<div align="center">

1   **UNITED STATES DISTRICT COURT**

2   **DISTRICT OF NEVADA**

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4   David L. Dearing,   2:17-cv-02516-JAD-GWF

5   Petitioner   **Order Dismissing Case**

6   v.   [ECF No. 1-1]

7   State of Nevada, et al.,

8   Respondents

9

10   Pro se petitioner David Dearing is serving an 18-month sentence after he was convicted

11 of domestic-violence battery, coercion, and petit larceny.[1] He filed a motion to vacate, set aside,

12 or correct his sentence under 28 U.S.C. § 2255,[2] but he has not paid the filing fee or filed an

13 application to proceed *in forma pauperis*. Dearing seems to actually challenge a state judgment

14 of conviction, so he needs to file a § 2254 petition for a writ of habeas corpus on this court's

15 form. This matter, therefore, has not been properly commenced.[3]

16   Accordingly, IT IS HEREBY ORDERED that this **case is DISMISSED without**

17 **prejudice** to Dearing's ability to file a petition for a writ of habeas corpus in a new, separate

18 case. If Dearing chooses to file a habeas petition, he must either: (1) pay the $5.00 filing fee, or

19 (2) file a completed application to proceed *in forma pauperis* on the proper form with a properly

20 executed financial certificate and inmate-account statements.

21   Dearing at all times remains responsible for properly exhausting his claims, for

22 calculating the federal limitations period as applied to his case, and for properly commencing a

23 timely filed federal habeas action.

24   The **Clerk of Court** is directed to **DETACH and FILE** the motion to vacate **[ECF No.**
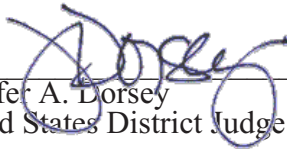
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[1] ECF No. 1-1 at 2.

[2] *Id.*

[3] 28 U.S.C. § 1915(a)(2) (2016), Local Rules LSR1-2, 3-1.

1   **1-1]**.

2   IT IS FURTHER ORDERED that the motion to vacate **[ECF No. 1-1] is DENIED**.

3   The **Clerk of Court** is also directed to **SEND to Dearing** two copies each of an

4   application form to proceed *in forma pauperis* for prisoners, a noncapital § 2254 habeas petition

5   form, one copy of the instructions for each form, and a copy of the papers that he submitted in

6   this action.

7   DATED: November 13, 2017.

8   _____
                                             Jennifer A. Dorsey
9   United States District Judge

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