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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARRYL LEE BRISCOE,

Petitioner,

Case No. 2:13-cv-01185 KJN P

vs.

E. VALENZUELA,

Respondent.

ORDER and

FINDINGS & RECOMMENDATIONS

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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 pursuant to 28 U.S.C. § 1915.

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

The court’s records reveal that petitioner previously filed an application for a writ of habeas corpus attacking the same conviction and sentence challenged in the instant case. See Briscoe v. Gonzales, Case No. 2:10-cv-02473 GGH P. The previous application was filed on August 19, 2010, and denied on the merits on September 24, 2012. The petition was denied as untimely, and the action dismissed with prejudice; the court determined that no certificate of

1 appealability should issue.

2 Because the claims asserted in the instant application appear to be identical to  
3 those presented in petitioner's prior application, dismissal of the instant petition is warranted. 28  
4 U.S.C. § 2244(b)(1). To the extent that petitioner may be seeking to assert a new claim, he must  
5 first obtain, from the Ninth Circuit Court of Appeals, an order authorizing the district court to  
6 consider the application. 28 U.S.C. § 2244(b)(2), (3). Therefore, on this ground too, petitioner's  
7 instant application must be dismissed.


8 In accordance with the above, IT IS HEREBY ORDERED that:

- 9 1. Petitioner's application to proceed in forma pauperis is granted; and  
10 2. The Clerk of Court is directed to randomly assign a district judge to this action.

11 In addition, IT IS HEREBY RECOMMENDED that this action be dismissed.

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

19 DATED: June 21, 2013

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22 KENDALL J. NEWMAN  
23 UNITED STATES MAGISTRATE JUDGE

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