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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY JOE OSBORNE,

Petitioner,

No. CIV S-09-3594 DAD P

vs.

MATTHEW CATE,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with a motion to proceed in forma pauperis.

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

“A petitioner for habeas corpus relief must name the state officer having custody of him or her as the respondent to the petition.” Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994) (citing Rule 2(a), 28 U.S.C. foll. § 2254). Petitioner has named Matthew Cate as the respondent in this action. Matthew Cate, however, is not the proper respondent. Accordingly, the instant petition must be dismissed with leave to amend. See

1 Stanley, 21 F.3d at 360. Petitioner is advised that the proper respondent in the usual habeas
2 action is the warden of the institution where the petitioner is currently incarcerated. See Stanley,
3 21 F.3d at 360.

4 In accordance with the above, IT IS HEREBY ORDERED that:

5 1. Petitioner's December 29, 2009 motion to proceed in forma pauperis (Doc. No.
6 2) is granted;

7 2. Petitioner's application for writ of habeas corpus is dismissed with leave to file
8 an amended petition within thirty days from the date of this order;

9 3. Any amended petition must be filed on the form employed by this court, must
10 name the proper respondent, and must state all claims and prayers for relief on the form. It must
11 bear the case number assigned to this action and must bear the title "Amended Petition"; and

12 4. The Clerk of the Court is directed to send petitioner the form for habeas corpus
13 application.

14 DATED: January 6, 2010.

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17 _____
18 DALE A. DROZD
19 UNITED STATES MAGISTRATE JUDGE

17 DAD:9
18 osbo3594.122