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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ignacio C. Garate,
Petitioner,

vs.

Dora Schriro, et al.,
Respondents.

No. CIV 05-3014-PHX-NVW (JJM)

ORDER

On September 30, 2005, Petitioner Ignacio C. Garate, presently confined in the Arizona State Prison Complex-Douglas, filed a Petition for Writ of Habeas Corpus by a Person in State Custody Pursuant to 28 U.S.C. § 2254 ("Petition"). Petitioner has not paid the five dollar (\$5.00) filing fee or filed an Application to Proceed *In Forma Pauperis*.

Failure to Pay Filing Fee

Rule 3.5(b) of the Local Rules of Civil Procedure ("LRCiv") requires that "[i]f a habeas corpus petitioner desires to prosecute the petition *in forma pauperis*, the petitioner shall file an application to proceed [*in forma pauperis*] on a form approved by the Court, accompanied by a certification of the warden or other appropriate officer of the institution in which the petitioner is confined as to the amount of money or securities on deposit to the

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1 petitioner's credit." Rule 3.5(b) also requires payment of the five dollar (\$5.00) filing fee if
2 a petitioner has in excess of twenty-five dollars (\$25.00) in his inmate account.

3 Because Petitioner has not paid the five dollar (\$5.00) filing fee, or filed an
4 Application to Proceed *In Forma Pauperis*, Petitioner will be given thirty (30) days from the
5 filing date of this Order to submit a properly executed and certified Application to Proceed
6 *In Forma Pauperis*, using the form included with this Order, *or* pay the five dollar (\$5.00)
7 filing fee.

8 **Rule 41 Cautionary Notice**

9 Petitioner should take notice that if he fails to timely comply with every provision of
10 this Order, or any order of the Court entered in this matter, the Petition and this action will
11 be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. See *Ferdik v.*
12 *Bonzelet*, 963 F.2d 1258 (9th Cir.) (District Court may dismiss action for failure to comply
13 with any order of the Court), cert. denied, 506 U.S. 915 (1992).

14 **IT IS THEREFORE ORDERED** as follows:

15 (1) Petitioner SHALL HAVE thirty (30) days from the filing date of this Order to
16 submit a properly executed and certified Application to Proceed *In Forma Pauperis*, using
17 the form included with this Order, *or* pay the five dollar (\$5.00) filing fee;


18 (2) The Clerk of the Court is DIRECTED to enter a judgment of dismissal without
19 prejudice of this action, without further notice to Petitioner, if Petitioner fails to submit a
20 properly executed and certified Application to Proceed *In Forma Pauperis*, or pay the five
21 dollar (\$5.00) filing fee, within thirty (30) days from the filing date of this Order;

22 (3) Aside from the two (2) copies of the Petition that must be submitted pursuant to
23 LRCiv 3.4(a), a clear, legible copy of every pleading or other document filed SHALL
24 ACCOMPANY each original pleading or other document filed with the Clerk for use by the
25 District Judge or Magistrate Judge to whom the case is assigned. See LRCiv 5.4. Failure
26 **to submit a copy along with the original pleading or document will result in the**
27 **pleading or document being stricken without further notice to Petitioner;**
28

1 (4) At all times during the pendency of this action, Petitioner SHALL
2 IMMEDIATELY ADVISE the Court and the United States Marshal of any change of address
3 and its effective date. Such notice shall be captioned "NOTICE OF CHANGE OF
4 ADDRESS." The notice shall contain only information pertaining to the change of address
5 and its effective date, except that if Petitioner has been released from custody, the notice
6 should so indicate. The notice shall not include any motions for any other relief. Failure to
7 file a NOTICE OF CHANGE OF ADDRESS may result in the dismissal of the action for
8 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b);

9 (5) The Clerk of the Court is DIRECTED to provide Petitioner with a current
10 Court-approved form titled, "Application to Proceed *In Forma Pauperis* By A Prisoner
11 (Habeas)."

12 DATED this 6th day of October, 2005.

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16 _____
Neil V. Wake
United States District Judge