

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SERGIO T. TORRES,

1:10-cv-00339-DLB (HC)

Petitioner,

ORDER DIRECTING CLERK OF COURT TO
CHANGE NAME OF RESPONDENT

v.

[Doc. 21]

KEN CLARK,

Respondent.

Petitioner is a state prisoner proceeding pro se with a Petition For Writ Of Habeas Corpus pursuant to 28 U.S.C. § 2254.

When the petition was initially filed, Petitioner named the State of California as Respondent. A petitioner filing a petition for writ of habeas corpus must name the state officer who has custody of the petitioner as the respondent. Rule 2 (a) of the Rules Governing § 2254 cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996). Normally, the person having custody of an incarcerated petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has "day-to-day control over" the petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992); see also Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994).

On April 23, 2010, the Court issued an Order To Show Cause why the petition should not be dismissed for lack of jurisdiction in that Petitioner had not named a proper Respondent. On July 14, 2010, Petitioner filed a notice naming Warden Clark as the Respondent.

Accordingly, the Clerk of the Court is DIRECTED to substitute Warden Clark as the Respondent in this action.

IT IS SO ORDERED.

Dated: July 28, 2010

/s/ **Dennis L. Beck**
UNITED STATES MAGISTRATE JUDGE