

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MANUEL BARELA, JR.,

Petitioner,

vs.

No. CIV 19-0133 JB/LF

RICHARD MARTINEZ, Warden, and Hector
HUGO BALDERAS, New Mexico Attorney
General,

Respondents.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on: (i) Plaintiff Manuel Barela, Jr.'s Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, filed February 15, 2019 (Doc. 1)(“Petition”); and (ii) the Honorable Laura Fashing’s, United States Magistrate Judge for the United States District Court for the District of New Mexico, Order to Show Cause, filed November 17, 2020 (Doc. 7)(“Order”). The Court will dismiss the Petition without prejudice because Barela did not comply with the Order and did not prosecute this proceeding

FACTUAL AND PROCEDURAL BACKGROUND

In the Petition, Barela asks the Court to “vacate illegal sentence of indeterminate 5 to 20 year parole.” Petition at 8. In the Order, Magistrate Judge Fashing concluded:

This matter is before the Court sua sponte. The record reflects that certain mailings to Petitioner Manuel Barela Jr. were returned as undelivered[. See Mail Returned as Undeliverable, filed November 16, 2020, (Doc. 6)]. The returned envelope indicates that Barela has been deported. [See Mail Returned as Undeliverable, filed November 16, 2020, (Doc. 6)]. It appears that Petitioner Barela has been transferred or released from custody without advising the Court of his new address, as required by D.N.M. LR-Civ. 83.6, thus severing contact with the Court. Because Petitioner has failed to comply with the Court’s local rules, he will be required to show cause why this action should not be dismissed. See Bradenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980)(“It is incumbent on

litigants, even those proceeding pro se, to follow the federal rules of procedure. . . . The same is true of simple, nonburdensome local rules” (citation omitted)). Failure to comply with this Order may result in dismissal without further notice.

Order at 1. Magistrate Judge Fashing ordered Barela to “notify the Clerk in writing of his current address or otherwise show cause why this action should not be dismissed” within thirty days of the Order’s entry. Order at 1.

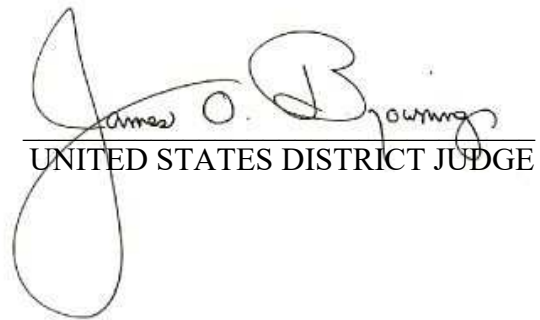
ANALYSIS

Pro se litigants are required to follow the federal rules of procedure and simple, nonburdensome local rules. See Bradenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980). The local rules require litigants, including prisoners, to keep the Court apprised of their proper mailing address and to maintain contact with the Court. See D.N.M. LR-Civ. 83.6. The Court may dismiss an action under rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. See Olsen v. Mapes, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003).

More than thirty days has elapsed since entry of the Order, and Barela has not provided the Court with a new address, responded to the Court’s Order, or otherwise shown cause why the case should not be dismissed. See Mail Returned as Undeliverable, filed November 16, 2020, (Doc. 6); Mail Returned as Undeliverable, filed November 25, 2020, (Doc. 8). The record reflects that certain mailings to Barela have been returned as undeliverable. See Mail Returned as Undeliverable, filed November 16, 2020, (Doc. 6); Mail Returned as Undeliverable, filed November 25, 2020, (Doc. 8). The Court’s research indicates that Barela has been released from the Otero County Prison Facility and has been deported. See Offender Search, New Mexico Corrections Department, <https://cd.nm.gov/offender-search/> (last visited May 25, 2021). The record reflects that Barela has been transferred or released from custody without advising the Court of his new address, as D.N.M. LR-Civ. 83.6 requires. Accordingly, Barela has not complied with

D.N.M. LR-Civ. 83.6, has not prosecuted this action, has not kept the Court apprised of his current address, and has not complied with the Court's Order. The Court will therefore dismiss this proceeding pursuant to rule 41(b) of the Federal of Civil Procedure.

IT IS ORDERED that: (i) Plaintiff Manuel Barela, Jr.'s Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, filed February 15, 2019 (Doc. 1), is dismissed without prejudice; and (ii) the Court will enter Final Judgment.



James O. Downing
UNITED STATES DISTRICT JUDGE

Parties:

Manuel Barela, Jr.
Chaparral, New Mexico

Plaintiff pro se