1.

Tenth Circuit.[4] Mr. Velasquez generally alleges that those judges committed legal errors in the decisions rendered in two prior actions Mr. Velasquez filed in this court.[5]

On March 14, 2022, Mr. Velasquez filed a "Motion for Emergency Relief Setting Aside a Judgment for Fraud on the Court."[6] The following day, he filed a "Motion for Open Hearing, Hearing Ex Parte on Request to Submit the Motion."[7] The undersigned issued an order on March 25, 2022, striking Mr. Velasquez's first motion and denying his second motion.[8]

Later the same day, Mr. Velasquez filed a "Motion to Amend Certificate of Service"[9] and a "Motion for Relief on Order Striking an Emergency Motion."[10] On March 31, 2022, Mr. Velasquez filed a "Motion for Hearing Ex Parte."[11] The undersigned issued an order on April 12, 2022, denying all three of Mr. Velasquez's motions.[12]

After receiving those adverse rulings, Mr. Velasquez moved to disqualify the undersigned because, among other things, the undersigned has: (1) engaged in "tortious mistreatment of case

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[4] *Id.* at 12-13 of 124.

[5] *See generally id.*

[6] ECF No. 19.

[7] ECF No. 22.

[8] ECF No. 25.

[9] ECF No. 26.

[10] ECF No. 27.

[11] ECF No. 28.

[12] ECF No. 31.

filings" and "criminal misconduct of the case";[13] (2) "fail[ed] to uphold standards of impartiality" and "demonstrate[d] an active and technical conflict of interest";[14] (3) shown a "direct posture . . . as a hostile witness" or "co-conspirator";[15] (4) "discriminate[d] against open interpretation of [Mr. Velasquez's] claims";[16] (5) "committ[ed] perjury against [Mr. Velasquez] in order to defend members of the U.S. Judiciary and shield them from civil prosecution";[17] and (6) issued rulings that are "criminally inspired . . . and intended to shock the victim of a crime."[18] Finally, Mr. Velasquez contends that the undersigned's rulings are "unnecessary, and entirely unpleasant; feel[] life-taking, excoriating, and expose[] [Mr. Velasquez] to criticisms, anxiety, and unnecessary personal liabilities."[19]

ANALYSIS

Although not cited by Mr. Velasquez, his motion to disqualify is governed by 28 U.S.C. § 455(a). Section 455(a) provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be

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[13] ECF No. 32 at 6 of 44.

[14] *Id.* at 7 of 44 (emphasis omitted).

[15] *Id.* (emphasis omitted).

[16] *Id.* at 13 of 44.

[17] *Id.* at 19 of 44.

[18] *Id.*

[19] *Id.* (emphasis omitted).

questioned."[20] Under § 455(a), "[t]he test is whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality."[21] In considering that test, the undersigned is mindful that "[t]here is as much obligation for a judge not to recuse when there is no occasion for him to do so as there is for him to do so when there is."[22] Additionally, it is important to note that "adverse rulings cannot in themselves form the appropriate grounds for disqualification,"[23] and section 455(a) "is not intended to give litigants a veto power over sitting judges, or a vehicle for obtaining a judge of their choice."[24] Finally, "[r]umor, speculation, beliefs, conclusions, innuendo, suspicion, opinion, and similar non-factual matters" are not sufficient grounds for disqualification under § 455(a).[25]

Mr. Velasquez's motion fails for two reasons. First, the motion is motivated by adverse rulings from the undersigned, which is not a ground for disqualification. The content of the

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[20] The court notes that in addition to the ground for disqualification set forth in § 455(a), there are additional grounds for disqualification under § 455(b). Because Mr. Velasquez's motion does not implicate any of the grounds listed in § 455(b), the court will not address them.

[21] *Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir. 1987) (per curiam); *see also In re McCarthey*, 368 F.3d 1266, 1269 (10th Cir. 2004) ("Section 455 contains an objective standard: disqualification is appropriate only where the reasonable person, were he to know all the circumstances, would harbor doubts about the judge's impartiality.").

