

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
FLORIDA

**Xiomar Javier Montilla Graterol v. Immigration and Customs
Enforcement, The Department of Homeland Security, and The Call
Field Office**

Montilla Graterol · No. 4:26cv165-TKW-MAF · Decided May 27, 2026

SUMMARY

The magistrate judge recommends dismissal of Xiomar Javier Montilla Graterol’s 28 U.S.C. § 2241 habeas case for failure to prosecute and because it duplicates another habeas case filed by the petitioner. The recommendation explains that the petitioner did not file an amended petition or otherwise continue this case after being given additional time, while pursuing a duplicative action in Case No. 4:26cv167-TKW-MAF.

CASE DETAILS

COURT	United States District Court for the Northern District of Florida
WRITING FOR THE COURT	Martin A. Fitzpatrick
JURISDICTION	United States District Court for the Northern District of Florida
DECIDED	May 27, 2026
DOCKET	4:26cv165-TKW-MAF
DISPOSITION	dismissed
PROCEDURAL POSTURE	Report and recommendation in a 28 U.S.C. § 2241 habeas proceeding recommending sua sponte dismissal for failure to prosecute and redundancy.
STANDARD OF REVIEW	Abuse of discretion for dismissal based on failure to prosecute or disregard of a court order.
PRECEDENTIAL VALUE	Nonprecedential report and recommendation; subject to review and adoption by the district court.

TOPICS

- immigration detention
- federal habeas corpus
- civil procedure
- motions to dismiss

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court may dismiss a habeas case sua sponte for failure to prosecute after the petitioner fails to comply with an order and takes no further action.
2. Whether dismissal is appropriate when the petition is duplicative of a pending companion habeas case involving the same requested relief and respondents.

HOLDINGS

1. A district court may dismiss a case sua sponte under its inherent authority to manage its docket when a petitioner fails to prosecute or comply with a court order, particularly after being forewarned.
2. A habeas case may be dismissed as redundant when the petitioner has another pending case in which the same relief may be litigated against the same respondents.

KEY QUOTATIONS

“A district court, as part of its inherent power to manage its own docket, may dismiss a case sua sponte” (at 2)

“The Court has inherent power “to dismiss sua sponte for lack of prosecution” as courts must necessarily have authority “to manage their own affairs” (at 2)

“While dismissal is an extraordinary remedy, dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.” (at 2)

FACTUAL BACKGROUND

Petitioner filed two habeas cases seeking relief concerning his detention or release. In this case, he failed to sign and amend his initial petition despite being given additional time and instructions, and he took no further action. He pursued an amended petition in a second case involving the same relief and respondents, making this case redundant.

PROCEDURAL HISTORY

Petitioner initiated two habeas cases under 28 U.S.C. § 2241. This case was filed in the Southern District of Florida on March 26, 2026, and transferred to the Northern District of Florida on April 8, 2026. After the court ordered an amended petition because the initial petition was unsigned and gave petitioner additional time to proceed, petitioner filed nothing further in this case but filed an amended petition in the duplicative companion case, No. 4:26cv167-TKW-MAF. The magistrate judge recommended dismissal.

DISPOSITION

dismissed

CASES CITED

- Ciosek v. Ashley, No. 3:13cv147-RV-CJK, 2015 WL 2137521, at *2 (N.D. Fla. May 7, 2015)
- Link v. Wabash R.R. Co., 370 U.S. 626, 630, 82 S. Ct. 1386, 1389, 8 L. Ed. 2d 734 (1962)
- Betty K Agencies, Ltd. v. M/V MONADA, 432 F.3d 1333, 1337 (11th Cir. 2005)
- Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION XIOMAR JAVIER MONTILLA GRATEROL, A# 249-206-620, Petitioner, vs. Case No. 4:26cv165-TKW-MAF IMMIGRATION AND CUSTOMS ENFORCEMENT, THE DEPARTMENT OF HOMELAND SECURITY, and THE CALL FIELD OFFICE, Respondents. _____/ REPORT AND RECOMMENDATION Petitioner, proceeding pro se, initiated two habeas cases pursuant to 28 U.S.C. § 2241.

This case was initiated on March 26, 2026, in the Southern District of Florida. ECF No. 1. It was transferred to this Court on April 8, 2026. ECF Nos. 5-6. An Order was entered in early April, requiring Petitioner to file an amended petition because his initial petition was not signed as required by Local Rule 5.1(E). ECF No. 8. Two mail returns were filed in late April.

ECF No. 12-13. An Order was entered addressing the mail returns and Page 2 of 3 clarifying the address which should be used by the Clerk's Office. ECF No. 14. Petitioner was provided additional time in which to file an amended petition if he desired to continue this case. *Id.* However, Petitioner was reminded that he cannot proceed with two cases at the same time.

Id. At this point, nothing further has been filed in this case. However, Petitioner did file an amended petition in his second habeas case, which is case number 4:26cv167-TKW-MAF. A service order has been entered in that case.

Thus, it appears this case should be dismissed for failure to prosecute and because it is duplicative.¹ “A district court, as part of its inherent power to manage its own docket, may dismiss a case sua sponte” when a plaintiff or petitioner “fails to prosecute or” otherwise comply with a court order. See *Ciosek v. Ashley*, No. 3:13cv147-RV-CJK, 2015 WL 2137521, at *2 (N.D.

Fla. May 7, 2015). The Court has inherent power “to dismiss sua sponte for lack of prosecution” as courts must necessarily have authority “to manage their own affairs.... ” *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630, 82 S. Ct. 1386, 1389, 8 L. Ed. 2d 734 (1962) (quoted in *Betty K Agencies, Ltd. v. 1* Petitioner's requests for relief in each habeas case are duplicative, and the same Respondents control the decision of whether to detain or release the Petitioner.

Case No. 4:26cv165-TKW-MAF Page 3 of 3 M/V MONADA, 432 F.3d 1333, 1337 (11th Cir. 2005)); see also N.D. Fla. Loc. R. 41.1. “While dismissal is an extraordinary remedy, dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.” Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989).

Here, Petitioner has another case in which to litigate his claim and has taken no action to continue what would be a redundant case. This case should now be dismissed. RECOMMENDATION It is respectfully RECOMMENDED that this case be DISMISSED for failure to prosecute and because it is redundant. IN CHAMBERS at Tallahassee, Florida, on May 27, 2026. S/ Martin A. Fitzpatrick MARTIN A. FITZPATRICK UNITED STATES MAGISTRATE JUDGE NOTICE TO THE PARTIES Within fourteen (14) days after being served with a copy of this Report and Recommendation, a party may serve and file specific written objections to these proposed findings and recommendations.

Fed. R. Civ. P. 72(b)(2). Any different deadline that may appear on the electronic docket is for the Court’s internal use only and does not control. If a party fails to object to the Magistrate Judge’s findings or recommendations as to any particular claim or issue contained in this Report and Recommendation, that party waives the right to challenge on appeal the District Court’s order based on the unobjected-to factual and legal conclusions.

See 11th Cir. Rule 3-1; 28 U.S.C. § 636. Case No. 4:26cv165-TKW-MAF