1
2
3
4
5
6
7
8

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

9   ROBERTO JOSE LEBRON,   1:09-cv-00694-SMS (HC)

10   Petitioner,   ORDER GRANTING PETITIONER'S
                                                    MOTION TO SUBSTITUTE RESPONDENT
11   v.   AND DIRECTING CLERK OF COURT TO
                                                    CHANGE NAME OF RESPONDENT
12   F. GONZALES,   [Doc. 12]

13   Respondent.

14   _____/

15

16   Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus

17   pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner consented to the

18   jurisdiction of the United States Magistrate Judge. Local Rule 305(b).

19   On June 21, 2010, Petitioner filed a motion to substitute the named Respondent in this

20   action. Petitioner indicates that he is currently in custody at California Correctional Institution in

21   Tehachapi, California, and the current warden of the facility is Fernando Gonzales.

22   A petitioner filing a petition for writ of habeas corpus must name the state officer who

23   has custody of the petitioner as the respondent. Rule 2 (a) of the Rules Governing § 2254 cases;

24   Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996). Normally, the person having

25   custody of an incarcerated petitioner is the warden of the prison in which the petitioner is

26   incarcerated because the warden has "day-to-day control over" the petitioner. Brittingham v.

27   United States, 982 F.2d 378, 379 (9th Cir. 1992); see also Stanley v. California Supreme Court,

28   21 F.3d 359, 360 (9th Cir. 1994). Accordingly, because the current warden having "day-to-day

1

1 control over" Petitioner is F. Gonzales, the Court will direct the Clerk of Court to change and

2 substitute the name of Respondent in this action to Warden Gonzales.

3   Based on the foregoing, it is HEREBY ORDERED that:

4   1.   Petitioner's motion to substitute the named Respondent in this action is

5   GRANTED; and

6   2.   The Clerk of Court is directed to substitute Warden F. Gonzales as Respondent.

7

8 IT IS SO ORDERED.

9 **Dated: August 17, 2010**   **/s/ Sandra M. Snyder**
                                     UNITED STATES MAGISTRATE JUDGE

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28