

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

MARVIN EDUARDO LUNA GOMEZ,

Petitioner,

v.

Civil Action No. **3:22CV43**

JOHN T. FREY,

Respondent.

MEMORANDUM OPINION

Petitioner, a Virginia prisoner proceeding *pro se*, submitted a document that he calls a “REQUEST FOR ENTRY OF DEFAULT,” which appears to relate to a state habeas corpus proceeding. (ECF No. 1.) Given the content of this document, the Court found it was appropriate to give Petitioner the opportunity to pursue this action as a petition for a writ of habeas corpus under 28 U.S.C. § 2254. *See Rivenbark v. Virginia*, 305 F. App’x 144, 145 (4th Cir. 2008).

By Memorandum Order entered on April 1, 2022, the Court directed Petitioner, within twenty (20) days of the date of entry thereof, to complete and return the standardized form for filing a § 2254 petition if he wished to file a petition for a writ of habeas corpus. The Court warned Petitioner that the failure to comply with the terms of the April 1, 2022 Memorandum Order would result in the dismissal of the action. *See* Fed. R. Civ. P. 41(b).¹

More than twenty (20) days have elapsed and Petitioner has not completed and returned the § 2254 form. Instead, Petitioner submitted a letter wherein he states that “there is a

¹ This Rule allows for dismissal “[i]f the plaintiff fails to prosecute or to comply with [the Federal Rules of Civil Procedure] or a court order.” Fed. R. Civ. P. 41(b).

misunderstanding,” that the “document [that he] received is wrong,” and that he has already filed “a habeas corpus.” (ECF No. 3, at 1 (capitalization corrected).) Petitioner goes on to request that this Court provide him with a court date in state court. This Court does not schedule state court hearings. Petitioner has made clear that he is not interested in pursuing a § 2254 petition at this time. Accordingly, the action will be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b). A certificate of appealability will be denied.

An appropriate Order shall accompany this Memorandum Opinion.

Date: 8-15-2022
Richmond, Virginia



M. Hannah Lauck
United States District Judge