

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS

Emilio Herrera v. FL Municipal

Civil Action No. 25-40097-MRG (D. Mass. Mar. 18, 2026) · No. 25-40097-MRG · Decided March 18, 2026

SUMMARY

The United States District Court for the District of Massachusetts dismissed Emilio Herrera's pro se action challenging the revocation of a Florida concealed-carry permit. The court concluded that the complaint lacked factual allegations, failed to state a viable claim under 42 U.S.C. § 1983, did not support diversity jurisdiction, and was filed in an improper venue. The court denied leave to proceed in forma pauperis and dismissed the action under its inherent authority, finding amendment would be futile.

CASE DETAILS

COURT	United States District Court for the District of Massachusetts
WRITING FOR THE COURT	Margaret R. Guzman
JURISDICTION	United States District Court for the District of Massachusetts
DECIDED	March 18, 2026
DOCKET	25-40097-MRG
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se plaintiff filed a complaint asserting diversity and federal-question jurisdiction and sought leave to proceed in forma pauperis. The district court sua sponte denied in forma pauperis status and dismissed the action under its inherent authority.
STANDARD OF REVIEW	The court conducted a sua sponte review of subject-matter jurisdiction and the sufficiency of the pro se complaint, construing the filings liberally but dismissing where jurisdiction was absent, the pleading lacked an arguable legal or factual basis, or amendment would be futile.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Emilio Herrera v. FL Municipal

TOPICS

subject matter jurisdiction

venue

section 1983

pleadings

civil procedure

PRACTICE AREAS

civil procedure

constitutional law

civil rights

federal jurisdiction

administrative law

QUESTIONS PRESENTED

1. Whether the court had subject-matter jurisdiction based on federal-question jurisdiction under the Second Amendment or 42 U.S.C. § 1983.
2. Whether diversity jurisdiction existed under 28 U.S.C. § 1332(a) when the defendant was a state agency or an extension of the state.
3. Whether venue was proper in the District of Massachusetts under 28 U.S.C. § 1391(b).
4. Whether the complaint stated a claim for relief and whether amendment would be futile.
5. Whether the court could deny in forma pauperis status and dismiss the action sua sponte under its inherent authority.

HOLDINGS

1. A state, including its agencies and departments, is not a “person” within the meaning of 42 U.S.C. § 1983; therefore, Herrera could not maintain a § 1983 claim against the identified Florida state entity.
2. Diversity jurisdiction did not exist because a state or state entity is not a citizen of a state for purposes of 28 U.S.C. § 1332(a), and therefore cannot satisfy the complete-diversity requirement.
3. Venue was not proper in the District of Massachusetts because the defendant was located in Florida and the events giving rise to the claim occurred in Florida.
4. The court could dismiss the action sua sponte under its inherent authority because the complaint lacked factual allegations, failed to state a claim, and could not be cured by amendment.

KEY QUOTATIONS

“A state (including its agencies and departments) is not a “person” within the meaning of Section 1983.”

“Even with a generous reading of the complaint, it fails to state a claim upon which relief can be granted.”

“In light of the nature of the claims asserted, the Court finds that amendment would be futile.”

FACTUAL BACKGROUND

Herrera, a Massachusetts resident who stated that he was homeless, filed a pro se complaint against an entity identified as “municipal” at an Orlando, Florida address. The complaint contained no factual allegations, but the civil cover sheet indicated that he sought relief for the involuntary revocation of a concealed-carry permit without compensation. The court determined that the identified defendant was the Orlando Regional Office of the Florida Department of Agriculture and Consumer Services and treated the action as a challenge to a Florida agency's revocation of Herrera's concealed-carry permit.

PROCEDURAL HISTORY

Herrera filed a complaint challenging the revocation of a Florida concealed-carry permit, identifying the defendant as a municipal entity at the address of a Florida Department of Agriculture and Consumer Services regional office. The court independently examined subject-matter jurisdiction, found no viable § 1983 claim, no diversity jurisdiction, improper venue, and failure to state a claim. It concluded amendment would be futile, denied leave to proceed in forma pauperis, and dismissed the action.

