

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

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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

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