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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK LEON PEREZ,)	1:12-cv-01920-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
ON HABEAS CORPUS,)	SERVICE OF THIS ORDER
)	
Respondent.)	
)	
)	

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. § 2254.¹ 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 November 27, 2012.

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

¹Although Petitioner has submitted his petition on a form for prisoners proceeding pursuant to 28 U.S.C. § 2241, the Court notes that Petitioner is serving a sentence imposed by a state court. Thus, the Court understands Petitioner to be proceeding pursuant to § 2254.

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

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

17 II. Petitioner's Failure to Name a Proper Respondent

18 In this case, Petitioner named no respondent. Petitioner is
19 incarcerated at the California State Prison at Solano (CSP-S).
20 (Pet., doc. 1, 1.) The official website of the California
21 Department of Corrections and Rehabilitation (CDCR) reflects that
22 the warden at that facility is Gary Swarthout.²

23 A petitioner seeking habeas corpus relief under 28 U.S.C.
24

25 ²The Court may take judicial notice of facts that are capable of
26 accurate and ready determination by resort to sources whose accuracy cannot
27 reasonably be questioned, including undisputed information posted on official
28 websites. Fed. R. Evid. 201(b); United States v. Bernal-Obeso, 989 F.2d 331,
333 (9th Cir. 1993); Daniels-Hall v. National Education Association, 629 F.3d
992, 999 (9th Cir. 2010). The address of the official website for the CDCR is
<http://www.cdcr.ca.gov>.

1 § 2254 must name the state officer having custody of him as the
2 respondent to the petition. Habeas Rule 2(a); Ortiz-Sandoval v.
3 Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California
4 Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Generally, the
5 person having custody of an incarcerated petitioner is the warden
6 of the prison in which the petitioner is incarcerated because the
7 warden has "day-to-day control over" the petitioner and thus can
8 produce the petitioner. Brittingham v. United States, 982 F.2d
9 378, 379 (9th Cir. 1992); see also, Stanley v. California Supreme
10 Court, 21 F.3d 359, 360 (9th Cir. 1994). However, the chief
11 officer in charge of state penal institutions, such as Matthew
12 Cate, the Secretary of the CDCR, is also appropriate. Ortiz-
13 Sandoval, 81 F.3d at 894; Stanley, 21 F.3d at 360.

14 Petitioner's failure to name a proper respondent may require
15 dismissal of his habeas petition for a failure to name a person
16 who can produce the petitioner in response to an order of the
17 Court and thereby to secure personal jurisdiction. See, Smith v.
18 Idaho, 392 F.3d 350, 355 n.3 (9th Cir. 2004). This Court must
19 ask sua sponte whether the respondent who is named has the power
20 to order the petitioner's release. If not, the Court may not
21 grant effective relief, and thus it should not hear the case
22 unless the petition is amended to name a respondent who can grant
23 the desired relief. Id.

24 However, the Court will give Petitioner the opportunity to
25 cure this defect by amending the petition to name a proper
26 respondent, such as the warden of his facility. See, In re
27 Morris, 363 F.3d 891, 893-94 (9th Cir. 2004). In the interest of
28 judicial economy, Petitioner need not file an amended petition in

1 a separate document. Instead, Petitioner may file a motion
2 entitled "Motion to Amend the Petition to Name a Proper
3 Respondent" wherein Petitioner may name the proper respondent in
4 this action.

5 III. Order Granting Leave to File a Motion to Amend
6 the Petition

7 Accordingly, Petitioner is GRANTED thirty (30) days from the
8 date of service of this order in which to file a motion to amend
9 the instant petition and name a proper respondent. Failure to
10 amend the petition and state a proper respondent will result in
11 dismissal of the petition for lack of jurisdiction or failure to
12 name as respondent a person with the power to produce the
13 petitioner.

14 IT IS SO ORDERED.

15 **Dated: December 6, 2012**

16 /s/ Sheila K. Oberto
17 UNITED STATES MAGISTRATE JUDGE
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