

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

|                  |   |                       |
|------------------|---|-----------------------|
| DAVID MUSCIOTTO, | : |                       |
|                  | : |                       |
| Petitioner,      | : | Civ. No. 19-396 (NLH) |
|                  | : |                       |
| v.               | : | OPINION               |
|                  | : |                       |
| ERIN NARDELLI,   | : |                       |
|                  | : |                       |
| Respondent.      | : |                       |
|                  | : |                       |

APPEARANCE:

David Musciotto, No. 1158738  
Southern State Correctional Facility  
4295 Route 47  
Delmont, NJ 08314  
Petitioner Pro se

HILLMAN, District Judge

Petitioner David Musciotto seeks to bring a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 without prepayment of fees or security. See ECF No. 1 (petition). Petitioner is presently incarcerated at the Southern State Correctional Facility for a New Jersey state conviction; however, he seeks to challenge a detainer lodged against him by the State of Connecticut. See id.

Filing Fee

The filing fee for a petition for writ of habeas corpus is \$5.00. Pursuant to Local Civil Rule 54.3(a), the filing fee is required to be paid at the time the petition is presented for filing. Pursuant to Local Civil Rule 81.2(b), whenever a

prisoner submits a petition for writ of habeas corpus and seeks to proceed in forma pauperis, that petitioner must submit (a) an affidavit setting forth information which establishes that the petitioner is unable to pay the fees and costs of the proceedings, and (b) a certification signed by an authorized officer of the institution certifying (1) the amount presently on deposit in the prisoner's prison account and, (2) the greatest amount on deposit in the prisoner's institutional account during the six-month period prior to the date of the certification. If the institutional account of the petitioner exceeds \$200, the petitioner shall not be considered eligible to proceed in forma pauperis. L. Civ. R. 81.2(c).

Here, Petitioner did not prepay the \$5.00 filing fee for a habeas petition as required by Local Civil Rule 54.3(a), nor did Petitioner submit an application for leave to proceed in forma pauperis. Although Plaintiff indicates in his cover letter that he would like to proceed in forma pauperis and submits a certified prison account statement, he has not submitted the required form, an affidavit of poverty and certification. Petitioner must either prepay the \$5.00 filing fee or submit a complete application to proceed in forma pauperis, including the required affidavit of poverty.

Conclusion

For the reason set forth above, the Clerk of Court will be ordered to administratively terminate this action without prejudice.<sup>1</sup> Petitioner will be granted leave to apply to re-open within thirty (30) days, by paying the filing fee of \$5.00, or submitted a completed application to proceed in forma pauperis. An appropriate Order will be entered.

Dated: January 16, 2019  
At Camden, New Jersey

s/ Noel L. Hillman  
NOEL L. HILLMAN, U.S.D.J.

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<sup>1</sup> Such an administrative termination is not a "dismissal" for purposes of the statute of limitations, and if the case is re-opened pursuant to the terms of the accompanying Order, it is not subject to the statute of limitations time bar if it was originally submitted timely. See Houston v. Lack, 487 U.S. 266 (1988) (prisoner mailbox rule); Papotto v. Hartford Life & Acc. Ins. Co., 731 F.3d 265, 275-76 (3d Cir. 2013) (collecting cases and explaining that a District Court retains jurisdiction over, and can re-open, administratively closed cases).