

1 On April 21, 2017, petitioner submitted another form petition to the Court, dated April 17,
2 2017. However, rather than using the form the Court had provided him with its April 7, 2017,
3 Order, petitioner instead used a state court habeas form. In addition, he still did not indicate the
4 respondent's name. As the April 21, 2017, submission did not name the proper respondent for
5 a habeas proceeding, this Court lacked jurisdiction to entertain the action and, on April 28, 2017,
6 the Court rejected the submission and ordered it returned to petitioner along with the April 28,
7 2017, Order. (ECF No. 4).

8 Also in the April 28, 2017, Order, the Court informed petitioner that it would give him a "final
9 opportunity" to file an Amended Petition using the proper form for an action brought pursuant to
10 28 U.S.C. § 2254 in this federal Court. (*Id.*). The Court ordered petitioner to file, no later than May
11 31, 2017, an Amended Petition using the proper § 2254 form petition (which was again included
12 with the April 28, 2017, Order). Petitioner was told that the Amended Petition should use the same
13 case number (CV 17-2508-BRO (PLA)), be clearly labeled "First Amended Petition," and be filled
14 out completely, including with the respondent's name. As noted in the Court's April 7, 2017,
15 Order, petitioner was told that he must also show that his claim(s) have been fairly presented to
16 the California Supreme Court prior to presenting them to the federal courts. Alternatively,
17 petitioner was informed that if he agreed the action should be dismissed without prejudice as
18 unexhausted, he could file a notice of voluntary dismissal pursuant to Federal Rule of Civil
19 Procedure 41(a)(1), and petitioner was provided with a blank dismissal form.

20 On May 19, 2017, the Court received a number of submissions from petitioner:

21 (1) Without explanation, petitioner re-submitted the April 21, 2017, petition that the Court
22 had returned to him on April 28, 2017. That document is **not to be filed**, but is instead again
23 **rejected and ordered returned to petitioner** along with this Order. Petitioner should keep this
24 document for his records and **must not** return it to this Court.

25 (2) Petitioner submitted a handwritten note ("Note"). In the Note, petitioner stated that he
26 "would like to dis[]miss" his "last habeas corpus sent in 'march.'" Attached to the Note was the
27 form previously provided to petitioner by the Court for a Rule 41 dismissal ("Dismissal Form"). On
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1 the Dismissal Form, petitioner indicated that he wanted to dismiss the action “John Smith v.
2 Courts” in its entirety. Although the Dismissal Form was dated May 16, 2017, petitioner did not
3 include a case number or a signature. The only document submitted by petitioner in March was
4 the original Petition submitted pursuant to § 2241 that the Court gave petitioner leave to amend
5 to include information regarding exhaustion of his claims. It is unclear, therefore (especially in light
6 of the third point below) whether petitioner actually intends to dismiss this action, or whether he
7 misunderstood the Court’s April 28, 2017, Order indicating that if he agreed his claim was not
8 exhausted, he could file a Dismissal Form and return to the *state* courts to exhaust his claim. In
9 an abundance of caution, therefore, no action will be taken on petitioner’s Dismissal Form at this
10 time, and the Court will instead wait for petitioner’s response to this Order to Show Cause.

11 (3) Petitioner submitted an Amended Petition pursuant to 28 U.S.C. § 2254 (“Amended
12 Petition” or “Am. Pet.”). The Amended Petition named the “San Fernando Valley Court” as the
13 respondent, did not include a case number and was undated. Attached to the Amended Petition
14 was the Court’s April 28, 2017, Order, with various portions underlined. In the Amended Petition,
15 petitioner inconsistently indicates that his date of conviction was October 5, 2016, pursuant to a
16 plea of *nolo contendere*, *and* that he had a jury trial. He states that he did not appeal to the state
17 courts because he “kn[e]w nothing about that.” (Am. Pet. at 3). The Amended Petition raises one
18 ground for relief, which appears to state as follows: “I was misrepresented I had a speedy trial
19 without me picking my jury.” (Am. Pet. at 5). Petitioner indicates that he did not raise this claim
20 on appeal to the state courts, or in a habeas petition to the California Supreme Court. (*Id.*).

21 (4) Petitioner submitted a Declaration in Support of Request to Proceed In Forma Pauperis,
22 along with a copy of his Trust Account report, certified by an officer at Atascadero State Hospital.
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25 **A. FAILURE TO STATE A CLAIM**

26 As previously noted, the Amended Petition raises one ground for relief in which petitioner
27 alleges “I was misrepresented I had a speedy trial without me picking my jury.” (*Id.*). This claim
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1 is ambiguous at best. For instance, among other things, it could be interpreted as a speedy trial
2 violation, or an ineffective assistance of counsel claim, or a claim that petitioner's plea was not
3 knowing and voluntary.