[22] *Hinman*, 831 F.2d at 939; *see also United States v. Wells*, 873 F.3d 1241, 1251 (10th Cir. 2017) ("Judges not only have a strong duty to recuse when appropriate, but also a strong duty to sit, and [§ 455(a)] must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is mandated upon the merest unsubstantiated suggestion of personal bias or prejudice." (quotations, citations, and emphasis omitted)).

[23] *Wells*, 873 F.3d at 1252 (quotations and citations omitted).

[24] *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993).

[25] *Id.*; *see also Hinman*, 831 F.2d at 939 ("A judge should not recuse himself on unsupported, irrational, or highly tenuous speculation.").

motion demonstrates that Mr. Velasquez is simply dissatisfied with the rulings he has received from the undersigned. Additionally, the timing of the motion reveals that it is motivated by adverse rulings. Indeed, Mr. Velasquez did not immediately move to disqualify when the undersigned was assigned to this case over a month ago. Instead, Mr. Velasquez waited until after receiving adverse rulings to make his motion.

Second, Mr. Velasquez's unsupported, irrational, and speculative assertions about the undersigned's impartiality are nothing more than "unsubstantiated suggestion[s] of personal bias or prejudice[, which are] insufficient to mandate recusal under section 455(a)."[26] Mr. Velasquez fails to cite to any facts or evidence that would cause a reasonable person to doubt the undersigned's impartiality.

CONCLUSION AND ORDER

For the foregoing reasons, Mr. Velasquez fails to demonstrate that disqualification of the undersigned is required under § 455(a). Therefore, the court DENIES Mr. Velasquez's "Emergency Motion [for] Reassignment of the Magistrate."[27]

IT IS SO ORDERED.

DATED this 11th day of May 2022.

BY THE COURT:

JARED C. BENNETT
United States Magistrate Judge

[26] *Willner v. Univ. of Kan.*, 848 F.2d 1023, 1027 (10th Cir. 1988).

[27] ECF No. 32.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

CARLOS VELASQUEZ, **Plaintiff,** **v.** **ROBERT BALDOCK, et al.,** **Defendants.**	**REPORT AND RECOMMENDATION** **Case No. 2:22-cv-00133-HCN-JCB** **District Judge Howard C. Nielson, Jr.** **Magistrate Judge Jared C. Bennett**

This case was referred to Magistrate Judge Jared C. Bennett under 28 U.S.C. § 636(b)(1)(B).[1] Based upon the analysis set forth below, the court recommends *sua sponte* dismissal of this action with prejudice for lack of subject-matter jurisdiction and failure to state claims upon which relief can be granted.

BACKGROUND

Before discussing the facts in the instant action, the court discusses some necessary background information related to two prior actions that pro se Plaintiff Carlos Velasquez ("Mr. Velasquez") filed in this court. In September 2018, Mr. Velasquez initiated his first action in this court ("First Action"). In the First Action, Mr. Velasquez was permitted to proceed in forma pauperis under 28 U.S.C. § 1915 ("IFP Statute"). Under the authority of the IFP statute, District

[1] ECF No. 7.

Judge David Nuffer reviewed the sufficiency of Mr. Velasquez's complaint in the First Action[2] and concluded that the First Action was barred by the *Rooker-Feldman* doctrine.[3] Consequently, Judge Nuffer dismissed the First Action with prejudice on February 25, 2019.[4] Mr. Velasquez moved for reconsideration of that decision, which Judge Nuffer denied. Mr. Velasquez then appealed to the United States Court of Appeals for the Tenth Circuit. The Tenth Circuit affirmed Judge Nuffer's decision on June 11, 2019.[5] Thereafter, Mr. Velasquez filed a petition for a writ of certiorari with the United States Supreme Court. The Supreme Court denied that petition on December 9, 2019.[6] Mr. Velasquez then filed a petition for rehearing with the Supreme Court, which was denied on February 24, 2020.[7]

In April 2020, Mr. Velasquez filed another action in this court ("Second Action"). Mr. Velasquez was again permitted to proceed in forma pauperis, and District Judge Dee Benson reviewed the sufficiency of Mr. Velasquez's complaint. Based upon that review, Judge Benson concluded that the Second Action was barred by the doctrine of claim preclusion and, therefore,

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[2] 28 U.S.C. § 1915(e)(2)(B)(ii) (providing that 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").

[3] *Velasquez v. Utah*, No. 2:18-CV-00728-DN, 2019 WL 919595, at *1-3 (D. Utah Feb. 25, 2019), *aff'd*, 775 F. App'x 420 (10th Cir. 2019), *cert. denied* 140 S. Ct. 615 (2019), *reh'g denied* 140 S. Ct. 1254 (2020).

[4] *Id.*

[5] *Velasquez v. Utah*, 775 F. App'x 420, 420-23 (10th Cir. 2019), *cert. denied* 140 S. Ct. 615 (2019), *reh'g denied* 140 S. Ct. 1254 (2020).

[6] *Velasquez v. Utah*, 140 S. Ct. 615 (2019), *reh'g denied* 140 S. Ct. 1254 (2020).

[7] *Velasquez v. Utah*, 140 S. Ct. 1254 (2020).

dismissed the Second Action with prejudice on April 27, 2020.[8] Mr. Velasquez then filed a motion to set aside Judge Benson's decision, as well as a motion to disqualify Judge Benson. Judge Benson denied both motions on July 8, 2020. Plaintiff appealed Judge Benson's dismissal order to the Tenth Circuit. The Tenth Circuit affirmed Judge Benson's decision on April 26, 2021, albeit on other grounds.[9] Mr. Velasquez then filed a petition for a writ of certiorari with the United States Supreme Court, which denied the petition on November 8, 2021.[10]

Mr. Velasquez filed his complaint in this action on February 25, 2022.[11] Mr. Velasquez names as defendants numerous judges in both this court and the Tenth Circuit (collectively, "Defendants").[12] Mr. Velasquez generally alleges that Defendants committed legal errors in the decisions discussed above.[13] Mr. Velasquez asserts that the decisions of the judges in this court contained "false conclusion[s]" and represented "perjury and . . . fraud on the court."[14] He further alleges that the Tenth Circuit judges have "simply proven to be opaque and hostile to the questions [he] consistently presented" and that there has been an "absolute avoision [sic] of [his]

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[8] *Velasquez v. Utah*, No. 2:20-CV-00205-DB-PMW, 2020 WL 1989388, at *1-6 (D. Utah Apr. 27, 2020), *aff'd on other grounds*, 857 F. App'x 971 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 469 (2021).

[9] *Velasquez v. Utah*, 857 F. App'x 971, 971-76 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 469 (2021).

[10] *Velasquez v. Utah*, 142 S. Ct. 469 (2021).

[11] ECF No. 1.

[12] *Id.* at 12-13 of 124.

[13] *See generally id.*

[14] *Id.* at 120 of 124 (emphasis omitted).

pleadings."[15] In his request for relief, Mr. Velasquez asks the court to set aside the decisions in the First Action and the Second Action for "fraud" and "[c]riminal [c]ontempt" and reopen the Second Action.[16] Mr. Velasquez also asserts claims against Defendants under 18 U.S.C. §§ 241, 242, 371, 401, 1503, 1621, 1622, and 1623.[17]

ANALYSIS

As demonstrated below: (I) the court lacks subject-matter jurisdiction to provide any relief to Mr. Velasquez in the First Action and the Second Action; (II) Mr. Velasquez's causes of action against Defendants fail to state claims upon which relief can be granted; and (III) providing Mr. Velasquez with an opportunity to amend his complaint would be futile. Therefore, the court recommends *sua sponte* dismissal of this action with prejudice.

I. The Court Lacks Subject-Matter Jurisdiction to Provide Mr. Velasquez With Any Relief in the First Action and the Second Action.

Mr. Velasquez's claims requesting relief in the First Action and the Second Action should be dismissed *sua sponte* because the court lacks subject-matter jurisdiction over those claims. "Insofar as subject matter jurisdiction is concerned, it has long been recognized that a federal court must, *sua sponte*, satisfy itself of its power to adjudicate in every case and at every stage of

[15] *Id.* at 121 of 124 (emphasis omitted).

[16] *Id.* at 104-07 of 124 (emphasis omitted)

[17] Mr. Velasquez also makes a claim under 18 U.S.C. § 1921, which has been repealed. Because that statute is no longer in effect, the court does not address Mr. Velasquez's claim under that provision.

the proceedings . . . ."[18] "A court lacking jurisdiction cannot render judgment but must dismiss the cause *at any stage* of the proceedings in which it becomes apparent that jurisdiction is lacking."[19]

As noted above, Mr. Velasquez appealed the dismissals in both the First Action and the Second Action to the Tenth Circuit, which affirmed both dismissals. Mr. Velasquez then sought review of the Tenth Circuit's decisions with the Supreme Court, which denied review in both the First Action and the Second Action. Thus, through his requests for relief in the First Action and the Second Action, Mr. Velasquez is, in essence, inviting this court to review or reconsider the decisions of the Supreme Court. Mr. Velasquez fails to cite to any authority that would provide this court with any jurisdiction to engage in such a review or reconsideration and, not surprisingly, no such authority exists.[20] Therefore, Mr. Velasquez's claims for relief in the First Action and Second Action should be dismissed *sua sponte* for lack of subject-matter jurisdiction.

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[18] *Tafoya v. U.S. Dep't of Just., L. Enf't Assistance Admin.*, 748 F.2d 1389, 1390 (10th Cir. 1984); *see also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

[19] *Tuck v. United Servs. Auto. Ass'n*, 859 F.2d 842, 844 (10th Cir. 1988) (quotations and citation omitted) (emphasis in original).

[20] *See, e.g.*, *Goforth v. United States*, No. 18-507C, 2019 WL 994574, at *2 (Fed. Cl. Mar. 1, 2019) ("[T]o the extent Ms. Goforth's complaint is construed as seeking a review of the Supreme Court's denial of certiorari or review of the decisions reached by the Western District of North Carolina District Court or the Fourth Circuit Court of Appeals, the court also agrees with the government that this court lacks jurisdiction to review those decisions."); *Po Kee Wong v. U.S. Solic. Gen.*, 839 F. Supp. 2d 130, 137-38 (D.D.C. 2012) ("Plaintiff has asked the Court to review the Supreme Court's denial of certiorari . . . . Plaintiff has identified no jurisdictional basis under which this Court would have authority to review the Supreme Court's denial of certiorari; indeed, there is none. Accordingly, plaintiff's claims ordering the Court to review Supreme Court decisions are therefore dismissed under Federal Rule of Civil Procedure 12(b)(1) for lack of jurisdiction.")

II. Mr. Velasquez's Causes of Action Against Defendants Fail to State Claims Upon Which Relief Can Be Granted.

Mr. Velasquez's claims against Defendants should be dismissed *sua sponte* under Fed. R. Civ. P. 12(b)(6) for failure to state claims upon which relief can be granted.[21] Although the Tenth Circuit "disfavor[s] . . . sua sponte dismissals . . . , [it] has held that such a dismissal under Rule 12(b)(6) is not reversible error when it is patently obvious that the plaintiff could not prevail on the facts alleged and allowing [him] an opportunity to amend [his] complaint would be futile."[22] "When this standard is met, the district court is not required to grant leave to amend," even for a pro se plaintiff.[23]

Under Rule 12(b)(6), the court "look[s] for plausibility in th[e] complaint."[24] 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

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[21] In analyzing Mr. Velasquez's complaint under Rule 12(b)(6), the court is mindful that he 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 Ledbetter v. City of Topeka, Kan.*, 318 F.3d 1183, 1187 (10th Cir. 2003). 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).

[22] *Knight v. Mooring Cap. Fund, LLC*, 749 F.3d 1180, 1190 (10th Cir. 2014) (quotations and citation omitted); *see also Jones v. Bowers*, 737 F. App'x 846, 848 (10th Cir. 2018) (same); *McKinney v. Okla. Dep't of Hum. Servs.*, 925 F.2d 363, 365 (10th Cir. 1991) (same).

[23] *Bowers*, 737 F. App'x at 848; *see also Knight*, 749 F.3d at 1190 ("[E]ven though pro se parties generally should be given leave to amend, it is appropriate to dismiss without allowing amendment 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." (quotations and citation omitted)).

[24] *Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007) (quotations and citation omitted) (second alteration in original).

'improbable,' '[f]actual allegations [in a complaint] must be enough to raise a right to relief above the speculative level.'"[25]

Mr. Velasquez's claims against Defendants should be dismissed under Rule 12(b)(6) because: (A) there are no private rights of action under any of the statutes Mr. Velasquez relies upon; and (B) Defendants are entitled to absolute judicial immunity. The court addresses each reason supporting dismissal below.

A. There Are No Private Rights of Action Under Any of the Statutes Mr. Velasquez Relies Upon.

Mr. Velasquez seeks relief against Defendants under 18 U.S.C. §§ 241, 242, 371, 401, 1503, 1621, 1622, and 1623. However, those statutes provide bases for criminal liability, and there is no private right of action under any of them.[26] Therefore, Mr. Velasquez's claims under those statutes should be dismissed *sua sponte*.

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[25] *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007)) (second and third alterations in original) (other quotations and citation omitted).

[26] *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007) (providing that there is no private right of action under 18 U.S.C. §§ 241, 371, and 1503); *Clements v. Chapman*, 189 F. App'x 688, 690, 692 (10th Cir. 2006) (providing that there is no private right of action under 18 U.S.C. § 1621) *Henry v. Albuquerque Police Dep't*, 49 F. App'x 272, 273 (10th Cir. 2002) (providing that there is no private right of action under 18 U.S.C. §§ 241 and 242); *Dobek v. United States*, 340 F. Supp. 3d 756, 781-82 (E.D. Wis. 2018) (providing that there is no private right of action under 18 U.S.C. § 401); *Sareen v. Sareen*, No. CIVS080176LKKEFBPS, 2008 WL 11450612, at *4 (E.D. Cal. Aug. 28, 2008) (providing that there is no private right of action under 18 U.S.C. §§ 1621, 1622, and 1623), *report and recommendation adopted*, No. CIVS08176LKKEFBPS, 2008 WL 11450613 (E.D. Cal. Sept. 29, 2008).

B. Defendants Are Entitled to Absolute Judicial Immunity from Mr. Velasquez's Claims.

To the extent that Mr. Velasquez makes any claims against Defendants other than those addressed above, any such claims must fail because Defendants are entitled to absolute judicial immunity. "Under the common law, judges are absolutely immune from suit on any claim based on the conduct of their office, including allegations that a decision is erroneous, malicious, or in excess of their judicial authority."[27] This immunity ensures "that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself."[28] "[J]udicial immunity is not overcome by allegations of bad faith or malice . . . ."[29] "Only accusations that a judge was not acting in his judicial capacity or that he acted in the complete absence of all jurisdiction can overcome absolute immunity."[30]

Mr. Velasquez's allegations against Defendants focus entirely on actions undertaken in their judicial capacities and in matters over which they clearly had jurisdiction. Although Mr. Velasquez makes some conclusory assertions that Defendants acted without jurisdiction, such unsupported allegations are insufficient to overcome absolute judicial immunity.[31] At their base,

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[27] *Christensen v. Ward*, 916 F.2d 1462, 1473 (10th Cir. 1990); *see also Mireles v. Waco*, 502 U.S. 9, 9-13 (1991) (per curiam).

[28] *Mireles*, 502 U.S. at 10 (quotations and citation omitted).

[29] *Id.* at 11.

[30] *Guttman v. Khalsa*, 446 F.3d 1027, 1034 (10th Cir. 2006); *see also Mireles*, 502 U.S. at 11-12.

[31] *Fuller v. Davis*, 594 F. App'x 935, 939 (10th Cir. 2014) ("While the [plaintiffs] assert that the judges acted outside their judicial capacities and in the absence of jurisdiction, these conclusory assertions are not supported by the alleged facts."); *Dorn v. Carpenter*, No. 20-CV-02103-RM-KLM, 2021 WL 4046417, at *6 (D. Colo. June 24, 2021) ("Plaintiff's conclusory allegation . . . is insufficient to defeat judicial immunity."), *report and recommendation adopted*, No. 20-CV-02103-RM-KLM, 2021 WL 3417978 (D. Colo. Aug. 5, 2021), *aff'd*, No. 21-1298, 2022 WL

Mr. Velasquez's allegations are simply that Defendants' decisions are, in his opinion, incorrect. "Disagreement with the action taken by the judge, however, does not justify depriving that judge of his immunity."[32] For those reasons, Defendants are entitled to absolute judicial immunity from any of Mr. Velasquez's claims against them.

III. Providing Mr. Velasquez With an Opportunity to Amend His Complaint Would Be Futile.

Based upon the analysis set forth above, there are no additional facts that Mr. Velasquez could allege that would provide the court with subject-matter jurisdiction over his claims for relief in the First Action and the Second Action. Additionally, there are no new facts he could allege that would strip Defendants of absolute judicial immunity. For those reasons, it would be futile to give Mr. Velasquez an opportunity to amend his complaint.

CONCLUSION AND RECOMMENDATION

As demonstrated above, the court lacks subject-matter jurisdiction to provide Mr. Velasquez with any relief in the First Action and the Second Action, and Mr. Velasquez's causes

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175900 (10th Cir. Jan. 20, 2022); *Mehdipour v. Matthew*, No. CIV-09-1060-C, 2010 WL 11586611, at *2 (W.D. Okla. Feb. 3, 2010) ("Plaintiff does argue the judges acted outside their jurisdiction or authority. This conclusory allegation, however, cannot overcome the factual averments that the wrong allegedly done by each judge was done in the performance of duties within the scope of their jurisdiction and authority. Indeed, Plaintiff's Amended Complaint makes clear his claims arise as a result of these Defendants' actions in their judicial capacities."); *Baker v. Storey*, No. 1:06-CV-00045 PGC, 2006 WL 3306821, at *2 (D. Utah Oct. 18, 2006) ("Although Baker alleges that Judge Storey acted without jurisdiction, those allegations are merely conclusory and based on Baker's own interpretation of jurisdiction. Baker's claims against Judge Storey are all based upon his rulings on judicial matters in the courtroom. Accordingly, Judge Storey is entitled to absolute judicial immunity and to the dismissal of all claims against him." (footnote omitted)).

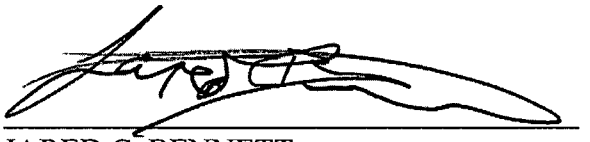
[32] *Stump v. Sparkman*, 435 U.S. 349, 363 (1978).

of action against Defendants fail to state claims upon which relief can be granted. Additionally, it would be futile to provide Mr. Velasquez with an opportunity to amend his complaint. Therefore, the court HEREBY RECOMMENDS that this action be DISMISSED WITH PREJUDICE *sua sponte*.

Copies of this Report and Recommendation are being sent to all parties, who are hereby notified of their right to object.[33] The parties must file any objection to this Report and Recommendation within fourteen days after being served with a copy of it.[34] Failure to object may constitute waiver of objections upon subsequent review.

DATED this 11th day of May 2022.

BY THE COURT:



JARED C. BENNETT
United States Magistrate Judge

[33] 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

[34] 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

United States District Court

District of Utah

Carlos Velasquez,

Plaintiff,

v.

Robert Baldock, *et al.*,

Defendants.

JUDGMENT IN A CIVIL CASE

Case Number: 2:22-cv-000133-HCN

IT IS ORDERED AND ADJUDGED

That this action is dismissed with prejudice for failure to state a claim upon which relief may be granted.

June 2, 2022

Date

BY THE COURT:

Howard C. Nielson, Jr.
United States District Judge

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