

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)

OPINION

Rivas

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 DAVID RIVAS, Case No.: 25-cv-00806-AJB-BLM

BOP #14267-298,

12

ORDER DISMISSING CIVIL

Plaintiff,

13 ACTION FOR FAILING TO

vs. STATE A CLAIM PURSUANT

14 TO 28 U.S.C. § 1915(e)(2)(B)(ii) MCC San Diego; JASON BURGANSOON,

15 AND 28 U.S.C. § 1915A(b)(1)

Correctional Officer,

AND FOR FAILING TO

16 Defendants. PROSECUTE 17 18 19 Plaintiff David Rivas, proceeding without counsel while incarcerated at the 20 Metropolitan Correctional Center in San Diego, filed this civil action pursuant to *Bivens v. 21 Six Unknown Named Federal Narcotic Agents*, 403 U.S. 388 (1971), together with a motion 22 to proceed in forma pauperis (“IFP”). (See Doc. Nos. 1; 2.) 23 On October 17, 2025, the Court granted Plaintiff leave to proceed IFP but screened 24 and dismissed his complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2) 25 and 1915A(b). (Doc. No. 6.) While the Court noted Plaintiff’s *Bivens* claims against Officer 26 Burganson were “dead on arrival” and expressed doubt as to whether Plaintiff could 27 effectively amend them, it granted him 45 days leave in which to try. (See Doc. No. 6 at 13 28 (citing *Harper v. Need*, 71 F.4th 1181, 1187 (9th Cir. 2023)).) The Court also warned 1 Plaintiff that if he failed to timely amend, a final judgment of dismissal would be entered 2 based both on his failure to state a claim and his failure to prosecute in compliance with 3 the Court’s Order. (Id. at 14–15 (citing *Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 4 2005) (“If a plaintiff does not take advantage of the opportunity to fix his complaint, a 5 district court may convert the dismissal of the complaint into dismissal of the entire 6 action.”))).) More than a month has passed since Plaintiff’s amended complaint was due, 7 but he has failed to respond. Thus, for the reasons explained, the Court DISMISSES the 8 case.

9 I. FAILURE TO AMEND AND/OR PROSECUTE

10 The Court may sua sponte dismiss a case for lack of prosecution or failure to comply 11 with a court order. See *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986); see 12 also Fed. R. Civ. P. 41(b) (providing for involuntary dismissal for failure to prosecute or 13 comply with the federal rules or court order). “The failure of the plaintiff eventually to 14 respond to the court’s ultimatum—either by amending the complaint or by indicating to the 15 court that [he] will not do so—is properly met with the sanction of a Rule 41(b) dismissal.” 16 *Edwards v. Marin Park*, 356 F.3d 1058, 1065 (9th Cir. 2004). “In determining whether to 17 dismiss a claim for failure to prosecute or failure to comply with a court order, the Court 18 must weigh the following factors: (1) the public’s interest in expeditious resolution of 19 litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to 20 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public 21 policy favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 22 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992)). 23 Because the Court clearly informed Plaintiff of his need to timely amend, factors 24 one, two, and four weigh in favor of dismissal. See *Ferdik*, 963 F.2d at 1262 (“[A] district 25 court’s warning to a party that his [or her] failure to obey the court’s order will result in

26 dismissal can satisfy the ‘consideration of alternatives’ requirement.”); Henderson, 779 F.2d at 1424; Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999) (“[T]he public’s interest in expeditious resolution of litigation always favors dismissal.”); 1 Pagtalunan, 291 F.3d at 642 (“The trial judge is in the best position to determine whether the delay in a particular case interferes with docket management and the public interest.”); 3 Nevijel v. North Coast Life Insurance Co., 651 F.2d 671, 674 (9th Cir. 1981) (a court is not required to exhaust all alternatives prior to dismissal). Factor five also supports dismissal. 5 See In re Phenylpropanolamine (PPA) Prod. Liab. Litig., 460 F.3d 1217, 1227 (9th Cir. 2006) (the public policy favoring disposition on the merits does not weigh against dismissal where plaintiff’s “conduct impedes progress in that direction”). 8 Finally, Plaintiff initiated this suit more than nine months ago but has failed to file 9 any pleading sufficient to survive initial screening, and no defendant has been served. See 10 Fed. R. Civ. P. 4(c). “A federal court is without personal jurisdiction over a defendant 11 unless the defendant has been served in accordance with Fed. R. Civ. P. 4.” Crowley v. 12 Bannister, 734 F.3d 967, 974–75 (9th Cir. 2013) (citations omitted); see also Flores v. 13 Velocity Express, LLC, No. 12-CV-05790-JST, 2017 WL 3477081, at *2 (N.D. Cal. Aug. 14 11, 2017) (dismissing civil action for failure to prosecute where plaintiff’s failure to 15 communicate for nearly four months “indicate[d] [] he ha[d] no interest in pursuing his 16 claims”). 17 Thus, while the “pendency of a lawsuit is not sufficiently prejudicial in and of itself 18 to warrant dismissal,” Pagtalunan, 291 F.3d at 642, when taken together, the Court finds 19 the weight of the Ferdik factors support dismissal and the entry of final judgment pursuant 20 to Fed. R. Civ. P. 41(b) is now warranted. See Hernandez v. City of El Monte, 138 F.3d 21 393, 399 (9th Cir. 1998) (“We may affirm a dismissal where at least four factors support 22 dismissal, or where at least three factors ‘strongly’ support dismissal.”) (quoting Ferdik, 23 963 F.2d at 1263).

24 II. CONCLUSION

25 For the reasons explained, the Court DISMISSES this civil action based on 26 Plaintiff’s failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. 27 §§ 1915(e)(2) (B)(ii) and 1915A(b)(1) and his failure to amend as required by the Court’s 28 October 17, 2025 Order. The Court further CERTIFIES that an IFP appeal would not be 1 ||taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). The Court DIRECTS the Clerk of 2 || Court to enter a final judgment of dismissal and close the file. 3 IT IS SO ORDERED. 4 ||Dated: January 13, 2026 6 United States District Judge 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28