



1 that Petitioner filed in the Kern County Superior Court on May 3, 2016, in that it bears both the  
2 Superior Court's docket number (*see* Doc. 1 at 1) and the certification of filing of the Kern  
3 County Clerk of Court (*see* Doc. 1 at 15). Because Petitioner has not filed an appropriate federal  
4 petition, the Court will direct the Clerk of Court to forward a federal form to Petitioner along with  
5 this screening order. The screening order also provides information that will assist Petitioner in  
6 amending his petition to satisfy federal requirements. If Petitioner requires assistance in  
7 preparing an amended petition, he is directed to contact a legal assistant in the law library of the  
8 facility in which he is confined.

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10 **I. Preliminary Screening**

11 Rule 4 of the Rules Governing § 2254 Cases requires the Court to conduct a preliminary  
12 review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it  
13 plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the  
14 Rules Governing 2254 Cases; *see also Hendricks v. Vasquez*, 908 F.2d 490, 491 (9<sup>th</sup> Cir. 1990).  
15 A petition for habeas corpus should not be dismissed without leave to amend unless it appears  
16 that no tenable claim for relief can be pleaded were such leave to be granted. *Jarvis v. Nelson*,  
17 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971).  
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19 **II. Standard of Review for Federal Habeas Petitions**

20 A person in custody as a result of the judgment of a state court may secure relief through a  
21 federal petition for habeas corpus if the custody violates the Constitution or laws or treaties of the  
22 United States. 28 U.S.C. § 2254(a); *Williams v. Taylor*, 529 U.S. 362, 375 (2000). On April 24,  
23 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"),  
24 which applies to all petitions for writ of habeas corpus filed thereafter. *Lindh v. Murphy*, 521  
25 U.S. 320, 322-23 (1997). Under the statutory terms, the petition in this case is governed by  
26 AEDPA's provisions because Petitioner filed it after April 24, 1996.  
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1 Habeas corpus is neither a substitute for a direct appeal nor a device for federal review of  
2 the merits of a guilty verdict rendered in state court. *Jackson v. Virginia*, 443 U.S. 307, 332 n. 5  
3 (1979) (Stevens, J., concurring). Habeas corpus relief is intended to address only "extreme  
4 malfunctions" in state criminal justice proceedings. *Id.* Under AEDPA, a petitioner can prevail  
5 only if he can show that the state court's adjudication of his claim:  
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7 (1) resulted in a decision that was contrary to, or involved an unreasonable  
8 application of, clearly established Federal law, as determined by the Supreme Court of  
9 the United States; or

10 (2) resulted in a decision that was based on an unreasonable determination of the  
11 facts in light of the evidence presented in the State court proceeding.

12 28 U.S.C. § 2254(d); *Lockyer v. Andrade*, 538 U.S. 63, 70-71 (2003); *Williams*,  
13 529 U.S. at 413.

14 "By its terms, § 2254(d) bars relitigation of any claim 'adjudicated on the merits' in state  
15 court, subject only to the exceptions set forth in §§ 2254(d)(1) and (d)(2)." *Harrington v.*  
16 *Richter*, 562 U.S. 86, 98 (2011).

17 As a threshold matter, a federal court must first determine what constitutes "clearly  
18 established Federal law, as determined by the Supreme Court of the United States." *Lockyer*,  
19 538 U.S. at 71. To do so, the Court must look to the holdings, as opposed to the dicta, of the  
20 Supreme Court's decisions at the time of the relevant state-court decision. *Id.* The court must  
21 then consider whether the state court's decision was "contrary to, or involved an unreasonable  
22 application of, clearly established Federal law." *Id.* at 72. The state court need not have cited  
23 clearly established Supreme Court precedent; it is sufficient that neither the reasoning nor the  
24 result of the state court contradicts it. *Early v. Packer*, 537 U.S. 3, 8 (2002). The federal court  
25 must apply the presumption that state courts know and follow the law. *Woodford v. Visciotti*,  
26 537 U.S. 19, 24 (2002). The petitioner has the burden of establishing that the decision of the

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1 state court is contrary to, or involved an unreasonable application of, United States Supreme  
2 Court precedent. *Baylor v. Estelle*, 94 F.3d 1321, 1325 (9<sup>th</sup> Cir. 1996).

3 "A federal habeas court may not issue the writ simply because the court concludes in its  
4 independent judgment that the relevant state-court decision applied clearly established federal  
5 law erroneously or incorrectly." *Lockyer*, 538 U.S. at 75-76. "A state court's determination that  
6 a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree'  
7 on the correctness of the state court's decision." *Harrington*, 562 U.S. at 101 (quoting  
8 *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). Thus, the AEDPA standard is difficult to  
9 satisfy since even a strong case for relief does not demonstrate that the state court's  
10 determination was unreasonable. *Harrington*, 562 U.S. at 102.

