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

JOSEPH MANUEL ORTIZ,

Petitioner,

No. CIV S-11-1593 GGH P

vs.

PEOPLE OF THE STATE OF CALIFORNIA,¹

Respondents.

ORDER

_____/

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

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be

¹ “A petitioner for habeas corpus relief must name the state officer having custody of him or her as the respondent to the petition. This person typically is the warden of the facility in which the petitioner is incarcerated. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir.1992).” Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994) (citing Rule 2(a), 28 U.S.C. foll. § 2254). “Failure to name the petitioner’s custodian as a respondent deprives federal courts of personal jurisdiction. Id.; Dunne v. Henman, 875 F.2d 244, 249 (9th Cir.1989).” Stanley, supra, at 360. In the instant action, petitioner has improperly named the People of the State of California, rather than the warden of facility wherein he is incarcerated, as respondent. Petitioner is cautioned that he should name the proper respondent in future filings.

1 granted. See 28 U.S.C. § 1915(a).

2 Since petitioner may be entitled to relief if the claimed violation of constitutional
3 rights is proved, respondents will be directed to file a response to petitioner's habeas petition.

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

5 1. Petitioner's application to proceed in forma pauperis is granted;

6 2. Respondents are directed to file a response to petitioner's habeas petition
7 within sixty days from the date of this order. See Rule 4, Fed. R. Governing § 2254 Cases. An
8 answer shall be accompanied by all transcripts and other documents relevant to the issues
9 presented in the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

10 3. If the response to the habeas petition is an answer, petitioner's reply, if any,
11 shall be filed and served within twenty-eight days after service of the answer;

12 4. If the response to the habeas petition is a motion, petitioner's opposition or
13 statement of non-opposition to the motion shall be filed and served within twenty-eight days after
14 service of the motion, and respondents' reply, if any, shall be filed and served within fourteen
15 days thereafter; and

16 5. The Clerk of the Court shall serve a copy of this order, *the*
17 *consent/reassignment form contemplated by Appendix A(k) to the Local Rules of this court*
18 together with a copy of the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on
19 Michael Patrick Farrell, Senior Assistant Attorney General.

20 DATED: June 22, 2011

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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