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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MIANTA MCKNIGHT,	)	1:09-cv-1315-SKO-HC
	)	
Petitioner,	)	ORDER GRANTING PETITIONER LEAVE
	)	TO FILE A MOTION TO AMEND THE
v.	)	PETITION AND NAME A PROPER
	)	RESPONDENT NO LATER THAN THIRTY
	)	(30) DAYS AFTER THE DATE OF
JOHN MONDAY, Executive	)	SERVICE OF THIS ORDER
Director, Board of Parole	)	
Hearings,	)	
	)	
Respondent.	)	
	)	
	)	

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Petitioner is a state prisoner who is confined in Chowchilla and proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 72-302 and 72-303. Pending before the Court is Petitioner's petition, which was filed on May 6, 2009, and transferred to this Court on July 20, 2009. The petition concerns the denial of Petitioner's parole on September 10, 2007, by the Board of Parole Hearings (Pet. 12.)

I. Screening the Petition

Rule 4 of the Rules Governing § 2254 Cases in the United

1 States District Courts (Habeas Rules) requires the Court to make  
2 a preliminary review of each petition for writ of habeas corpus.  
3 The Court must summarily dismiss a petition "[i]f it plainly  
4 appears from the petition and any attached exhibits that the  
5 petitioner is not entitled to relief in the district court...."  
6 Habeas Rule 4; O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.  
7 1990); see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.  
8 1990).

9 The Court may dismiss a petition for writ of habeas corpus  
10 either on its own motion under Habeas Rule 4, pursuant to the  
11 respondent's motion to dismiss, or after an answer to the  
12 petition has been filed. Advisory Committee Notes to Habeas Rule  
13 8, 1976 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43  
14 (9th Cir. 2001). A petition for habeas corpus should not be  
15 dismissed without leave to amend unless it appears that no  
16 tenable claim for relief can be pleaded were such leave granted.  
17 Jarvis v. Nelson, 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971).

## 18 II. Petitioner's Failure to Name a Proper Respondent

19 In this case, Petitioner named as Respondent John Monday,  
20 Executive Director, Board of Parole Hearings. Petitioner is  
21 incarcerated at the Valley State Prison for Women located in  
22 Chowchilla, California. The warden at that facility is Tina  
23 Hornbeak.

24 A petitioner seeking habeas corpus relief under 28 U.S.C.  
25 § 2254 must name the state officer having custody of her as the  
26 respondent to the petition. Habeas Rule 2(a); Ortiz-Sandoval v.  
27 Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California  
28 Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the

1 person having custody of an incarcerated petitioner is the warden  
2 of the prison in which the petitioner is incarcerated because the  
3 warden has "day-to-day control over" the petitioner and thus can  
4 produce the petitioner. Brittingham v. United States, 982 F.2d  
5 378, 379 (9th Cir. 1992); see also, Stanley v. California Supreme  
6 Court, 21 F.3d 359, 360 (9th Cir. 1994). However, the chief  
7 officer in charge of state penal institutions is also  
8 appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at 360.  
9 Where a petitioner is on probation or parole, the proper  
10 respondent is his probation or parole officer and the official in  
11 charge of the parole or probation agency or state correctional  
12 agency. Id. However, in a proceeding pursuant to § 2254  
13 challenging a decision of the California Board of Parole  
14 Hearings' to deny parole to a petitioner who is a state prison  
15 inmate, the proper respondent is the state officer with immediate  
16 custody of the prisoner, and specifically, the warden at the  
17 institution of confinement. Oluwa v. Evans, 2008 WL 5411204, \*1  
18 (N.D.Cal. Dec. 29, 2008).

19       Petitioner's failure to name a proper respondent requires  
20 dismissal of his habeas petition for lack of jurisdiction.  
21 Stanley, 21 F.3d at 360.

22       However, the Court will give Petitioner the opportunity to  
23 cure this defect by amending the petition to name a proper  
24 respondent, such as the warden of his facility. See, In re  
25 Morris, 363 F.3d 891, 893-94 (9th Cir. 2004). In the interest of  
26 judicial economy, Petitioner need not file an amended petition.  
27 Instead, Petitioner may file a motion entitled "Motion to Amend  
28 the Petition to Name a Proper Respondent" wherein Petitioner may

1 name the proper respondent in this action.

2 III. Order Granting Leave to File a Motion to Amend  
3 the Petition

4 Accordingly, Petitioner is GRANTED thirty (30) days from the  
5 date of service of this order in which to file a motion to amend  
6 the instant petition and name a proper respondent. Failure to  
7 amend the petition and state a proper respondent will result in a  
8 recommendation that the petition be dismissed for lack of  
9 jurisdiction.

10 IT IS SO ORDERED.

11 Dated: May 24, 2010

12 /s/ Sheila K. Oberto  
13 UNITED STATES MAGISTRATE JUDGE