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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 CHRISTOPHER BOEGEMAN

11 Petitioner,

12 v.

13 CHRIS SMITH, et al.

14 Respondent.  
15

Case No.: 3:17-cv-00861-GPC-KSC

**ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S MOTION  
FOR LEAVE TO PROCEED IN  
FORMA PAUPERIS ON APPEAL**

**[DKT. NO. 13]**

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17 On July 18, 2018, Petitioner Christopher Boegeman ("Petitioner") filed an  
18 application to proceed in forma pauperis concurrently with a notice of appeal of this  
19 Court's Dkt. No. 10 Order denying Petitioner's habeas petition. Dkt. No. 13. The Court  
20 will construe this application to be a motion for leave to proceed in forma pauperis on  
21 appeal pursuant to Federal Rule of Appellate Procedure 24(a)(1).

22 An indigent party who cannot afford the expense of pursuing an appeal may file a  
23 motion for leave to proceed *in forma pauperis*. See Fed. R. App. P. 24(a); 28 U.S.C. §  
24 1915(a)(1). Pursuant to Federal Rule of Appellate Procedure 24(a), a party to a district-  
25 court action who desires to appeal *in forma pauperis* must file a motion in the district  
26 court. "The party must attach an affidavit that (1) shows in detail 'the party's inability to  
27 pay or give security for fees and costs,' (2) 'claims an entitlement to redress,' and (3)  
28

1 ‘states the issues that the party intends to present on appeal.’ ” *McKinley v. Warden*, No.  
2 CV 5:12-00337-VBF, 2013 WL 3872105, \*1 (C.D. Cal. Apr. 26, 2013) (quoting Fed. R.  
3 App. P. 24(a)(1))

4 A party seeking to proceed IFP on appeal must file a motion in the district  
5 court. *See* Fed R.App. P. 24(a)(1). The determination of whether a plaintiff is indigent,  
6 and thus unable to pay the filing fee falls within the district court's discretion. *California*  
7 *Men's Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir.1991), *reversed on other*  
8 *grounds*, 506 U.S. 194, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993) (“Section 1915 typically  
9 requires the reviewing court to exercise its sound discretion in determining whether the  
10 affiant has satisfied the statute's requirement of indigency.”). It is well-settled that a party  
11 need not be completely destitute to proceed IFP. *Adkins v. E.I. DuPont de Nemours &*  
12 *Co.*, 335 U.S. 331, 339–40 (1948). To satisfy the requirements of IFP status, “an affidavit  
13 [of poverty] is sufficient which states that one cannot because of his poverty pay or give  
14 security for costs ... and still be able to provide himself and dependents with the  
15 necessities of life.” *Id.* at 339.

16 Petitioner’s application shows that he cannot afford a filing fee. Here, he lists an  
17 average monthly income of \$1,900 a month with expenses of \$2,907 a month.  
18 Furthermore, Petitioner states that he must pay a “monthly due of a crime I never did”  
19 which the Court construes to refer to the \$100 a month restitution ordered by the state  
20 court in his underlying case. *See* Dkt. No. 13 at 5; Dkt. No. 17-13 at 7 (ordering fines  
21 and restitution (totaling \$11,939.80) to be paid to Probation at the rate of \$100 per  
22 month). Accordingly, Petitioner’s affidavit shows that he cannot afford the filing fee.

23 Petitioner’s affidavit, however, has not claimed an entitlement to redress, nor set  
24 forth the issues that he intends to present on appeal. Furthermore, Petitioner’s Notice of  
25 Appeal does not discuss these issues. *See* Dkt. No. 12. Consequently, Petitioner has  
26 failed to meet the second and third requirements set forth under Federal Rule of Appellate  
27 Procedure 24(a)(1). Accordingly, the Court will **DENY** Petitioner’s motion to proceed in  
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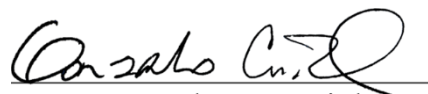
1 forma pauperis on appeal without prejudice. *See Ontiveros v. Cate*, 2010 WL 4316942,  
2 at \*1 (S.D. Cal. Oct. 27, 2010) (“However, petitioner fails to detail the issues he intends  
3 to present on appeal as required for this Court to determine whether to grant or deny his  
4 request to proceed *in forma pauperis* on appeal. *See* Fed. R. App. P. 24(a)(1).  
5 Accordingly, petitioner’s motion to proceed in forma pauperis on appeal is DENIED  
6 without prejudice.”); *Tran v. Macomber*, 2016 WL 342348, at \*15 (N.D. Cal. Jan. 27,  
7 2016) (denying request for IFP status on appeal where “[t]he application is deficient in  
8 that it . . . does not contain an affidavit in which Petitioner ‘claims an entitlement to  
9 redress’ and ‘states the issues that the party intends to present on appeal.’”). This denial is  
10 without prejudice to Petitioner filing an application in the United States Court of Appeals  
11 for the Ninth Circuit to proceed *in forma pauperis* on appeal. *See* Fed. R. App. P.  
12 24(a)(5).<sup>1</sup>

### 14 CONCLUSION

15 For the foregoing reasons, this Court **DENIES WITHOUT PREJUDICE**  
16 Petitioner’s Motion to Proceed In Forma Pauperis on Appeal.

17 **IT IS SO ORDERED.**

18 Dated: July 19, 2018



19 Hon. Gonzalo P. Curiel  
20 United States District Judge

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25 <sup>1</sup> The district court previously denied a certificate of appealability. *See* Dkt. No. 10. Pursuant to Federal  
26 Rule of Appellate Procedure 22, “[i]f the district judge has denied the certificate [of appealability], the  
27 applicant may request a circuit judge to issue it.” Fed. R. App. P. 22(b)(1). Consequently, even though  
28 this Court denied a certificate of appealability, Petitioner may still seek appellate review. *See Broadnax*  
*v. Beard*, 2014 WL 293270, at \*2 (S.D. Cal., Jan. 12, 2014).