

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EDDIE CARRILLO, ) 1:09-cv-01331-SMS-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  
PEOPLE OF THE STATE OF ) SERVICE OF THIS ORDER  
CALIFORNIA, et al., )  
)  
Respondents. )  
)  
\_\_\_\_\_ )

Petitioner is a state prisoner proceeding pro se and in forma pauperis 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 302 and 303. Pending before the Court is Petitioner's petition, which was filed in this Court on July 24, 2009.

I. Screening the Petition

Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts (Habeas Rules) requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition "[i]f it plainly

1 appears from the petition and any attached exhibits that the  
2 petitioner is not entitled to relief in the district court...."  
3 Habeas Rule 4; O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.  
4 1990); see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.  
5 1990).

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

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

16 In this case, Petitioner named as Respondent the people of  
17 the state of California and the state attorney general.  
18 Petitioner is incarcerated at the Pleasant Valley State Prison  
19 located in Coalinga, California. The warden at that facility is  
20 James A. Yates.

21 A petitioner seeking habeas corpus relief under 28 U.S.C.  
22 § 2254 must name the state officer having custody of him as the  
23 respondent to the petition. Habeas Rule 2(a); Ortiz-Sandoval v.  
24 Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California  
25 Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the  
26 person having custody of an incarcerated petitioner is the warden  
27 of the prison in which the petitioner is incarcerated because the  
28 warden has "day-to-day control over" the petitioner and thus can

1 produce the petitioner. Brittingham v. United States, 982 F.2d  
2 378, 379 (9th Cir. 1992); see also, Stanley v. California Supreme  
3 Court, 21 F.3d 359, 360 (9th Cir. 1994). However, the chief  
4 officer in charge of state penal institutions is also  
5 appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at 360.  
6 Where a petitioner is on probation or parole, the proper  
7 respondent is his probation or parole officer and the official in  
8 charge of the parole or probation agency or state correctional  
9 agency. Id.

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

13 However, the Court will give Petitioner the opportunity to  
14 cure this defect by amending the petition to name a proper  
15 respondent, such as the warden of his facility. See, In re  
16 Morris, 363 F.3d 891, 893-94 (9th Cir. 2004). In the interest of  
17 judicial economy, Petitioner need not file an amended petition.  
18 Instead, Petitioner may file a motion entitled "Motion to Amend  
19 the Petition to Name a Proper Respondent" wherein Petitioner may  
20 name the proper respondent in this action.

21 III. Order Granting Leave to File a Motion to Amend  
22 the Petition

23 Accordingly, Petitioner is GRANTED thirty (30) days from the  
24 date of service of this order in which to file a motion to amend  
25 the instant petition and name a proper respondent. Failure to  
26 amend the petition and state a proper respondent will result in a

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1 recommendation that the petition be dismissed for lack of  
2 jurisdiction.

3  
4 IT IS SO ORDERED.

5 **Dated: July 13, 2010**

**/s/ Sandra M. Snyder**  
UNITED STATES MAGISTRATE JUDGE