

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

PUEBLO OF POJOAQUE, a federally recognized
Indian Tribe; et al.,

Plaintiffs,

vs.

Case No. 1:15-cv-00625 JB/GBW

STATE OF NEW MEXICO, et al.,

Defendants.

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS
COUNT V OF PLAINTIFFS' COMPLAINT**

Defendants State of New Mexico, Susana Martinez, Jeremiah Ritchie, Jeffrey S. Landers, Salvatore Maniaci, Paulette Becker, Robert M. Doughty, III, and Carl E. Londene (together "Defendants") submit this reply in support of their Motion to Dismiss Count V of Plaintiffs Pueblo of Pojoaque and Joseph M. Talachy's (together "Plaintiffs") Complaint ("Motion").

In their response, Plaintiffs admit that Defendants' decision not to waive their immunity under the Eleventh Amendment and the New Mexico Tort Claims Act ("NMTCA") divests this Court of jurisdiction to hear Count V, and requires dismissal of Count V.¹ (Pls.' Resp. to Mot. at 2, Dkt. No. 89.) Accordingly, it is uncontested that Count V of the Complaint should be dismissed.

¹ Plaintiffs' Response mischaracterizes the Defendants' Motion as asserting only Eleventh Amendment immunity. Defendants assert both their Eleventh Amendment immunity from suit in federal court and their independent immunity under the NMTCA from liability under New Mexico tort law, other than liability grounded in negligence. That is, pursuant to the NMTCA Count V fails to state a state law cause of action against the Defendants. Both considerations mandate dismissal of Count V.

