UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL DEMOND RUSSELL,
 	
      Petitioner,
 	
   v.
 	
FREDRIC FOULK, Warden,
 	
      Respondent.
	Case No. 1:14-cv-00685 GSA HC
	
	ORDER GRANTING PETITIONER'S MOTION TO AMEND TO NAME A PROPER RESPONDENT
	
	ORDER DIRECTING CLERK OF COURT TO SUBSTITUTE RESPONDENT

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has consented to the jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c).

DISCUSSION

On May 27, 2014, after conducting a preliminary review of the petition, the Court determined that Petitioner had failed to name a proper respondent. The Court granted Petitioner leave to file a motion to amend the petition in order to name a proper respondent. On June 16, 2014, Petitioner filed a motion to amend the petition to name Fredric Foulk, the warden of his institution, as Respondent. A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer having custody of him as the respondent to the petition. Rule 2 (a) of the Rules Governing § 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

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having custody of an incarcerated petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has "day-to-day control over" the petitioner. <u>Brittingham v. United States</u>, 982 F.2d 378, 379 (9th Cir. 1992); <u>see also</u> <u>Stanley</u>, 21 F.3d at 360. Therefore, Petitioner's motion is proper and will be granted.

ORDER

Accordingly, IT IS HEREBY ORDERED:

1) Petitioner's motion to amend the petition is GRANTED;

2) The Clerk of Court is DIRECTED to substitute Fredric Foulk as Respondent in this matter.

IT IS SO ORDERED.

Dated: __**June 23, 2014**__   _____**/s/ Gary S. Austin**
                                                    UNITED STATES MAGISTRATE JUDGE