

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 21-10507-RGS

DAVID ALI MYERS

v.

MICHAEL RODRIGUES, SUPERINTENDENT

ORDER

June 3, 2021

For the reasons stated below, this action is dismissed without prejudice.

On April 14, 2021, petitioner David Ali Myers filed a *pro se* petition under 28 U.S.C. § 2254 for writ of habeas corpus. Docket No. 1. On April 19, 2021, Myers was ordered to file, within 35 days, an affidavit showing cause why the petition should not be denied for lack of subject matter jurisdiction because he is not in custody or as time-barred. Docket No. 4. The Order stated that failure of Myers to comply may result in the dismissal of this action. *Id.*

To date, Myers has not responded and the time to do so has expired. It is a long-established principle that this court has the authority to dismiss an action *sua sponte* for a party's failure to prosecute his action and his failure

to follow the court's orders. Fed. R. Civ. P. 41(b). Here, dismissal is appropriate because without petitioner's active participation, the court cannot affect the advancement of the case to a resolution on the merits.

Accordingly, for the failure to comply with the April 19, 2021 Order, this action is hereby dismissed without prejudice.

SO ORDERED.

/s/ Richard G. Stearns  
UNITED STATES DISTRICT JUDGE