

1	UNITED STATES DISTRICT COURT
2	EASTERN DISTRICT OF CALIFORNIA
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12	FRANK R. CASTILLO, Case No. 1:18-cv-00251-LJO-MJS (HC)
13	Petitioner,
14	v.
15	UNITED STATES DISTRICT COURT ORDER TO SHOW CAUSE WHY THE
16	FOR THE NORTHERN DISTRICT OF PETITION SHOULD NOT BE DISMISSED
17	CALIFORNIA, FAILURE TO EXHAUST STATE COURT REMEDIES AND
18	Respondent. FAILURE TO NAME A PROPER
19	RESPONDENT
20	THIRTY (30) DAY DEADLINE
21	CLERK TO SEND BLANK HABEAS
22	corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges the February 26, 2014
23	judgement of the Fresno County Superior Court. (ECF No. 2 at 1.)
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25	I. Preliminary Review of Petition
26	Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a
27	preliminary review of each petition for writ of habeas corpus. The Court must dismiss a
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Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges the February 26, 2014 judgement of the Fresno County Superior Court. (ECF No. 2 at 1.)

I. Preliminary Review of Petition

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

1 petition "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to
2 relief." Rule 4 of the Rules Governing § 2254 Cases; Hendricks v. Vasquez, 908 F.2d
3 490 (9th Cir. 1990). Otherwise, the Court will order Respondent to respond to the
4 petition. Rule 5 of the Rules Governing § 2254 Cases.

5 **II. Exhaustion Requirement**

6 A petitioner who is in state custody and wishes to collaterally challenge his
7 conviction by a petition for writ of habeas corpus must exhaust state judicial remedies.
8 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity to the state court
9 and gives the state court the initial opportunity to correct the state's alleged constitutional
10 deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S.
11 509, 518 (1982); Buffalo v. Sunn, 854 F.2d 1158, 1163 (9th Cir. 1988).

12 A petitioner can satisfy the exhaustion requirement by providing the highest state
13 court with a full and fair opportunity to consider each claim before presenting it to the
14 federal court. Duncan v. Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S.
15 270, 276 (1971); Johnson v. Zenon, 88 F.3d 828, 829 (9th Cir. 1996). A federal court will
16 find that the highest state court was given a full and fair opportunity to hear a claim if the
17 petitioner has presented the highest state court with the claim's factual and legal basis.
18 Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504 U.S. 1, 9 (1992)
19 (factual basis).

20 Additionally, the petitioner must have specifically told the state court that he was
21 raising a federal constitutional claim. Duncan, 513 U.S. at 365-66; Lyons v. Crawford,
22 232 F.3d 666, 669 (9th Cir. 2000), amended, 247 F.3d 904 (2001); Hiivala v. Wood, 195
23 F.3d 1098, 1106 (9th Cir. 1999); Keating v. Hood, 133 F.3d 1240, 1241 (9th Cir. 1998). In
24 Duncan, the United States Supreme Court reiterated the rule as follows:

25 In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that
26 exhaustion of state remedies requires that petitioners "fairly present"
27 federal claims to the state courts in order to give the State the
28 "opportunity to pass upon and correct" alleged violations of the prisoners'
federal rights" (some internal quotation marks omitted). If state courts are
to be given the opportunity to correct alleged violations of prisoners'

1 federal rights, they must surely be alerted to the fact that the prisoners are
2 asserting claims under the United States Constitution. If a habeas
3 petitioner wishes to claim that an evidentiary ruling at a state court trial
4 denied him the due process of law guaranteed by the Fourteenth
5 Amendment, he must say so, not only in federal court, but in state court.

6 Duncan, 513 U.S. at 365-366. The Ninth Circuit examined the rule further, stating:

7 Our rule is that a state prisoner has not "fairly presented" (and thus
8 exhausted) his federal claims in state court unless he specifically indicated
9 to that court that those claims were based on federal law. See Shumway
10 v. Payne, 223 F.3d 982, 987-88 (9th Cir. 2000). Since the Supreme
11 Court's decision in Duncan, this court has held that the petitioner must
12 make the federal basis of the claim explicit either by citing federal law or
13 the decisions of federal courts, even if the federal basis is "self-evident,"
14 Gatlin v. Madding, 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v.
15 Harless, 459 U.S. 4, 7 . . . (1982), or the underlying claim would be
16 decided under state law on the same considerations that would control
17 resolution of the claim on federal grounds. Hiivala v. Wood, 195 F3d 1098,
18 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31 (9th Cir.
19 1996);

20 In Johnson, we explained that the petitioner must alert the state court to
21 the fact that the relevant claim is a federal one without regard to how
22 similar the state and federal standards for reviewing the claim may be or
23 how obvious the violation of federal law is.

24 Lyons v. Crawford, 232 F.3d 666, 668-669 (9th Cir. 2000).

25 Here, it is unclear from the petition whether Petitioner has presented his claims to
26 the highest state court, the California Supreme Court. It appears that he may have raised
27 some of his claims in a petition for writ of habeas corpus in the Fresno County Superior
28 Court. However, he does not state whether he also sought review of these claims in the
29 California Supreme Court. This court cannot proceed to the merits of the petition unless
30 the claims have first been presented to the California Supreme Court, whether on direct
31 appeal or by way of a petition for writ of habeas corpus.

32 If Petitioner has, in fact, presented his claims to the California Supreme Court, he
33 must so advise this Court and, if possible, provide this Court with a copy of the petition
34 filed in the California Supreme Court along with any ruling thereon. Without information
35 to suggest that the claims have been presented to the California Supreme Court, the
36 Court is unable to proceed to the merits of the petition. 28 U.S.C. § 2254(b)(1).

III. Proper Respondent

Petitioner names the United States District Court for the Northern District of California as the Respondent in this case.

A petitioner who is 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. Habeas Rule 2(a); 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). Generally, the person 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 and thus can produce the petitioner in court. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992); Stanley, 21 F.3d at 360. A petitioner’s failure to name a proper respondent may require dismissal of his habeas petition for a failure to name a person who can produce the petitioner in response to an order of the Court and thereby to secure personal jurisdiction. See Smith v. Idaho, 392 F.3d 350, 355 n.3 (9th Cir. 2004).

Petitioner may cure this defect by preparing an amended petition naming as the respondent the warden of the facility in which he is incarcerated. See In re Morris, 363 F.3d 891, 893–94 (9th Cir. 2004).

IV. Order

Based on the foregoing, Petitioner is ORDERED TO SHOW CAUSE why the petition should not be dismissed for Petitioner's failure to exhaust state remedies and failure to name a proper respondent. Within thirty (30) days of the date of service of this order, Petitioner shall file an amended petition naming a proper respondent and shall therein inform the Court what claims, if any, have been presented to the California Supreme Court.

If Petitioner fails to respond to this order and fails to show cause why the petition should not be dismissed, the undersigned will recommend dismissal of the petition

1 without prejudice for failure to exhaust state remedies and failure to name a proper
2 respondent.

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4 IT IS SO ORDERED.
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6 Dated: March 7, 2018

7 /s/ *Michael J. Seng*
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