

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Rodriguez-Mendez v. Kerney

Rodriguez-Mendez · No. No. 2:24-CV-0678-DC-DMC-P · Decided August 20, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Rodrigo Rodriguez-Mendez’s pro se Bivens civil rights action without prejudice. The recommendation is based on Plaintiff’s failure to submit documents required for service despite a court order and warning that noncompliance could result in dismissal. Parties are advised that they may file objections within 14 days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dennis M. Cota
DECIDED	August 20, 2025
DOCKET	No. 2:24-CV-0678-DC-DMC-P
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a United States magistrate judge recommending dismissal without prejudice of a prisoner's Bivens civil-rights action for lack of prosecution and failure to comply with court rules and orders.
STANDARD OF REVIEW	Dismissal as a sanction for lack of prosecution or failure to comply with court orders requires consideration of five factors: the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to opposing parties, the public policy favoring disposition on the merits, and the availability of less drastic sanctions.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations; not a final district-court judgment in the source.

TOPICS

- sanctions
- civil procedure
- prisoners rights
- civil rights

PRACTICE AREAS

civil rights

civil procedure

prisoner litigation

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice for lack of prosecution and failure to comply with the court's service-related order.
2. Whether the five-factor standard governing dismissal as a sanction was satisfied.

HOLDINGS

1. Before imposing dismissal as a sanction, the court must weigh five factors: the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to opposing parties, the public policy favoring disposition on the merits, and the availability of less drastic sanctions.
2. Dismissal without prejudice was appropriate because Plaintiff failed to submit the required service documents after being ordered to do so and warned that noncompliance could result in dismissal.

KEY QUOTATIONS

"The Court must weigh five factors before imposing the harsh sanction of dismissal." (at 1)

"Based on the foregoing, the undersigned recommends that this action be dismissed, without prejudice, for lack of prosecution and failure to comply with court rules and orders." (at 2)

FACTUAL BACKGROUND

Plaintiff was proceeding pro se and had brought a Bivens civil-rights action. The court found the complaint appropriate for service and ordered Plaintiff to provide documents for service by the United States Marshal within 30 days. Plaintiff failed to comply despite being warned that noncompliance could lead to dismissal.

PROCEDURAL HISTORY

Plaintiff filed a pro se prisoner civil-rights action under Bivens. After determining that the complaint was appropriate for service, the court directed Plaintiff to submit documents needed for service by the United States Marshal within 30 days and warned that noncompliance could result in dismissal. Plaintiff did not submit the required documents, and the magistrate judge recommended dismissal without prejudice; the parties were given 14 days to object under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- Bivens v. Six Unknown Agents, 403 U.S. 388 (1971)
- Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000)

- *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)
- *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam)
- *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)
- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- *Martinez v. Yist*, 951 F.2d 1153 (9th Cir. 1991)

OPINION

(PC) *Rodriguez-Mendez v. Ellred, et al*

PER CURIAM.

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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 RODRIGO RODRIGUEZ-MENDEZ, No. 2:24-CV-0678-DC-DMC-P

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 KERNEY, et al., 15 Defendants. 16 17 Plaintiff, a prisoner proceeding pro se, brings this civil
rights action pursuant to 18 *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971). 19 On June 13,
2025, the Court determined that Plaintiff's complaint was appropriate 20 for service and directed
Plaintiff to submit documents for service by the United States Marshal 21 within 30 days. Plaintiff
was warned that failure to submit the required documents may result in 22 dismissal of this action
for lack of prosecution and failure to comply with court rules and orders. 23 See Local Rule 110.
To date, Plaintiff has not complied. 24 The Court must weigh five factors before imposing the
harsh sanction of dismissal. 25 See *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir.
2000); *Malone v. U.S. Postal* 26 *Service*, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1)
the public's interest in 27 expeditious resolution of litigation; (2) the court's need to manage its
own docket; (3) the risk of 28 prejudice to opposing parties; (4) the public policy favoring
disposition of cases on their merits; 1 | and (5) the availability of less drastic sanctions. See *id.*; see
also *Ghazali v. Moran*, 46 F.3d 52, 2 | 53 (th Cir. 1995) (per curiam). A warning that the action
may be dismissed as an appropriate 3 || sanction is considered a less drastic alternative sufficient to
satisfy the last factor. See *Malone*, 4 | 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack
of prosecution is appropriate where 5 || there has been unreasonable delay. See *Henderson v.*
Duncan, 779 F.2d 1421, 1423 (9th Cir. 6 || 1986). Dismissal has also been held to be an appropriate
sanction for failure to comply with an 7 || order to file an amended complaint. See *Ferdik v.*
Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 8 | 1992). 9 Having considered these factors, and in
light of Plaintiffs failure to submit service 10 || documents as directed, the Court finds that
dismissal of this action is appropriate. 11 Based on the foregoing, the undersigned recommends
that this action be dismissed, 12 || without prejudice, for lack of prosecution and failure to comply

with court rules and orders. 13 These findings and recommendations are submitted to the United States District 14 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 15 || after being served with these findings and recommendations, any party may file written 16 || objections with the court. Responses to objections shall be filed within 14 days after service of 17 || objections. Failure to file objections within the specified time may waive the right to appeal. See 18 | Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991). 19 20 | Dated: August 19, 2025 Co

21 DENNIS M. COTA

02 UNITED STATES MAGISTRATE JUDGE

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