

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Eric Fierro v. Lisa Trabaudo, et al.

Fierro · No. 24-cv-1292-SMD-GJF · Decided March 25, 2026

SUMMARY

The United States District Court for the District of New Mexico dismissed Eric Fierro’s prisoner civil-rights action without prejudice under Federal Rules of Civil Procedure 41(b) and 8(a). The court held that Fierro failed to comply with an order directing him to file a single, short, plain amended complaint and instead continued filing piecemeal pleadings. The court also dismissed any construed successive habeas claims for lack of jurisdiction and denied a certificate of appealability.

CASE DETAILS

COURT	United States District Court for the District of New Mexico
WRITING FOR THE COURT	Sarah M. Davenport
JURISDICTION	United States District Court for the District of New Mexico
DECIDED	March 25, 2026
DOCKET	24-cv-1292-SMD-GJF
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding pro se, filed a civil rights action in state court that defendants removed to federal court. After the court ordered him to file one short and plain amended complaint, plaintiff continued filing numerous piecemeal pleadings, motions, supplements, and notices. The district court dismissed the action without prejudice under Federal Rules of Civil Procedure 41(b) and 8(a), denied pending motions as moot, and separately dismissed any construed successive habeas claims for lack of jurisdiction.
STANDARD OF REVIEW	A district court may dismiss an action under Federal Rule of Civil Procedure 41(b) for failure to comply with the Federal Rules of Civil Procedure or a court order. In assessing dismissal as a sanction, the court considers the Ehrenhaus factors, including prejudice, interference with the judicial process, culpability, prior warnings, and the efficacy of lesser sanctions.
PRECEDENTIAL VALUE	unpublished district court memorandum opinion and order

TOPICS

pleadings

civil procedure

section 1983

prisoners rights

federal habeas corpus

PRACTICE AREAS

civil procedure

civil rights

prisoner litigation

federal habeas corpus

QUESTIONS PRESENTED

1. Whether the action should be dismissed under Federal Rule of Civil Procedure 41(b) because plaintiff failed to comply with the court's order requiring one amended complaint.
2. Whether the action should alternatively be dismissed under Federal Rule of Civil Procedure 8(a) because plaintiff's piecemeal filings did not provide a short and plain statement identifying the claims, defendants, and factual basis for relief.
3. Whether filings that could be construed as a successive 28 U.S.C. § 2254 habeas challenge should be dismissed for lack of jurisdiction absent authorization from the Tenth Circuit.

HOLDINGS

1. A district court may dismiss an action without prejudice under Federal Rule of Civil Procedure 41(b) when a plaintiff repeatedly disregards an order requiring submission of a single amended complaint and continues filing piecemeal pleadings.
2. An action may be dismissed without prejudice under Federal Rule of Civil Procedure 8(a) when a plaintiff's numerous intermingled and piecemeal filings fail to present a short and plain statement of the grounds for relief and do not clearly identify what each defendant allegedly did.
3. A district court lacks jurisdiction to consider a second or successive 28 U.S.C. § 2254 habeas challenge absent authorization from the appropriate court of appeals.

KEY QUOTATIONS

“Because Fierro responded by submitting at least 24 more piecemeal pleadings, and for the reasons above, the Court will dismiss this case pursuant to Fed. R. Civ. P. 41(b) for “failure to ... comply with the ... court’s orders” and, alternatively, pursuant to Rule 8(a) for failure to file a short, plain statement as instructed.” (at 5)

“IT IS ORDERED that this case is DISMISSED without prejudice pursuant to Rule 41(b) and, alternatively, pursuant to Rule 8(a); and all pending motions (Docs. 105, 107, 108, 109, 118, 119, 121, 122, 129, 130, 132, 135, 137, and 146) are DENIED as moot.” (at 6)

FACTUAL BACKGROUND

Fierro is a state prisoner whose state criminal case resulted in convictions on 28 counts of criminal sexual penetration or contact of a child and two counts of bribery of a witness, with a 198-year sentence imposed in 2009. He sought damages from state prosecutors based on alleged fraud and wrongful imprisonment, despite having previously raised a related theory in a federal habeas proceeding. After removal, he filed more than 45

motions, notices, amendments, supplements, and other pleadings, and continued filing at least 24 piecemeal submissions after being ordered to file one amended complaint. The filings intermingled factual allegations, legal theories, procedural requests, and references to additional defendants and unrelated matters, making the claims and parties unclear.

