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

CURTIS HIGHTOWER,	)	Case No.: 1:14-cv-01675-JLT
Petitioner,	)	
v.	)	ORDER REQUIRING PETITIONER TO AMEND
	)	PETITION TO NAME PROPER RESPONDENT
PEOPLE OF THE STATE OF CALIFORNIA,	)	30-DAY DEADLINE
Respondent.	)	
	)	

Petitioner is a state prisoner proceeding through retained counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed the instant petition on October 27, 2014. (Doc. 1).

**PROCEDURAL HISTORY**

A. Procedural Grounds for Summary Dismissal.

Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an answer to the petition has been filed. A petition for habeas corpus should not be dismissed without leave to amend unless it appears that no tenable claim for relief can be pleaded were such

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. Where a petitioner is on probation or parole, the proper respondent is his probation or  
12 parole officer and the official in charge of the parole or probation agency or state correctional agency.  
13 Id.

14 Here, Petitioner has named as Respondent "the People of the State of California." However,  
15 "the People of the State of California" is not the warden or chief officer of the institution where  
16 Petitioner is confined and, thus, does not have day-to-day control over Petitioner. Petitioner is  
17 presently confined at the Florence Correctional Center, Florence, Arizona. Petitioner should name as  
18 Respondent the present Warden of that facility or, alternatively, the Director of the California  
19 Department of Corrections and Rehabilitation.

20 Petitioner's failure to name a proper respondent requires dismissal of his habeas petition for  
21 lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326  
22 (9th Cir. 1970); see also, Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976).  
23 **However, the Court will give Petitioner the opportunity to cure this defect by amending the**  
24 **petition to name a proper respondent, such as the warden of his facility.** See West v. Louisiana,  
25 478 F.2d 1026, 1029 (5th Cir.1973), *vacated in part on other grounds*, 510 F.2d 363 (5th Cir.1975)  
26 (en banc) (allowing petitioner to amend petition to name proper respondent); Ashley v. State of  
27 Washington, 394 F.2d 125 (9th Cir. 1968) (same).

