FILED
United States Court of Appeals
Tenth Circuit

August 19, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LISA S. MONTOYA,

Plaintiff - Appellant,

v.

AMY COLONY, Senior Attorney General; JEFF BEZOS, CEO Amazon,

Defendants - Appellees.

No. 25-1217
(D.C. No. 1:25-CV-00457-LTB-RTG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **BALDOCK**, and **FEDERICO**, Circuit Judges.

Lisa Montoya filed a pro se complaint alleging that she endured continuing assaults at an Amazon warehouse, without redress. The district court dismissed the case as inadequately pled under Rule 8, and we **AFFIRM**.

The original complaint lacked any clear statement of the specific claims she was asserting, but named Amy Colony, a lawyer in Colorado's Office of the Attorney General, as a defendant. The court determined that the complaint did not meet the

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

requirements of Federal Rule of Civil Procedure 8. Ms. Montoya then filed an Amended Complaint that named both Ms. Colony and Jeff Bezos, CEO of Amazon, as defendants. The magistrate judge determined the Amended Complaint still did not comply with the requirements of Rule 8 because it failed to provide a short and plain statement of any claim that demonstrates that Ms. Montoya is entitled to relief. The magistrate judge, considerate of the court's role in pro se proceedings, noted that while such pleadings must be construed liberally, the court could not serve as the litigant's attorney. So the magistrate judge recommended the Amended Complaint be dismissed.

Although Ms. Montoya eventually filed a motion opposing the recommendation, the district court determined that Ms. Montoya's motion was both untimely and did not address the specific analysis in the recommendation. As a result, the district court accepted and adopted the magistrate judge's recommendation without conducting de novo review. It dismissed the Amended Complaint without prejudice and denied without prejudice leave to proceed in forma pauperis on appeal. The court also denied Ms. Montoya's many pending motions as moot.

Following the dismissal, Ms. Montoya filed a "Motion to Vacate Judgement" on April 17, 2025. Construing this as a motion under Rule 59(e), the district court determined once again that the motion was both vague and did not demonstrate that Ms. Montoya's rights had been violated. Additionally, Ms. Montoya provided no reason for the court to reconsider and vacate the order. The district court therefore denied Ms. Montoya's motion.

On appeal, Ms. Montoya argues that her objections should not have been treated as untimely, and reiterates the merits of her claim, particularly given the defendants' non-appearance. She has continued to file motions and documents, including a purported "Entry of Default" and a motion to expedite this case.

As a pro se litigant, we construe Ms. Montoya's arguments liberally. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). At the same time, a court may not craft arguments on a pro se litigant's behalf. *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). And a pro se litigant is also subject to the same rules of procedure that govern other litigants. *DiCesare v. Stuart*, 12 F.3d 973, 979 (10th Cir. 1993).

But her arguments on appeal, as much as they can be deciphered, are no more meritorious than they were below. We review a district court's dismissal for failure to comply with Rule 8 for abuse of discretion. *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1162 n.3 (10th Cir. 2007) ("In numerous unpublished decisions, we have affirmed district courts' dismissals of actions without prejudice for failure to comply with Rule 8 under our basic abuse of discretion standard."). And we find no abuse of discretion below.

The magistrate judge correctly recommended that the complaint be dismissed for failure to provide a short and plain statement of the claim showing that the pleader is entitled to relief or a demand for the relief sought. See Fed. R. Civ. P. 8(a); *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008). The complaint's vagaries, its lack of specific claims for relief or recitation of facts makes it

impossible to give fair notice of the basis of any claim without constructing arguments on her behalf. *See Nasious*, 492 F.3d at 1163.

The district court was correct to accept this recommendation and committed no abuse of discretion by considering Ms. Montoya's objections to be untimely and non-specific. Any objections to magistrate judge recommendations must be filed within fourteen days after service. *See* 28 U.S.C. § 636(b)(1)(C). The magistrate judge's recommendation was filed on March 20, giving Ms. Montoya until April 3 to object. Despite filing several other motions within this period, she did not file her "Motion Opposing the Recommendation of Dismissal" until April 9, 2025. Ms. Montoya admits her objections were filed after the two-week deadline. Although she pleads on appeal for leniency or excusable neglect, pro se parties must adhere to the same procedures and deadlines as represented parties. *DiCesare*, 12 F.3d at 979. Nor were her objections specific to the magistrate judge's legal analysis—she focused instead on the "discriminating vibe" and the perceived injustices of the recommendation. *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996) ("[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review.").

