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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

BRIAN ANTHONY DeDEN,)
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Petitioner,)
)
v.)
)
ATTORNEY GENERAL OF CALIFORNIA,)
)
Respondent.)
_____)

No. CV 17-4123-VAP (PLA)
**ORDER SUMMARILY DISMISSING
HABEAS PETITION FOR LACK OF
STANDING, LACK OF JURISDICTION,
FAILURE TO PROSECUTE, AND/OR
FAILURE TO COMPLY WITH COURT
ORDERS**

**I.
BACKGROUND**

On June 2, 2017, Rita DeDen (“Ms. DeDen”) filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2241 (“Petition” or “Pet.”) (ECF No. 1) on behalf of her son, Brian Anthony DeDen (“petitioner”). Ms. DeDen purported to be filing the Petition as a “next friend,” pursuant to Central District Local Rule 83-16.3. (Pet. at 2, Attach. to Question 9). According to the Petition, petitioner is being “detained in Peru awaiting extradition” to appear in Los Angeles County Superior Court case number BA425130. (Pet. at 2). Thus, at the time the Petition was filed, he had not yet been convicted or sentenced. (*Id.*). The Petition raises four claims: (1) many of the charges against petitioner are barred by the four-year statute of limitations because the acts alleged in this “real estate case . . . were final -- contracts and grant deeds were fully executed by property

1 sellers beyond 4-years”; (2) the prosecutor gave improper or no instructions to the grand jury on the
2 charges against petitioner; (3) the prosecutor adduced false testimony and suppressed exculpatory
3 evidence at the grand jury hearing; and (4) the prosecutor “used old events . . . to obtain false
4 testimony from people with flexible memories . . . to gain tactical advantage,” and “waited 1.5 years
5 to seek extradition after arresting and settling [with] all other defendants.”¹ (Pet. at 3-4).

6 On June 7, 2017, after reviewing the Petition, the Magistrate Judge ordered Ms. DeDen to
7 show cause on or before June 28, 2017, why the Petition should not be dismissed without prejudice
8 (1) for lack of jurisdiction because she lacks standing to bring the action on behalf of petitioner; and
9 (2) because she is not an attorney authorized to practice law before this Court. (ECF No. 3 at 5).
10 The Magistrate Judge further advised Ms. DeDen that failure to timely file a response to the June 7,
11 2017, Order to Show Cause “**will result in the Petition being summarily dismissed without**
12 **prejudice for lack of jurisdiction, for failure to prosecute, and/or for failure to follow court**
13 **orders.**” (ECF No. 3 at 6).

14 As of the date of this Order, Ms. DeDen has not filed a response to the June 7, 2017, Order
15 to Show Cause, and the time to do so has expired.

17 II.

18 DISCUSSION

19 A. “NEXT FRIEND” PETITIONS

20 A federal court cannot consider the merits of a legal claim unless the person seeking to invoke
21 the jurisdiction of the court establishes the requisite standing to sue. Whitmore v. Arkansas, 495 U.S.
22 149, 154, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990). A litigant demonstrates standing by showing
23 that he has suffered an injury in fact that is fairly traceable to the challenged action and is redressable
24 by a favorable judicial decision.

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

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

8 “[N]ext friend’ standing is by no means granted automatically to whomever seeks to pursue
9 an action on behalf of another.” Id. In order for such standing to be granted, two requisites must be
10 satisfied. First, the “next friend” must provide an adequate explanation, such as inaccessibility,
11 mental incompetence, or other disability, why the real party in interest cannot appear on his own
12 behalf to prosecute the action. See, e.g., United States ex rel. Toth v. Quarles, 350 U.S. 11, 13 n.3,
13 76 S. Ct. 1, 100 L. Ed. 8 (1955) (habeas petition brought by sister on behalf of civilian prisoner held
14 in military prison in Korea); Massie ex rel. Kroll v. Woodford, 244 F.3d 1192, 1196 (9th Cir. 2001)
15 (next friend must present “meaningful evidence” that petitioner is suffering from a mental disease,
16 disorder, or defect that substantially affects his capacity to make an intelligent decision); Hamdi v.
17 Rumsfeld, 294 F.3d 598 (4th Cir. 2002) (father of alleged enemy combatant detained at a naval
18 station brig in Virginia granted “next friend” standing). Second, the “next friend” must have some
19 significant relationship with, and be truly dedicated to, the best interests of the petitioner. Massie, 244
20 F.3d at 1194 (citing Whitmore, 495 U.S. at 163); cf. Coalition of Clergy, Lawyers, and Professors v.
21 Bush, 310 F.3d 1153, 1161-62 (9th Cir. 2002) (coalition lacks standing as “next friend” because it had
22 not demonstrated any relations with the detainees on whose behalf the petition was brought). It is
23 clear that a “next friend” may not file a habeas corpus petition on behalf of a detainee if the detainee
24 himself could file the petition. See Whitmore, 495 U.S. at 163 (citing Wilson v. Lane, 870 F.2d 1250,
25 1253 (7th Cir. 1989)). These limitations were placed so that the writ of habeas corpus should not be
26 availed of, as a matter of course, by intruders or uninvited meddlers, styling themselves as “next
27 friends.” Whitmore, 495 U.S. at 164. Where a habeas petition is brought by an individual who lacks
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1 standing to proceed as “next friend” of the petitioner, the Court lacks jurisdiction over the action. See
2 id. at 166.

3 As set forth above, Ms. DeDen filed the current Petition on behalf of her son who is being
4 detained in Peru awaiting extradition. Although Ms. DeDen presumably has a significant relationship
5 with her son and is dedicated to his best interests, she has not made any showing as to this
6 prerequisite. Neither has she demonstrated that petitioner’s detention in Peru renders him
7 “inaccessible” for purposes of asserting her “next friend” status. Her desire to litigate on behalf of her
8 son in and of itself is not sufficient. Martinez v. Mitchell, 2009 WL 381969, at *2 (E.D. Cal. Feb. 13,
9 2009).

10 Nor does Local Rule 83-16.3 -- pursuant to which Ms. DeDen purported to bring the Petition --
11 confer “next friend” standing on Ms. DeDen. That rule provides the following:

12 A next friend petition for a writ of habeas corpus in *exclusion, deportation and removal*
13 cases must allege that the petitioner has been authorized by the applicant for
14 admission or respondent in the proceedings to file the petition. If the petition is filed
15 by a relative who is the . . . mother . . . of the applicant for admission in the
16 proceedings, that fact shall be alleged and authorization to file the petition need not be
17 shown.

18 Local Rule 83-16.3 (emphasis added). In this case, however, petitioner (as alleged by Ms. DeDen)
19 seeks to “stay” his *extradition* from Peru to appear in Los Angeles County Superior Court. (Pet. at
20 1, Attach. to question 9). It appears, therefore, that Local Rule 83-16.3, providing for “next friend”
21 status without showing authorization in only three specific types of cases (exclusion, deportation, and
22 removal), is inapplicable in this extradition case.

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

24 Assuming that the Whitmore requirements could be met if competent evidence had been
25 provided by Ms. DeDen, even a qualified “next friend” may not proceed with a habeas action on
26 behalf of another without an attorney. See Stoner v. Santa Clara Cty. Off. of Educ., 502 F.3d 1116,
27 1127 (9th Cir. 2007) (although False Claims Act authorizes a relator to bring a *qui tam* action on
28 behalf of the government, it does not authorize relator to proceed pro se); see also Mitchell v. Yates,
2011 WL 486568, at *2 (C.D. Cal. Jan. 27, 2011) (“individuals not licensed to practice law by the state

1 may not use the ‘next friend’ device as an artifice for the unauthorized practice of law”) (quoting
2 Weber v. Garza, 570 F.2d 511, 514 (5th Cir. 1978)). Ms. DeDen did not contend that she is an
3 attorney, and a non-attorney has no authority to appear on behalf of anyone but herself. See United
4 States v. French, 748 F.3d 922, 933 (9th Cir. 2014) (citing Johns v. Cty. of San Diego, 114 F.3d 874,
5 876 (9th Cir. 1997)). In short, Ms. DeDen may not use the “next friend” vehicle to engage in the
6 unauthorized practice of law by acting as a *pro se* “next friend.” See, e.g., Simon v. Hartford Life,
7 Inc., 546 F.3d 661, 664 (9th Cir. 2008) (“courts have routinely adhered to the general rule prohibiting
8 *pro se* plaintiffs from pursuing claims on behalf of others in a representative capacity”) (citations and
9 footnote omitted); Weber, 570 F.2d at 514; see Whitmore, 495 U.S. at 164. Indeed, Local Rule
10 83-2.2.1 expressly prohibits a *pro se* litigant from delegating his representation to any other person,
11 including a spouse or a relative. Petitioner is not entitled, therefore, to have an unlicensed lay
12 person, such as Ms. DeDen, represent him in this Court as his attorney.

