IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 13-CV-01469-CMA-KLM

DAVID E. WILKENSON,

Plaintiff,

v.

STATE OF COLORADO, et al.

MESA COUNTY, COLORADO, et al.

Defendants.

VERIFIED RESPONSE TO DEFENDANT STATE OF COLORADO'S 8/7/13 REPLY IN SUPPORT OF ITS MOTION TO DISMISS.

COMES NOW, the Plaintiff, DAVID E. WILKENSON, pro se, pursuant to Fed R.Civ. P. 12, and the inherent equity powers of the Court, and responds to the Defendant State of Colorado's August 7, 2013, Reply in Support of its Motion to Dismiss all claims against it in the Amended Complaint as follows:

1. Because Plaintiff is not a lawyer, he specifically requests the extra latitude he is entitled to by *Haines v. Kerner*, 404 US 519, *Puckett v. Cox*, 456 F2d 233, and *Picking v. Pennsylvania Railway*, 151 F2d 240, etc. in all matters of substance over form and not affecting the rights of the parties.

2. Plaintiff continues to object to Attorney Haines misstating the facts, arguments, and claims for relief Plaintiff has made in his First Amended Complaint (FAC) in an attempt to have inapposite case law and Court Rules fit Attorney Haines' arguments for dismissing Plaintiff's FAC.

3. The plain language contained in Plaintiff's FAC speaks for itself. Plaintiff has sworn under penalty of perjury that the statements of fact contained in the FAC are true to the best of his knowledge and belief and has included in the FAC various copies of official records and documents as appendices which prove the allegations Plaintiff has made in his FAC.

4. The inaccuracies and untruths contained in Attorney Haines' reply in support of his motion to dismiss are merely a continuation of what he had alleged in his 7/23/13 motion to dismiss. Attorney Haines wrongly alleges that this case is just another level of review or appeal of the State court case so his *Rooker-Fieldman* arguments apply. He completely ignores the facts of this case as presented in Plantiff's FAC and wrongly alleges they are the same as the facts alleged by Plaintiff in case 98-M-1839 so his *res judicata* arguments apply.

5. Attorney Haines alleges that, "Mr. Wilkenson's complaint, then and now, is of 'injuries caused by state-court judgments rendered before the district court proceedings commenced and invited district court review and rejection of those judgments.'" This statement is completely untrue. Plaintiff is not complaining of injuries caused by state court judgments. Plaintiff is complaining of injuries caused by the CRIMINAL MANIPULATIONS and total lack of jurisdiction and procedural due process which resulted in those state judgments. Plaintiff is

complaining of injuries caused by the CRIMINAL MANIPULATIONS and cover up which seek to unconstitutionally deprive Plaintiff of any and all legal redress for the self-evident deprivation of his most fundamental state and federal constitutional rights by the Colorado courts. Plaintiff is complaining of injuries caused by criminal fraud perpetrated against the institutions of the Colorado courts by as-yet-unidentified employees of the Colorado courts. The Court's true inquiry is not to "revisit" an underlying state court judgment, but to determine whether or not there have been violations—some of them criminal—of relevant law which substantially adversely affected Plaintiff's most fundamental constitutional rights in arriving at those underlying judgments and placing them outside the rule of law and beyond all redress. There was no state court order to falsify the register of actions, or selectively and extensively falsify the court record of the Title 14 case, and then destroy the official record on appeal altogether. There was no state court order totally depriving Plaintiff of his fundamental constitutional right of relationship with his boys, Ben and Toby. In fact the state court custody and parenting time orders specifically have ordered Plaintiff to have the right of relationship with his boys. The truth is the state courts, despite Plaintiff's best efforts, have deliberately failed to enforce their custody and parenting time orders in the Title 14 case. Plaintiff has had none of the parenting time with his boys he was ordered to have since they relocated to England fifteen years ago. No state court has issued an order or even addressed the jurisdictional prohibition of C.R.S. 19-104(6) as applied to the creation of the Title 19 case in the prior pending Title 14 case. The proven reality of Plaintiff's situation is that without this Court's intervention, he will continue to be illegally deprived of his passport and will likely never see his boys again. He will never be able to legally drive a vehicle again, and will most likely wind up being jailed for disobeying the fraudulent, and illegally void jurisdictionless support order in spite of the specific holdings in *Ex Parte Fisk*, 113 US 713, and *Thrap v.People*, 558 P 2d 576. And all without any possible

review or appeal because there is no court record of the Title 14 case. None of those circumstances were involved at all in case 98-M-1839 as falsely alleged by Attorney Haines. If these current circumstances had existed fifteen years ago, given Judge Matsch's concerns, there is virtually no chance he would have dismissed 98-M-1839.

6. The relief Plaintiff has requested in this case include declaratory relief and injunctive relief and those forms of relief were not requested in 98-M-1839. This relief is necessarily requested and required to keep the Defendants from continuing to violate Plaintiff's most fundamental constitutional rights in an ongoing deliberate manner.

7. Attorney Haines argues that because Plaintiff does not now know the names of the specific individuals who have violated his rights he should be denied the ability to find out through the discovery process by having the case dismissed prior to being able to find out. The logic of Attorney Haines' argument deprives Plaintiff his 14th Amendment right to due process and equal protection of law. None of the individuals involved want to be known to anyone as many of the acts they have committed constitute violations of state and/or federal criminal statutes. The likely reason these individuals have done what they have done is because they believe they are cloaked in some kind of immunity because they have just done what they were told by their superior/s or because they think that they are above any consequences of their actions because they believe no prosecutor will attempt to investigate anything due to who they are. This makes them *de facto* above the law and free to do anything they wish to anyone. This is the exact reason for the creation of 42 USC 1983—which began as the Enforcement Act of 1871 designed to prevent Klu Klux Klan members serving in various state government capacities from depriving citizens of their federal constitutional rights—to prevent the type of injustice described by the facts Plaintiff has alleged in the instant case. Dismissing this case without even finding out which individuals are responsible for the deprivation of Plaintiff's most constitutional right

would negate the very intent of 28 USC 1331, 18 USC 241, 242, and 42 USC 1983.

8. The facts of a case determine what law applies to that case. *United States v. Young*, 470 US 1 (1985), *United States v. Socony-Vacuum Oil Co.*, 310 US 150 (1940), *Williamson v. United States*, 207 US 425, 52 L Ed 278, 28 S Ct 163 (1908), *Holmes v. Goldsmith*, 147 US 150 (1893). See also pages 33-34 of *Courts on Trial: Myth and Reality in American Justice*. In the instant situation, Attorney Haines is asking the Court to dismiss Plaintiff's FAC at the same time he is seeking to deprive the Court (the finder of facts) of any and all threshold jurisdictional facts that the Court will need to be able to make a legally accurate determination as to whether or not it has subject matter jurisdiction.

9. The essence of Attorney Haines' specious argument against subject matter is: because the names of the specific individuals who committed crimes ~~is~~ are unknown, therefore no crimes were committed. That *non sequitur* is absurd on its face. For example, unless it has been altered or deleted, the computer audit trail in 96 DR 372 should prove who logged in and falsified the register of actions in 96 DR 372.

10. Regarding Colorado's intent to continue its pattern of "double down" misconduct and *ultra vires* behavior in this case, the Court should take special notice of the fact that instead of returning Plaintiff's illegally taken driver's license—Plaintiff has a good driving record— and passport, Colorado chooses to simply tell this Court that it lacks jurisdiction to question Colorado's *prima facie* misconduct and *ultra vires* behavior. It is perverse for Colorado to simultaneously illegally seize Plaintiff's passport and yet pretend Plaintiff is free to visit Ben and Toby in England. That fact speaks to Colorado's criminal intent and this Court's jurisdiction. For over fifteen years Plaintiff has refused to waive his C.R.Civ. P Rule 12(b) objections to the C.R.S. 19-1-104(6)-violative illegality of 96 JV 180 and any orders stemming from that legally nonexistent case. Plaintiff has no intention of ever voluntarily waiving that objection, despite