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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

11 GREGORIO FUNTANILLA, JR.,) 1:10-CV-01946 LJO GSA HC
12 Petitioner,) ORDER GRANTING PETITIONER'S
13 v.) MOTION TO AMEND PETITION AND
14 KELLY SANTORO, Warden,) CHANGE NAME OF RESPONDENT
15 Respondent.) [Doc. #11]
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17 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
18 pursuant to 28 U.S.C. § 2254.

19 On April 5, 2011, the Court granted Petitioner leave to file a motion to amend the petition to
20 name a proper respondent. On May 5, 2011, Petitioner filed a motion to amend the petition.
21 Petitioner requests that Kelly Santoro, the Warden at his institution, be named as Respondent in this
22 matter.

23 A petitioner seeking habeas relief must name the state officer having custody of him as the
24 respondent to the petition. Rule 2(a) of the Rules Governing Section 2254 Cases; Ortiz-Sandoval v.
25 Gomez, 81 F.3d 891, 894 (9th Cir.1996); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th
26 Cir.1994). Normally, the person having custody of the prisoner is the warden of the prison because
27 the warden has "day to day control over" the prisoner. Brittingham v. United States, 982. F.2d 378,
28 279 (9th Cir.1992). Therefore, Petitioner's request is proper.

1 Accordingly, Petitioner's motion for leave to amend the petition to name Kelly Santoro as
2 Respondent in this matter is GRANTED. The Clerk of Court is DIRECTED to change the name of
3 Respondent to Kelly Santoro.

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5 || IT IS SO ORDERED.

6 Dated: May 10, 2011

/s/ **Gary S. Austin**
UNITED STATES MAGISTRATE JUDGE

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