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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

KAREN BUTLER,  
  
                    Petitioner,  
  
                    v.  
  
UNKNOWN,  
  
                    Respondent.

Case No. 1:14-cv-00645-BAM-HC  
  
ORDER DISMISSING THE PETITION FOR WRIT OF HABEAS CORPUS WITH LEAVE TO FILE A FIRST AMENDED PETITION NO LATER THAN THIRTY DAYS AFTER THE DATE OF SERVICE OF THIS ORDER (DOC. 1)  
  
ORDER DIRECTING THE CLERK TO SEND TO PETITIONER WITH THIS ORDER A FORM PETITION PURSUANT TO 28 U.S.C. § 2254  
  
FILING DEADLINE:  
THIRTY (30) DAYS

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. 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 the petition, which was filed on April 25, 2014, and transferred to this Court from the Sacramento Division on May 1, 2014.  
  
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1 I. Screening the Petition

2 Rule 4 of the Rules Governing § 2254 Cases in the United States  
3 District Courts (Habeas Rules) requires the Court to make a  
4 preliminary review of each petition for writ of habeas corpus. The  
5 Court must summarily dismiss a petition "[i]f it plainly appears  
6 from the petition and any attached exhibits that the petitioner is  
7 not entitled to relief in the district court...." Habeas Rule 4;  
8 O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990); see also  
9 Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Habeas Rule  
10 2(c) requires that a petition 1) specify all grounds of relief  
11 available to the Petitioner; 2) state the facts supporting each  
12 ground; and 3) state the relief requested. Notice pleading is not  
13 sufficient; rather, the petition must state facts that point to a  
14 real possibility of constitutional error. Rule 4, Advisory  
15 Committee Notes, 1976 Adoption; O'Bremski v. Maass, 915 F.2d at 420  
16 (quoting Blackledge v. Allison, 431 U.S. 63, 75 n.7 (1977)).  
17 Allegations in a petition that are vague, conclusory, or palpably  
18 incredible are subject to summary dismissal. Hendricks v. Vasquez,  
19 908 F.2d at 491.

20 Further, the Court may dismiss a petition for writ of habeas  
21 corpus either on its own motion under Habeas Rule 4, pursuant to the  
22 respondent's motion to dismiss, or after an answer to the petition  
23 has been filed. Advisory Committee Notes to Habeas Rule 8, 1976  
24 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th Cir.  
25 2001).

26 A petition for writ of habeas corpus should not be dismissed  
27 without leave to amend unless it appears that no tenable claim for  
28 relief can be pleaded were such leave granted. Jarvis v. Nelson,

1 440 F.2d 13, 14 (9th Cir. 1971).

2 II. Failure to Allege Facts Warranting Habeas Relief

3 Here, Petitioner alleges that she is an inmate of the  
4 California Institution for Women located in Corona, California  
5 (CIW), serving a sentence of four years imposed for a conviction  
6 sustained in October 2011 in the Superior Court of the State of  
7 California, County of Madera, which is within the territorial  
8 boundaries of this district. Petitioner does not state any legal or  
9 factual grounds for relief. Further, Petitioner has failed to name  
10 a respondent, and she has not alleged that she exhausted state court  
11 remedies.

12 Because the petition was filed after April 24, 1996, the  
13 effective date of the Antiterrorism and Effective Death Penalty Act  
14 of 1996 (AEDPA), the AEDPA applies to the petition. Lindh v.  
15 Murphy, 521 U.S. 320, 327 (1997); Jeffries v. Wood, 114 F.3d 1484,  
16 1499 (9th Cir. 1997).

17 A district court may entertain a petition for a writ of habeas  
18 corpus by a person in custody pursuant to the judgment of a state  
19 court only on the ground that the custody is in violation of the  
20 Constitution, laws, or treaties of the United States. 28 U.S.C. §§  
21 2254(a), 2241(c)(3); Williams v. Taylor, 529 U.S. 362, 375 n.7  
22 (2000); Wilson v. Corcoran, 562 U.S. -, -, 131 S.Ct. 13, 16 (2010)  
23 (per curiam).

24 The notice pleading standard applicable in ordinary civil  
25 proceedings does not apply in habeas corpus cases; rather, Habeas  
26 Rules 2(c), 4, and 5(b) require a more detailed statement of all  
27 grounds for relief and the facts supporting each ground; the  
28 petition is expected to state facts that point to a real possibility

1 of constitutional error and show the relationship of the facts to  
2 the claim. Habeas Rule 4, Advisory Committee Notes, 1976 Adoption;  
3 Mayle v. Felix, 545 U.S. 644, 655 (2005); O'Bremski v. Maass, 915  
4 F.2d 418, 420 (9th Cir. 1990) (quoting Blackledge v. Allison, 431  
5 U.S. 63, 75 n.7 (1977)). This is because the purpose of the rules  
6 is to assist the district court in determining whether the  
7 respondent should be ordered to show cause why the writ should not  
8 be granted and to permit the filing of an answer that satisfies the  
9 requirement that it address the allegations in the petition. Mayle  
10 v. Felix, 545 U.S. at 655. Allegations in a petition that are  
11 vague, conclusional, or palpably incredible, and that are  
12 unsupported by a statement of specific facts, are insufficient to  
13 warrant relief and are subject to summary dismissal. Jones v.  
14 Gomez, 66 F.3d 199, 204-05 (9th Cir. 1995); James v. Borg, 24 F.3d  
15 20, 26 (9th Cir. 1994).

16 Here, Petitioner fails to allege any legal grounds for relief  
17 or any specific facts in support of any claims.

18 Further, Petitioner has failed to allege facts that would  
19 enable this Court to determine the appropriate venue of this action.  
20 Pursuant to 28 U.S.C. § 2241(d), a state prisoner seeking relief  
21 pursuant to § 2254 may proceed in either the district of conviction  
22 or the district of confinement. However, petitions challenging a  
23 conviction preferably are heard in the district of conviction, Laue  
24 v. Nelson, 279 F.Supp. 265, 266 (N.D.Cal. 1968); petitions  
25 challenging execution of sentence are preferably heard in the  
26 district where the inmate is confined, Dunne v. Henman, 875 F.2d  
27 244, 249 (9th Cir. 1989). A court should further consider  
28 traditional considerations of venue, such as the convenience of

1 parties and witnesses and the interests of justice. Braden v. 30th  
2 Judicial Circuit Court of Kentucky, 410 U.S. 484, 495 (1973).

3 Here, the uncertainty of Petitioner's claims has prevented the  
4 Court from determining the correct venue for this action.

5 Because Petitioner has failed to include any statement of legal  
6 grounds for relief or any supporting facts, her petition must be  
7 dismissed. However, it is possible that Petitioner could state  
8 legal grounds and supporting facts that would entitle her to relief.  
9 Accordingly, the petition will be dismissed as uncertain, but  
10 Petitioner will be given leave to file an amended petition.

11 III. Naming a Proper Respondent

12 Petitioner failed to name a respondent. (Pet., doc. 1, 1.)  
13 The official website of the California Department of Corrections and  
14 Rehabilitation (CDCR) reflects that the warden of CIW, where  
15 Petitioner is incarcerated, is Kimberly Hughes.<sup>1</sup>

16 A petitioner who is seeking habeas corpus relief under 28  
17 U.S.C. § 2254 must name the state officer having custody of him or  
18 her as the respondent to the petition. Habeas Rule 2(a); Ortiz-  
19 Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v.  
20 California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994).

21 Normally, the person having custody of an incarcerated petitioner is  
22 the warden of the prison in which the petitioner is incarcerated  
23 because the warden has "day-to-day control over" the petitioner and  
24 thus can produce the petitioner. Brittingham v. United States, 982

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26 <sup>1</sup> The Court may take judicial notice of facts that are capable of accurate and  
27 ready determination by resort to sources whose accuracy cannot reasonably be  
28 questioned, including undisputed information posted on official 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 F.2d 378, 379 (9th Cir. 1992); see also, Stanley v. California  
2 Supreme Court, 21 F.3d at 360. However, the chief officer in charge  
3 of state penal institutions, such as the Secretary of the CDCR, is  
4 also appropriate. Ortiz-Sandoval, 81 F.3d at 894; Stanley, 21 F.3d  
5 at 360.

6 Petitioner's failure to name a proper respondent may require  
7 dismissal of her habeas petition for a failure to name a person who  
8 can produce the petitioner in response to an order of the Court and  
9 thereby to secure personal jurisdiction. See, Smith v. Idaho, 392  
10 F.3d 350, 355 n.3 (9th Cir. 2004). This Court must ask sua sponte  
11 whether the respondent who is named has the power to order the  
12 petitioner's release. If not, the Court may not grant effective  
13 relief, and thus it should not hear the case unless the petition is  
14 amended to name a respondent who can grant the desired relief. Id.  
15 However, the Court will give Petitioner the opportunity to cure this  
16 defect by amending the petition to name a proper respondent, such as  
17 the warden of her institution of confinement. See, In re Morris,  
18 363 F.3d 891, 893-94 (9th Cir. 2004).

19 IV. Exhaustion of State Court Remedies

20 A petitioner who is in state custody and wishes to challenge  
21 collaterally a conviction by a petition for writ of habeas corpus  
22 must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The  
23 exhaustion doctrine is based on comity to the state court and gives  
24 the state court the initial opportunity to correct the state's  
25 alleged constitutional deprivations. Coleman v. Thompson, 501 U.S.  
26 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982); Buffalo v.  
27 Sunn, 854 F.2d 1158, 1162-63 (9th Cir. 1988).

28 A petitioner can satisfy the exhaustion requirement by

1 providing the highest state court with the necessary jurisdiction a  
2 full and fair opportunity to consider each claim before presenting  
3 it to the federal court, and demonstrating that no state remedy  
4 remains available. Picard v. Connor, 404 U.S. 270, 275-76 (1971);  
5 Johnson v. Zenon, 88 F.3d 828, 829 (9th Cir. 1996). A federal court  
6 will find that the highest state court was given a full and fair  
7 opportunity to hear a claim if the petitioner has presented the  
8 highest state court with the claim's factual and legal basis.  
9 Duncan v. Henry, 513 U.S. 364, 365 (1995) (legal basis); Kenney v.  
10 Tamayo-Reyes, 504 U.S. 1, 9-10 (1992), superceded by statute as  
11 stated in Williams v. Taylor, 529 U.S. 362 (2000) (factual basis).

12 Additionally, the petitioner must have specifically told the  
13 state court that he was raising a federal constitutional claim.  
14 Duncan, 513 U.S. at 365-66; Lyons v. Crawford, 232 F.3d 666, 669  
15 (9th Cir. 2000), amended, 247 F.3d 904 (9th Cir. 2001); Hiivala v.  
16 Wood, 195 F.3d 1098, 1106 (9th Cir. 1999); Keating v. Hood, 133 F.3d  
17 1240, 1241 (9th Cir. 1998). In Duncan, the United States Supreme  
18 Court reiterated the rule as follows:

19 In Picard v. Connor, 404 U.S. 270, 275...(1971),  
20 we said that exhaustion of state remedies requires that  
21 petitioners "fairly presen[t]" federal claims to the  
22 state courts in order to give the State the  
23 "'opportunity to pass upon and correct' alleged  
24 violations of the prisoners' federal rights" (some  
25 internal quotation marks omitted). If state courts are  
26 to be given the opportunity to correct alleged violations  
27 of prisoners' federal rights, they must surely be  
28 alerted to the fact that the prisoners are asserting  
claims under the United States Constitution. If a  
habeas petitioner wishes to claim that an evidentiary  
ruling at a state court trial denied him the due  
process of law guaranteed by the Fourteenth Amendment,  
he must say so, not only in federal court, but in state  
court.

1 Duncan, 513 U.S. at 365-366. The Ninth Circuit examined the rule  
2 further in Lyons v. Crawford, 232 F.3d 666, 668-69 (9th Cir. 2000),  
3 as amended by Lyons v. Crawford, 247 F.3d 904, 904-05 (9th Cir.  
4 2001), stating:

5 Our rule is that a state prisoner has not "fairly  
6 presented" (and thus exhausted) his federal claims  
7 in state court unless he specifically indicated to  
8 that court that those claims were based on federal law.  
9 See, Shumway v. Payne, 223 F.3d 982, 987-88 (9th Cir.  
10 2000). Since the Supreme Court's decision in Duncan,  
11 this court has held that the petitioner must make the  
12 federal basis of the claim explicit either by citing  
13 federal law or the decisions of federal courts, even  
14 if the federal basis is "self-evident," Gatlin v. Madding,  
15 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v.  
Harless, 459 U.S. 4, 7... (1982), or the underlying  
claim would be decided under state law on the same  
considerations that would control resolution of the claim  
on federal grounds, see, e.g., Hiivala v. Wood, 195  
F.3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon,  
88 F.3d 828, 830-31 (9th Cir. 1996); Crotts, 73 F.3d  
at 865.

16 ...

17 In Johnson, we explained that the petitioner must alert  
18 the state court to the fact that the relevant claim is a  
19 federal one without regard to how similar the state and  
federal standards for reviewing the claim may be or how  
obvious the violation of federal law is.

20 Lyons v. Crawford, 232 F.3d 666, 668-69 (9th Cir. 2000), as amended  
21 by Lyons v. Crawford, 247 F.3d 904, 904-05 (9th Cir. 2001).

22 Where none of a petitioner's claims has been presented to the highest  
23 state court as required by the exhaustion doctrine, the Court must  
24 dismiss the petition. Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th  
25 Cir. 2006); Jiminez v. Rice, 276 F.3d 478, 481 (9th Cir. 2001). The  
26 authority of a court to hold a mixed petition in abeyance pending  
27 exhaustion of the unexhausted claims has not been extended to  
28 petitions that contain no exhausted claims. Raspberry, 448 F.3d at



1 1154.

2 Here, Petitioner has failed to allege exhaustion of state court  
3 remedies. However, Petitioner will have the opportunity to inform  
4 the Court of her efforts to exhaust state court remedies in an  
5 amended petition.

6 V. Amendment of the Petition

7 The instant petition must be dismissed for the reasons stated  
8 above. Petitioner will be given leave to file a first amended  
9 petition to cure the deficiencies. Petitioner is advised that  
10 failure to file a petition in compliance with this order (i.e., a  
11 completed petition form with cognizable federal claims clearly  
12 stated) within the allotted time will result in dismissal of the  
13 petition and termination of the action. Petitioner is advised that  
14 the amended petition should be entitled, "First Amended Petition,"  
15 and it must refer to the case number in this action. Further,  
16 Petitioner is informed that Local Rule 220 provides that unless  
17 prior approval to the contrary is obtained from the Court, every  
18 pleading as to which an amendment or supplement is permitted shall  
19 be retyped or rewritten and filed so that it is complete in itself  
20 without reference to the prior or superseded pleading.

21 The Clerk will be directed to send to Petitioner a blank form  
22 petition for a proceeding pursuant to § 2254.

23 VI. Disposition

24 Accordingly, it is ORDERED that:

25 1) The petition for writ of habeas corpus is DISMISSED with  
26 leave to amend; and

27 2) Petitioner is GRANTED thirty (30) days from the date of  
28 service of this order to file an amended petition in compliance with

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this order; and

3) The Clerk of the Court is DIRECTED to send Petitioner a form petition pursuant to 28 U.S.C. § 2254.

IT IS SO ORDERED.

Dated: May 15, 2014

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE