**UNITED STATES DISTRICT COURT**
**DISTRICT OF MINNESOTA**

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| Mark Ackley,<br><br>Petitioner,<br><br>v.<br><br>B. Birkholz, Warden of Federal Prison Camp Duluth; and Michael Carvajal, Director of the Federal Bureau of Prisons, in their official capacities,<br><br>Respondents. | Case No. 21-cv-1806 (JRT/LIB)<br><br>**REPORT AND RECOMMENDATION** |

This matter comes before the undersigned United States Magistrate Judge pursuant to a general referral in accordance with the provisions of 28 U.S.C. § 636 and Local Rule 72.1, as well as, upon Petitioner Mark Ackley's Petition for writ of habeas corpus ("Petition"). [Docket No. 1].

Upon commencing this habeas corpus action, Petitioner did not pay the required $5.00 filing fee or apply for in forma pauperis ("IFP") status. The Clerk of Court notified Petitioner on August 6, 2021, that he would be required to submit the filing fee or an IFP application, failing which this matter could be summarily dismissed without prejudice. (See, Letter [Docket No. 4]).

More than three weeks have passed since Petitioner commenced this action, and yet Petitioner has not yet submitted the filing fee or applied for IFP status. In fact, Petitioner has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. See, Henderson v. Renaissance Grand Hotel, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court

order."). Should Petitioner submit the filing fee or an IFP application during the period for objecting to this Report and Recommendation, this Court will vacate the recommendation of dismissal and review the habeas petition as required by Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. See, Rule 1(b), Rules Governing Section 2254 Cases ("The district court may apply any or all of these rules to a habeas corpus petition not [governed by 28 U.S.C. § 2254].").

Therefore, based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** this action be **DISMISSED without prejudice** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: September 1, 2021

s/Leo I. Brisbois
Hon Leo I. Brisbois
United States Magistrate Judge

**NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).