

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Melissa Lynn Hanson,

Case No. 21-cv-2651 (NEB/LIB)

Petitioner,

v.

**ORDER TO SHOW CAUSE**

Sheriff Kurt Freitag and Sheriff Lon Thiele,

Respondents.

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This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provision of 28 U.S.C. § 636, and upon Melissa Lynn Hanson’s Amended Petition for a writ of habeas corpus. [Docket No. 3].

Petitioner Melissa Lynn Hanson has filed a petition for a writ of habeas corpus challenging the legality of two criminal proceedings against her in state court; one of those proceedings is ongoing, while the other resulted in Petitioner’s conviction on misdemeanor offenses. See, State of Minnesota v. Hanson (“Hanson I”), No. 24-CR-21-137 (Minn. Dist. Ct.); State of Minnesota v. Hanson (“Hanson II”), No. 24-CR-21-188 (Minn. Dist. Ct.). This matter is now before the Court for review pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.<sup>1</sup>

After review of the present Amended Petition, this Court orders Petitioner to show cause why the habeas petition should not be denied for failure to exhaust available remedies in the state courts.

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<sup>1</sup> Insofar as Petitioner challenges the legality of custody resulting from the criminal proceedings that have not yet concluded, her challenge is not brought under 28 U.S.C. § 2254, as that custody does not result from “the judgment of a State court.” 28 U.S.C. § 2254(a). Nevertheless, the Rules Governing Section 2254 Cases may be applied to any habeas corpus proceeding. See, Rule 1(b).

In early 2021, the State of Minnesota brought criminal charges against Petitioner related to the alleged violation of emergency orders relating to the Covid-19 pandemic. Those criminal charges were brought in two separate proceedings, each in the same court and presided over by the same judge. (See, Amended Petition [Docket No. 3] ¶¶ 19–21). Hanson I has since concluded with Petitioner’s conviction, while Hanson II remains ongoing at the time of this Order. In this habeas proceeding, Petitioner attacks the legality of her post-judgment custody resulting from the first criminal matter and the pre-judgment custody resulting from the second criminal matter.

With respect to Hanson I, Petitioner is “in custody pursuant to the judgment of a State court,” 28 U.S.C. § 2254(a), and her habeas Petition is therefore subject to the requirement of § 2254(b) which required that she first exhaust available remedies in the state courts before seeking federal habeas corpus relief. More specifically, each claim presented in the habeas petition must be exhausted; the presence of even a single unexhausted claim for relief requires dismissal of the petition. See, Rose v. Lundy, 455 U.S. 509, 510 (1982). There is little reason to believe that Petitioner has done this with respect to the claims attacking the judgment in Hanson I. From the documents submitted by Petitioner to the Court, only a single claim regarding judicial bias<sup>2</sup> has been properly presented to the Minnesota Supreme Court at this time. None of Petitioner’s many other claims seem to have been decided by the state appellate courts on the merits; in fact, it does not appear that Petitioner has yet sought direct appellate review of her conviction.

With respect to Hanson II, no statutory provision requires exhaustion of claims where a prisoner is not held in custody pursuant to a state judgment. That said, “federal courts have consistently recognized that the principles of comity and federalism require state pre-trial detainees to present their constitutional claims in state court before seeking federal habeas corpus relief under

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<sup>2</sup> That claim appears to have been raised entirely as a matter of state law and is therefore not cognizable on federal habeas review. See, 28 U.S.C. § 2241(c)(3).

§ 2241.” Olson v. Washington County, No. 12-CV-2807 (MJD/AJB), 2013 WL 1871523, at \*2 (D. Minn. Jan. 24, 2013) (collecting cases). A claim that an ongoing prosecution violates federal law may be presented in the state courts during the course of the criminal proceedings—and, where those claims may be adjudicated in the state courts, petitioners are generally required to seek state-court adjudication (including post-judgment appellate adjudication) before requesting federal habeas relief. “Absent extraordinary circumstances, federal courts should not interfere with the states’ pending judicial processes prior to trial and conviction, even though the prisoner claims [she] is being held in violation of the Constitution.” Wingo v. Ciccone, 507 F.2d 354, 357 (8th Cir. 1974). Again, it does not appear that Petitioner has secured a ruling on the merits from the state appellate courts regarding her federal-law claims.

Accordingly, Petitioner is hereby ordered to show cause why this matter should not be dismissed for failure to exhaust state remedies. In her response to the order to show cause, Petitioner must provide the following:

1. Documentation showing how Petitioner has raised each of the claims in her Petition at each level of the state courts, including the Minnesota Supreme Court. At a minimum, Petitioner must provide the petition through which review was sought from the Minnesota Supreme Court. That documentation must show that Petitioner has fairly presented each claim for relief under federal law<sup>3</sup> in such a way that she is entitled to a ruling on the merits of that claim.
2. The orders or opinions of the state appellate courts through which Petitioner’s federal habeas claims were rejected on the merits. Petitioner is warned that a finding of the

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<sup>3</sup> “It is not enough that all the facts necessary to support the federal claim were before the state courts, or that a somewhat similar state-law claim was made.” Anderson v. Harless, 459 U.S. 4, 7 (1982) (per curiam) (citation omitted).

state appellate courts that her claims were raised prematurely does not constitute disposition on the merits and will not be sufficient to establish exhaustion of those claims.

Petitioner must respond to this order to show cause within thirty (30) days of the date of this Order. If Petitioner fails to comply with this Court's directive in the time permitted, then it will be recommended that this matter be dismissed for failure to prosecute. See, Fed. R. Civ. P. 41(b).

**SO ORDERED.**

Dated: January 14, 2021

s/Leo I. Brisbois  
Hon. Leo I. Brisbois  
United States Magistrate Judge