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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MUSTAQ ALI KHAN,  
Petitioner,  
v.  
S. FRAUENHEIM, Warden,  
Respondent.

No. 2:15-cv-1050 WBS DAD 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, together with an application to proceed in forma pauperis.

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

**PRELIMINARY SCREENING**

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court . . . .” Rule 4, Rules Governing Section 2254 Cases. See also O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990); Gutierrez v. Griggs, 695 F.2d 1195, 1198 (9th Cir. 1983). The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas corpus at several stages of a case, including “summary

1 dismissal under Rule 4; a dismissal pursuant to a motion by the respondent; a dismissal after the  
2 answer and petition are considered; or a dismissal after consideration of the pleadings and an  
3 expanded record.”

#### 4 **THE PETITION**

5 Petitioner commenced this action by filing a petition for writ of habeas corpus. In his  
6 petition, petitioner makes clear that he is not challenging his conviction and sentence. Instead,  
7 petitioner requests a commutation of sentence and/or an international transfer of custody to the  
8 Fijian Islands. He has attached to his petition a copy of his California Application for  
9 Commutation of Sentence directed to Governor Edmund G. Brown, Jr. (Pet. at 5-5a & Ex. A.)

#### 10 **DISCUSSION**

11 Petitioner’s application for a writ of habeas corpus fails to state a cognizable claim for  
12 federal habeas corpus relief. 28 U.S.C. § 2254(a). As noted above, petitioner does not challenge  
13 his conviction and sentence and does not assert any claims for relief. In fact, from the allegations  
14 of his petition, petitioner himself does not appear to believe that he has suffered any federal  
15 constitutional deprivation(s). Petitioner admits to his crime and accepts full responsibility for it.  
16 He simply is seeking the commutation of his sentence. Petitioner is advised that he needs to file  
17 his Application for Commutation of Sentence with the Office of the Governor of California and  
18 not with this federal court.

#### 19 **CONCLUSION**

20 Accordingly, IT IS HEREBY ORDERED that petitioner’s motion to proceed in forma  
21 pauperis (Doc. No. 6) is granted.

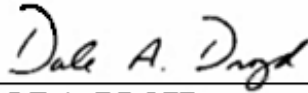
22 IT IS HEREBY RECOMMENDED that petitioner’s application for writ of habeas corpus  
23 be dismissed for failure to state a cognizable claim for relief.

24 These findings and recommendations are submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
26 after being served with these findings and recommendations, petitioner may file written  
27 objections with the court and serve a copy on all parties. Such a document should be captioned  
28 “Objections to Magistrate Judge’s Findings and Recommendations.” Petitioner is advised that

1 failure to file objections within the specified time may waive the right to appeal the District  
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 In any objections he elects to file, petitioner may address whether a certificate of  
4 appealability should issue in the event he files an appeal of the judgment in this case. See Rule  
5 11, Federal Rules Governing Section 2254 Cases (the district court must issue or deny a  
6 certificate of appealability when it enters a final order adverse to the applicant).

7 Dated: October 8, 2015

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10 DALE A. DROZD  
11 UNITED STATES MAGISTRATE JUDGE

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