

FILED

March 29, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-23-90004

MEMORANDUM

Complainant, a state prisoner, appears to allege that the subject United States Magistrate Judge “is refusing to entertain” his pending 28 U.S.C. § 2254 petition for a writ of habeas corpus which has been ripe for consideration since March 2022.

Delay does not, of itself, constitute judicial misconduct. There is no evidence to suggest that any delay in judicial action by the magistrate judge is due to lack of diligence or an intent to deny complainant’s due process rights. This aspect of the complaint is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). *See* Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings.

Complainant further alleges that the magistrate judge “will not” order the Respondent to produce “the parole files which [are] the sole preponderance of credible evidence” in support of complainant’s claim that he is being illegally detained.

A review of the record shows that complainant asked the court to order the Respondent to “submit the parole file[s] into the record.” Although the magistrate judge did not issue an order regarding that request, the docket indicates that, two weeks later, the Respondent filed an answer to

the § 2254 petition and attached a copy of the “parole files.” The allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.

/s/ Priscilla Richman

Priscilla Richman

Chief United States Circuit Judge

March 25, 2023