4 Under 28 U.S.C. § 2254(a), petitioner may only seek habeas relief if he is contending that
5 he is in custody in violation of the Constitution or laws or treaties of the United States. See Estelle
6 v. McGuire, 502 U.S. 62, 67-68, 112 S. Ct. 475, 116 L. Ed. 2d 385 (1991) ("In conducting habeas
7 review, a federal court is limited to deciding whether a conviction violated the Constitution, laws,
8 or treaties of the United States."); Smith v. Phillips, 455 U.S. 209, 221, 102 S. Ct. 940, 71 L. Ed.
9 2d 78 (1982) ("A federally issued writ of habeas corpus, of course, reaches only convictions
10 obtained in violation of some provision of the United States Constitution."). Rule 2 of the Rules
11 Governing Section 2254 Cases in the United States District Courts ("Habeas Rule 2") requires that
12 a petitioner specify all the grounds for habeas relief as well as the facts supporting each ground.
13 Habeas Rule 2(c). A petitioner is required to set forth a "detailed statement" explaining his habeas
14 claims. See Mayle v. Felix, 545 U.S. 644, 649, 125 S. Ct. 2562, 162 L. Ed. 2d 582 (2005)
15 ("[Habeas] Rule 2(c) . . . requires a . . . detailed statement. The habeas rule instructs the
16 petitioner to 'specify all the grounds for relief available to [him]' and to 'state the facts supporting
17 each ground.'").

18 Here, the Amended Petition does not clearly set forth the ground for relief petitioner
19 purports to be bringing, and the Court is unable to discern from the way petitioner presented his
20 ground for relief what federal constitutional claim(s) (if any) petitioner is alleging. Thus, the Court
21 is left to speculate as to the ground(s) for relief that petitioner is seeking to raise herein, and has
22 no facts or arguments to support that ground. In short, in its present format, the Amended Petition
23 does not provide either a clear legal basis for habeas relief or specific supporting facts for
24 petitioner's alleged claim. For these reasons, the Court concludes that the Amended Petition does
25 not clearly state a claim pursuant to 28 U.S.C. § 2254(a), and does not contain any claim that
26 meets the standard set forth in Habeas Rule 2(c) requiring a statement of specific grounds and
27 facts.

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1 **B. EXHAUSTION**

2 As a matter of comity, a federal court will not entertain a habeas corpus petition unless the
3 petitioner has exhausted the available state judicial remedies on every ground presented in the
4 petition. Rose v. Lundy, 455 U.S. 509, 518-22, 102 S. Ct. 1198, 71 L. Ed. 2d 379 (1982). The
5 habeas statute explicitly provides that a habeas petition brought by a person in state custody “shall
6 not be granted unless it appears that -- (A) the applicant has exhausted the remedies available
7 in the courts of the State; or (B)(i) there is an absence of available State corrective process; or (ii)
8 circumstances exist that render such process ineffective to protect the rights of the applicant.” 28
9 U.S.C. § 2254(b)(1). Moreover, if the exhaustion requirement is to be waived, it must be waived
10 expressly by the state, through counsel. See 28 U.S.C. § 2254(b)(3).

11 Exhaustion requires that petitioner’s contentions be fairly presented to the *state* supreme
12 court even if that court’s review is discretionary. O’Sullivan v. Boerckel, 526 U.S. 838, 845-47, 119
13 S. Ct. 1728, 144 L. Ed. 2d 1 (1999); James v. Giles, 221 F.3d 1074, 1077, n.3 (9th Cir. 2000).
14 Petitioner must give the state courts “one full opportunity to resolve any constitutional issues by
15 invoking one complete round of the State’s established appellate review process” in order to
16 exhaust his claims. O’Sullivan, 526 U.S. at 845. A claim has not been fairly presented unless the
17 prisoner has described in the state court proceedings both the operative facts and the federal legal
18 theory on which his claim is based. See Duncan v. Henry, 513 U.S. 364, 365-66, 115 S. Ct. 887,
19 130 L. Ed. 2d 865 (1995); Picard v. Connor, 404 U.S. 270, 275-78, 92 S. Ct. 509, 30 L. Ed. 2d 438
20 (1971); Johnson v. Zenon, 88 F.3d 828, 830 (9th Cir. 1996); Bland v. Cal. Dep’t of Corr., 20 F.3d
21 1469, 1473 (9th Cir. 1994), overruled on other grounds by Schell v. Witek, 218 F.3d 1017 (9th Cir.
22 2000). State remedies are not exhausted if an appeal or petition for post-conviction relief is still
23 pending in state court. Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983) (if petitioner has
24 a pending state appeal, he “must await the outcome of his appeal before his state remedies are
25 exhausted”); Schnepp v. Oregon, 333 F.2d 288, 288 (9th Cir. 1964) (per curiam) (state remedies
26 are unexhausted where a petition for post-conviction relief is still pending in state court). Petitioner
27 has the burden of demonstrating that he has exhausted available state remedies. See, e.g.,
28 Brown v. Cuyler, 669 F.2d 155, 158 (3d Cir. 1982).

