

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:24-CV-00063-FDW-DCK

JOSEPH A. NESBITT, II,

Plaintiff,

vs.

ALEJANDRO MAYORKAS,

Defendant.

ORDER

THIS MATTER is before the Court *sua sponte* concerning the status of this case. On January 18, 2024, Plaintiff filed his *pro se* Complaint, (Doc. No. 1), and Application to Proceed in District Court without Prepaying Fees or Costs, (Doc. No. 2). On January 22, 2024, the Court granted Plaintiff’s Application to Proceed in District Court without Prepaying Fees or Costs, but dismissed Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915(e)(2). (Doc. No. 3.) The Court allowed Plaintiff twenty-one (21) days to file a superseding Amended Complaint. (*Id.*) On February 16, 2024, twenty-five (25) days later, Plaintiff filed an “Email/Letter.” (Doc. No. 4.) On October 31, 2024, the Court entered an Order giving Plaintiff another twenty-one (21) days to file a superseding Amended Complaint. (Doc. No. 5.)

Plaintiff has failed to file a superseding Amended Complaint in accordance with the Court’s earlier Orders, (Doc. Nos. 3, 5), and the time to do so has expired. The Court is unable to proceed, and this case will, therefore, be dismissed without prejudice. See Fed. R. Civ. P. 41(b) (“If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.”); Link v. Wabash R.R. Co., 370 U.S. 626, 630–33 (1962) (explaining although Rule 41(b) does not expressly provide for *sua sponte* dismissal,

Rule 41(b) does not imply any such restriction and a court has the inherent power to dismiss a case for lack of prosecution or violation of a court order).

IT IS THEREFORE ORDERED that this action is **DISMISSED without prejudice**.

The Clerk is respectfully directed to **CLOSE** this case.

IT IS SO ORDERED.

Signed: November 20, 2024

A handwritten signature in black ink, appearing to read "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
United States District Judge