PROCEDURAL HISTORY

Fierro initiated the action in the New Mexico Second Judicial District Court, alleging that prosecutors committed fraud resulting in his wrongful imprisonment and seeking damages. Defendants removed the case on December 23, 2024, based on federal-question jurisdiction. The district court previously directed Fierro to replace more than 45 filings with a single amended complaint complying with Rule 8(a), but he submitted at least 24 additional piecemeal filings. The court dismissed without prejudice for failure to comply with the court's order and Rule 8(a), denied pending motions as moot, and dismissed any successive habeas claims for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Fierro v. Smith, 17-cv-0738 JCH-KBM
- McNamara v. Brauchler, 570 Fed. App'x 741, 743 (10th Cir. 2014)
- Glenn v. First Nat. Bank in Grand Junction, 868 F.2d 368, 371 (10th Cir. 1989)
- Pola v. Utah, 458 Fed. Appx. 760, 762 (10th Cir. 2012)
- Robbins v. Oklahoma, 519 F.3d 1242, 1249-50 (10th Cir. 2008)
- Olsen v. Mapes, 333 F.3d 1199, 1204 n. 3 (10th Cir. 2003)
- Fontana v. Pearson, 772 Fed. App'x 728, 729 (10th Cir. 2019)
- Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe County Justice Center, 492 F.3d 1158, 1163 (10th Cir. 2007)
- Ehrenhaus v. Reynolds, 965 F.2d 916, 921 (10th Cir. 1992)
- Imbler v. Pachtman, 424 U.S. 409, 431 (1976)
- Denney v. Werholtz, 348 Fed. App'x 348, 350 (10th Cir. 2009)
- Carbajal v. McCann, 808 Fed. App'x 620, 629 (10th Cir. 2020)
- In re Cline, 531 F.3d 1249, 1251 (10th Cir. 2008)
- Barnes v. New Mexico Department of Corrections, Summary Order entered October 31, 2023

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO ERIC FIERRO, Plaintiff, v. No. 24-cv-1292-SMD-GJF LISA TRABAUDO, et al, Defendants. MEMORANDUM OPINION AND ORDER This matter is before the Court on the voluminous,

piecemeal pleadings filed by Plaintiff Eric Fierro in violation of Fed. R. Civ. P. 8(a) and Court Order. Fierro is a state prisoner and is proceeding pro se.

The Court previously directed him to file a single, amended complaint in lieu of his 45 initial pleadings, supplements, briefs, affidavits, motions, and notices. Because Fierro responded by submitting at least 24 more piecemeal pleadings, the Court will dismiss this case. BACKGROUND Fierro initiated this case by filing a Prisoner Civil Complaint in New Mexico's Second Judicial District Court.

Doc. 1-3 ("Opening Compl."). The Opening Compl alleges Assistant District Attorneys Lisa Traubado and Gerard Treich committed fraud, which resulted in Fierro's wrongful imprisonment in violation of the U.S. Constitution. Opening Compl at 1.

The attachments to the Opening Compl. cite New Mexico Case No. D-202-CR-2004-2692. Opening Compl. at 14, 17-20. A jury convicted Fierro in that case of 28 counts of criminal sexual penetration or contact of a child and 2 counts of bribery of a witness. Judgment in Case No. D-202-CR-2004-2692. By a Judgment entered May 25, 2009, the state court sentenced Fierro to 198 years in prison.

Id. In the instant case, Fierro seeks money damages for false imprisonment. Opening Compl. at 7. Fierro previously raised his fraud theory in a 28 U.S.C. § 2254 habeas petition challenging his custody/convictions. See *Fierro v. Smith*, 17-cv-0738 JCH-KBM (addressing the convictions in Case No. D-202-CR-2004-2692).

The Court (Hon. Judith Herrera) denied relief on the merits, and the Tenth Circuit affirmed. Docs. 41, 52 in *Fierro v. Smith*, 17-cv-0738 JCH-KBM. On December 23, 2024, Defendants removed the instant civil rights case to this Court based on federal question jurisdiction. See Doc. 1-3 (raising claims under the U.S. Constitution); Doc. 34 at 3 (citing 42 U.S.C. § 1983); Doc.

86 at 1 (same). Thereafter, Fierro filed over 45 motions, notices, amendments, and supplements. See Docs. 8, 9, 17, 29-37, 48-64, 70-76, 78, 84-92, and 97. These filings contain additional factual allegations and address a variety of topics such as summary judgment, sanctions, and discovery requests. By a Memorandum Opinion and Order entered June 4, 2025, the Court explained that "[i]t is not the role of either the Court or the defendant[s] to sort through a lengthy... complaint and voluminous [supplemental pleadings]... to construct [Fierro's] causes of action." Doc.

99 ("Screening Ruling") (quoting *McNamara v. Brauchler*, 570 Fed. App'x 741, 743 (10th Cir. 2014)). See also *Glenn v. First Nat. Bank in Grand Junction*, 868 F.2d 368, 371 (10th Cir. 1989) ("The law recognizes a significant difference between notice pleading and 'shotgun' pleading."); *Pola v. Utah*, 458 Fed. Appx. 760, 762 (10th Cir. 2012) (rejecting submissions that include "everything but the kitchen sink").

The Screening Ruling specifically addresses Fierro's practice of filing complaints/supplemental pleadings alongside motions, which means his "legal theories and factual allegations are intermingled with his arguments seeking procedural relief." Screening 2 Ruling at 5. Fierro was advised that such practice impedes the screening function under 28 U.S.C. § 1915A because the Court cannot discern whether specific claims against specific Defendants have merit.

See 28 U.S.C. § 1915A (requiring courts to sua sponte screen prisoner complaints and dismiss any claim that is frivolous, malicious, or fails to state a claim upon which relief may be granted). In a separate order, the Court explained the screening process under § 1915A and noted that prisoner petitions are excluded from pre-trial case management procedures, including discovery obligations.

Doc. 98. Consistent with these authorities, the Court declined to consider the merits of Fierro's 45 initial filings. Screening Ruling at 5. Fierro was directed to file a single amended complaint. *Id.* (emphasis in original).

The Screening Ruling contains instructions on how to comply with Fed. R. Civ. P. 8(a). *Id.* That rule requires each federal litigant to file a short and plain statement of the grounds for relief. Fierro was advised that the single amendment must "make clear exactly who is alleged to have done what to whom, to provide each individual with fair notice as to the basis of the claim against him or her." *Robbins v. Oklahoma*, 519 F.3d 1242, 1249-50 (10th Cir.

2008). The Screening Ruling also warns that if Fierro fails to file a single amendment - and instead continues to file piecemeal submissions - the Court may dismiss this case with or without prejudice. Screening Ruling at 5. Fierro did not follow these instructions.

After entry of the Screening Ruling, he filed at least 24 more submissions. The submissions include: (a) At least 5 complaints, supplements, and briefs that raise factual allegations and legal claims. Docs. 101, 102, 103, 111, and 115. (b) At least 9 motions that request procedural relief such as discovery, hearings, trial 3 settings, etc. Docs. 105, 108, 109, 110, 118, 130, 135, 137, and 146. (c) At least 10 more filings that ostensibly request procedural relief but appear to contain additional facts, law, or exhibits.

Docs. 106, 107, 119, 121, 122, 129, 136, 139, 142, and 144.¹ DISCUSSION Fierro's filings do not comply with Rule 8(a) or the Screening Ruling, for several reasons. His claims are not confined to a single pleading, as directed. Striking extraneous submissions would not cure the defect.

As noted above, several filings are explicitly identified as complaints or supplements, and others blur the line between requesting procedural relief and elaborating on the facts/legal claims. While Fierro's primary goal is to obtain money damages from the state prosecutors involved in his criminal case, his piecemeal filings also reference a state civil lawsuit, alleged bias by Supreme Court justices, state appellate filing decisions, and disputes over public records requests.

One supplemental filing also seeks Fed. R. Civ. P. 60(b) relief, which appears to be unrelated to the 42 U.S.C. § 1983 claims for money damages in this case. Doc. 121. Fierro asks the Court to “reopen[] proceedings,” which may reference his state criminal case or the state habeas proceeding challenging his conviction. *Id.* at 3. Fierro’s piecemeal submissions also make it difficult to identify the defendants in this case.

The captions of most filings list “State of New Mexico, Second Judicial District Attorney’s Office; Gerard Treich; and Lisa Trabaudo, et al.” See, e.g., Doc. 126. Other filings reference additional wrongdoers. For example, one “supplemental closing brief” states: “[Fierro] has consistently 1 Fierro also filed several reply briefs where Defendants, though counsel, responded to certain procedural motions.

See, e.g., Docs. 116, 128. While Fierro’s overall filings in this case violate the Screening Ruling and impede the initial screening function under 28 U.S.C. § 1915A, the Court does not cite the reply briefs to establish this pattern. 4 alleged in this civil action that actors including prosecutors, court personnel, and agents of the New Mexico Supreme Court relied upon” falsified documents.

Doc. 102 at 2. As noted above, the Court explicitly declined to conduct a 28 U.S.C. § 1915A review of Fierro’s 45 initial filings. Fierro was warned that his claims and alleged facts must appear in a single pleading. Screening Ruling at 4-5. He was also cautioned not to file various motions before his single amendment was screened and that this case would be dismissed if he continued to submit piecemeal submissions.

Id. Because Fierro responded by submitting at least 24 more piecemeal filings, and for the reasons above, the Court will dismiss this case pursuant to Fed. R. Civ. P. 41(b) for “failure to ... comply with the ... court’s orders” and, alternatively, pursuant to Rule 8(a) for failure to file a short, plain statement as instructed. See *Olsen v. Mapes*, 333 F.3d 1199, 1204 n. 3 (10th Cir.

2003). The dismissal will be entered without prejudice, since it is still unclear what specific claims are being dismissed. See *Fontana v. Pearson*, 772 Fed. App’x 728, 729 (10th Cir. 2019) (“If the complainant fails to comply with Rule 8, a court may dismiss an action with or without prejudice.”); *Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe County Justice Center*, 492 F.3d 1158, 1163 (10th Cir.

2007) (applying the same rule under Rule 41(b)). Most inmates are able to refile their claims following a dismissal without prejudice. In this case, however, it is not possible to discern the scope of the claims or when such claims arose for the purposes of any statute of limitations. Most claims arose in 2008 or 2009 and were already time-barred when this case was filed, but the filings reference more recent misconduct.

See, e.g., Doc. 102 (referencing a 2025 dispute involving record requests); Doc. 103 (claiming prosecutors committed fraud in 2008). To the extent one or more claim is barred by the statute of

limitations, 5 the Ehrenhaus factors still support this ruling. See *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992) (requiring courts to consider factors such as prejudice; interference with the judicial process; the movant's culpability; prior dismissal warnings; and the efficacy of lesser sanctions).

Fierro was given detailed instructions on how to comply with Rule 8(a); the Court explained that prisoner cases are exempt from initial discovery procedures; and Fierro was warned that this case would be dismissed if he failed to file a single amended complaint. Fierro's numerous piecemeal pleadings interfere with the judicial process. Ordering any state official to answer the filings would cause prejudice, as the exact claims and controlling pleadings are still unclear.

It appears unlikely that additional admonishments would change the result, given Fierro's filing history in this case. The Court cannot find that dismissal would materially prejudice Fierro's claims. His primary theory – that state prosecutors should compensate him for obtaining a criminal conviction – is likely barred by prosecutorial immunity and, alternatively, by the Heck doctrine.

See *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976) (Prosecutors are absolutely immune from suit for actions "taken in connection with the judicial process"); *Denney v. Werholtz*, 348 Fed. App'x 348, 350 (10th Cir. 2009) (awarding damages based on allegedly illegal sentence/incarceration is barred by Heck).

In sum, dismissal is appropriate pursuant to Rule 8(a), Rule 41(b), and - if it applies - *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992). Moreover, because Fierro is not proceeding in forma pauperis in this case, this dismissal "does not count as a strike under [28 U.S.C.] § 1915(g)." See *Carbajal v. McCann*, 808 Fed. App'x 620, 629 (10th Cir. 2020) (addressing the three-strike rule for in forma pauperis litigants).

Finally, to the extent certain filings can be construed to raise a successive 28 U.S.C. § 2254 challenge to the underlying state 6 convictions, the Court will dismiss such claims for lack of jurisdiction and deny a certificate of appealability (COA) under Habeas Corpus Rule 11. See *Jn re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (District Courts lack jurisdiction to consider second/successive habeas challenges absent Circuit authorization); *Barnes v. New Mexico Department of Corrections*, Summary Order entered October 31, 2023 (requiring the District Court to grant or deny a COA following the dismissal of litigant's piecemeal pleadings under Rule 8(a)).

IT IS ORDERED that this case is DISMISSED without prejudice pursuant to Rule 41(b) and, alternatively, pursuant to Rule 8(a); and all pending motions (Docs. 105, 107, 108, 109, 118, 119, 121, 122, 129, 130, 132, 135, 137, and 146) are DENIED as moot. IT IS FURTHER ORDERED that, to the extent certain filings can be construed to raise a successive habeas challenge to Fierro's underlying state convictions, such claims are DISMISSED without prejudice for lack of jurisdiction, and a certificate of appealability is DENIED.

IT IS FINALLY ORDERED that the Court will enter a separate judgment closing the civil case.
HON. SARAH M. DAVENPORT UNITED STATES DISTRICT JUDGE

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