

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02151-BNB

JUAN ZAVALA,

Applicant,

v.

RANDY DAVIS, ADX Warden, and  
HARLEY LAPPIN, F.B.O.P. Director,

Respondents.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO  
OCT -2 2009  
GREGORY C. LANGHAM  
CLERK

---

ORDER DISMISSING CASE

---

Applicant Juan Zavala, a federal prisoner housed in the State of Colorado, initiated this action on August 28, 2009, by submitting to the Court a *pro se* Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. On September 9, 2000, Magistrate Judge Boyd N. Boland entered an order construing the action more properly filed pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Mr. Zavala was directed to file his claims on a Prisoner Complaint form and to submit a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, or in the alternative to pay the \$350.00 filing fee.

On September 24, 2009, Mr. Zavala filed a Letter requesting that the Court allow him to refile his complaint at a later date. The Court must construe the September 24, 2009, Letter liberally because Mr. Zavala is a *pro se* litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991).


Fed. R. Civ. P. 41(a)(1)(A) provides that "the [applicant] may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . ." No answer has been filed by Respondent in this action. Further, a voluntary dismissal under Rule 41(a)(1)(A)(i) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. **See** J. Moore, Moore's Federal Practice ¶ 41.02(2) (2<sup>d</sup> ed. 1995); **Hyde Constr. Co. v. Koehring Co.**, 388 F.2d 501, 507 (10<sup>th</sup> Cir. 1968).

Therefore, the Court will construe the pleading as a Notice of Dismissal filed pursuant to Rule 41(a)(1)(A)(i) and close the file as of September 24, 2009. **See Hyde Constr. Co.**, 388 F.2d at 507. Accordingly, it is

ORDERED that the September 24, 2009, Letter is construed as a Notice of Dismissal, filed pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), and is effective as of September 24, 2009, the date Mr. Zavala filed the Notice in this action.

DATED at Denver, Colorado, this 24 day of Oct., 2009.

BY THE COURT:

  
\_\_\_\_\_  
ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

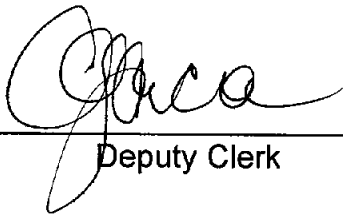
**CERTIFICATE OF MAILING**

Civil Action No. 09-cv-02151-BNB

Juan Zavala  
Reg. No. 10296-045  
ADX – Florence  
PO Box 8500  
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/2/09

GREGORY C. LANGHAM, CLERK

By:   
Deputy Clerk