

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT MEDINA,

 Petitioner,

 v.

UNNAMED,

 Respondent.

No. 1:24-cv-01425-SKO (HC)

**ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE**

**FINDINGS AND RECOMMENDATION
TO DISMISS PETITION**

[TWENTY-ONE DAY DEADLINE]

Petitioner is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He filed the instant petition on November 21, 2024. The petition is unexhausted and fails to name a proper respondent. Therefore, the Court will recommend the petition be dismissed.

DISCUSSION

A. Preliminary Review of Petition

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court” Rule 4 of the Rules Governing Section 2254 Cases. 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

1 dismiss, or after an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th Cir.
2 2001).

3 B. Failure to Exhaust State Remedies

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

9 A petitioner can satisfy the exhaustion requirement by providing the highest state court
10 with a full and fair opportunity to consider each claim before presenting it to the federal court.
11 Duncan v. Henry, 513 U.S. 364, 365 (1995). A federal court will find that the highest state court
12 was given a full and fair opportunity to hear a claim if the petitioner has presented the highest
13 state court with the claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney
14 v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).

15 Additionally, the petitioner must have specifically told the state court that he was raising a
16 federal constitutional claim. Duncan, 513 U.S. at 365-66. In Duncan, the United States Supreme
17 Court reiterated the rule as follows:

18 In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion of state
19 remedies requires that petitioners “fairly presen[t]” federal claims to the state courts
20 in order to give the State the “opportunity to pass upon and correct alleged violations
21 of the prisoners' federal rights” (some internal quotation marks omitted). If state
22 courts are to be given the opportunity to correct alleged violations of prisoners'
23 federal rights, they must surely be alerted to the fact that the prisoners are asserting
claims under the United States Constitution. If a habeas petitioner wishes to claim
that an evidentiary ruling at a state court trial denied him the due process of law
guaranteed by the Fourteenth Amendment, he must say so, not only in federal court,
but in state court.

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

25 Our rule is that a state prisoner has not “fairly presented” (and thus exhausted) his
26 federal claims in state court *unless he specifically indicated to that court that those*
27 *claims were based on federal law. See Shumway v. Payne, 223 F.3d 982, 987-88*
28 *(9th Cir. 2000). Since the Supreme Court's decision in Duncan, this court has held*
that the petitioner must make the federal basis of the claim explicit either by citing
federal law or the decisions of federal courts, even if the federal basis is “self-
evident,” Gatlin v. Madding, 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Harless, 459 U.S. 4, 7 . . . (1982), or the underlying claim would be decided under state law on the same considerations that would control resolution of the claim on federal grounds. Hiiivala v. Wood, 195 F.3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31 (9th Cir. 1996);

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

Lyons v. Crawford, 232 F.3d 666, 668-669 (9th Cir. 2000) (italics added), *as amended by Lyons v. Crawford*, 247 F.3d 904, 904-5 (9th Cir. 2001).

In the form petition, Petitioner makes one statement: “I was at Fresno County Jail for some other case and they find [sic] on my bed PC 11502 that wasn’t mined [sic] at all and joy-riding in a CVC 10851 . . . would like the court re look [sic] again.” Petitioner indicates throughout his petition that he has not sought relief in the state courts for his claim. The petition is unexhausted and must be dismissed. 28 U.S.C. § 2254(b)(1); Rose v. Lundy, 455 U.S. 509, 521-22 (1982).

C. Failure to Name a Proper Respondent

Petitioner fails to name a 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) of the Rules Governing § 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). Petitioner’s failure to name a proper respondent requires dismissal of his habeas petition for lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326 (9th Cir. 1970); see also Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976).

ORDER

The Clerk of Court is DIRECTED to assign a district judge to this case.

//
//
//
//

1 **RECOMMENDATION**

2 For the foregoing reasons, the Court hereby RECOMMENDS that the petition be
3 DISMISSED without prejudice for failure to exhaust state remedies and failure to name a proper
4 respondent.

5 This Findings and Recommendation is submitted to the United States District Court Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the
7 Local Rules of Practice for the United States District Court, Eastern District of California. Within
8 twenty-one (21) days after being served with a copy of this Findings and Recommendation, a
9 party may file written objections with the Court and serve a copy on all parties. *Id.* The document
10 should be captioned, “Objections to Magistrate Judge’s Findings and Recommendation” and shall
11 not exceed fifteen (15) pages, except by leave of court with good cause shown. The Court will not
12 consider exhibits attached to the Objections. To the extent a party wishes to refer to any
13 exhibit(s), the party should reference the exhibit in the record by its CM/ECF document and page
14 number, when possible, or otherwise reference the exhibit with specificity. Any pages filed in
15 excess of the fifteen (15) page limitation may be disregarded by the District Judge when
16 reviewing these Findings and Recommendations pursuant to 28 U.S.C. § 636 (b)(1)(C). The
17 parties are advised that failure to file objections within the specified time may result in the waiver
18 of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014). This
19 recommendation is not an order that is immediately appealable to the Ninth Circuit Court of
20 Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure,
21 should not be filed until entry of the District Court's judgment.

22 IT IS SO ORDERED.

23 Dated: November 22, 2024

24 */s/ Sheila K. Oberto*
25 UNITED STATES MAGISTRATE JUDGE