

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

JOSE ANTONIO ROJAS *et al.*

PLAINTIFFS

V.

NO: 5:09CV00041 JLH/HDY

DOE *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the

hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiffs Jose Antonio Rojas, Antonio Cruz, and George Sanchez filed this complaint on February 10, 2009. Because the complaint was not clear as to the claim or claims that each Plaintiff was raising, on February 12, 2009, each Plaintiff was ordered to file an amended complaint within 30 days (docket entry #2). Each Plaintiff was also directed to file an application for leave to proceed *in forma pauperis*, or to pay the \$350.00 filing fee within 30 days. Plaintiffs were warned that their failure to comply would result in the recommended dismissal of their claims. Rojas and Cruz failed to respond to the order whatsoever, and the docket sheet indicates that mail sent to them has been returned as undeliverable.

On March 9, 2009, Sanchez filed an application for leave to proceed *in forma pauperis* (docket entry #7). That motion was granted, and Sanchez was granted an additional 11 days to submit the information specified in the order of March 12, 2009. Sanchez was also warned that his failure to comply would result in the recommended dismissal of his complaint. More than 11 days has passed, and Sanchez has not filed an amended complaint, or otherwise responded to the order.

Under these circumstances, the Court concludes that the entire complaint, including the claims of each Plaintiff, should be dismissed without prejudice due to each Plaintiff's failure to prosecute. *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (District courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiffs' complaint be DISMISSED WITHOUT PREJUDICE for failure to prosecute.
2. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 21 day of April, 2009.



UNITED STATES MAGISTRATE JUDGE