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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WALTER ORDUNO,

Petitioner,

v.

ON HABEAS CORPUS,

Respondent.

Case No. 1:16-cv-01180-EPG-HC

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

Petitioner a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

In this matter, Petitioner fails to name any 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), Rules Governing Section 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 having custody of an incarcerated petitioner is the warden of the prison in which the petitioner is incarcerated. Smith v. Idaho, 392 F.3d 350, 355 (9th Cir. 2004); Stanley, 21 F.3d at 360. However, the chief officer in charge of state penal institutions is also appropriate. Ortiz-Sandoval, 81 F.3d at 894; Stanley, 21 F.3d at 360.

A petitioner's failure to name a proper respondent requires dismissal of his habeas petition for lack of personal jurisdiction. Stanley v. California Supreme Court, 21 F.3d 359, 360

1 (9th Cir. 1994). However, the Court will give Petitioner the opportunity to cure this defect by
2 amending the petition to name a proper respondent, such as the warden of his facility or the chief
3 officer in charge of state penal institutions. See Dubrin v. California, 720 F.3d 1095, 1100 (9th
4 Cir. 2013) (petitioner should be granted leave to amend petition to name proper respondent). In
5 the interests of judicial economy, Petitioner need not file an amended petition. Instead, Petitioner
6 may file a motion entitled “Motion to Amend the Petition to Name a Proper Respondent”
7 wherein Petitioner may name the proper respondent in this action.

8 Accordingly, IT IS HEREBY ORDERED that Petitioner is GRANTED **THIRTY (30)**
9 **days** from the date of service of this order in which to file a motion to amend the petition to
10 name a proper respondent.

11 Petitioner is forewarned that failure to follow this order may result in dismissal of the
12 petition pursuant to Federal Rule of Civil Procedure 41(b) (a petitioner’s failure to prosecute or
13 to comply with a court order may result in a dismissal of the action).

14 IT IS SO ORDERED.

15 Dated: October 17, 2016

16 /s/ Eric P. Gray
17 UNITED STATES MAGISTRATE JUDGE