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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAI NGUYEN,  
  
                                    Petitioner,  
  
                    v.  
  
DAVID DAVEY, Warden,  
Corcoran State Prison,  
  
                                    Respondent.

No. 2:15-cv-02054 KJM AC P

FINDINGS AND RECOMMENDATION

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 request to proceed in forma pauperis demonstrates that it is incomplete.<sup>1</sup>

More importantly, 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. See Nguyen v. Scribner, Case No. 2:06-cv-01389 GEB CMK P. The previous application was filed on June 22, 2006, and denied as untimely on October 31, 2006. Thereafter, the United States Court of Appeals for the Ninth Circuit denied petitioner’s request for a certificate of

<sup>1</sup> Petitioner’s request to proceed in forma pauperis is not set forth on the proper form, does not provide the required information, and fails to include the appropriate documentation.


1 appealability.

2 Before petitioner can proceed with the instant application, he must move in the Ninth  
3 Circuit Court of Appeals for an order authorizing the district court to consider the application.  
4 See 28 U.S.C. § 2244(b)(3). Therefore, petitioner’s instant application must be dismissed without  
5 prejudice to its re-filing upon authorization from the Court of Appeals.

6 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without  
7 prejudice.

8 These findings and recommendations are submitted to the United States District Judge  
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)  
10 days after being served with these findings and recommendations, petitioner may file written  
11 objections with the court. The document should be captioned “Objections to Magistrate Judge’s  
12 Findings and Recommendations.” Petitioner is advised that failure to file objections within the  
13 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951  
14 F.2d 1153 (9th Cir. 1991).

15 DATED: December 8, 2015

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17 ALLISON CLAIRE  
18 UNITED STATES MAGISTRATE JUDGE  
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