



IN THE SUPREME COURT OF THE UNITED STATES

Case Number:

Tenth Circuit Case Number:26-1062

District Case Number:25-CV-02206

BRITTANY NAKAGAKI,
Petitioner,

v.

ASPEN VALLEY HOSPITAL, et al.,
Respondents.

Application for Extension of Time to File Petition for Writ of Certiorari

To the Honorable Justice assigned to the United States Court of Appeals for the Tenth Circuit:

Petitioner Brittany Nakagaki, appearing pro se, respectfully requests a 30-day extension, through November 4, 2026, within which to file a petition for a writ of certiorari seeking review of the judgment of the United States Court of Appeals for the Tenth Circuit in No. 26-1062.

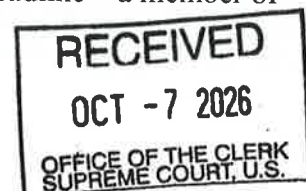
This application is made pursuant to Supreme Court Rules 13.5, 22, and 30.2 and 30.3.

The Tenth Circuit entered its Order and Judgment on July 7, 2026. Based on the information presently available to Petitioner, the current deadline for filing a petition for a writ of certiorari is October 5, 2026.

Because this application is being filed fewer than ten days before the current filing deadline, Petitioner respectfully submits that the circumstances described below constitute the most extraordinary circumstances contemplated by Rule 30.2.

1. Recent Death of a Family Member

On October 4, 2026—one day before the current Supreme Court filing deadline—a member of Petitioner's family passed away.



The death occurred immediately before the filing deadline and has materially interfered with Petitioner's ability, as a pro se litigant, to complete and properly prepare the petition for filing.

Petitioner is requesting this extension in good faith because this circumstance occurred immediately before the deadline and was not within Petitioner's control.

2. Petitioner Is Proceeding Without Counsel

Petitioner is representing herself without counsel.

The petition requires careful preparation of the Questions Presented, jurisdictional statement, statement of the case, reasons for granting the writ, and appendix. Petitioner must also ensure that the petition accurately identifies the relevant decisions and orders from the District Court and the Tenth Circuit and complies with the Supreme Court's filing, formatting, service, and appendix requirements.

3. Additional Time Is Needed to Complete the Record and Appendix

Petitioner is obtaining and reviewing the lower-court documents necessary to prepare an accurate petition and appendix.

The District Court entered judgment on February 13, 2026, pursuant to its February 13, 2026 Order. The Tenth Circuit subsequently affirmed the dismissal in No. 26-1062 on July 7, 2026.

Petitioner needs additional time to ensure that the petition accurately presents the procedural history and includes the appropriate lower-court rulings, including the District Court's order, the Report and Recommendation, Petitioner's response to the recommendation, and the Tenth Circuit's Order and Judgment.

4. Supreme Court Example of an Extension Granted on the Filing Deadline

The requested extension is consistent with the Court's consideration of extension applications in circumstances where an applicant seeks additional time to prepare a petition for a writ of certiorari.

Recent Supreme Court extension applications also demonstrate that the Court considers requests for additional time when circumstances outside a petitioner's control interfere with preparation of a petition for a writ of certiorari. In *Sundby v. Landau*, Application No. 26A361 (2026), pro se petitioners explained that they had been away from home because of a death in the family and sought relief under Supreme Court Rules 13.5, 22, 30.2, and 30.3. The application provides a recent example of the Court considering a death in the family as a circumstance relevant to an extension request by pro se petitioners. In *Abdullah Said Ali v. City of Portland, Oregon*, Application No. 25A759 (2025), an extension application was submitted on the applicable filing deadline, and Justice Kagan subsequently granted the application and extended the time for filing the petition. Petitioner recognizes that these individual extension dispositions are not binding precedent; they are cited only as recent examples demonstrating that the Court considers

extension requests based on circumstances affecting a petitioner's ability to timely prepare and file a petition.

In *Abdullah Said Ali v. City of Portland, Oregon*, Application No. 25A759, the applicant submitted an application for an extension of time on December 17, 2025, the then-applicable filing deadline. Justice Kagan subsequently granted the application, extending the time to file the petition through February 15, 2026.

Petitioner recognizes that the disposition of an individual extension application does not constitute binding precedent. It is cited instead as a recent example demonstrating that an extension application submitted on the filing deadline may nevertheless be considered and granted when the circumstances warrant relief.

The Court's docket for Application No. 25A759 reflects the grant of the extension.

5. The Requested Extension

Petitioner respectfully requests a 30-day extension, through November 4, 2026.

This request is substantially less than the maximum extension permitted under Supreme Court Rule 13.5 and is requested only to allow Petitioner to address the circumstances described above and complete a properly prepared petition.

Petitioner does not seek an extension for purposes of delay. The requested extension is necessary so that the Court receives a complete and properly prepared petition addressing the judgment under review.

6. Prior Proceedings

The underlying action was filed in the United States District Court for the District of Colorado as Civil Action No. 25-cv-02206-LTB-RTG.

The District Court entered judgment in favor of Defendants and against Petitioner on February 13, 2026.

Petitioner appealed to the United States Court of Appeals for the Tenth Circuit.

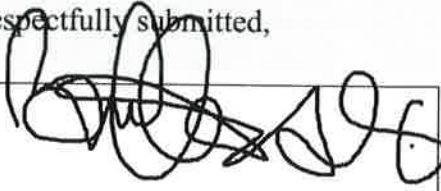
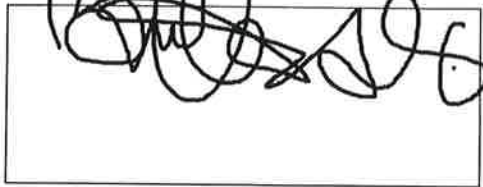
The Tenth Circuit, No. 26-1062, entered its Order and Judgment on July 7, 2026, affirming the District Court's judgment.

Petitioner seeks review by this Court of the Tenth Circuit's judgment.

WHEREFORE

For the foregoing reasons, Petitioner Brittany Nakagaki respectfully requests that the Court grant this Application and extend the time for filing the petition for a writ of certiorari by 30 days, through November 4, 2026.

Respectfully submitted,

Brittany Nakagaki
Petitioner, pro se

7601 Prescott Way
Sacramento, CA 95823

916-513-3528
brittanynakagaki9@gmail.com

October 5, 2026

CERTIFICATE OF SERVICE

I, Brittany Nakagaki, certify that on October 5, 2026, I served a copy of this Application for Extension of Time to File Petition for Writ of Certiorari upon counsel of record for all other parties by depositing a copy of the application by courier at the us supreme court , postage prepaid, addressed to the counsel of record at the address listed below.

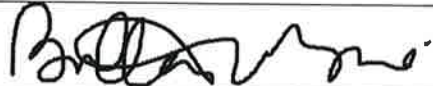
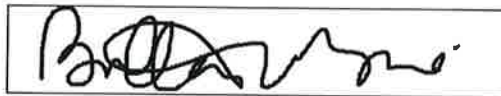
1 First Street, NE, Washington, DC 20543

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 5,

2026.

Brittany Nakagaki

Petitioner, pro se

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

FILED
United States Court of Appeals
Tenth Circuit

July 7, 2026

Christopher M. Wolpert
Clerk of Court

BRITTANY NAKAGAKI,

Plaintiff - Appellant,

v.

ASPEN VALLEY HOSPITAL; VALLEY
VIEW HOSPITAL; GRAND RIVER
HOSPITAL; DOE DEFENDANTS,

Defendants - Appellees.

No. 26-1062
(D.C. No. 1:25-CV-02206-LTB-RTG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON, MURPHY, and ROSSMAN**, Circuit Judges.

Brittany Nakagaki appeals the dismissal of her pro se employment discrimination complaint. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.¹

* 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.

¹ Because Ms. Nakagaki appears pro se, “we liberally construe [her] filings, but we will not act as [her] advocate.” *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

I. BACKGROUND

Ms. Nakagaki filed an employment discrimination complaint against Aspen Valley Hospital, Valley View Hospital, Grand River Hospital, and unidentified “Doe Defendants.” The district court twice ordered Ms. Nakagaki to correct a number of pleading issues and file an amended complaint using the court-approved form.

A magistrate judge recommended dismissing Ms. Nakagaki’s second amended complaint without prejudice because it (1) did not use the pleading form posted on the court’s website as previously ordered and as required by the District of Colorado’s local civil rules and (2) did not comply with Federal Rule of Civil Procedure 8.

Rather than object to the magistrate judge’s recommendation, Ms. Nakagaki filed a “Reply to Recommendation of the United States Magistrate Judge,” asserting that she had an “emergency” that kept her from “receiving and completing the order” and asking for an extension of time to comply with the court’s order as well as leave to amend her complaint. ROA at 29.

The district court did not interpret Ms. Nakagaki’s filing as a timely objection to the recommendation and therefore concluded she had waived her right to de novo review. It also denied her requests for an extension of time and leave to amend. The district court therefore accepted the magistrate judge’s recommendation and dismissed Ms. Nakagaki’s complaint without prejudice.

Ms. Nakagaki timely appealed.

II. DISCUSSION

Ms. Nakagaki argues the district court erred in (1) denying her leave to amend and (2) dismissing her complaint rather than accepting her well-pleaded allegations as true and drawing all reasonable inferences in her favor. Neither argument has merit.

A. *Leave to Amend*

We review a district court's denial of leave to amend for abuse of discretion. *Cohen v. Longshore*, 621 F.3d 1311, 1313 (10th Cir. 2010); *see also Roland v. Letgo, Inc.*, No. 22-1456, 2024 WL 372218, at *8 (10th Cir. Feb. 1, 2024).²

Federal Rule of Civil Procedure 15(a)(2) provides that leave to amend should be freely given “when justice so requires.” “Refusing leave to amend is generally only justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment.” *Frank v. U.S. W., Inc.*, 3 F.3d 1357, 1365 (10th Cir. 1993).

In denying Ms. Nakagaki's request for leave to amend, the district court pointed out that Ms. Nakagaki had already amended her complaint twice “with the benefit of” the magistrate judge's “detailed orders to amend.” ROA at 33. It therefore determined Ms. Nakagaki could amend her complaint “only with the consent of the opposing parties or leave of court” should “justice so require[.]” *Id.* (quoting Fed. R. Civ. P. 15(a)(2)). Because there was “no indication that the opposing parties consent[ed] to amendment,”

² Cited for its persuasive value under Fed. R. App. 32.1(a) and 10th Cir. R. 32.1(A).

the district court determined it had discretion to grant or deny leave to amend. *Id.* But it noted that Ms. Nakagaki did not attach a proposed amended complaint to her motion as required by the local rules, *see* D.C.COLO.LCivR 15.1(b), so it could not determine whether justice required granting leave to amend.

Ms. Nakagaki argues on appeal that “[t]he district court erred in concluding that further amendment [of her complaint] would be futile.” Aplt. Br. at 2. But the district court did not deny Ms. Nakagaki leave to amend because further amendment would be futile. It rather denied leave to amend because she had failed to cure deficiencies in her previous amendments and because she had not complied with local rules by providing an amended complaint that would have allowed the district court to determine whether justice required granting leave to amend.

“The first task of an appellant is to explain to us why the district court’s decision was wrong.” *Nixon v. City of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015).

Ms. Nakagaki has failed to do so here. She does not argue that the district court abused its discretion by denying her leave to amend, that she complied with the local rules, or that justice required granting leave to amend. Although she asserts that she “repeatedly amended her pleadings in good-faith attempts to comply with the court’s recommendations and to address perceived deficiencies,” Aplt. Br. at 2, she does not allege that she cured the deficiencies in her complaint in her previous two amendments. Ms. Nakagaki’s pro se status does not excuse noncompliance with court rules. *See, e.g., Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

In the absence of argument to the contrary, it was not an abuse of discretion to deny Ms. Nakagaki leave to amend her complaint.

B. Dismissal

We review the district court's dismissal of a complaint without prejudice under Rule 8(a) for abuse of discretion. *See Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1162 n.3 (10th Cir. 2007). Under Rule 8(a)(2), a complaint "must contain . . . a short and plain statement of the claim showing that the [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a).

Ms. Nakagaki does not argue that she complied with Rule 8 or that the district court abused its discretion in dismissing her complaint for failure to comply with Rule 8. She rather argues the district court erred in dismissing her complaint with prejudice and failing to liberally construe her pro se pleadings. Aplt. Br. at 3. But the district court did not dismiss her complaint *with* prejudice, and it did not resolve her claim on the merits or fail to liberally construe her complaint. Ms. Nakagaki therefore fails to explain why the district court was wrong to dismiss her complaint for failure to comply with Rule 8. *See Nixon*, 784 F.3d at 1366.³

³ Under the firm-waiver rule, "the failure to timely object to a magistrate judge's finding and recommendations waives appellate review of both factual and legal questions." *Klein v. Harper*, 777 F.3d 1144, 1147 (10th Cir. 2015) (quotations omitted). "This rule does not apply, however, when (1) a *pro se* litigant has not been informed of the time period for objecting and the consequences of failing to object, or when (2) the interests of justice require review." *Morales-Fernandez v. INS*, 418 F.3d 1116, 1119 (10th Cir. 2005) (quotations omitted).

Ms. Nakagaki's failure to object to the magistrate judge's recommendation likely waived appellate review of the district court's Rule 8 determination, and she does not argue that either exception to the firm waiver rule applies. But because she also does not

Because Ms. Nakagaki does not argue otherwise, we cannot conclude the district court abused its discretion.

III. CONCLUSION

We affirm the district court's judgment. We grant Ms. Nakagaki's motion for leave to proceed *in forma pauperis*.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge

argue the district court was wrong to dismiss her complaint for failure to comply with Rule 8, we need not rely on the firm waiver rule to affirm.

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
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Clerk@ca10.uscourts.gov

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

July 07, 2026

Brittany Nakagaki
270 Cobb Parkway, Suite 140
Marietta, GA 30060

RE: 26-1062, Nakagaki v. Aspen Valley Hospital, et al
Dist/Ag docket: 1:25-CV-02206-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,

A handwritten signature in black ink, appearing to read 'C. Wolpert', with a long horizontal line extending to the right.

Christopher M. Wolpert
Clerk of Court

CMW/sds