

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

ERICK TOWET,

Petitioner,

v.

CASE NO. 20-3258-JWL

KATY CASSELLE, Deportation Officer,

Respondent.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed under 28 U.S.C. § 2241. Petitioner commenced this action on October 15, 2020, stating he had received verbal notice from an officer of the United States Customs and Immigration Enforcement of an intent to revoke his order of supervision. On October 16, 2020, the Court granted a temporary restraining order, directed a response, and set this matter for a hearing.

Petitioner now has filed a motion to withdraw the petition (Doc. 7). Respondent does not oppose the motion but asks the Court to dissolve the temporary restraining order, cancel the October 26, 2020, deadline for filing a response, and cancel the hearing scheduled for October 30, 2020.

**Discussion**

Because petitioner proceeds pro se, the Court must liberally construe his motion. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). The Court has considered the record and construes petitioner's motion as a filing under Rule 41(a) of the Federal Rules of Civil Procedure.

While the Rules Governing Section 2254 Cases in the United States District Courts<sup>1</sup> do not address voluntary dismissals, Rule 12 of the rules states that “[t]he Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.” Accordingly, applicants for habeas corpus may voluntarily dismiss their petitions under the provisions of Fed. R. Civ. P. 41. See *Papineau v. Toney*, No. 2:17-CV-221-RAH-JTA, 2020 WL 4032155, at \*1 (M.D. Ala. June 22, 2020), report and recommendation adopted, No. 2:17-CV-221-RAH-JTA, 2020 WL 4016245 (M.D. Ala. July 16, 2020) (applying Fed. R. Civ. P. 41(a)(2) to a petition filed under 28 U.S.C. § 2241); *DeAtley v. Williams*, 782 F. App’x 736, 737 (10th Cir. 2019) (affirming dismissal of § 2254 habeas petition under rule 41(b)).

Rule 41(a)(1)(A) provides that “the [applicant] 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 answer on the merits or motion for summary judgment has been filed by respondent in this action, and the Court concludes this matter may be dismissed under Rule 41(a)(1)(A).

IT IS, THEREFORE, BY THE COURT ORDERED petitioner’s motion to withdraw (Doc. 7) is liberally construed as a notice filed under Rule 41(a)(1)(A) and is granted.

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<sup>1</sup> Rule 1(b) provides that “[t]he district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a).”

IT IS FURTHER ORDERED the temporary restraining order granted on October 16, 2020, is dissolved, the order directing a responsive pleading is rescinded, and the hearing scheduled for October 30, 2020, is cancelled.

The clerk of the court shall transmit copies of this Memorandum and Order to the parties and to the U.S. Attorney for the District of Kansas.

**IT IS SO ORDERED.**

DATED: This 22nd day of October, 2020, at Kansas City, Kansas.

S/ John W. Lungstrum

JOHN W. LUNGSTRUM  
United States District Judge