

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

MANUEL A. RIVERA,

Petitioner,

vs.

No. CIV 23-1100 JB/KK

RAÚL TORREZ, Attorney General of  
the State of New Mexico,

Respondent.

**MEMORANDUM OPINION AND ORDER**

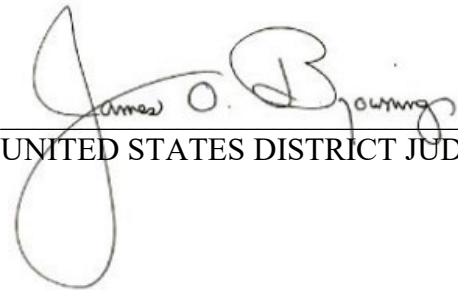
**THIS MATTER** comes before the Court on the Petitioner’s Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed January 10, 2024 (Doc. 3)(“IFP Motion”). Petitioner Manuel A. Rivera is incarcerated and proceeding pro se. See Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus By a Person in State Custody at 1, filed December 13, 2023 (Doc. 1)(“Habeas Petition”). Rivera seeks to prosecute his Habeas Petition without prepaying the \$5.00 habeas filing fee. IFP Motion at 1. The Court may grant such relief only where an inmate’s “affidavit [and] . . . statement of . . . assets [demonstrates] that the [inmate] is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). Although Rivera asserts in the IFP Motion that he, has “no fun[d]s,” IFP Motion at 1, Rivera provides his inmate financial statement, which reflects a balance of \$25.03, see IFP Motion at 3 (New Mexico Corrections Department, Otero County Prison Facility Statement of Account (dated 10/01/2023 to 11/15/2023)). The Court concludes that Rivera can afford to prepay the \$5.00 habeas filing fee and, therefore, the Court must deny the IFP Motion.<sup>1</sup> Rivera shall pay the \$5.00 habeas filing fee

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<sup>1</sup>In addition to his inmate financial statement, Rivera also provides -- included with his IFP Motion -- a receipt from a standard commissary order in the amount of \$51.63. IFP Motion at 4.

within thirty days of entry of this order. The failure timely to comply with this Memorandum Opinion and Order will result in the dismissal of this action without further notice.

**IT IS ORDERED** that: (i) the Court denies the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed January 10, 2024 (Doc. 3); and (ii) Rivera must submit the \$5.00 habeas filing fee within thirty days from entry of this Order.



UNITED STATES DISTRICT JUDGE

*Parties:*

Manuel A. Rivera  
Chaparral, New Mexico

*Petitioner pro se*

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The bottom of this receipt reads a date and time, "11/28/2023 11:09:16 AM," which Rivera has underlined. IFP Motion at 4. Rivera does not explain the significance of this commissary receipt, or how it relates to his account balance. To the extent that Rivera seeks use the receipt to show that he has no funds because he spent all his funds at the commissary, the Court does not accept this conclusion. Although the date on the receipt post-dates the account statement, the Court has no way of knowing whether that date and time on the receipt correspond to the date and time that Rivera made his commissary purchase, or simply the date that Rivera printed the receipt. Moreover, the Court notes that, even if Rivera's commissary transaction came after November 15, 2023, the \$51.63 amount charged in the receipt exceeds the \$25.03 shown in Rivera's November 15, 2023, account balance, which leads the Court to the conclusion that Rivera obtained further income before he made the commissary purchase. For these reasons, the Court concludes that the commissary receipt does not affect the Court's conclusion regarding Rivera's assets to pay the filing fee.