

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Cuong Huy Dao v. M. Bravo, et al.

No. 1:25-cv-00970-HBK (PC), United States District Court for the Eastern District of California (December 5, 2025)

SUMMARY

The United States District Court for the Eastern District of California ordered Plaintiff Cuong Huy Dao to show cause why Defendants A. Gutierrez and M. Lopez should not be dismissed without prejudice for failure to provide sufficient information for service of process. The court gave Plaintiff 60 days to provide identifying information and warned that failure to respond or show cause would result in dismissal under Federal Rule of Civil Procedure 4(m).

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Helena M. Barch-Kuchta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 5, 2025
DOCKET	1:25-cv-00970-HBK (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding pro se and in forma pauperis under 42 U.S.C. § 1983, was ordered to show cause why two unidentified and unserved defendants should not be dismissed for failure to provide sufficient information to effect service.
STANDARD OF REVIEW	Dismissal for failure to effect service under Federal Rule of Civil Procedure 4(m), including whether the plaintiff has shown good cause for the failure to serve.
PRECEDENTIAL VALUE	Nonprecedential district court order; precedential status is not stated in the opinion.

TOPICS

- service of process
- civil procedure
- prisoners rights
- section 1983
- police misconduct

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court should provide Plaintiff an opportunity to show cause and furnish additional information before dismissing Defendants A. Gutierrez and M. Lopez for failure to effect service under Federal Rule of Civil Procedure 4(m).
2. Whether a pro se prisoner proceeding in forma pauperis must provide the U.S. Marshal with accurate and sufficient information to identify and locate a defendant, and whether dismissal without prejudice is appropriate when the plaintiff fails to do so.

HOLDINGS

1. The court must give Plaintiff an opportunity to show cause and provide additional identifying information before dismissing Defendants A. Gutierrez and M. Lopez for failure to effect service.

KEY QUOTATIONS

“So long as the prisoner has furnished the information necessary to identify the defendant, the marshal’s failure to effect service is ‘automatically good cause’” (at 2)

“If Plaintiff is unable to provide the Marshal with the necessary information to identify and locate these Defendants, Defendants A. Gutierrez and M. Lopez shall be dismissed from this action, without prejudice.” (at 3)

FACTUAL BACKGROUND

Plaintiff is an incarcerated pro se litigant proceeding in forma pauperis in a § 1983 action alleging, among other claims, Eighth Amendment excessive use of force. The U.S. Marshal attempted to electronically serve Defendants A. Gutierrez and M. Lopez using the information Plaintiff provided but was unable to identify either defendant, and additional efforts were unsuccessful. The court therefore required Plaintiff to provide further information, such as the approximate incident date, facility or building location, or physical identifying features.

PROCEDURAL HISTORY

The action proceeded on Eighth Amendment excessive-force and deliberate-indifference claims against multiple defendants. After the court directed service under its electronic-service pilot program, the U.S. Marshal reported that Defendants A. Gutierrez and M. Lopez could not be identified for service despite further efforts. The court issued this order giving Plaintiff sixty days to provide additional identifying information or show cause why those defendants should not be dismissed without prejudice under Federal Rule of Civil Procedure 4(m).

DISPOSITION

other

CASES CITED

- Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990)
- Walker v. Sumner, 14 F.3d 1415, 1421-1422 (9th Cir. 1994)
- Sandin v. Connor, 515 U.S. 472, 115 (1995)

OPINION

Bravo

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 CUONG HUY DAO, Case No. 1:25-cv-00970-HBK (PC) 12 Plaintiff, ORDER TO SHOW
CAUSE WHY DEFENDANTS A. GUTIERREZ AND M.

13 v. LOPEZ SHOULD NOT BE DISMISSED

FROM THIS ACTION FOR FAILURE TO

14 M. BRAVO, et al., PROVIDE SUFFICIENT INFORMATION TO

EFFECTUATE SERVICE

15 Defendants.

SIXTY (60) DAY DEADLINE

16 17 Plaintiff Chong Huy Dao (“Plaintiff”) is a state prisoner proceeding pro se and in forma 18
pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against on 19
Plaintiff’s Eighth Amendment excessive use of force claims against Defendants M. Bravo, J. 20
Rivera, J. Perez, A. Heredia, Devila, Medina, A. Gutierrez, M. Lopez, Rodrigo, and two 21
Unidentified Correctional Officers, and Eighth Amendment medical deliberate indifference 22
claims against Defendants LVN Reyes, RN Callejo, and Dr. Kongara. 23 On September 15, 2025,
the Court issued an order directing service on Defendants under 24 the Court’s E-Service pilot
program for civil rights cases for the Eastern District of California. 25 (Doc. No. 11). The order
included the following information regarding Defendants A. Gutierrez 26 and M. Lopez:
“Correctional Officer, North Kern State Prison. (Id. at 2:14-15.) On September 27 15, 2025 and
November 18, 2025, the Court received information that Defendants A. Gutierrez 28 and M.
Lopez could not be identified for service. (Doc. Nos. 11-1, 19). 1 Federal Rule of Civil Procedure
4(m) provides as follows: 2 If a defendant is not served within 90 days after the complaint is filed,
the court— 3 on motion or on its own after notice to the plaintiff—must dismiss the action without
prejudice against that defendant or order that service be made within a 4 specified time. But if the
plaintiff shows good cause for the failure, the court must extend the time for service for an
appropriate period. 5 6 Fed. R. Civ. P. 4(m). 7 In cases involving a plaintiff proceeding in forma
pauperis, the Marshal, upon order of the 8 court, shall serve the summons and the complaint. Fed.
R. Civ. P. 4(c)(3). “[A]n incarcerated pro 9 se plaintiff proceeding in forma pauperis is entitled to
rely on the U.S. Marshal for service of the 10 summons and complaint, and . . . should not be

penalized by having his or her action dismissed 11 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the 12 duties required of each of them” Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). “So 13 long as the prisoner has furnished the information necessary to identify the defendant, the 14 marshal’s failure to effect service is ‘automatically good cause’” Walker v. Sumner, 14 F.3d 15 1415, 1422 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115 16 (1995). However, where a pro se plaintiff fails to provide the Marshal with accurate and 17 sufficient information to effect service of the summons and complaint, the Court’s sua sponte 18 dismissal of the unserved defendant is appropriate. Walker, 14 F.3d at 1421–22. 19 Here, the U.S. Marshal attempted to electronically serve Defendants A. Gutierrez and M. 20 Lopez with the information that Plaintiff provided. However, the Marshal was informed that 21 there was not enough information to identify either Defendant for service of process. Further 22 efforts by the Marshal were also unsuccessful. If Plaintiff is unable to provide the Marshal with 23 the necessary information to identify and locate these Defendants, Defendants A. Gutierrez and 24 M. Lopez shall be dismissed from this action, without prejudice. 25 Pursuant to Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause 26 why Defendants A. Gutierrez and M. Lopez should not be dismissed from the action at this time. 27 Plaintiff may respond to this order by providing additional information that will assist the 28 Marshal in identifying Defendants A. Gutierrez and M. Lopez for service of process. For 1 | example, Plaintiff may provide an approximate date for the incident at issue, a building number or 2 | facility where the incident took place, or other identifying physical features for Defendants A. 3 | Gutierrez and M. Lopez. 4 Accordingly, it is hereby ORDERED: 5 1. Within sixty (60) days from the date of service of this order, Plaintiff shall show cause 6 why Defendants A. Gutierrez and M. Lopez should not be dismissed from this action; and 7 2. The failure to respond to this order or the failure to show cause will result in the dismissal 8 of any unidentified and unserved defendant from this action, due to Plaintiff’s failure to 9 serve process pursuant to Federal Rule of Civil Procedure 4(m). 10 Dated: _ December 5, 2025 oo. Zh. Bareh Zack

12 HELENA M. BARCH-KUCHTA

3 UNITED STATES MAGISTRATE JUDGE

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