

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**CHARLES SMITH,**

**Petitioner,**

**v.**

**CASE NO. 19-3104-SAC**

**UNITED STATES OF AMERICA,**

**Respondent.**

**ORDER OF DISMISSAL**

This matter is a petition for habeas corpus filed under 28 U.S.C. § 2241. Petitioner states that he is under civil commitment at the Larned State Hospital following proceedings held in the District Court of Reno County, Kansas.

On June 16, 2019, the Court entered an order to show cause (OSC) directing petitioner to show cause why this matter should not be dismissed without prejudice due to his failure to exhaust state court remedies. Petitioner filed a timely response in which he argues that the exhaustion of remedies is not required. He also seeks a monetary award, "release from the State of Kansas", free housing for three years, and other assistance.

Petitioner's argument is in error. As explained in the OSC, a petitioner seeking release from state custody is required to exhaust state court remedies whether proceeding under 28 U.S.C. § 2254 or 28 U.S.C. § 2241. *Montez v. McKinna*, 208 F.3d 862, 866 (10<sup>th</sup> Cir. 2000). Because petitioner has not sought relief in the state appellate courts, the Court will dismiss this matter without prejudice to allow him to do so.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed without prejudice.

IT IS FURTHER ORDERED petitioner's motion to proceed in forma pauperis (Doc. 7) is granted.

IT IS FURTHER ORDERED no certificate of appealability will issue.

**IT IS SO ORDERED.**

DATED: This 23rd day of August, 2019, at Topeka, Kansas.

S/ Sam A. Crow  
SAM A. CROW  
U.S. Senior District Judge