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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLINTON WAGNER,  
Petitioner,  
v.  
JOE LIZZARRAGA,  
Respondent.

No. 2:16-cv-0449 CKD P

ORDER and FINDINGS &  
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis. Examination of the request to proceed in forma pauperis reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. The court has conducted that review.

In his petition, petitioner asks that the court order the Superior Court of Santa Clara County to provide plaintiff with a copy of his trial transcript. However, a district court can only entertain a petition for a writ of habeas corpus to the extent it is alleged that the petitioner is in

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1 custody in violation of federal law. 28 U.S.C. § 2254(a). Because petitioner's claim is not  
2 actionable by way of a petition for writ of habeas corpus, his habeas petition should be summarily  
3 dismissed.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Petitioner's request for leave to proceed in forma pauperis (ECF No. 2) is granted; and
- 6 2. The Clerk of the Court is directed to assign a district court judge to this case.

7 IT IS HEREBY RECOMMENDED that:

- 8 1. Petitioner's petition for writ of habeas corpus be summarily dismissed; and
- 9 2. This case be closed.

10 These findings and recommendations are submitted to the United States District Judge  
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
12 after being served with these findings and recommendations, petitioner may file written  
13 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
14 Findings and Recommendations." Petitioner is advised that failure to file objections within the  
15 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951  
16 F.2d 1153 (9th Cir. 1991).

17 Dated: March 14, 2016

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20 CAROLYN K. DELANEY  
21 UNITED STATES MAGISTRATE JUDGE

22 1/md  
23 wagn0449.dis