

United States District Court
Southern District of Texas

ENTERED

June 30, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROBERT ANTHONY RIOS,
(Inmate # 01586189)

Petitioner,

vs.

ED GONZALEZ,

Respondent.

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CIVIL ACTION NO. H-23-1554

MEMORANDUM OPINION DISMISSING CASE

The petitioner, Robert Anthony Rios, (Inmate # 01586189), is a pretrial detainee in the Harris County Jail. Representing himself, he filed a handwritten letter alleging that he was wrongfully detained on an unreasonably high bond. (Docket Entry No. 1). He did not pay the filing fee or move to proceed without prepaying the filing fee. Viewing Rios’s letter liberally, the court docketed it as a petition for a writ of habeas corpus under 28 U.S.C. § 2241 and ordered him to file an amended petition using the approved form for state inmates seeking this relief. (Docket Entry No. 3). The court also ordered Rios to either pay the \$5.00 filing fee for a habeas action or file a properly supported motion to proceed without prepaying the filing fee. (*Id.*). The court provided Rios with the appropriate forms and warned him that failure to timely comply with the court’s order could result in dismissal of his action without further notice under Federal Rule of Civil Procedure 41(b). (*Id.*).

To date, Rios has not filed an amended petition as ordered. He has neither paid the filing fee nor filed a properly supported motion for leave to proceed without prepaying the filing fee. His time to do so under the court’s order has expired. Rios’s failure to take any action forces the court to conclude that he lacks due diligence. Dismissal for want of prosecution is appropriate.

See FED. R. CIV. P. 41(b); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998) (a district court may dismiss an action on its own for failure to prosecute or to comply with any court order).

Rios is advised that he may seek relief from this order under Federal Rule of Civil Procedure 60(b) if he can show good cause for failing to comply with the court's order and the local rules. Any motion under Rule 60(b) must be accompanied by an amended petition on the proper form and either the filing fee of \$5.00 or a properly supported motion to proceed without prepaying the filing fee, including a certified copy of the inmate trust fund account statement.

Rios's petition, (Docket Entry No. 1), is dismissed without prejudice for want of prosecution. Any pending motions are denied as moot. No certificate of appealability will be issued.

SIGNED on June 30, 2023, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal". The signature is written in a cursive style with a large, sweeping flourish at the end.

Lee H. Rosenthal
United States District Judge