

**UNITED STATES COURT OF APPEALS**

**SEP 4 1998**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

ALI MEHDIPOUR,

Petitioner - Appellant,

v.

OKLAHOMA COUNTY SHERIFF;  
THE ATTORNEY GENERAL OF  
THE STATE OF OKLAHOMA;  
OKLAHOMA COUNTY DISTRICT  
ATTORNEY; and OKLAHOMA CITY  
POLICE DEPARTMENT,

Respondent - Appellee.

No. 98-6118

(D.C. No. CIV-97-1712-A)

(W.D. Okla.)

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**ORDER AND JUDGMENT\***

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Before **ANDERSON, McKAY, and LUCERO**, Circuit Judges.

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After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Petitioner, proceeding *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 seeking to enjoin his Oklahoma state criminal proceeding. He alleges that the arrest, search, and seizure by the Oklahoma Bureau of Narcotics and Dangerous Drugs violated his Fourth Amendment rights and that the state court failed to provide a probable cause determination hearing on his state petition for writ of habeas corpus. The magistrate judge recommended that the petition be dismissed. The district court adopted the magistrate judge's Findings and Recommendation and, together with its reliance on the doctrines of abstention and exhaustion, it dismissed the petition. On appeal, Petitioner requests that we issue a certificate of appealability and claims that the magistrate judge and the district court erroneously construed his claims.<sup>1</sup>

After thoroughly reviewing the briefs and the record, we agree with the district court that the federal habeas petition is premature.<sup>2</sup> Thus, we deny Petitioner a certificate of appealability and dismiss the appeal for substantially the same reasons as stated in the district court's Order filed February 18, 1998. We

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<sup>1</sup> We grant Petitioner's Motion to Enter Relevant Documentation which we construe as a motion to supplement the record. See Fed. R. App. P. 10(e).

<sup>2</sup> According to Petitioner's Motion to Expedite, his criminal trial in Oklahoma state court is scheduled to begin on September 28, 1998.

also deny Petitioner's Motion to Expedite Appeal.

DENIED and DISMISSED.

Entered for the Court

Monroe McKay  
Circuit Judge