

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RAUL ZAMORA PEREZ,)	
)	
Petitioner,)	
)	
v.)	1:15CV631
)	
FAYE DANIELS,)	
)	
Respondent.)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner of the State of North Carolina, submitted a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody together with an application to proceed *in forma pauperis*. For the following reasons, the Petition cannot be further processed.

1. The filing fee was not received, nor was a sufficient affidavit to proceed *in forma pauperis* submitted and signed by Petitioner. The application submitted by Petitioner does not include the total amounts of deposits into his prison trust account for the six months prior to filing, which the Court needs in order to decide the application. Petitioner includes a statement showing deposits for only about one month. He checks boxes on the form indicating no income during the past twelve months, but the statement he provides contradicts this by showing that Petitioner received \$100 in one month alone.
2. Petitioner does not appear to state any viable claim for relief. Petitioner writes absolutely nothing in the spaces on the § 2254 form set aside for him to list his claims. In a portion of the form addressing the timeliness of any claims, Petitioner writes a lengthy explanation that appears to indicate that he may face deportation following his future release from prison, but that he wishes to go live with his brother in Texas instead of being deported. Petitions under § 2254 address alleged state violations of federal

constitutional rights which are connected with state criminal convictions and sentences. Petitioner's future release and his deportation or living arrangements do not appear to relate to any violations of his federal rights by the State of North Carolina in connection with his current convictions and sentences. They also appear to involve matters in the control of federal immigration authorities, and any decisions by those authorities appear to be in the future. If Petitioner contends that his state convictions or sentences are unconstitutional in some way, he must clearly state his claims under § 2254 on the proper forms in the spaces provided.

Because of these pleading failures, the Petition should be filed and then dismissed, without prejudice to Petitioner filing a new petition on the proper habeas corpus forms with the \$5.00 filing fee, or a completed application to proceed *in forma pauperis*, and otherwise correcting the defects noted. To further aid Petitioner, the Clerk is instructed to send Petitioner a new application to proceed *in forma pauperis*, new § 2254 forms, and instructions for filing a § 2254 petition, which Petitioner should follow.

In forma pauperis status will be granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Petitioner § 2254 forms, instructions, and a current application to proceed *in forma pauperis*.

IT IS RECOMMENDED that this action be filed, but then dismissed *sua sponte* without prejudice to Petitioner filing a new petition which corrects the defects of the current Petition.

This, the 4th day of January, 2016.

/s/ Joi Elizabeth Peake
United States Magistrate Judge