

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 27, 2015

Lyle W. Cayce
Clerk

No. 15-20178
Summary Calendar

SHIVAM P. PATEL,

Plaintiff – Appellant,

v.

UNITED AIRLINES,

Defendant - Appellee

Appeal from the United States District court
for the Southern District of Texas
U.S.D.C. No. 4:15-cv-00028

Before REAVLEY, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:*

Shivam P. Patel, proceeding in forma pauperis, filed this lawsuit against United Airlines alleging that United retaliated against him for filing a discrimination claim by enforcing a rule requiring a six-month wait before reapplying for a lateral position. The district court, implicitly exercising its authority under 28 U.S.C. § 1915(e)(2)(B), dismissed the case *sua sponte* following an oral hearing. *See Newsome v. EEOC*, 301 F.3d 227, 231 (5th Cir.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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2002) (applying § 1915(e) to a non-prisoner); *Salgado-Toribio v. Holder*, 713 F.3d 1267, 1270 (10th Cir. 2013) (“we apply section 1915(e)’s . . . standard to both prisoner and non-prisoner litigation”). We have carefully considered the pertinent portions of the district court’s record and opinion in light of the parties’ briefs. We conclude that, even if we accept Patel’s version of the facts, the complaint was properly dismissed under § 1915(e)(2)(B)(ii). *See Davis v. Fort Bend County*, 765 F.3d 480, 489-90 (5th Cir. 2014) (setting forth elements of a retaliation claim), *cert. denied*, 135 S. Ct. 2804 (2015).

Accordingly, we AFFIRM the judgment of the district court. We DENY Patel’s motions to strike and for remand.