### 11 **III. Federal Habeas Petitions, Section 1983 Civil Rights Actions, and *Bivens*<sup>2</sup> Actions**

12 A federal petition for writ of habeas corpus concerns whether a petitioner is in custody  
13 in violation of the Constitution. 28 U.S.C. § 2254(a). "Habeas corpus is the exclusive remedy  
14 for a state prisoner who challenges the fact or duration of his confinement and seeks immediate  
15 or speedier release, even though such a claim may come within the literal terms of § 1983."  
16 *Preiser v. Rodriguez*, 411 U.S. 475, 488-89 (1973).

17 Challenges to the conditions of prison life by state prisoners are properly brought under  
18 42 U.S.C. § 1983. *McCarthy v. Bronson*, 500 U.S. 136, 142 (1991). Because a *Bivens* action  
19 provides a remedy for violation of civil rights by federal actors, a *Bivens* action is an incorrect  
20 way for a state prisoner alleging a violation arising from the conditions of his confinement to  
21 pursue a civil rights claim. The above-captioned petition alleges conditions-of-confinement  
22 claims which it identifies as *Bivens* claims but does not tie to any federal actor. Petitioner must  
23 remove those claims from his habeas petition and bring them in a separate civil rights action  
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28 <sup>2</sup> *Bivens v. Six Unnamed Agents of Federal Bureau of Narcotics*, 399 U.S. 905 (1970).

1 pursuant to 42 U.S.C. § 1983. This is because a petitioner may not seek both types of relief in a  
2 single action. *See Heck v. Humphrey*, 512 U.S. 477, 487-88 (1994); *Preiser*, 411 U.S. at 498-99  
3 n. 15; *Young v. Kenny*, 907 F.2d 874 (9<sup>th</sup> Cir. 1990), *cert. denied sub nom Bressman v. Farrier*,  
4 498 U.S. 1126 (1991); *Advisory Committee Notes to Rule 1 of the Rules Governing Section*  
5 *2254 Cases*.

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7 To the extent that Petitioner is unsure whether a particular constitutional claim is  
8 properly brought in a habeas petition or a § 1983 complaint, consideration of the relief that he  
9 seeks will help him determine the proper course of action. As stated above, if the claim alleges  
10 that the petitioner’s conviction resulted from a federal constitutional violation and that he  
11 should be immediately released or released sooner than the end of the term of imprisonment to  
12 which he was sentenced, that claim must be brought in a habeas petition. If the claim alleges a  
13 violation of the petitioner’s federal constitutional rights arising from the conditions of his  
14 confinement and seeks either monetary or injunctive relief, that claim must be brought in a §  
15 1983 complaint.  
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17 **IV. Proper Respondent**

18 The petition names as respondents Rebecca Barron, a probation officer; Terry McNally,  
19 apparently a juvenile justice employee in the Kern County judicial district; Kern County  
20 District Attorney Lisa Green; Kern County Judge John S. Somers; Angie Ralls, identified as  
21 “clerk”; California Department of Corrections and Rehabilitation (“CDCR”); and Coastline  
22 Community College. The petition neither clearly identifies these respondents, nor explains their  
23 relationship to the grounds alleged for habeas relief. Whatever their relationship to Petitioner’s  
24 claims, none of these individuals is a proper respondent in a federal habeas action.  
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26 A petitioner who is seeking habeas corpus relief under 28 U.S.C. § 2254 must name the  
27 state officer having custody of him as the respondent to the petition. Habeas Rule 2(a); *Ortiz-*  
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1 *Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996); *Stanley v. California Supreme Court*, 21  
2 F.3d 359, 360 (9th Cir. 1994). Generally, the person having custody of an incarcerated petitioner  
3 is the warden of the prison in which the petitioner is incarcerated because the warden has “day-to-  
4 day control over” the petitioner and thus can produce the petitioner in court. *Brittingham v.*  
5 *United States*, 982 F.2d 378, 379 (9th Cir. 1992); *Stanley*, 21 F.3d at 360. A petitioner’s failure  
6 to name a proper respondent may require dismissal of his habeas petition for a failure to name a  
7 person who can produce the petitioner in response to an order of the Court and thereby to secure  
8 personal jurisdiction. *See, Smith v. Idaho*, 392 F.3d 350, 355 n.3 (9th Cir. 2004). When he  
9 prepares his amended petition, Petitioner may cure this defect by naming as the respondent the  
10 warden of the facility in which he is incarcerated. *See In re Morris*, 363 F.3d 891, 893-94 (9th  
11 Cir. 2004).

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14 **V. Failure to Sign Petition**

15 A federal petition must "be signed under penalty of perjury by the petitioner or by a  
16 person authorized to sign if for the petition under 28 U.S.C. § 2242." Rule 2(c)(5) of the Rules  
17 Governing 2254 Cases. The state petition form filed in this action does not specify that Petitioner  
18 attests to the truthfulness of the allegations and was not signed under penalty of perjury. In  
19 addition, the state petition bears a signature of “K. Taylor,” not Petitioner. Petitioner must sign  
20 the amended petition under penalty of perjury in the designated location at the end of the form.