1 Here, petitioner admits that he has not exhausted his state judicial remedies in connection
2 with his claim in this matter. (See Am. Pet. at 3, 5). As the Amended Petition appears to be
3 unexhausted, it is subject to being dismissed without prejudice. Greenawalt v. Stewart, 105 F.3d
4 1268, 1271, 1273-75 (9th Cir. 1997).

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6 **C. PROPER RESPONDENT**

7 A petitioner seeking habeas corpus relief must name the state officer having custody of him
8 as the respondent to the Petition. See Rule 2(a), Rules Governing Section 2254 Cases in the
9 United States District Courts. This person typically is the immediate custodian of the facility in
10 which the petitioner is incarcerated.¹ Stanley v. Cal. Sup. Ct., 21 F.3d 359, 360 (9th Cir. 1994);
11 Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam) (explaining that a
12 federal habeas petitioner’s immediate custodian is the only party that can actually produce “the
13 body” of the petitioner). Here, petitioner names the “San Fernando Valley Court” as respondent.
14 Failure to name the correct respondent deprives federal courts of personal jurisdiction. Stanley,
15 21 F.3d at 360; Dunne, 875 F.2d at 249.

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17 **D. ORDER**

18 Based on the foregoing, **on or before June 30, 2017**, petitioner is ordered to show cause
19 why this action should not be dismissed as unexhausted and/or for failure to state a claim. To
20 avoid dismissal, **on or before June 30, 2017**, petitioner must file a response to this Order detailing
21 why he believes the action should go forward under § 2254, and must also demonstrate that he
22 has a claim (or claims) upon which habeas relief may be granted by indicating (1) the specific
23 ground(s) for relief and supporting facts on which he seeks habeas relief, and (2) clearly indicating
24 that his claim (or claims) have been fairly presented to the California Supreme Court.

25 The filing by petitioner of a Second Amended Petition -- on the Central District of
26 California’s form Petition for Writ of Habeas Corpus pursuant to § 2254 -- **on or before June 30**,

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¹ In this case, the proper respondent would be the Director of Atascadero State Hospital.

1 **2017** -- containing the required information as detailed above, shall be deemed compliance with
2 this Order. A Second Amended Petition should reflect the same case number (CV 17-2508-BRO
3 (PLA)), be clearly labeled "Second Amended Petition," and be filled out completely. In ¶ 8 of the
4 Second Amended Petition, petitioner should specify **separately and concisely** each federal
5 constitutional claim that he seeks to raise herein and answer all of the questions pertaining to each
6 claim, including whether it has been raised in the California Supreme Court. The Court Clerk is
7 directed to send petitioner a blank copy the Central District's form Petition for Writ of Habeas
8 Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254.

9 If instead petitioner intended to **voluntarily dismiss this action without prejudice** when
10 he submitted his Dismissal Form, or now agrees that this action should be dismissed without
11 prejudice as unexhausted and/or for failure to state a claim, **on or before June 30, 2017**, he may
12 re-submit a **fully completed** Notice of Voluntary Dismissal pursuant to Federal Rule of Civil
13 Procedure 41(a)(1) ("Rule 41"). He may then return to the state courts to exhaust whatever
14 claim(s) he may wish to later bring in this Court. The Court clerk is directed to send petitioner
15 another copy of the blank Central District form titled "Notice of Dismissal Pursuant to Federal
16 Rules of Civil Procedure 41(a) or (c)" along with this Order to Show Cause. If petitioner chooses
17 this option, he (1) must not file any other document with his Notice of Voluntary Dismissal; and (2)
18 must be mindful of the one-year limitation period under the Ant-Terrorism and Effective Death
19 Penalty Act of 1996 ("AEDPA").

20 **Petitioner is advised that his failure to timely file a response to this Order, as set**
21 **forth herein, will result in the action being dismissed as unexhausted, and/or for failure to**
22 **state a claim, and/or for failure to prosecute and follow Court orders. Petitioner is also**
23 **advised that the filing of a petition for federal habeas corpus relief does not toll the**
24 **AEDPA's one-year statute of limitations.** Duncan v. Walker, 533 U.S. 167, 172, 121 S. Ct.
25 2120, 150 L. Ed. 2d 251 (2001).

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27 DATED: May 30, 2017

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PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE