

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE, PORTLAND

CARL ERIC OLSEN, in propria persona,	*	
	*	
Petitioner,	*	1:07-cv-34
	*	
v.	*	
	*	
UNITED STATES,	*	Objection to Magistrate's Recommended
	*	Decision on Motion to Proceed In Forma
Respondent.	*	Pauperis

The Petitioner respectfully moves the Court to reconsider the Magistrate's Recommended Decision of June 11, 2007 (docket entry 15) because it is not fair to force the Petitioner to pay for the error made in refusing to accept the Petition for Writ of Habeas Corpus under the correct statutory authority is was filed under.

In the Recommended Decision of June 11, 2007 (docket entry 15) the Magistrate says the "Petition for Writ of Habeas Corpus" was filed pursuant to 28 U.S.C. § 2241 and 28 U.S.C. § 1651, but it in the Recommended Decision to Dismiss the Petition of March 19, 2007 (docket entry 2) the Magistrate said the petition was filed pursuant to 28 U.S.C. § 2255.

This Court dismissed the Plaintiff's petition on April 10, 2007 (docket entries 5 and 6) without requiring any response from the United States, saying the petition had been filed under 28 U.S.C. § 2255, and finding that the Petition is not eligible to file under 28 U.S.C. § 2255. The Petitioner knows he is not eligible to file pursuant to 28 U.S.C. § 2255, which is exactly why the Petitioner filed the petition pursuant to 28 U.S.C. § 2241 and 28 U.S.C. § 1651. This court's ruling effectively says I have no right to file a "Petition for Writ of Habeas Corpus".

This Court now wants the Petitioner to pay the U.S. Court of Appeals a \$455 filing fee when the sole issue is whether the Petitioner has a right to file a

Petition for Writ of Habeas Corpus. The Petitioner's objection to the Magistrate's Recommended Decision of March 19, 2007 clearly shows the Petitioner has a right to file a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 and 28 U.S.C. § 1651 and this Court has an obligation to rule on the merits of the petition.

The Magistrate's Recommended Decision of June 11, 2007 says that the Petitioner attempted to pay a filing fee of \$5 with his Petition for Writ of Habeas Corpus and the court returned the Petitioner's \$5 under administrative procedures followed by District Court. The \$5 filing fee is statutory and it cannot be waived. See 28 U.S.C. § 1914(a).

The District Court should now accept the Petitioner's Petition for Writ of Habeas Corpus under the correct statutes it was filed under. The Petition is will to re-file, if this Court agrees. The District Court cannot simply rewrite the Petitioner's petition, change the statutory jurisdictional authority from 28 U.S.C. § 2241 and 28 U.S.C. § 1651 to 28 U.S.C. § 2255, and dismiss the Petition on a technical issue. The court must address the merits of the Petition. The Petitioner should not have to pay for an appeal which does not address the merits of the Peition.

CONCLUSION

The District Court should allow the Petitioner to re-file the Petition under the correct statutory jurisdictional authority, accept the statutory filing fee of \$5, and require the United States to give an answer.

In the alternative, the District Court should grant the Petitioner's Motion to Proceed In Forma Pauperis.

Respectfully submitted this 11th day of June, 2007.

[/s/ Carl E. Olsen](#)

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IN PROPRIA PERSONA

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Certificate of Appealability was served electronically on this 11th day of June, 2007 to the following respondent:

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