

FILED

17 AUG 29 AM 10:18

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY *RTM* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

<p>JONATHAN CHAMPEAU, Petitioner, v. SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY, Respondent.</p>

Case No.: 17cv1525 BEN (BGS)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

Petitioner, proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

FAILURE TO SATISFY FILING FEE REQUIREMENT

Petitioner has failed to pay the \$5.00 filing fee and has failed to move to proceed in forma pauperis. This Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or qualified to proceed in forma pauperis. See Rule 3(a), 28 U.S.C. foll. § 2254.

JURISDICTIONAL CUSTODY REQUIREMENT

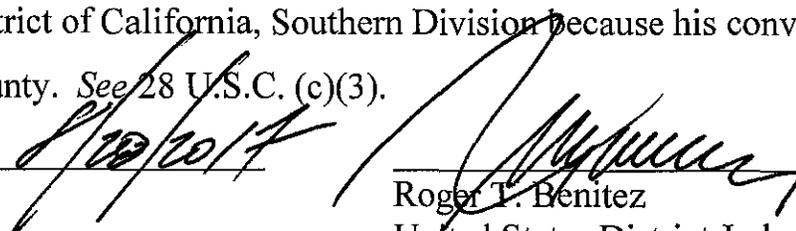
Petitioner is not currently in either actual or constructive custody, and thus this Court does not have habeas jurisdiction. A habeas petitioner who challenges a state court conviction must establish he is “in custody in violation of the Constitution or laws . . . of the United States.” 28 U.S.C. § 2254(a). Current imprisonment or constructive custody, such as a petitioner’s status on probation or parole, is required to satisfy the custody

1 requirement. *See, e.g., Jones v. Cunningham*, 371 U.S. 236, 243 (1963) (parole); *United*
2 *States v. Span*, 75 F.3d 1383, 1386 n.5 (9th Cir. 1996) (probation); *United States v.*
3 *Gaudin*, 28 F.3d 943, 965 (9th Cir. 1994) (en banc) (probation).

4 **CONCLUSION**

5 For the foregoing reasons, the Court **DISMISSES** this action without prejudice.
6 The Court notes that if Petitioner can satisfy the custody requirement by virtue of being
7 imprisoned, or being on probation or parole, the proper venue for a challenge to his
8 conviction pursuant to 28 U.S.C. § 2254 would be the United States District Court for the
9 Central District of California, Southern Division because his conviction occurred in
10 Orange County. *See* 28 U.S.C. (c)(3).

11 DATED: 8/12/2017



Roger T. Benitez
United States District Judge