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

FERNANDO VALENZUELA,

Petitioner,

No.2:10-cv-0973-JFM (HC)

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

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 request 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), and the court is required to consider sua sponte whether the named respondents have the power to provide the relief sought in a habeas corpus action. See Smith v.

1 Idaho, 392 F.3d 350, 355 n.3 (9th Cir. 2004). Petitioner has named “People of the State of
2 California” as the respondent in this action. This is not the proper respondent in this action.
3 Instead, petitioner must name as respondent the warden of the prison where he is incarcerated.
4 Accordingly, the instant petition must be dismissed with leave to amend. See Stanley, 21 F.3d at
5 360.

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

- 7 1. Petitioner’s April 22, 2010 request to proceed in forma pauperis is granted;
- 8 2. Petitioner’s April 22, 2010 application for writ of habeas corpus is dismissed
9 with leave to file an amended petition within thirty days from the date of this order;
- 10 3. Any amended petition must be filed on the form employed by this court, must
11 name the proper respondent, and must state all claims and prayers for relief on the form. It must
12 bear the case number assigned to this action and must bear the title “Amended Petition”; and
- 13 4. The Clerk of the Court is directed to send petitioner the form for habeas corpus
14 application.

15 DATED: May 5, 2010.

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18 UNITED STATES MAGISTRATE JUDGE

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