1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF CALIFORNIA 10 11 YASIR MEHMOOD, No. 2:13-cv-02461 KJM DAD P 12 Petitioner. 13 **ORDER** v. 14 UNKNOWN, 15 Respondent. 16 17 Although earlier orders have characterized petitioner as a state prison inmate 18 proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254, he is in 19 federal custody, proceeding in pro per, awaiting trial in *United States v. Mehmood*, No. 2:12-cr-20 0154 JAM. This action appears to be a writ of habeas corpus under 28 U.S.C. § 2241, claiming 21 the case against him is overcharged. See Pet., ECF No. 1. 22 Petitioner filed his pleading on October 25, 2013 in the Northern District, which 23 transferred the case to this court on November 22, 2013. ECF Nos. 1, 4. 24 On December 4, 2013, the court directed petitioner to file an affidavit in support of 25 his request to proceed in forma pauperis. ECF No. 7. Several communications sent to petitioner 26 were returned and petitioner did not file any supporting documentation for the request to proceed 27 in forma pauperis. On February 20, 2014, the magistrate judge assigned to the case 28 ///// 1

1 recommended dismissal for failure to prosecute. ECF No. 8. This court adopted this 2 recommendation on April 1, 2014, and ordered the Clerk to close the case. ECF No. 9. 3 On July 21, 2014, petitioner filed a motion to reopen the time for filing an appeal. 4 ECF No. 11. He explained he had been in a facility in Seattle for a mental health evaluation and 5 did not receive the findings and recommendation or judgment. *Id.* at 1-2. 6 The court granted the request and allowed petitioner to appeal. ECF No. 13. 7 Petitioner filed his notice of appeal on August 28, 2014, and filed a request to proceed in forma 8 pauperis on September 22, 2014. ECF Nos. 14, 17. 9 Under Rule 24(a) of the Federal Rules of Appellate Procedure, a party who wishes 10 to appeal in forma pauperis must file a motion in the district court, supported by an affidavit 11 showing his inability to pay the fees and costs, claiming an entitlement to redress, and stating the 12 issues to be pursued on appeal. Petitioner has filed an affidavit showing his inability to pay, but 13 has not listed the issues he will raise on appeal. ECF No. 17. Accordingly the court denies the 14 motion without prejudice. 15 In light of petitioner's explanation that he did not receive the court's earlier orders, 16 the court would be inclined to vacate the judgment and consider the affidavit filed in connection 17 with the current motion as his request to proceed in forma pauperis with this action. It cannot do 18 so, however, because the notice of appeal has removed this court's jurisdiction over the subject of the appeal. Davis v. United States, 667 F.2d 822, 824 (9th Cir. 1982). Should petitioner dismiss 19 20 the appeal, this case could move forward. 21 IT IS THEREFORE ORDERED that petitioner's motion to proceed in forma 22 pauperis on appeal is denied without prejudice. 23 DATED: December 17, 2014. 24 25 26

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