13 Thus, the Petition is subject to dismissal for lack of standing and/or lack of jurisdiction.
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15 **C. FAILURE TO PROSECUTE AND TO FOLLOW COURT ORDERS**

16 It is well established that a district court has authority to dismiss a habeas action because of
17 failure to prosecute or to comply with court orders. See Fed. R. Civ. P. 41(b); Link v. Wabash R.R.
18 Co., 370 U.S. 626, 629-30, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962) (holding that a court’s authority
19 to dismiss for lack of prosecution is necessary to prevent undue delays in the disposition of pending
20 cases and to avoid congestion in the calendars of the district courts); Ferdik v. Bonzelet, 963 F.2d
21 1258, 1260 (9th Cir. 1992) (holding that a district court may dismiss an action for failure to comply
22 with any order of the court).

23 In determining whether to dismiss this action due to Ms. DeDen’s failure to prosecute or to
24 comply with court orders, the Court must consider the following five factors: “(1) the public’s interest
25 in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
26 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits[;] and
27 (5) the availability of less drastic sanctions.” Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988) (per
28

1 curiam) (citation and internal quotation marks omitted); see also In re Eisen, 31 F.3d 1447, 1451 (9th
2 Cir. 1994) (failure to prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court orders).

3 The first two factors -- the public's interest in expeditious resolution of litigation and the Court's
4 need to manage its docket -- weigh in favor of dismissal. Ms. DeDen's failure to respond to the
5 Magistrate Judge's June 7, 2017, Order to Show Cause hinders the Court's ability to move this case
6 toward disposition and indicates that she does not intend to litigate this action diligently.

7 The third factor -- prejudice to respondents -- also weighs in favor of dismissal. A rebuttable
8 presumption of prejudice to respondents arises when a petitioner unreasonably delays prosecution
9 of an action. Eisen, 31 F.3d at 1452-53. Nothing suggests that such a presumption is unwarranted
10 in this case.

11 The fourth factor -- public policy in favor of deciding cases on their merits -- weighs against
12 dismissal. However, the Magistrate Judge reviewed the Petition and informed Ms. DeDen that the
13 Court appears to lack jurisdiction to entertain the Petition because she does not have standing to
14 bring the action on petitioner's behalf, and because she is not an attorney authorized to practice law
15 before this Court. (ECF No. 3 at 2-5). Moreover, even assuming Ms. DeDen was able to
16 demonstrate that has standing, or that she is an attorney, it is then her responsibility to move this
17 case toward a disposition at a reasonable pace and to avoid dilatory and evasive tactics. See Morris
18 v. Morgan Stanley Co., 942 F.2d 648, 652 (9th Cir. 1991). By failing to respond to the June 7, 2017,
19 Order to Show Cause as ordered by the Magistrate Judge, Ms. DeDen has not discharged this
20 responsibility. In these circumstances, the public policy favoring resolution of disputes on the merits
21 does not outweigh Ms. DeDen's failure to comply with court orders.

22 The fifth factor -- availability of less drastic sanctions -- weighs in favor of dismissal. The
23 Magistrate Judge first attempted to avoid dismissal when he issued his June 7, 2017, Order to Show
24 Cause, giving Ms. DeDen an opportunity to show why this action should not be dismissed for lack
25 of jurisdiction because Ms. DeDen lacks standing to bring the action on behalf of petitioner and
26 because she is not an attorney authorized to practice law before this Court. Nonetheless, as of the
27 date of this Order, Ms. DeDen has failed to respond as required by the Magistrate Judge's June 7,
28 2017, Order to Show Cause.

1 Taking all of the above factors into account, dismissal for failure to prosecute and to follow
2 court orders also is appropriate. Such a dismissal, however, should not be entered unless Ms. Den
3 has been notified that dismissal is imminent. See W. Coast Theater Corp. v. City of Portland, 897
4 F.2d 1519, 1523 (9th Cir. 1990). In this case, Ms. DeDen was cautioned about the possibility of
5 dismissal in the Magistrate Judge's June 7, 2017, Order.

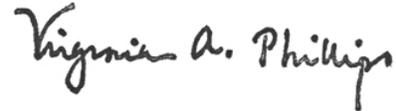
6 Based on the foregoing, the Petition is subject to dismissal for failure to prosecute and/or to
7 comply with court orders.

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9 **III.**

10 **CONCLUSION**

11 IT IS THEREFORE ORDERED that this action is **dismissed without prejudice** for lack
12 of standing, for lack of jurisdiction, for failure to prosecute, and for failure to follow court orders.

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14 DATED: July 19, 2017



15 _____
16 HONORABLE VIRGINIA A. PHILLIPS
17 CHIEF UNITED STATES DISTRICT JUDGE
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