

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM G. CURTIS,

Petitioner,

v.

B.M. TRATE,

Respondent.

Case No. 1:22-cv-00415-CDB (HC)

**ORDER DISMISSING PETITIONER'S
PETITION WITHOUT PREJUDICE**

(ECF Nos. 10, 12)

Petitioner William G. Curtis, pro se, filed a Petition for Habeas Corpus under 28 U.S.C. § 2241 on April 12, 2022. (ECF. No. 1). On October 27, 2022, Respondent filed a Motion to Dismiss on the grounds that the Court does not have jurisdiction to hear this matter because Petitioner fails to qualify for the “escape hatch” clause of 28 U.S.C. § 2255. *See* Fed. Rule Civ. P. 12(b)(1), (6), 28 U.S.C. §§ 2241 & 2255(e). (ECF No. 10).

On November 14, 2022, Petitioner filed a Motion for Voluntary Dismissal Without Prejudice. (ECF No. 12).

Under Rule 41(a)(2) of the Federal Rules of Civil Procedure, “[A]n action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” In the Ninth Circuit, district courts are to grant such motions “unless a defendant can show that it will suffer some plain legal prejudice as a result.” *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). Legal prejudice means “prejudice to some legal interest, some claim, some legal

argument.” *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996).

Here, Respondent faces no discernable risk of prejudice from granting Petitioner’s motion to dismiss as both parties agree that the Court lacks jurisdiction over Petitioner’s claim, which warrants dismissal without prejudice. Moreover, given Petitioner’s voluntary request to dismiss, and in light of the parties’ agreement that this Court lacks jurisdiction, the Court considers dismissal proper under Rule 41(a)(2).

Accordingly, it is hereby ORDERED that Petitioner’s Motion to Dismiss (ECF No. 12) is GRANTED, the application for writ of habeas corpus (ECF No. 1) is DENIED without prejudice and the case is dismissed pursuant to Rule 41(a)(2).

It is FURTHER ORDERED that Respondent’s Motion to Dismiss (ECF No. 10) is DENIED as moot.

The Clerk of Court is directed to close the case.

IT IS SO ORDERED.

Dated: November 18, 2022


UNITED STATES MAGISTRATE JUDGE