

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

OMAR AYALA,  
Petitioner,  
vs.  
JO GENTRY, *et al.*,  
Respondents.

Case No. 2:17-cv-01617-APG-GWF  
**ORDER**

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner. Neither a filing fee nor an application to proceed *in forma pauperis* was submitted with the petition. When filing a habeas action, petitioner must either submit the \$5.00 filing fee for habeas petition or an application to proceed *in forma pauperis*. Due to the lack of an *in forma pauperis* application or filing fee, the present action will be dismissed without prejudice to the filing of a new petition in a new action with a pauper application with all required attachments. It does not appear from the papers presented that a dismissal without prejudice would result in a promptly-filed new petition being untimely. In this regard, petitioner at all times remains responsible for calculating the running of the limitations period as applied to his case and properly commencing a timely-filed habeas corpus action.

**IT THEREFORE IS ORDERED** that this action is **DISMISSED** without prejudice to the filing of a **new petition in a new action.**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS FURTHER ORDERED** that the Clerk of the Court shall send petitioner the following: (1) two copies of an *in forma pauperis* application form for a prisoner and one copy of the instructions for the same, (2) two copies of a blank 28 U.S.C. § 2254 habeas petition form and one copy of instructions for the same; and (3) the petition.

**IT IS FURTHER ORDERED** that petitioner may file a new petition in a new action, but may not file further documents in this action.

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**. Reasonable jurists would not find the dismissal of the improperly-commenced action without prejudice to be debatable or wrong.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment accordingly.

Dated: June 13, 2017.

  
\_\_\_\_\_  
ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE