

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

HERRON LEE JOHNSON,	:	
	:	
Petitioner,	:	
	:	
v.	:	Case No. 4:25-cv-236-CDL-AGH
	:	
Sheriff GREG COUNTRYMAN,	:	
	:	
Respondent.	:	

ORDER AND RECOMMENDATION

Pro se Petitioner Herron Lee Johnson, a pretrial detainee in the Muscogee County Jail in Columbus, Georgia, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. ECF No. 1. On August 26, 2025, Petitioner filed his first motion to proceed *in forma pauperis* which was denied because Petitioner averred that he had \$250 on his books as of August 20, 2025. *See* ECF No. 9 at 2, 3; ECF No. 12. Petitioner was then ordered to pay the \$5.00 filing fee. ECF No. 12. Petitioner has now filed another motion to proceed *in forma pauperis*. ECF No. 13. Petitioner attached an “Official Certificate of Prisoner Account” signed by Sgt. Waters of the Muscogee County Jail that shows \$3.71 in his prisoner trust account. ECF No. 13-1. Because Petitioner’s “Official Certificate of Prisoner Account” shows he lacks the funds to pay the filing fee, his motion to proceed *in forma pauperis* is **GRANTED**. However, it is **RECOMMENDED** that Petitioner’s habeas petition be **DISMISSED without prejudice** because he has not exhausted available state remedies and that his remaining pending motions (ECF Nos. 3, 4, 7, 10) be **DENIED as moot**. It is also

RECOMMENDED that a certificate of appealability (“COA”) and any motion to proceed *in forma pauperis* on appeal be **DENIED**.

I. SCREENING

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides that

The clerk must promptly forward the petition to a judge under the court’s assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

Rules Governing § 2254 Cases, R. 4.

A state prisoner cannot petition for federal habeas relief without first exhausting his state court remedies. 28 U.S.C. § 2254(b)(1); *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 489-92 (1973) (addressing issue raised in § 2241 petition only after concluding the petitioner, a pretrial detainee, exhausted all available state court remedies for consideration of his constitutional claim); *Skinner v. Wiley*, 355 F.3d 1293, 1295 (11th Cir. 2004) (holding that administrative exhaustion is required “in all habeas cases,” including those brought under § 2241). “The exhaustion doctrine was crafted on federalism grounds to protect the state courts’ opportunity to confront and resolve any constitutional issues arising within their jurisdiction and to limit federal interference in the state adjudicatory process.” *Johnson v. Fla.*, 32 F.4th 1092, 1096 (11th Cir. 2022) (citing *Braden*, 410 U.S. at 490–91). To exhaust state remedies, a state-court prisoner must first “present his claim to the state court in a manner that would allow a reasonable reader to understand the legal and factual

foundation for each claim” and then “must take his claim to the state’s highest court, either on direct appeal or on collateral review.” *Id.* (internal citations omitted); *see also O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) (finding that exhaustion requires that “state prisoners . . . give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State’s established appellate review process.”).

District courts are called upon to dismiss habeas corpus petitions without ordering the State to respond “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.” *Paez v. Sec’y, Fla. Dep’t of Corrs.*, 947 F.3d 649, 653 (11th Cir. 2020) (quoting Rule 4). Although the exhaustion requirement is not jurisdictional, the Court can still *sua sponte* dismiss a habeas petition on a non-jurisdictional basis, so long as (1) the petitioner is given “notice of its decision and an opportunity to be heard in opposition[,]” and (2) the respondent is given similar notice and an opportunity to waive that defense. *Id.* at 653 (allowing *sua sponte* dismissal based on untimeliness because Report and Recommendation provided notice and opportunity to respond to both petitioner and respondent); *see also Fletcher v. Oliver*, No. 1:20-00347-KD-N, 2020 WL 5100631, at *2 n.4 (S.D. Ala. July 21, 2020), *report and recommendation adopted*, 2020 WL 5099937 (S.D. Ala. Aug. 28, 2020) (stating that “[t]he undersigned finds no reason the procedure endorsed in *Paez* cannot also be utilized to *sua sponte* dismiss a habeas petition as unexhausted”).

Here, Petitioner’s complaint was docketed on July 16, 2025. ECF No. 1.

Petitioner is a pre-trial detainee challenging his “modification/revocation of probation” that was scheduled in the Superior Court of Muscogee County on “August 8th, 2025, 9 a.m.” *Id.* at 2. Petitioner complains that “excessive force was used on [him] during arrest, while experiencing a diabetic coma” and that he was denied medical treatment.¹ *Id.* at 6. He also complains that his probation officer is “committing perjury” in the petition to revoke his probation. *Id.* at 6, 7. He further states that “the victims have no apprehension of harm and wish themselves to drop charges as stated by affidavits they are said to have signed.” *Id.* Petitioner is requesting that this Court “vacate” his state criminal charges that are pending against him.² *Id.*

First, Petitioner is advised that the principles of equity, comity, and federalism counsel federal abstention in deference to ongoing state court proceedings. *See Younger v. Harris*, 401 U.S. 37, 43-46 (1971); *Christman v. Crist*, 315 F. App’x 231, 232 (11th Cir. 2009) (concluding that “*Younger* abstention is required when (1) the proceedings constitute an ongoing state judicial proceeding, (2) the proceedings

¹ Claims regarding lack of medical treatment are not cognizable in a § 2241 habeas petition because they challenge the conditions of confinement, not the validity of confinement. *See e.g., Nelson v. Campbell*, 541 U.S. 637, 643 (2004); *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990) (“relief of an Eighth Amendment violation does not include release from confinement.”); *Vaz v. Skinner*, 634 F. App’x 778, 781 (11th Cir. 2015) (holding that a § 2241 petition was “not the appropriate vehicle for raising an inadequate medical care claim, as such a claim challenges the conditions of confinement, not the fact or duration of that confinement[.]” and because “release from imprisonment is not an available remedy for a conditions-of-confinement claim.” (citing *Gomez*, 899 F.2d at 1126)).

² Petitioner was arrested on May 20, 2025 for Aggravated Assault, Cruelty to Children–3rd Degree, Willful Obstruction of Law Enforcement Officers, Simple Assault-Family Violence, Criminal Trespass, and Criminal Trespass-Family Violence (with additional warrants added June 2025 for Violation of Probation). *Muscogee County Online Jail Search*, <https://portal-gamuscogee.tylertech.cloud/app/ViewJailing/#/jailing/477708> [<https://perma.cc/8UJ7-EPMH>] (last visited Nov. 17, 2025).

implicate important state interests, and (3) there is an adequate opportunity in the state proceedings to raise constitutional challenges.”); *Hughes v. Att’y Gen. of Fla.*, 377 F.3d 1258, 1262 (11th Cir. 2004) (concluding that federal courts consistently abstain from interfering in state criminal prosecutions unless a limited exception applies). Petitioner has not shown that any exception to the *Younger* doctrine applies. Thus, this Petition which requests that this Court prevent Petitioner’s prosecution in the Muscogee County Superior Court for state criminal charges is subject to dismissal. *See Johnson*, 32 F.4th at 1096 (finding that “an attempt to dismiss an indictment or otherwise prevent a prosecution . . . is not a sufficient ground to enjoin the state proceeding”).

More importantly, it does not appear that Petitioner has exhausted his state court remedies prior to petitioning this Court for habeas relief. *See* ECF No. 1. Petitioner utilized a district court standard form for his petition. *Id.* When asked on the form about whether he has filed any petitions, applications, motions, or appeals in the state courts he vaguely states that he filed something on June 9, 2025 in the Superior Court of Muscogee County. *Id.* at 2. However, he states he is challenging the probation revocation proceedings that are scheduled for “August 8, 2025” which is a date that would have occurred after the date he signed his petition on July 1, 2025 that initiated the present federal civil action. *Id.* at 2, 8. Thus, it “plainly appears” on the face of the petition that Petitioner has not exhausted available state remedies and his petition is subject to dismissal for his failure to do so. *See Paez.*, 947 F.3d at 653 (quoting Rule 4).

For the reasons set forth, it is **RECOMMENDED** that this 28 U.S.C. § 2241 petition be **DISMISSED without prejudice**.

II. CERTIFICATE OF APPEALABILITY AND *IN FORMA PAUPERIS* ON APPEAL

A prisoner seeking to appeal a district court’s final order denying his petition for writ of habeas corpus must obtain a certificate of appealability prior to filing his appeal. 28 U.S.C. § 2253(c)(1)(A). Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts provides that “[t]he district court must issue or deny a [COA] when it enters a final order adverse to the applicant,” and if a COA is issued “the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2).”

“A [COA] may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requires a demonstration that “jurists of reason could disagree with the district court’s resolution of [a petitioner’s] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim,” such as in this case, “a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the

district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484. Petitioner has not made these showings. Therefore, it is **RECOMMENDED** that Petitioner be **DENIED** a COA. Additionally, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3). Accordingly, it is **RECOMMENDED** that any motion to proceed *in forma pauperis* on appeal be **DENIED**.

III. CONCLUSION

Petitioner’s motion to proceed *in forma pauperis* (ECF No. 5) is **GRANTED**. It is **RECOMMENDED** that Petitioner’s § 2241 petition be **DISMISSED without prejudice** for failure to exhaust state remedies and that his remaining pending motions (ECF Nos. 3, 4, 7, 10) be **DENIED as moot**. It is also **RECOMMENDED** that any COA and motion to proceed *in forma pauperis* on appeal be **DENIED**.

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the Clerk is **DIRECTED** “to notify the [P]etitioner” of this ruling by mailing him a copy of this Order and Recommendation of Dismissal. The Clerk is **DIRECTED** to serve a copy of the Petition (ECF No. 4) and this Order on the Respondent by U.S. Mail, and they may, **but are not required to**, respond to the Order and Recommendation of Dismissal.

IV. OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation with Clay D. Land, United States District Judge, **WITHIN FOURTEEN (14) DAYS** after being served with a copy of this Order and

Recommendation of Dismissal. Any objection is limited in length to **TWENTY (20) PAGES**. See M.D. Ga. L.R. 7.4. Any party may seek an extension of time in which to file written objections, provided a request for an extension is filed prior to the deadline for filing written objections. Failure to object in accordance with the provisions of § 636(b)(1) waives the right to challenge on appeal the district judge's order based on factual and legal conclusions to which no objection was timely made. See 11th Cir. R. 3-1.

SO ORDERED and RECOMMENDED this 17th day of November, 2025.

s/ Amelia G. Helmick

UNITED STATES MAGISTRATE JUDGE