

**UNITED STATES COURT OF APPEALS**

**JAN 31 2002**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

MICHAEL SANCHEZ,

Plaintiff - Counter-Defendant -  
Appellant,

v.

BEATRICE SANCHEZ; MARK  
GARCIA; LUANNA GARCIA; ROSS  
CHAVEZ, doing business as Hog  
Heaven; CLIFF MCINTYRE;  
SAMUEL BEHAR; YVETTE  
GARDUNO-RODARTE; and RAY  
DURAN,

Defendants - Appellees,

TOM GORDON,

Defendant - Counter-Claimant -  
Appellee.

No. 01-2239

(D.C. No. CIV-00-1747-M/LFG)

(D. New Mexico)

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**ORDER AND JUDGMENT\***

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Before **SEYMOUR** and **McKAY**, Circuit Judges, and **BRORBY**, Senior Circuit  
Judge.

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After examining the briefs and the appellate record, this panel has

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\*This order and judgment is not binding precedent, except under the  
doctrines of law of the case, res judicata, and collateral estoppel. The court  
generally disfavors the citation of orders and judgments; nevertheless, an order  
and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

determined unanimously that oral argument would not materially assist 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.

Mr. Sanchez filed state law tort claims against Defendants in federal district court asserting diversity jurisdiction. When Mr. Sanchez filed his complaint, all Defendants were residents of New Mexico. Mr. Sanchez was a resident of New Mexico prior to his incarceration. Mr. Sanchez is currently incarcerated at La Tuna Federal Prison which is located partially in New Mexico and partially in Texas. Because of this, Mr. Sanchez claimed that he was a citizen of Texas when he filed his complaint. The district court concluded that Mr. Sanchez was a citizen of New Mexico because he resided in New Mexico prior to his incarceration and dismissed Mr. Sanchez's action without prejudice for lack of subject matter jurisdiction.

We agree with the district court that Mr. Sanchez is a citizen of New Mexico. His current incarceration at La Tuna and his assertion that he intends to stay in Texas after his incarceration are not enough to change Mr. Sanchez's legal residency. Additionally, we cannot find error in the district court's denial of Mr. Sanchez's Motion to Reconsider and Amend Judgment and Motion for Leave to File Amendment.

After a thorough review of the briefs and the record, and for substantially

the same reasons set forth in the district court's well-reasoned June 29, 2001

Order, we hold that no relief is available to Mr. Sanchez.

Appellant's complaint is DISMISSED.

Entered for the Court:

Monroe G. McKay  
Circuit Judge