

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Serena Ruiz v. Brian Gottlieb

Ruiz · No. No. 2:26-cv-00239-KG-GJF · Decided March 17, 2026

SUMMARY

The United States District Court for the District of New Mexico dismissed Serena Ruiz’s pro se action against Brian Gottlieb without prejudice. The court dismissed the case for failure to comply with an order requiring an amended complaint and a long-form application to proceed without prepaying fees or costs, and denied the short-form application.

CASE DETAILS

COURT	United States District Court for the District of New Mexico
WRITING FOR THE COURT	Kenneth J. Gonzales
JURISDICTION	United States District Court for the District of New Mexico
DECIDED	March 17, 2026
DOCKET	No. 2:26-cv-00239-KG-GJF
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court dismissed the pro se plaintiff's action without prejudice sua sponte for failure to comply with an order requiring an amended complaint and a long-form application to proceed in forma pauperis. The court also denied the plaintiff's short-form in forma pauperis application.
PRECEDENTIAL VALUE	unknown
PARTIES	Serena Ruiz v. Brian Gottlieb

TOPICS

- motions to dismiss
- civil procedure
- pleadings

PRACTICE AREAS

- civil procedure
- federal civil litigation
- in forma pauperis proceedings

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice for Plaintiff's failure to comply with the order requiring an amended complaint and a long-form in forma pauperis application.
2. Whether Plaintiff's short-form application to proceed without prepaying fees or costs should be denied for failure to provide sufficient financial information.

HOLDINGS

1. The court may dismiss the action without prejudice because Plaintiff failed to comply with the magistrate judge's order to file an amended complaint and a long-form application to proceed in forma pauperis.
2. The short-form application to proceed without prepaying fees or costs is denied because it did not provide sufficient information to determine whether Plaintiff was unable to pay the required fees, and Plaintiff failed to submit the required long-form application.

KEY QUOTATIONS

“Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff's failure to prosecute or comply with the rules of civil procedure or court's orders.” (at 2)

FACTUAL BACKGROUND

Plaintiff's complaint alleged that Defendant was tardy in adjudicating issues and sought mandamus relief requiring Defendant to resolve a backlog. The magistrate judge determined that the complaint failed to state a claim and ordered Plaintiff to amend it. Plaintiff also failed to provide sufficient financial information in the short-form in forma pauperis application and did not submit the required long-form application. Plaintiff filed neither the amended complaint nor the long-form application by the deadline, despite the Clerk's Office mailing the order to the correct address.

PROCEDURAL HISTORY

Plaintiff filed a complaint seeking mandamus relief and a short-form application to proceed without prepaying fees. A magistrate judge ordered Plaintiff to file an amended complaint and a long-form in forma pauperis application by February 24, 2026, warning that noncompliance could result in dismissal or denial. Plaintiff filed neither document, and the district court dismissed the case without prejudice and denied the short-form application.

DISPOSITION

dismissed

CASES CITED

- Gustafson v. Luke, 696 Fed. Appx. 352, 354 (10th Cir. 2017)
- Olsen v. Mapes, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)

OPINION

Ruiz

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

SERENA RUIZ,

Plaintiff, v. No. 2:26-cv-00239-KG-GJF

BRIAN GOTTLIEB,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court on pro se Plaintiff's Complaint, Doc. 1, filed February 2, 2026, and Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), Doc. 2, filed February 2, 2026 ("Short Form Application"). The only factual allegations in the Complaint state:

1. Defendant, what others described as kind-hearted, failed to remain the same when doing his job,

2. When adjudicating issues, he showed tardiness, leaving things undecided,

3. Plaintiff requests an issuance of mandamus for Brian Gottlieb to resolve the

backlog as soon as possible, which this Court has jurisdiction. Complaint at 1. United States Magistrate Judge Gregory J. Fouratt notified Plaintiff that the Complaint failed to state a claim upon which relief can be granted and ordered Plaintiff to file an amended complaint. See Order at 2, 4, Doc. 3, filed February 3, 2026 (notifying Plaintiff that failure to timely file an amended complaint may result in dismissal of this case). Plaintiff did not file an amended complaint by the February 24, 2026, deadline. Plaintiff also filed a motion to proceed in forma pauperis using a Short Form Application. Judge Fouratt notified Plaintiff the Short Form Application does not provide sufficient information for the Court to determine whether a plaintiff is unable to pay the required fees and ordered Plaintiff to file an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form). See Order at 1, 4 (notifying Plaintiff that failure to timely file a Long Form Application may result in denial of the motion to proceed in forma pauperis). Plaintiff did not file a Long Form Application by the February 24, 2026, deadline. Judge Fouratt's Order to file an amended complaint and to file a Long Form Application that the Clerk mailed to Plaintiff was "returned as undeliverable." See Doc. 5, filed February 20, 2026. The Clerk's Office had mailed Judge Fouratt's Order to an incorrect address. The Clerk's Office mailed another copy of Judge Fouratt's Order to the correct address on February 23, 2026. Another document that the Clerk's Office mailed to Plaintiff's correct address was returned as undeliverable. See Doc. 9, filed March 16, 2026; D.N.M.LR-Civ. 83.6 ("parties appearing pro se have a continuing duty to notify the Clerk, in writing of any change in their . . . mailing address"). It is now over 21 days after the Clerk's Office mailed Judge Fouratt's Order to the correct address and Plaintiff has not filed an

amended complaint or a Long Form Application. The Court dismisses this case without prejudice because Plaintiff has not complied with Judge Fouratt's Order to file an amended complaint and to file a Long Form Application to proceed in forma pauperis. See Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action"); *Gustafson v. Luke*, 696 Fed.Appx. 352, 354 (10th Cir. 2017) ("Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff's failure to prosecute or comply with the rules of civil procedure or court's orders.") (quoting *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)). Because it is dismissing this case and based on Plaintiff's failure to comply with Judge Fouratt's Order to file a Long Form Application, the Court denies Plaintiff's Short Form Application to proceed in forma pauperis. IT IS ORDERED that: (i) This case is DISMISSED without prejudice. (ii) Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), Doc. 2, filed February 2, 2026, is DENIED. /s/Kenneth J. Gonzales_____

CHIEF UNITED STATES DISTRICT JUDGE

- Please note that this document has been electronically filed. To verify its authenticity, please refer to the Digital File Stamp on the NEF (Notice of Electronic Filing) accompanying this document. Electronically filed documents can be found on the Court's PACER public access system.