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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CECIL JEROME HATCHETT,  
Petitioner,  
v.  
GONZALEZ,  
Respondent.

No. 2:13-cv-2477 TLN KJN P  
ORDER AND FINDINGS AND  
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. Pursuant to the court’s December 5, 2013 order, on January 8, 2014, petitioner filed 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 has previously filed an application for a writ of habeas corpus attacking the conviction and sentence challenged in this case. Hatchett v. Lungren, Case No. 2:98-cv-0345 WBS JFM P. The previous application was filed on February 26, 1998, and was denied on the merits on October 6, 2003. Before petitioner can proceed with the instant application, he must move in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3). Therefore,

1 petitioner's application must be dismissed without prejudice to its re-filing upon obtaining  
2 authorization from the United States Court of Appeals for the Ninth Circuit.<sup>1</sup>

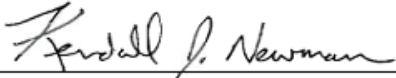
3 In accordance with the above, IT IS HEREBY ORDERED that petitioner's application to  
4 proceed in forma pauperis (ECF No. 6) is granted; and

5 IT IS RECOMMENDED that this action be dismissed without prejudice.

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

13 Dated: February 14, 2014

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> The Ninth Circuit previously denied petitioner leave to proceed with a successive petition on November 2, 2004, in Case No. 04-73928. Moreover, on October 22, 2013, this court dismissed without prejudice, because successive, another habeas petition filed by petitioner. See Hatchett v. Gonzales, Case No. 2:12-cv-02228 MCE DAD P.