

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

11 Petitioner's failure to name a proper respondent requires dismissal of his habeas petition
12 for lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326,
13 1326 (9th Cir. 1970); see also Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd
14 Cir. 1976). However, the Court will give Petitioner the opportunity to cure this defect by
15 amending the petition to name a proper respondent, such as the warden of his facility. See West
16 v. Louisiana, 478 F.2d 1026, 1029 (5th Cir. 1973), *vacated in part on other grounds*, 510 F.2d
17 363 (5th Cir. 1975) (en banc) (allowing petitioner to amend petition to name proper respondent);
18 Ashley v. State of Washington, 394 F.2d 125 (9th Cir. 1968) (same). In the interests of judicial
19 economy, Petitioner need not file an amended petition. Instead, Petitioner may file a motion
20 entitled "Motion to Amend the Petition to Name a Proper Respondent" wherein Petitioner may
21 name the proper respondent in this action.

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ORDER

Accordingly, Petitioner is GRANTED thirty (30) days from the date of service of this order in which to file a motion to amend the instant petition and name a proper respondent. Failure to amend the petition and state a proper respondent will result in dismissal of the petition for lack of jurisdiction.

IT IS SO ORDERED.

Dated: May 21, 2014



UNITED STATES MAGISTRATE JUDGE

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