

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

MICHAEL COTA,

Case No. 3:21-cv-00399-MMD-CLB

v-

**Petitioner:**

## ORDER

WILLIAM GITTERE, *et al.*,

## Respondents.

12        This action is a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254,  
13 by Petitioner Michael Cota, an individual incarcerated at Nevada’s Ely State Prison. Cota  
14 initiated this action on September 2, 2021, by submitting his habeas petition (ECF No. 1-  
15 1), along with an application to proceed *in forma pauperis* (ECF No. 1). On September 3,  
16 2021, Cota filed a “Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct  
17 Sentence by a Person in Federal Custody.” (ECF No. 3 (“Motion”).)

18 Cota's application to proceed *in forma pauperis* is incomplete, in that it does not  
19 include the required financial certificate, completed, and signed by an authorized prison  
20 officer. See LR LSR 1-2. The Court will therefore deny the application to proceed *in forma*  
21 *pauperis*, without prejudice to Cota filing a new application.

22 The Court will grant Cota time to either pay the filing fee for this action or file a new  
23 application to proceed *in forma pauperis*. If Cota wishes to pay the filing fee, Cota must  
24 have \$5.00 sent to the Clerk of Court, with a cover letter indicating the case number of  
25 this action. If Cota fails to pay the filing fee or file a new *in forma pauperis* application  
26 within the time allowed, this action will be dismissed.

27 The Court will deny Cota's Motion under 28 U.S.C. § 2255. Such a motion is  
28 properly made only by a person in federal custody. Cota is not in federal custody; he is

1 state custody. Cota's state conviction and sentence are properly challenged by means of  
2 his petition for writ of habeas corpus under 28 U.S.C. § 2254.

3 It is therefore hereby ordered that Petitioner Michael Cota's "Motion under 28  
4 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody"  
5 (ECF No. 3) is denied.

6 It is further ordered that Cota's application to proceed *in forma pauperis* (ECF No.  
7 1) is denied, without prejudice.

8 It is further ordered that Cota will have 45 days from the date of this Order to either  
9 pay the \$5.00 filing fee for this action as instructed above or file a fully completed  
10 application to proceed *in forma pauperis*, including the required financial certificate.

11 The Clerk of Court is directed to send to Cota, along with a copy of this order, two  
12 form *in forma pauperis* applications.

13 DATED THIS 8<sup>th</sup> Day of September 2021.



14  
15  
16 MIRANDA M. DU  
17 CHIEF UNITED STATES DISTRICT JUDGE  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28