DISPOSITION

dismissed

CASES CITED

- McCulloch v. Velez, 364 F.3d 1, 5 (1st Cir. 2004)
- Goodyear Tire & Rubber Co. v. Haeger, 581 U.S. 101, 107 (2017)
- Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962)
- Mallard v. United States District Court, 490 U.S. 296, 307-308 (1989)
- Brockton Savings Bank v. Peat, Marwick, Mitchell & Co., 771 F.2d 5, 11 n.5 (1st Cir. 1985)
- Axcella Building Realty Trust v. Thompson, No. 23-40151-DHH, 2024 WL 474539, at n. 2 (D. Mass. Jan. 25, 2024)
- Neitzke v. Williams, 490 U.S. 319, 325 (1989)
- Ayala Serrano v. Lebron Gonzalez, 909 F.2d 8, 15 (1st Cir. 1990)
- Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989)
- Moor v. Alameda, 411 U.S. 693, 717 (1973)
- University of Rhode Island v. A.W. Chesterton Co., 2 F.3d 1200, 1203 (1st Cir. 1993)
- In re Fresenius Granuflo/NaturaLyte Dialysate Products Liability Litigation, 76 F. Supp. 3d 268, 273 (D. Mass. 2015)
- Garayalde-Rijos v. Municipality of Carolina, 747 F.3d 15, 23 (1st Cir. 2014)

OPINION

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS) EMILIO
HERRERA,)) Plaintiff,)) CIVIL ACTION v.) NO. 25-40097-MRG) FL MUNICIPAL,))
Defendant.)) ORDER March 18, 2026 GUZMAN, D.J. Plaintiff Emilio Herrera, a resident of
Massachusetts, initiated this action by filing a pro se complaint. ECF 1.

The complaint identifies the defendant as “municipal” with an address of 5750 Major Blvd. unit 100, Orlando, Florida 32819. ECF 1 at ¶ I(B). For the basis of jurisdiction, Herrera checks the box for diversity jurisdiction. Id. at ¶ II. He also asserts federal question jurisdiction under the Second Amendment to the United States Constitution. Id. at ¶ II(A).

In the relief section of the complaint, he writes “monetize.” *Id.* at ¶ IV. There are no factual allegations in the complaint, however, in the section of the civil cover sheet for describing the cause of action, Herrera states “involuntarily revoked conceal carry without ssi compensation (remote trial).” ECF 1-1 at ¶ VI (cause of action). Herrera provides a mailing address in Leominster, Massachusetts, *id.* at ¶ I(c), and in the complaint, states that he is “homeless.” ECF 1 at ¶ I(A).

With the complaint, Herrera filed an unsigned affidavit of indigency on a form used in the courts of the Commonwealth of Massachusetts. ECF 2. The Court has an independent obligation to inquire, *sua sponte*, into its subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”); *McCulloch v. Velez*, 364 F.3d 1, 5 (1st Cir.

2004). In addition, federal courts possess certain “‘inherent powers,’ not conferred by rule or statute, ‘to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.’” *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 107 (2017) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)). Those powers include the power to dismiss frivolous or malicious actions, regardless of the status of the filing fee.

See *Mallard v. United States Dist. Ct.*, 490 U.S. 296, 307-308 (1989); *Brockton Sav. Bank. v. Peat, Marwick, Mitchell & Co.*, 771 F.2d 5, 11 n.5 (1st Cir. 1985). As used in this context, “frivolous” does not refer to the subjective intent of a plaintiff. *Axcella Building Realty Trust v. Thompson*, No. 23-40151-DHH, 2024 WL 474539, at n. 2 (D. Mass. Jan. 25, 2024). “Rather, in legal parlance, a complaint is ‘frivolous’ if it ‘lacks an arguable basis either in law or in fact.’” *Id.* (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)).

When evaluating documents filed *pro se*, the Court is to construe these documents liberally and in favor of the drafter. See *Ayala Serrano v. Lebron Gonzalez*, 909 F.2d 8, 15 (1st Cir. 1990) (stating the rule that “*pro se* pleadings are to be liberally construed, in favor of the *pro se* party”).

As best can be gleaned from the submitted documents, Herrera seeks to challenge an order by the Florida Department of Agriculture and Consumer Services, Division of Licensing, revoking his permit for carrying a concealed weapon.¹ Even with liberal construction, the complaint is subject to dismissal. ¹ An on-line search reveals that the Defendant’s address in the complaint is the address for the Orlando Regional Office of the Florida Department of Agriculture and Consumer Services.

See <https://www.fdacs.gov/Divisions-Offices/Licensing/Regional-Offices/Orlando-Regional-Office> (last visited 3-12-2026). As an initial matter, Herrera’s complaint fails to present any factual allegations in support of his claim for relief.

In addition, Herrera cannot maintain a claim under 42 U.S.C. § 1983 against the defendant. To state a claim under § 1983, a plaintiff must assert that a “person” acting under color of state law deprived him of rights, privileges, or immunities secured by the Constitution or laws of the United States. See 42 U.S.C. § 1983. A state (including its agencies and departments) is not a “person” within the meaning of Section 1983.

See *Will v. Michigan Dep’t. of State Police*, 491 U.S. 58, 71 (1989). Although Herrera contends that this Court has jurisdiction based partly on diversity jurisdiction, this Court does not have diversity jurisdiction under 28 U.S.C. § 1332(a). A suit between a state (or state entities such as the defendant) and a citizen of another state is not a suit between citizens of different states for purposes of diversity jurisdiction.

See *Moor v. Alameda*, 411 U.S. 693, 717 (1973) (stating that there is no question that a State is not a citizen for purposes of diversity jurisdiction); see also *University of R.I. v. A.W. Chesterton Co.*, 2 F.3d 1200, 1203 (1st Cir. 1993) (an entity that is an extension of the state is not a citizen for purposes of diversity).

Here, Herrera cannot establish diversity jurisdiction because the defendant does not fit within any of the categories set forth in Section 1332(a). See *In re Fresenius Granuflo/NaturaLyte Dialysate Prods. Liab. Litig.*, 76 F. Supp. 3d 268, 273 (D. Mass. 2015) (noting that “as a matter of history, parties without any state citizenship, such as States, Indian tribes, or Americans domiciled abroad, have been treated as ‘jurisdictional spoilers’ whose mere presence in an action destroys complete diversity”).

Thus, this Court does not have jurisdiction over the instant action based on diversity. Finally, venue is not proper in the District of Massachusetts. In the present context, the term “venue” refers to “the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts.” 28 U.S.C. § 1390(a).

Federal trial courts are divided geographically into districts, and the venue statutes designate appropriate districts for each case. Under the general venue statute, venue is proper in a judicial district in which the defendants reside or in which “a substantial part of the events or omissions giving rise to the claim occurred.” 28 U.S.C. § 1391(b).

Because the defendant in this action is located in Florida and the events giving rise to Herrera’s claim occurred in Florida, venue does not exist in the District of Massachusetts. Even with a generous reading of the complaint, it fails to state a claim upon which relief can be granted.

In light of the nature of the claims asserted, the Court finds that amendment would be futile. *Garayalde-Rijos v. Municipality of Carolina*, 747 F.3d 15, 23 (1st Cir. 2014) (explaining that sua sponte dismissal is appropriate only when it is crystal clear that the plaintiff cannot prevail and that amending the complaint would be futile).

Accordingly, the Court hereby orders: 1. The motion for leave to proceed in forma pauperis (ECF 2) is DENIED. 2. This action is DISMISSED pursuant to the Court's inherent authority. So Ordered. _/s/ Margaret R. Guzman_____ MARGARET R. GUZMAN UNITED STATES DISTRICT JUDGE Dated: March 18, 2026