

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH
CAROLINA

David Lee Parker v. Dir. Harvey, Alvin S. Glenn, Richland County
Sheriff's Office, 5th Circuit Solicitor's Office

Parker · No. 9:25-12799-RMG · Decided March 13, 2026

SUMMARY

The United States District Court for the District of South Carolina adopted the Magistrate Judge’s Report and Recommendation and dismissed David Lee Parker’s action without prejudice under Federal Rule of Civil Procedure 41(b). The dismissal was based on Parker’s failure to respond to a Proper Form Order and failure to file timely objections to the recommended dismissal.

CASE DETAILS

COURT	United States District Court for the District of South Carolina
WRITING FOR THE COURT	Richard Mark Gergel
JURISDICTION	United States District Court for the District of South Carolina
DECIDED	March 13, 2026
DOCKET	9:25-12799-RMG
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's Report and Recommendation recommending dismissal without prejudice under Federal Rule of Civil Procedure 41(b) for failure to respond to a Proper Form Order. No timely objections were filed.
STANDARD OF REVIEW	The district court conducts de novo review of portions of a magistrate judge's Report and Recommendation to which specific objections are made; absent timely objections, review is limited to clear error. The court may accept, reject, modify, or recommit the recommendation under 28 U.S.C. § 636(b)(1).
PRECEDENTIAL VALUE	unpublished district court order; persuasive but not precedential
PARTIES	David Lee Parker v. Dir. Harvey, Alvin S. Glenn, Richland County Sheriff's Office, 5th Circuit Solicitor's Office

TOPICS

civil procedure

pleadings

prisoners rights

motions to dismiss

PRACTICE AREAS

civil procedure

civil rights

prisoner litigation

QUESTIONS PRESENTED

1. Whether the district court should adopt the magistrate judge's Report and Recommendation when Plaintiff failed to respond to the Proper Form Order and filed no timely objections.
2. Whether dismissal without prejudice under Federal Rule of Civil Procedure 41(b) was appropriate for Plaintiff's failure to comply with the Proper Form Order.

HOLDINGS

1. Because Plaintiff filed no timely objections, the district court reviewed the Report and Recommendation under the applicable limited clear-error standard and adopted it as the order of the court.
2. Dismissal without prejudice under Federal Rule of Civil Procedure 41(b) was appropriate because Plaintiff failed to respond to the Proper Form Order after being warned that noncompliance could result in dismissal.
3. Liberal construction of a pro se complaint does not permit the court to disregard a clear failure to allege facts establishing a viable federal claim.

KEY QUOTATIONS

"The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court." (1)

"The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleadings to allege facts which set forth a viable federal claim, nor can the Court assume the existence of a genuine issue of material fact where none exists." (1)

FACTUAL BACKGROUND

Plaintiff filed a handwritten, unsigned statement criticizing conditions at the Alvin S. Glenn Detention Center. The magistrate judge's Proper Form Order required Plaintiff to sign his submissions, complete a complaint form, address the filing fee or submit an application to proceed without payment, and provide information about the named defendants. Plaintiff did not respond to the order or object to the recommendation that the case be dismissed.

PROCEDURAL HISTORY

Plaintiff submitted a handwritten, unsigned statement criticizing conditions at the Alvin S. Glenn Detention Center. The magistrate judge issued a Proper Form Order directing Plaintiff to sign his submissions, complete a complaint form, address the filing fee or seek leave to proceed without prepayment, and provide information about the defendants. After Plaintiff failed to respond, the magistrate judge recommended dismissal without

prejudice and Plaintiff failed to file timely objections. The district court adopted the Report and Recommendation and dismissed the action without prejudice.

DISPOSITION

dismissed

CASES CITED

- Mathews v. Weber, 423 U.S. 261, 270-71 (1976)
- Cruz v. Beto, 405 U.S. 319 (1972)
- Haines v. Kerner, 404 U.S. 519 (1972)
- Weller v. Department of Social Services, 901 F.2d 387 (4th Cir. 1990)

OPINION

IN THE UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA David Lee Parker, Case No. 9:25-12799-RMG Plaintiff, v. ORDER Dir. Harvey, Alvin S. Glenn, Richland County Sheriff's Office, 5th Circuit Solicitor's Office, Defendants. This matter is before the Court on the Report and Recommendation ("R&R") of the Magistrate Judge (Dkt. No. 6) recommending that this case be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to respond to the Magistrate Judge's Proper Form Order.

Plaintiff was warned that a failure to respond to the Proper Form Order could result in dismissal of his suit. (Dkt. No. 3). Plaintiff did not respond to the Proper Form Order, and the Magistrate Judge then issued the R & R recommending the dismissal of the case without prejudice. Plaintiff was advised that he had 14 days to file written objections to the R & R and a failure to timely submit objections would result in limited clear error review and a waiver of the right to appeal the District Court's order.

(Id. a 3). No timely objections have been filed. I. Legal Standards A. Magistrate's Report and Recommendation The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. Mathews v. Weber, 423 U.S. 261, 270-71 (1976).

The Court is charged with making 1 a de novo determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). B. Pro Se Pleadings This Court liberally construes complaints filed by pro se litigants to allow the development of a potentially meritorious case.

See Cruz v. Beto, 405 U.S. 319 (1972); Haines v. Kerner, 404 U.S. 519 (1972). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleadings to

allege facts which set forth a viable federal claim, nor can the Court assume the existence of a genuine issue of material fact where none exists. See *Weller v. Dep't of Social Services*, 901 F.2d 387 (4th Cir.

1990). II. Discussion Plaintiff's submission to the Court was a handwritten unsigned statement criticizing conditions at the Alvin S. Glenn Detention Center. (Dkt. No. 1). The Proper Form Order directed that the Plaintiff sign his submissions, complete a complaint form, submit a filing fee if he was not an indigent or an Application to Proceed Without Payment if he is indigent, and provide information about the named defendants.

(Dkt. No. 3 at 2-3). When Plaintiff failed to respond to the Proper Form Order, the Magistrate Judge issued the R & R and provided Plaintiff an opportunity to object to the dismissal of his case. Plaintiff failed to submit any objection to the R & R, resulting in the present unobjected to R & R recommending the dismissal of this action under Rule 41(b). 2 Under these circumstances, the the Court finds that the Magistrate Judge ably summarized the factual and legal issues in this matter and correctly concluded that this case should be dismissed under Rule 41(b).

Conclusion For the reasons set forth above, the Court ADOPTS the R&R (Dkt. No. 6) as the Order of the Court and dismisses this case without prejudice. AND IT IS SO ORDERED. s/ Richard Mark Gergel Richard Mark Gergel United States District Judge March 13, 2026 Charleston, South Carolina 3