Nor do we perceive any error in the district court's denial of Ms. Montoya's post-judgment motions. A motion pursuant to Fed. R. Civ. P. 59(e) "may be granted to correct errors of law or to present newly discovered evidence," *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997), or when "the court had

misapprehended the facts, a party's position, or the controlling law." *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Ms. Montoya's motion for reconsideration did not meet that standard. Her arguments amount to little more than "an unadorned, the-defendants-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Ms. Montoya continues to seek a default judgment against the defendants, who have not appeared. But because her case was dismissed, and judgment entered against her, no default is appropriate. She contends that dismissal was improper because the opposing parties failed to respond after being served, and that the court should not have closed the case considering their lack of appearance. But not only is it unclear whether service was ever actually completed on defendants, a defendant's failure to respond is independent from a deficient complaint. The district court is well within its authority to dismiss a complaint solely based on its non-compliance with Rule 8. If a complaint fails to meet even "basic pleading requirements, a district court may dismiss the action sua sponte for failure to comply with Rule 8." *Nasious*, 492 F.3d at 1161 n.2.

Because non-compliance with the requirements of Rule 8 is sufficient for dismissal, the court need not have allowed extra time for the defendants to respond, and the court need not consider the plaintiff's objections if they were not timely.

We affirm the dismissal of Ms. Montoya's case without prejudice. As to her remaining motions, we GRANT the motion to proceed in forma pauperis, and we DENY the remaining motions as moot given the affirmed dismissal.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
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Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

August 19, 2025

Lisa Sandra Montoya
330 South Kendall
Lakewood, CO 80226

RE: 25-1217, Montoya v. Colony, et al
Dist/Ag docket: 1:25-CV-00457-LTB-RTG

Dear Appellant:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of Court

CMW/jm

FILED
United States Court of Appeals
Tenth Circuit

September 25, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LISA S. MONTOYA,

Plaintiff - Appellant,

v.

AMY COLONY, Senior Attorney General, et al.,

Defendants - Appellees.

No. 25-1217
(D.C. No. 1:25-CV-00457-LTB-RTG)
(D. Colo.)

ORDER

Before **TYMKOVICH**, **BALDOCK**, and **FEDERICO**, Circuit Judges.

Appellant's petition for rehearing is denied. All Pending motions are also denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-00457-LTB-RTG

LISA S. MONTOYA,

Plaintiff,

v.

AMY COLONY, Senior Attorney General, and
JEFF BEZOS, CEO Amazon,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Richard T. Gurley, United States Magistrate Judge

This matter comes before the Court on the Amended Complaint (ECF No. 10)[1] filed *pro se* by Plaintiff, Lisa S. Montoya, on February 24, 2025. The matter has been referred to this Magistrate Judge for recommendation (ECF No. 18).

The Court must construe the Amended Complaint liberally because Ms. Montoya is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110.

The Court has reviewed the filings to date. The Court has considered the entire

[1] "(ECF No. 10)" is an example of the convention I use to identify the docket number assigned to a specific paper by the Court's case management and electronic case filing system (CM/ECF). I use this convention throughout this Recommendation.

case file, the applicable law, and is sufficiently advised in the premises. It is respectfully recommended that the Amended Complaint and the action be dismissed.

I. DISCUSSION

• Background

Ms. Montoya is a resident of Lakewood, Colorado. She initiated this action by filing *pro se* a Complaint for a Civil Case (ECF No. 1). The named Defendant in the Complaint was Amy Colony, a Senior Attorney General in the State of Colorado. Ms. Montoya alleged Ms. Colony is a citizen of Iowa, and she asserted diversity jurisdiction over her claims pursuant to 28 U.S.C. § 1332. She did not, however, provide a clear statement of the specific claims she was asserting against Ms. Colony.

On February 13, 2025, the Court ordered Ms. Montoya to file an amended complaint that complies with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure if she wishes to pursue any claims in this action. As noted above, on February 24, 2025, Ms. Montoya filed an Amended Complaint (ECF No. 10).

• The Amended Complaint

Ms. Montoya lists two Defendants in the Amended Complaint, Ms. Colony and Amazon CEO Jeff Bezos. According to Ms. Colony, the Court has diversity jurisdiction over her claims in the Amended Complaint because she is a citizen of Colorado, Ms. Colony is a citizen of Iowa (which is her birth state), and Mr. Bezos is a citizen of Florida. In the section of the Amended Complaint labeled "Statement of Claims," Ms. Montoya alleges the following, which the Court quotes verbatim without correcting or

identifying errors in spelling, grammar, or punctuation:

(1.) Back in December 2020, my son and I were brutally assaulted in the Amazon warehouse. Three nights throughout the flex shift. No Peace Officers were called to stop the assault. On the third night LSM called the police to intervene but to her knowledge they never arrived. This is an event that Amy Colony is aware of because she was there at the warehouse as a look out for the assailants. This was the complaint that Montoya had informed Denver PD and EEOC back in 2021 but was denied any action, for reasons not known. No Statute of Limitations have commenced from the incident because the brutal assault is ongoing.

(2.) On September 5, 2023, Lisa S. Montoya, representing herself, filed a Complaint in Jefferson County District Civil Court. She paid the Jefferson County Sheriff, acting as Process Server, to deliver the document to the Defendant. The allotted time expired without a reply, prompting her to file a Motion for Default Judgment with Exigent Circumstances. This motion was denied by Honorable Judge Christopher Zenisk, who also issued a court order for Lisa S. Montoya to correct the venue of service of the complaint after the Jefferson County Sheriff, acting as Process Server, had made an error, which led to the Motion for Default Judgment with Exigent Circumstances.

(3.) The State Attorney General Phil Weiser is the Defendant that JeffCo should have served when tendered to do so.

(4.) Lisa S. Montoya paid a Process Server, an outside entity to the case, to serve the Amended Complaint, correcting the issue. The err within the process should have stopped the process and an Ordered Settlement Court Date could have commenced immediate action to prevent further damages.

(5.) Senior Attorney General Amy Colony who is allotted time to respond, did not, leaving Pro Se believing to be ignored and having to Motion for Default with Exigent Circumstances.

Plausible factual allegations even if lacks evidentiary is not frivolous as contemplated by § 1915(d).

Pursuant to 28 U.S.C § 657(a), (b), (c) (1) (2) (3) (A), also 28 U.S.C § 2106

U.S.C § 30501 (1), (2), (3), (4), (5), (6) (A) (B) (C) (D) (E), (7), (8), (9), (10), and

Pursuant to 42 U.S.C § 1983 and 42 U.S.C § 1986

Constitution of the State of Colorado Article XXXIX Ethics in Government (Amendment 41) Section 1. Purposes and Findings (1) (a) (b) (c) (d) (e), (2). Section 3. Gift Ban (1), (2), (4), (5), (6), Section 4. Restrictions After Leaving Office, Section 5. Independent Ethics Commission (1), (2) (f), (3) (a) (c) (d), (4), (5), Section 6. Penalty.

Rule regarding fact judicially noticed applies only to adjudicative facts and therefore the classification of a criminal defendant offense which is a question of law, did not require instruction pursuant to this Rule. People v. Hampton, 857 P.2d 441 (Colo. App. 1992), *affd, 876 P.2d 1236 (Colo. 1994).*

The eleventh Amendment does not in some circumstances bar an action for damages against a state official charged with depriving a person(s) of a Federal Right under Color of State Law, and the District Court acted prematurely, erroneously dismissing the complaints as it did without affording petitioners opportunity by subsequent proof to establish their claims. Pp.416 U.S. 235-238.

(ECF No. 10 at pp.8-9.) As relief Ms. Montoya seeks an unspecified amount of damages.

• **Rule 8**

The twin purposes of a pleading are to give the opposing parties fair notice of the basis for the claims against them so that they may respond and to allow the Court to conclude that the allegations, if proven, show that the plaintiff is entitled to relief. *See Monument Builders of Greater Kansas City, Inc. v. American Cemetery Ass'n of Kansas*, 891 F.2d 1473, 1480 (10th Cir. 1989); *see also Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007) (stating that a complaint "must

explain what each defendant did to him or her; when the defendant did it; how the defendant's action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated"). The requirements of Rule 8 of the Federal Rules of Civil Procedure are designed to meet these purposes. *See TV Communications Network, Inc. v. ESPN, Inc.*, 767 F. Supp. 1062, 1069 (D. Colo. 1991), *aff'd*, 964 F.2d 1022 (10th Cir. 1992). Specifically, Rule 8(a) provides that a complaint "must contain (1) a short and plain statement of the grounds for the court's jurisdiction, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought." Furthermore, the philosophy of Rule 8(a) is reinforced by Rule 8(d)(1), which provides that "[e]ach allegation must be simple, concise, and direct." Taken together, Rules 8(a) and (d)(1) underscore the emphasis placed on clarity and brevity by the federal pleading rules. As a result, prolix, vague, or unintelligible pleadings violate the requirements of Rule 8.