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22 **VI. Exhaustion of State Remedies**

23 A petitioner who is in state custody and wishes to collaterally challenge his conviction by  
24 a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1).  
25 The exhaustion doctrine is based on comity to the state court and gives the state court the initial  
26 opportunity to correct the state's alleged constitutional deprivations. *Coleman v. Thompson*, 501

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1 U.S. 722, 731 (1991); *Rose v. Lundy*, 455 U.S. 509, 518 (1982); *Buffalo v. Sunn*, 854 F.2d 1158,  
2 1163 (9<sup>th</sup> Cir. 1988).

3 A petitioner can satisfy the exhaustion requirement by providing the highest state court  
4 with a full and fair opportunity to consider each claim before presenting it to the federal court.  
5 *Duncan v. Henry*, 513 U.S. 364, 365 (1995); *Picard v. Connor*, 404 U.S. 270, 276 (1971);  
6 *Johnson v. Zenon*, 88 F.3d 828, 829 (9<sup>th</sup> Cir. 1996). A federal court will find that the highest state  
7 court was given a full and fair opportunity to hear a claim if the petitioner has presented the  
8 highest state court with the claim's factual and legal basis. *Duncan*, 513 U.S. at 365; *Kenney v.*  
9 *Tamayo-Reyes*, 504 U.S. 1, 8 (1992).

10 Because Petitioner filed a copy of the state petition filed in the superior court, the petition  
11 does not provide sufficient information to permit the Court to evaluate whether Petitioner has  
12 exhausted his claims by presenting them to the California Supreme Court. In preparing the  
13 amended petition, using the form that will be provided to Petitioner with this order, Petitioner is  
14 advised to complete fully those portions of the form concerning the direct appeal of his conviction  
15 and state habeas proceedings. If Petitioner has not exhausted any of the grounds alleged for  
16 habeas relief, the Court will be required to dismiss the amended petition.

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19 **VII. Clarity and Completeness of Grounds for Relief and Supporting Facts**

20 Because each ground for habeas relief included in the petition comingles multiple habeas  
21 and civil rights claims, the Court is unable to provide further screening of the substance of  
22 Petitioner's claims. The inclusion of multiple and disparate claims prevents the Court from  
23 determining accurately which factual allegations are intended to support which ground for habeas  
24 relief. In preparing his amended petition, Petitioner should take care to limit each ground for  
25 relief to one claim and to briefly but completely set forth the nature of the factual support for that  
26 claim. The Court will conduct a substantive screening of the amended petition after it has been  
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1 filed. Allegations in a petition that are vague, conclusory, patently frivolous or false, or palpably  
2 incredible are subject to summary dismissal. *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir.  
3 1990).

4 In addition, Petitioner has appended numerous documents to the petition without any  
5 explanation of what each document is and why it is relevant to his claims. Because the respondent  
6 must produce the record of the state proceedings as part of his response, attaching extensive materials  
7 to the petition is generally unnecessary. To the extent that Petitioner must append a document to the  
8 petition, he is directed to identify it in the petition and incorporate it by reference, identifying each  
9 such document with a separate exhibit number.

#### 11 **VIII. The Motions**

12 Petitioner has also filed two motions: (1) motion to correct illegal sentence (Doc. 10) and  
13 (2) motion for evidence statements (Doc. 13). Because each of these motions restates portions of  
14 claims alleged within the petition filed in this case, the Court denies these motions as moot in  
15 light of this order dismissing the petition with leave to amend.

16 Submitting additional motions regarding the claims set forth in a petition is unnecessary,  
17 and it is a needless waste of the Court's and the Respondent's resources. Petitioner is directed to  
18 include all claims within the amended petition and to refrain from filing motions restating those  
19 claims.  
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#### 21 **IX. Conclusion and Order**

22 Accordingly, the Court hereby ORDERS:

- 23 1. The petition for writ of habeas corpus is hereby  
24 DISMISSED with leave to amend.
- 25 2. The Motion to Correct Illegal Sentence (Doc. 10) and the  
26 Motion for Evidence Statements (Doc. 13) are DISMISSED as  
27 moot.

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3. The Clerk's Office shall send Petitioner a copy of this order and the forms for (a) Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody and (b) Civil Rights Complaint by a Prisoner Under 42 U.S.C. § 1983.

4. Within thirty (30) days of service of this order, Plaintiff shall file an amended petition naming a proper respondent. Plaintiff shall fully complete the form for the amended petition, separately stating each claim and the facts supporting each claim. Plaintiff shall sign the amended petition under penalty of perjury.

5. If Plaintiff fails to file an amended petition within thirty (30) days from the date of this order, this action will be dismissed without further notice for lack of prosecution.

IT IS SO ORDERED.

Dated: March 7, 2017

/s/ Sheila K. Olerto  
UNITED STATES MAGISTRATE JUDGE