

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
WEST VIRGINIA, CHARLESTON DIVISION

Peter Machlup v. Lucas Johnson

Machlup v. Johnson · No. 2:25-cv-00619 · Decided February 12, 2026

SUMMARY

This Proposed Findings and Recommendation addresses a pro se plaintiff's failure to serve process and respond to an order to show cause in a 42 U.S.C. § 1983 action alleging a Fourth Amendment violation. The magistrate judge recommends dismissal with prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with court orders.

CASE DETAILS

COURT	United States District Court for the Southern District of West Virginia, Charleston Division
WRITING FOR THE COURT	Dwane L. Tinsley, United States Magistrate Judge
JURISDICTION	United States District Court for the Southern District of West Virginia, Charleston Division
DECIDED	February 12, 2026
DOCKET	2:25-cv-00619
DISPOSITION	other
PROCEDURAL POSTURE	Proposed findings and recommendation by a magistrate judge, referred under 28 U.S.C. § 636(b)(1)(B), recommending dismissal with prejudice for failure to effect service and failure to prosecute.
STANDARD OF REVIEW	The Fourth Circuit's four-factor standard for dismissal for failure to prosecute: the plaintiff's personal responsibility, prejudice to the defendant, a drawn-out history of deliberate delay, and the effectiveness of less drastic sanctions.
PRECEDENTIAL VALUE	Nonprecedential proposed findings and recommendation; not a final disposition unless adopted by the district judge.
PARTIES	Peter Machlup v. Lucas Johnson

TOPICS

- service of process
- sanctions
- civil procedure
- section 1983
- police misconduct

PRACTICE AREAS

Civil procedure

Civil rights

Federal courts

QUESTIONS PRESENTED

1. Whether the action should be dismissed with prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with court orders.
2. Whether the Fourth Circuit's factors for dismissal for failure to prosecute support dismissal where a pro se plaintiff failed to effect service after an express warning and then failed to respond to an order to show cause.

HOLDINGS

1. The magistrate judge found that dismissal with prejudice was proper under Federal Rule of Civil Procedure 41(b) because Plaintiff failed to effect timely service, failed to file proof of service, and failed to respond to the order to show cause despite multiple express warnings.

KEY QUOTATIONS

“Since dismissal is a severe sanction, the Court must exercise this power with restraint, balancing the need to prevent delays with the sound public policy of deciding cases on their merits.” (2)

“Considering the factors listed above, the Court concludes that any sanction short of dismissal would not be effective.” (2-3)

“Accordingly, the undersigned FINDS that dismissal with prejudice is proper pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.” (3)

FACTUAL BACKGROUND

Plaintiff initiated a pro se civil-rights action alleging a Fourth Amendment violation. The court expressly ordered Plaintiff to effect service under Rule 4 by January 20, 2026 and warned that failure to do so could lead to dismissal. Plaintiff did not file proof of service, did not respond to a subsequent order to show cause, and did not otherwise communicate an intent to pursue the action.

PROCEDURAL HISTORY

Plaintiff, proceeding pro se, filed a 42 U.S.C. § 1983 action alleging a Fourth Amendment violation on October 20, 2025. The magistrate judge ordered Plaintiff to effect service by January 20, 2026, and warned that failure to do so could result in dismissal. After Plaintiff failed to file proof of service, the court issued an order to show cause, but Plaintiff did not respond by the February 9, 2026 deadline. The magistrate judge therefore recommended dismissal with prejudice under Federal Rule of Civil Procedure 41(b), subject to objections and review by the district judge.

DISPOSITION

other

CASES CITED

- Doyle v. Murray, 938 F.2d 33, 34 (4th Cir. 1991)
- Dove v. CODESCO, 569 F.2d 807, 810 (4th Cir. 1978)
- Hillig v. Commissioner of Internal Revenue, 916 F.2d 171, 174 (4th Cir. 1990)
- Attkisson v. Holder, 925 F.3d 606, 626 (4th Cir. 2019)
- Ballard v. Carlson, 882 F.2d 93, 95-96 (4th Cir. 1989)
- Thomas v. Arn, 474 U.S. 140, 155 (1985)
- Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989)
- Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985)
- United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984)

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