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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**
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12 RITA DeDEN on behalf of
13 BRIAN ANTHONY DeDEN,
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15 Petitioner,

16 v.

17 ATTORNEY GENERAL OF CALIFORNIA,
18
19 Respondent.

) No. CV 17-4123-VAP (PLA)

) **ORDER TO SHOW CAUSE RE: DISMISSAL**
) **OF HABEAS PETITION**

20 On June 2, 2017, Rita DeDen (“Ms. DeDen”) filed a Petition for Writ of Habeas Corpus by
21 a Person in State Custody pursuant to 28 U.S.C. § 2241 (“Petition” or “Pet.”) on behalf of her son,
22 Brian Anthony DeDen (“petitioner”). Ms. DeDen purports to be filing the Petition as a “next friend,”
23 pursuant to Central District Local Rule 83-16.3. (Pet. at 2, Attach. to Question 9). According to
24 the Petition, petitioner is being “detained in Peru awaiting extradition” to appear in Los Angeles
25 County Superior Court case number BA425130. (Pet. at 2). He has not yet been convicted or
26 sentenced. (*Id.*). The Petition raises four claims: (1) many of the charges against petitioner are
27 barred by the four-year statute of limitations because the acts alleged in this “real estate case .
28 . . . were final -- contracts and grant deeds were fully executed by property sellers beyond 4-years”;
(2) the prosecutor gave improper or no instructions to the grand jury on the charges against

1 petitioner; (3) the prosecutor adduced false testimony and suppressed exculpatory evidence at
2 the grand jury hearing; and (4) the prosecutor “used old events . . . to obtain false testimony from
3 people with flexible memories . . . to gain tactical advantage,” and “waited 1.5 years to seek
4 extradition after arresting and settling [with] all other defendants.”¹ (Pet. at 3-4).

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6 **II.**

7 **DISCUSSION**

8 **A. “NEXT FRIEND” PETITIONS**

9 A federal court cannot consider the merits of a legal claim unless the person seeking to invoke
10 the jurisdiction of the court establishes the requisite standing to sue. Whitmore v. Arkansas, 495
11 U.S. 149, 154, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990). A litigant demonstrates standing by
12 showing that he has suffered an injury in fact that is fairly traceable to the challenged action and
13 is redressable by a favorable judicial decision.

14 A third party, or “next friend,” can appear in court on behalf of detained prisoners who are
15 unable to seek relief themselves. Id. at 161-62 (noting that 28 U.S.C. § 2242, which allows for
16 an application for writ of habeas corpus to be signed and verified “by the person for whose relief
17 it is intended *or by someone acting in his behalf*,” codified the “next friend” doctrine) (emphasis
18 in original). A “next friend” does not herself become a party to the habeas corpus action in which
19 she participates. She merely pursues the cause on behalf of the detained person, who remains
20 the real party in interest. Id. at 163.

21 “[N]ext friend’ standing is by no means granted automatically to whomever seeks to pursue
22 an action on behalf of another.” Id. In order for such standing to be granted, two requisites must
23 be satisfied. First, the “next friend” must provide an adequate explanation, such as inaccessibility,
24 mental incompetence, or other disability, why the real party in interest cannot appear on his own
25 behalf to prosecute the action. See, e.g., United States ex rel. Toth v. Quarles, 350 U.S. 11, 13

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27 ¹ A review of the state court’s website shows that eleven individuals were arraigned in this
28 case.

1 n.3, 76 S. Ct. 1, 100 L. Ed. 8 (1955) (habeas petition brought by sister on behalf of civilian prisoner
2 held in military prison in Korea); Massie ex rel. Kroll v. Woodford, 244 F.3d 1192, 1196 (9th Cir.
3 2001) (next friend must present “meaningful evidence” that petitioner is suffering from a mental
4 disease, disorder, or defect that substantially affects his capacity to make an intelligent decision);
5 Hamdi v. Rumsfeld, 294 F.3d 598 (4th Cir. 2002) (father of alleged enemy combatant detained at
6 a naval station brig in Virginia granted “next friend” standing). Second, the “next friend” must have
7 some significant relationship with, and be truly dedicated to, the best interests of the petitioner.
8 Massie, 244 F.3d at 1194 (citing Whitmore, 495 U.S. at 163); cf. Coalition of Clergy, Lawyers, and
9 Professors v. Bush, 310 F.3d 1153, 1161-62 (9th Cir. 2002) (coalition lacks standing as “next
10 friend” because it had not demonstrated any relations with the detainees on whose behalf the
11 petition was brought). It is clear that a “next friend” may not file a habeas corpus petition on behalf
12 of a detainee if the detainee himself could file the petition. See Whitmore, 495 U.S. at 163 (citing
13 Wilson v. Lane, 870 F.2d 1250, 1253 (7th Cir. 1989)). These limitations were placed so that the
14 writ of habeas corpus should not be availed of, as a matter of course, by intruders or uninvited
15 meddlers, styling themselves as “next friends.” Whitmore, 495 U.S. at 164. Where a habeas
16 petition is brought by an individual who lacks standing to proceed as “next friend” of the petitioner,
17 the Court lacks jurisdiction over the action. See id. at 166.

18 As set forth above, Ms. DeDen has filed the current Petition on behalf of her son who is
19 being detained in Peru awaiting extradition. Although Ms. DeDen presumably has a significant
20 relationship with her son and is dedicated to his best interests, she has not made any showing as
21 to this prerequisite. Neither has she demonstrated that petitioner’s detention in Peru renders him
22 “inaccessible” for purposes of asserting her “next friend” status. Her desire to litigate on behalf
23 of her son in and of itself is not sufficient. Martinez v. Mitchell, 2009 WL 381969, at *2 (E.D. Cal.
24 Feb. 13, 2009).

