

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Hailey Davis v. Judy Kim

Davis · No. No. 2:26-cv-00036-KG-GJF · Decided February 3, 2026

SUMMARY

The United States District Court for the District of New Mexico dismisses Hailey Davis’s pro se complaint against Judy Kim without prejudice. The court finds that Davis failed to comply with orders requiring an amended complaint and a long-form application to proceed in forma pauperis, and denies the short-form fee application. The dismissal is based on failure to prosecute and failure to comply with a court order under Federal Rule of Civil Procedure 41(b).

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	February 3, 2026
DOCKET	No. 2:26-cv-00036-KG-GJF
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court dismissed the pro se plaintiff's complaint without prejudice after the plaintiff failed to comply with orders requiring an amended complaint and a completed long-form application to proceed in forma pauperis.
PRECEDENTIAL VALUE	unpublished district court memorandum opinion

TOPICS

- motions to dismiss
- pleadings
- civil procedure

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether the district court could dismiss the action without prejudice for Plaintiff's failure to comply with orders requiring an amended complaint and a long-form in forma pauperis application.

2. Whether Plaintiff's short-form application to proceed in forma pauperis should be denied after Plaintiff failed to submit the required long-form application.

HOLDINGS

1. The district court may dismiss an action without prejudice when a plaintiff fails to comply with a court order requiring an amended complaint and a completed in forma pauperis application.
2. The short-form application to proceed in forma pauperis is denied because Plaintiff failed to submit the required long-form application.

KEY QUOTATIONS

“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.”
(Memorandum Opinion and Order of Dismissal)

“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.” (Memorandum Opinion and Order of Dismissal)

FACTUAL BACKGROUND

Plaintiff's complaint alleged that Defendant engaged in ex parte communication and conspired with another individual in violation of due process, but it supplied no developed factual or legal basis for relief. The magistrate judge ordered Plaintiff to amend the complaint and submit a long-form application to proceed in forma pauperis. Plaintiff did neither by the deadline, and the court's mailed orders were returned as undeliverable.

PROCEDURAL HISTORY

Plaintiff filed a complaint and a short-form application to proceed without prepaying fees. A magistrate judge ordered Plaintiff to file an amended complaint because the original complaint failed to state a claim and to submit a long-form financial application. Plaintiff missed both deadlines, and the mailed orders were returned as undeliverable. The district court dismissed the action without prejudice and denied the short-form in forma pauperis application.

DISPOSITION

dismissed

CASES CITED

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

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO
HAILEY DAVIS, Plaintiff, v. No. 2:26-cv-00036-KG-GJF JUDY KIM, Defendant.
MEMORANDUM OPINION AND ORDER OF DISMISSAL THIS MATTER comes before the Court on pro se Plaintiff's Complaint, Doc. 1, filed January 8, 2026, and Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), Doc.

2, filed January 9, 2026 ("Short Form Application"). The only allegations in the Complaint state: 1. Upon information and belief, Defendant had ex parte communication with individual in 101014/2022 [sic], 2. Defendant conspired with individual in violation of due process, 3. This Court has jurisdiction under federal law. 4. Plaintiff demands a trial of jury and with compensation of \$1,000,000.

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. 4, filed January 12, 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 2, 2026, deadline. Plaintiff also filed a motion to proceed in forma pauperis using a Short Form Application. See Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), Doc. 2, filed January 9, 2025. 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 2, 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." Doc's 5, 6, filed January 22 and 26, 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"). 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 January 9, 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.