Here, Ms. Montoya still fails to provide a short and plain statement of any claim that demonstrates she is entitled to relief. The general rule that *pro se* pleadings must be construed liberally has limits and "the court cannot take on the responsibility of serving as the litigant's attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005); *see also United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs."); *Ketchum v. Cruz*, 775 F. Supp. 1399, 1403 (D. Colo. 1991) (vague and conclusory allegations that his rights have been violated do not

entitle a *pro se* pleader to a day in court regardless of how liberally the pleadings are construed), *aff'd*, 961 F.2d 916 (10th Cir. 1992). "[I]n analyzing the sufficiency of the plaintiff's complaint, the court need accept as true only the plaintiff's well-pleaded factual contentions, not his conclusory allegations." *Hall*, 935 F.2d at 1110.

Because Ms. Montoya fails to provide a short and plain statement of her claims showing she is entitled to relief, the action should be dismissed for failure to comply with the pleading requirements of Rule 8.

II. RECOMMENDATION

For the reasons set forth herein, it is respectfully

RECOMMENDED that the Amended Complaint (ECF No. 10) and the action be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to comply with the pleading requirements of Rule 8.[2]

[2] Be advised that all parties shall have fourteen (14) days after service hereof to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. Fed. R. Civ. P. 72(b). The party filing objections must specifically identify those findings or recommendations to which the objections are being made. The District Court need not consider frivolous, conclusive or general objections. A party's failure to file such written objections to proposed findings and recommendations contained in this report may bar the party from a de novo determination by the District Judge of the proposed findings and recommendations. *United States v. Raddatz*, 447 U.S. 667, 676-83 (1980); 28 U.S.C. § 636(b)(1). Additionally, the failure to file written objections to the proposed findings and recommendations within fourteen (14) days after being served with a copy may bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted or adopted by the District Court. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

DATED March 20, 2025.

BY THE COURT:

Richard T. Gurley
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-00457-LTB-RTG

LISA S. MONTOYA,

Plaintiff,

v.

AMY COLONY, Senior Attorney General, and
JEFF BEZOS, CEO Amazon,

Defendants.

ORDER

This matter is before the Court on the Recommendation of United States Magistrate Judge filed March 20, 2025 (ECF No. 19). The Recommendation states that any objection to the Recommendation must be filed within fourteen days after its service. *See* 28 U.S.C. § 636(b)(1)(C). The Recommendation was served on March 20, 2025.

On March 28, 2025, Plaintiff filed a "Motion for Contempt" (ECF No. 20) and a "Motion for/to Redact" (ECF No. 21). On April 1, 2025, Plaintiff filed a "Supporting Affidavit" (ECF No. 22) in support of the "Motion for Contempt" and another "Motion for/to Redact" (ECF No. 23). On April 3, 2025, Plaintiff filed a proposed Scheduling Order (ECF No. 24). On April 7, 2025, Plaintiff filed a motion captioned "Motion Request for Scheduling a Conference Affidavit of Supplementing Support" (ECF No. 25). And on April 9, 2025, Plaintiff filed a "Motion Opposing the Recommendation of Dismissal" (ECF No. 26).

Plaintiff's "Motion Opposing the Recommendation of Dismissal" (ECF No. 26) is not timely. In addition, Plaintiff does not address the specific analysis in the Recommendation. Thus, Plaintiff is therefore barred from de novo review. *See United States v. One Parcel of Real Property*, 73 F.3d 1057, 1060 (10th Cir. 1996) ("[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review.").

Accordingly, for the foregoing reasons, it is

ORDERED that the Recommendation of United States Magistrate Judge (ECF No. 19) is accepted and adopted. It is

FURTHER ORDERED that the Amended Complaint (ECF No. 10) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Plaintiff failed to comply with the pleading requirements of Rule 8. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this dismissal would not be taken in good faith. It is

FURTHER ORDERED that all pending motions are denied as moot.

DATED: April 10, 2025.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court