

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

<p>HENRY JOHN RED CLOUD, JR., Petitioner, vs. AGENT TAYLOR SANTANA, or designee, Respondent.</p>	<p>5:23-CV-05079-RAL OPINION AND ORDER DISMISSING PETITION</p>
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Henry John Red Cloud, Jr. filed a petition for writ of habeas corpus under 28 U.S.C. § 2241. Doc. 1. In his petition, Red Cloud alleges that he was arrested by unknown South Dakota parole agents and was being held in the Pennington County Jail in violation of Colorado state law. Doc. 1 at 2, 6–8. Red Cloud has notified the Court that he has been extradited from South Dakota to Colorado and is now being held in the Boulder County Jail. Doc. 4.

This Court is to “forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled” to relief. 28 U.S.C. § 2243. Thus, this Court must screen Red Cloud’s petition and dismiss the petition if it “plainly appears from the petition . . . that the petitioner is not entitled to relief in the district court[.]” Rule 4 of the Rules Governing Section 2254 Cases; see Rule 1(b) of the Rules Governing Section 2254 Cases (extending the screening rule to petitions filed under § 2241).

Section 2241 habeas cases brought by inmates convicted of state crimes like Red Cloud, see Doc. 1 at 1, are to proceed in the judicial district where the state conviction arose or where the defendant is incarcerated. 28 U.S.C. § 2241(d). Red Cloud is in custody in Colorado and his conviction arose in Colorado. Doc. 1 at 1; Doc. 4. Accordingly, his § 2241 petition should be filed in federal court in Colorado, not South Dakota. Although § 2241(d) gives this Court discretion to transfer Red Cloud’s petition to the District of Colorado, Red Cloud’s petition does not allege that he “is in custody in violation of the Constitution or laws or treaties of the United States[.]” 28 U.S.C. § 2241(c)(3). Rather, Red Cloud alleges that his warrantless arrest and detention violates Colorado state law. Thus, rather than transferring this action to federal court in Colorado, this Court will dismiss the action without prejudice to Red Cloud filing a petition in Colorado federal court that states a claim upon which can be granted. Therefore, it is hereby

ORDERED that Red Cloud’s § 2241 petition is dismissed without prejudice to refile a petition that states a claim upon which relief can be granted in federal court in Colorado and that the Clerk of Court mail a copy of this opinion and order and the accompanying judgment to Red Cloud.

DATED this 11th day of December, 2023.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE