

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Perez v. Samaloson

Perez · No. 2:24-cv-2817 AC P · Decided March 5, 2025

SUMMARY

The United States District Court for the Eastern District of California dismissed Salvador Perez’s 28 U.S.C. § 2241 habeas petition without prejudice for failure to prosecute. The court found that petitioner’s failure to respond to the motion to dismiss or a subsequent court order warranted dismissal under Federal Rule of Civil Procedure 41(b).

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 5, 2025
DOCKET	2:24-cv-2817 AC P
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner brought a federal habeas corpus petition under 28 U.S.C. § 2241. Respondent moved to dismiss, and the court dismissed the action without prejudice after petitioner failed to oppose the motion or comply with an order directing him to respond.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Salvador Perez v. S. Samaloson

TOPICS

- federal habeas corpus
- motions to dismiss
- civil procedure

PRACTICE AREAS

- Habeas corpus
- Federal civil procedure

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b) after petitioner failed to respond to a motion to dismiss and failed to comply with a court order.

HOLDINGS

1. Dismissal without prejudice was warranted because petitioner failed to participate in the litigation, failed to respond to the motion to dismiss, and failed to comply with the court's order directing a response after receiving a warning of dismissal.

KEY QUOTATIONS

“(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.”” (at 2)

FACTUAL BACKGROUND

Salvador Perez, a federal prisoner proceeding pro se, filed a habeas corpus petition under 28 U.S.C. § 2241. Respondent moved to dismiss, but Perez did not oppose the motion. Although the court later ordered Perez to respond within twenty-one days and warned that failure to do so would result in dismissal, he neither responded to the motion nor otherwise complied with the order.

PROCEDURAL HISTORY

Petitioner filed a § 2241 habeas petition while proceeding pro se. Respondent moved to dismiss on December 2, 2024. After petitioner failed to respond, the court ordered him on January 22, 2025, to file a response within twenty-one days and warned that noncompliance would result in dismissal without prejudice for failure to prosecute. Petitioner did not respond, so the court dismissed the action under Federal Rule of Civil Procedure 41(b).

DISPOSITION

dismissed

CASES CITED

- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)

OPINION

(HC) Perez v. Samaloston

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 SALVADOR PEREZ, No. 2:24-cv-2817 AC P

12 Petitioner, 13 v. ORDER

14 S. SAMALOSON,

15 Respondent. 16

17 Petitioner is a federal prisoner proceeding pro se with a habeas corpus petition filed 18 pursuant
to 28 U.S.C. § 2241. The parties have consented to magistrate judge jurisdiction. ECF

19 No. 7. On December 2, 2024, respondent filed a motion to dismiss the petition. ECF No. 8.

20 Petitioner did not file an opposition or statement of non-opposition to the motion within the
time 21 provided by the applicable rules. On January 22, 2025, petitioner was ordered to file a
response 22 to the pending motion within twenty-one days. ECF No. 9. In the same order,
petitioner was 23 cautioned that failure to file an opposition would result in dismissal without
prejudice for failure 24 to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Id. The
twenty-one-day period 25 has now expired, and petitioner has not filed a response to the motion to
dismiss or otherwise 26 responded to the court's order. 27 In considering dismissal for failure to
prosecute, the court has considered "(1) the public's 28 interest in expeditious resolution of
litigation; (2) the court's need to manage its docket; (3) the 1 | risk of prejudice to the defendants;
(4) the public policy favoring disposition of cases on their 2 | merits; and (5) the availability of less
drastic alternatives." *Ferdik v. Bonzelet*, 963 F.2d 1258, 3 || 1260-61 (9th Cir. 1992) (citation
omitted). Because this case cannot move forward without 4 || petitioner's participation, the court
finds the factors weigh in favor of dismissal. 5 For the foregoing reasons, IT IS HEREBY
ORDERED that this action is dismissed 6 || without prejudice pursuant to Federal Rule of Civil
Procedure 41(b). 7 || DATED: March 5, 2025 ~ 8 Lhar—e_

ALLISON CLAIRE

9 UNITED STATES MAGISTRATE JUDGE

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