

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORIO FUNTANILLA, JR.,)	1:10-CV-01946 LJO GSA HC
)	
Petitioner,)	ORDER GRANTING PETITIONER'S
)	MOTION TO AMEND PETITION AND
v.)	CHANGE NAME OF RESPONDENT
)	[Doc. #11]
KELLY SANTORO, Warden,)	
)	ORDER DIRECTING CLERK OF COURT
Respondent.)	TO CHANGE NAME OF RESPONDENT

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

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

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