25 Nor does Local Rule 83-16.3 -- pursuant to which Ms. DeDen purports to bring the Petition
26 -- confer “next friend” standing on Ms. DeDen. That rule provides the following:
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1 A next friend petition for a writ of habeas corpus in *exclusion, deportation and*
2 *removal* cases must allege that the petitioner has been authorized by the applicant
3 for admission or respondent in the proceedings to file the petition. If the petition is
4 filed by a relative who is the . . . mother . . . of the applicant for admission in the
5 proceedings, that fact shall be alleged and authorization to file the petition need not
6 be shown.

7 Local Rule 83-16.3 (emphasis added). In this case, however, petitioner (as alleged by Ms.
8 DeDen) seeks to “stay” his *extradition* from Peru to appear in Los Angeles County Superior Court.
9 (Pet. at 1, Attach. to question 9). It appears, therefore, that Local Rule 83-16.3, providing for “next
10 friend” status without showing authorization in only three specific types of cases (exclusion,
11 deportation, and removal), is inapplicable in this extradition case.

12 **B. EVEN A “NEXT FRIEND” CANNOT PROCEED WITHOUT COUNSEL**

13 Assuming that the Whitmore requirements could be met if competent evidence were to be
14 provided by Ms. DeDen, even a qualified “next friend” may not proceed with a habeas action on
15 behalf of another without an attorney. See Stoner v. Santa Clara Cty. Off. of Educ., 502 F.3d
16 1116, 1127 (9th Cir. 2007) (although False Claims Act authorizes a relator to bring a *qui tam*
17 action on behalf of the government, it does not authorize relator to proceed pro se); see also
18 Mitchell v. Yates, 2011 WL 486568, at *2 (C.D. Cal. Jan. 27, 2011) (“individuals not licensed to
19 practice law by the state may not use the ‘next friend’ device as an artifice for the unauthorized
20 practice of law”) (quoting Weber v. Garza, 570 F.2d 511, 514 (5th Cir. 1978)). Ms. DeDen does
21 not contend that she is an attorney, and a non-attorney has no authority to appear on behalf of
22 anyone but herself. See United States v. French, 748 F.3d 922, 933 (9th Cir. 2014) (citing Johns
23 v. Cty. of San Diego, 114 F.3d 874, 876 (9th Cir. 1997)). In short, Ms. DeDen may not use the
24 “next friend” vehicle to engage in the unauthorized practice of law by acting as a *pro se* “next
25 friend.” See, e.g., Simon v. Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008) (“courts have
26 routinely adhered to the general rule prohibiting pro se plaintiffs from pursuing claims on behalf
27 of others in a representative capacity”) (citations and footnote omitted); Weber, 570 F.2d at 514;
28 see Whitmore, 495 U.S. at 164. Indeed, Local Rule 83-2.2.1 expressly prohibits a pro se litigant
from delegating his representation to any other person, including a spouse or a relative. Petitioner

1 is not entitled, therefore, to have an unlicensed lay person, such as Ms. DeDen, represent him in
2 this Court as his attorney.

3 Thus, the Petition is subject to dismissal for lack of standing and/or lack of jurisdiction.
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5 **C. ORDER**

6 Based on the foregoing, Ms. DeDen is **ordered to show cause** why the instant Petition
7 should not be dismissed without prejudice for lack of jurisdiction because she lacks standing to
8 bring the action on behalf of petitioner, and because she is not an attorney authorized to practice
9 law before this Court.

10 To avoid dismissal, if Ms. DeDen still seeks to proceed on behalf of petitioner as a “next
11 friend,” **on or before June 28, 2017**, she shall (1) file a motion seeking “next friend” status,
12 addressing the factors cited in Whitmore; and (2) either provide evidence that she is authorized
13 to practice law before this Court, or proceed with legal representation.²

14 Alternatively, if Ms. DeDen agrees that the action should be dismissed without prejudice
15 for lack of standing, or for any other reason, she may file a notice of voluntary dismissal pursuant
16 to Federal Rule of Civil Procedure 41(a)(1) (“Rule 41”). Rule 41 allows for the voluntary dismissal
17 of an action by a petitioner without prejudice and without a court order before the opposing party
18 serves either an answer or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1); Hamilton
19 v. Shearson-Lehman Am. Express, Inc., 813 F.2d 1532, 1534 (9th Cir. 1987). Respondent has
20 not yet appeared in this action. The Court clerk is directed to send Ms. DeDen a copy of a blank
21 Central District form titled “Notice of Dismissal Pursuant to Federal Rules of Civil Procedure 41(a)
22 or (c)” along with this Order to Show Cause.

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27 ² Given Ms. DeDen’s lack of standing and the Court’s lack of jurisdiction, the Court expresses
28 no opinion on the merits of the Petition, or whether the Petition is subject to dismissal for any
procedural defects.

1 **Failure to respond to this Order by June 28, 2017, will result in the Petition being**
2 **summarily dismissed without prejudice for lack of jurisdiction, for failure to prosecute,**
3 **and/or for failure to follow court orders.**

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5 DATED: June 7, 2017

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7 PAUL L. ABRAMS
8 UNITED STATES MAGISTRATE JUDGE
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