

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

EDWARD McKINNEY,

Case No. 1:14-cv-01751-SAB-HC

Petitioner,

ORDER GRANTING PETITIONER LEAVE
TO FILE A MOTION TO AMEND THE
PETITION AND NAME A PROPER
RESPONDENT

KAMALA HARRIS,

(ECF No. 1)

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus

pursuant to 28 U.S.C. § 2254. Petitioner has consented to the jurisdiction of the magistrate judge

pursuant to 28 U.S.C. § 636(c). Petitioner challenges his October 16, 2012, conviction in Kings

County Superior Court for continuous sexual abuse. (Pet., ECF No. 1).

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DISCUSSION

Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990). A petition for habeas corpus should not be dismissed without leave to amend unless it appears

1 that no tenable claim for relief can be pleaded were such leave granted. Jarvis v. Nelson, 440
2 F.2d 13, 14 (9th Cir. 1971).

3 In this case, Petitioner names "Kamala Harris" as the Respondent. It is insufficient to
4 name the Attorney General of California as Respondent when a petitioner is in custody under a
5 state-court judgment. Rule 2(a) of the Rules Governing 22541 Cases. A petitioner seeking
6 habeas corpus relief under 28 U.S.C. § 2254 must name the state officer having custody of him
7 as the respondent to the petition. Rule 2(a) of the Rules Governing § 2254 Cases; Ortiz-
8 Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme Court, 21
9 F.3d 359, 360 (9th Cir. 1994). Normally, the person having custody of an incarcerated petitioner
10 is the warden of the prison in which the petitioner is incarcerated because the warden has "day-
11 to-day control over" the petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir.
12 1992); see also, Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994).
13 However, the chief officer in charge of state penal institutions is also appropriate. Ortiz, 81 F.3d
14 at 894; Stanley, 21 F.3d at 360.

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

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II.

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 the petition being dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated: December 1, 2014



UNITED STATES MAGISTRATE JUDGE