

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PRECEDENTIAL VALUE	unpublished district court order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)