

**UNITED STATES COURT OF APPEALS**

**OCT 30 2000**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

JAMES A. MIERITZ,

Plaintiff-Appellant,

v.

JOE WILLIAMS, Warden, Lea County  
Correctional Facility; GARY JOHNSON,  
Governor, State of New Mexico;  
ROBERT PERRY, Secretary of  
Corrections; NEW MEXICO  
CORRECTIONS DEPARTMENT, State  
of New Mexico; WACKENHUT  
CORRECTIONS CORPORATION, a  
Florida corporation; LEA COUNTY,  
NEW MEXICO; ATTORNEY  
GENERAL FOR THE STATE OF NEW  
MEXICO,

Defendants-Appellees.

No. 00-2148

(D. N.M.)

(D.Ct. No. CIV-00-197-MV/WWD)

**ORDER AND JUDGMENT\***

Before **BRORBY, KELLY, and MURPHY**, Circuit Judges.

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\* This order and judgment is not binding precedent except under the doctrines of law of the case, *res judicata* and collateral estoppel.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.

After examining the briefs and 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)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Appellant James Mieritz, a state inmate appearing *pro se*, appeals the district court's decision denying his habeas corpus petition filed under 28 U.S.C. § 2241 for failure to exhaust existing state remedies. The facts and issues in this case are identical to those in *Rael v. Williams*, 2000 WL 1051845 (10th Cir. July 31, 2000), *petition for cert. filed*, (U.S. Oct. 10, 2000) (No. 00-6587). Thus, our decision is governed by this court's analysis and conclusions therein.

Accordingly, we grant Mr. Mieritz a certificate of appealability and **AFFIRM** the judgment of the district court, as modified, to dismiss the claim cognizable under 28 U.S.C. § 2241 with prejudice; all other claims contained in Mr. Mieritz's petition are dismissed without prejudice.

**Entered by the Court:**

**WADE BRORBY**  
United States Circuit Judge