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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 MARLON BLACHER,

12 Petitioner,

13 v.

14 RALPH DIAZ, Secretary, et al.,

15 Respondents.
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Case No. 20cv1611-MMA (AGS)

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS;**

[Doc. No. 2]

**DISMISSING ACTION WITHOUT
PREJUDICE**

19 Petitioner, a state prisoner incarcerated at the R.J. Donovan Correctional Facility in
20 San Diego, California, proceeding *pro se*, has filed a petition for a writ of habeas corpus
21 pursuant to 28 U.S.C. § 2254, along with a motion to proceed in forma pauperis. *See*
22 Doc. Nos. 1, 2. Petitioner is challenging his 2008 murder conviction from the Contra
23 Costa County California Superior Court and the denial of his motion in that court for
24 resentencing pursuant to California Penal Code § 1170.95. *See* Doc. No. 1 at 1-57.

25 **MOTION TO PROCEED IN FORMA PAUPERIS**

26 The Court must deny Petitioner's motion to proceed in forma pauperis because
27 Petitioner has not provided the statutorily required information to determine his financial
28 status. A request to proceed in forma pauperis made by a state prisoner must include a

1 certificate from the warden or other appropriate officer showing the amount of money or
2 securities Petitioner has on account in the institution. *See* Rule 3(a)(2), 28 U.S.C. foll.
3 § 2254; Local Rule 3.2. Notwithstanding his presumably good faith representations
4 regarding his financial status, Petitioner has failed to provide the Court with the required
5 Prison Certificate. Accordingly, the Court **DENIES** Petitioner's motion to proceed in
6 forma pauperis and **DISMISSES** this action without prejudice.

7 PROPER VENUE

8 The Court cautions Petitioner that a petition for writ of habeas corpus may be filed
9 in the United States District Court of either the judicial district in which the petitioner is
10 presently confined or the judicial district in which he was convicted and sentenced. *See*
11 28 U.S.C. § 2241(d); *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 497 (1973).
12 The application in the present matter attacks a judgment of conviction that was entered in
13 the Contra Costa County Superior Court, which is within the jurisdictional boundaries of
14 the United States District Court for the Northern District of California. *See* 28 U.S.C. §
15 84(a). Petitioner is presently confined at R.J. Donovan Correctional Facility in San
16 Diego, California, which is within the jurisdictional boundaries of the United States
17 District Court for the Southern District of California. *See* 28 U.S.C. § 84(d). When a
18 habeas petitioner is challenging a judgment of conviction, the district court of the district
19 in which the judgment of conviction was entered is a more convenient forum because of
20 the accessibility of evidence, records and witnesses. *See Braden*, 410 U.S. at 497, 499
21 n.15 (stating that a court can transfer habeas cases to the district of conviction which is
22 ordinarily a more convenient forum).

23 If Petitioner wishes to challenge his conviction and the denial of his motion for
24 resentencing, both of which took place in the Northern District of California (*see* Doc.
25 No. 1 at 1, 122), he should file a new petition without delay in the United States District
26 Court for the Northern District of California.


27 CONCLUSION

28 Based on the foregoing, the Court **DENIES** Petitioner's motion to proceed in

1 forma pauperis and **DISMISSES** this action without prejudice to Petitioner’s right to
2 proceed with his claims in the proper venue of the United States District Court for the
3 Northern District of California. The Court **DIRECTS** the Clerk of Court to close the
4 case.

5 **IT IS SO ORDERED.**

6 DATE: September 14, 2020


HON. MICHAEL M. ANELLO
United States District Judge

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