



1 leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971).

2 B. Failure to Name A Proper Respondent.

3 A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer  
4 having custody of him as the respondent to the petition. Rule 2 (a) of the Rules Governing § 2254  
5 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme  
6 Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the person having custody of an incarcerated  
7 petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has  
8 "day-to-day control over" the petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir.  
9 1992); see also, Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). However, the  
10 chief officer in charge of state penal institutions is also appropriate. Ortiz, 81 F.3d at 894; Stanley, 21  
11 F.3d at 360.

12 Here, Petitioner has named as Respondent "Kamala D. Harris," the Attorney General of  
13 California. However, "Kamala D. Harris" is not the warden or chief officer of the institution where  
14 Petitioner is confined and, thus, does not have day-to-day control over Petitioner. Petitioner is  
15 presently confined at the Pelican Bay State Prison, Crescent City, California. The current director or  
16 warden of that facility is Ron E. Barnes. This is the person Petitioner should name as Respondent.

17 Petitioner's failure to name a proper respondent requires dismissal of his habeas petition for  
18 lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326  
19 (9th Cir. 1970); see also, Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976).  
20 **However, the Court will give Petitioner the opportunity to cure this defect by amending the**  
21 **petition to name a proper respondent, such as the warden of his facility.** See West v. Louisiana,  
22 478 F.2d 1026, 1029 (5th Cir.1973), *vacated in part on other grounds*, 510 F.2d 363 (5th Cir.1975)  
23 (en banc) (allowing petitioner to amend petition to name proper respondent); Ashley v. State of  
24 Washington, 394 F.2d 125 (9th Cir. 1968) (same).

25 **In the interests of judicial economy, Petitioner *need not* file an amended petition. Instead,**  
26 **Petitioner can satisfy this deficiency in his petition by filing a motion entitled "Motion to Amend**  
27 **the Petition to Name a Proper Respondent" wherein Petitioner may name the proper**  
28 **respondent in this action.**

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Accordingly, it is HEREBY ORDERED that:

1. Petitioner is GRANTED 30 days from the date of service of this Order to SUBMIT a Motion to Amend the Petition to Name a Proper Respondent.

Petitioner is forewarned that his failure to comply with this Order may result in an Order of Dismissal or a Recommendation that the petition be dismissed pursuant to Local Rule 110.

IT IS SO ORDERED.

Dated: November 19, 2013

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE