

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

David Rivas v. MCC San Diego; Jason Burganson

Case No. 25-cv-00806-AJB-BLM · No. 25-cv-00806-AJB-BLM · Decided January 13, 2026

SUMMARY

The United States District Court for the Southern District of California dismissed David Rivas’s Bivens civil action against MCC San Diego and Correctional Officer Jason Burganson. The court dismissed the action for failure to state a claim and failure to amend or prosecute after Plaintiff did not file an amended complaint by the court-ordered deadline. The court directed entry of final judgment and certified that an appeal in forma pauperis would not be taken in good faith.

CASE DETAILS

COURT	United States District Court for the Southern District of California
JURISDICTION	United States District Court for the Southern District of California
DECIDED	January 13, 2026
DOCKET	25-cv-00806-AJB-BLM
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se incarcerated plaintiff's Bivens civil action was dismissed at the screening stage, with leave to amend. After plaintiff failed to file an amended complaint or otherwise respond, the district court dismissed the action for failure to state a claim and failure to prosecute.
STANDARD OF REVIEW	The court applied the Ninth Circuit's five-factor test for dismissal for failure to prosecute or failure to comply with a court order: the public's interest in expeditious resolution, the court's need to manage its docket, prejudice to defendants, availability of less drastic alternatives, and the public policy favoring disposition on the merits.
PRECEDENTIAL VALUE	unknown
PARTIES	David Rivas v. MCC San Diego, Jason Burganson, Correctional Officer

TOPICS

- civil procedure
- sanctions
- prisoners rights
- civil rights
- service of process

PRACTICE AREAS

civil procedure

civil rights

prisoner litigation

QUESTIONS PRESENTED

1. Whether the court should dismiss the action under Federal Rule of Civil Procedure 41(b) because plaintiff failed to amend his complaint as ordered and failed to prosecute.
2. Whether the action should be dismissed for failure to state a claim under 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1).
3. Whether plaintiff's in forma pauperis appeal should be certified as not taken in good faith under 28 U.S.C. § 1915(a)(3).

HOLDINGS

1. A district court may sua sponte dismiss an action under Federal Rule of Civil Procedure 41(b) when a plaintiff fails to comply with a court order to amend or otherwise fails to prosecute, after weighing the applicable dismissal factors. Because the court had clearly warned Rivas that failure to amend would result in dismissal and the relevant factors supported dismissal, final dismissal was warranted.
2. Dismissal of the civil action for failure to state a claim was warranted under 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1), where the complaint had already been screened and dismissed and plaintiff failed to file an amended pleading.
3. The court certified that an appeal in forma pauperis would not be taken in good faith.

KEY QUOTATIONS

“The failure of the plaintiff eventually to respond to the court’s ultimatum—either by amending the complaint or by indicating to the court that [he] will not do so—is properly met with the sanction of a Rule 41(b) dismissal.” (at 1)

“In determining whether to dismiss a claim for failure to prosecute or failure to comply with a court order, the Court must weigh the following factors: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.” (at 1)

“A federal court is without personal jurisdiction over a defendant unless the defendant has been served in accordance with Fed. R. Civ. P. 4.” (at 2)

FACTUAL BACKGROUND

David Rivas, an incarcerated pro se plaintiff, filed a Bivens action against MCC San Diego and correctional officer Jason Burganson. The court previously screened and dismissed his complaint for failure to state a claim, granted 45 days to amend, and warned that failure to amend would result in dismissal. More than a month after the amendment deadline passed, Rivas had filed no amended complaint or other response, and no defendant had been served.

PROCEDURAL HISTORY

Rivas filed a Bivens action and moved to proceed in forma pauperis. The court granted IFP status but dismissed the complaint during screening under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), allowing 45 days to amend and warning that failure to do so could result in dismissal of the entire action. Rivas did not amend or respond, and the court entered a final dismissal under Rule 41(b), also certifying that an IFP appeal would not be taken in good faith.

DISPOSITION

dismissed

CASES CITED

- Bivens v. Six Unknown Named Federal Narcotic Agents, 403 U.S. 388 (1971)
- Harper v. Need, 71 F.4th 1181, 1187 (9th Cir. 2023)
- Lira v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005)
- Henderson v. Duncan, 779 F.2d 1421, 1423–24 (9th Cir. 1986)
- Edwards v. Marin Park, 356 F.3d 1058, 1065 (9th Cir. 2004)
- Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260–63 (9th Cir. 1992)
- Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)
- Nevijel v. North Coast Life Insurance Co., 651 F.2d 671, 674 (9th Cir. 1981)
- In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1227 (9th Cir. 2006)
- Crowley v. Bannister, 734 F.3d 967, 974–75 (9th Cir. 2013)
- Flores v. Velocity Express, LLC, No. 12-CV-05790-JST, 2017 WL 3477081, at *2 (N.D. Cal. Aug. 11, 2017)
- Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998)

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