IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-03255-GPG

MIGUEL CARO-QUINTERO,

Petitioner,

v.

CALVIN JOHNSON, Warden,

Respondent.

ORDER DISMISSING CASE

Petitioner, Miguel Caro-Quintero, is in the custody of the Federal Bureau of Prisons and is incarcerated at the Federal Correctional Institution in Adelanto, California. He has filed, *pro se*, a Petition for Writ of Habeas Corpus By a Person in Federal Custody (28 U.S.C. § 2241). (ECF No. 1).

In an Order entered on December 2, 2014, Magistrate Judge Gordon P. Gallagher directed Petitioner to show cause, in writing, within 30 days, why this action should not be dismissed because Petitioner has an adequate and effective remedy under 28 U.S.C. § 2255. (ECF No. 4).

On January 2, 2015, Mr. Caro-Quintero filed a Motion to Withdraw Civil Action (ECF No. 5) in which he asks the Court to dismiss this action.

Fed. R. Civ. P. 41(a)(1) provides that "the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . ." No responsive pleading has been

filed by the Respondent in this action. Further, a voluntary dismissal under Rule 41(a)(1) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. *See* J. Moore, Moore's Federal Practice ¶ 41.02(2) (2d ed. 1995); *Hyde Constr. Co. v. Koehring Co.*, 388 F.2d 501, 507 (10th Cir. 1968). The motion, therefore, closes the file as of January 2, 2015. *See Hyde Constr. Co.*, 388 F.2d at 507. Accordingly, it is

ORDERED that the action is dismissed pursuant to Fed. R. Civ. P. 41(a)(1). It is

FURTHER ORDERED that the voluntary dismissal is without prejudice and is effective as of January 2, 2015, the date Petitioner filed the Motion to Withdraw Civil Action.

DATED January 8, 2015, at Denver, Colorado.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court