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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RALPH EDWARD CRENSHAW,  
Petitioner,  
v.  
CALIFORNIA BOARD OF PRISON TERMS,  
Respondent.

Civil No. 07-1107 JM (WMc)

**ORDER DISMISSING CASE  
WITHOUT PREJUDICE AND WITH  
LEAVE TO AMEND**

Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

**FAILURE TO SATISFY THE FILING FEE REQUIREMENT**

Petitioner has failed to pay the \$5.00 filing fee and has failed to move to proceed in forma pauperis. Because this Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or qualified to proceed in forma pauperis, the Court **DISMISSES** the case without prejudice. See Rule 3(a), 28 U.S.C. foll. § 2254. If Petitioner wishes to proceed with this case, he must submit, **no later than August 21, 2007**, a copy of this Order with the \$5.00 fee or with adequate proof of his inability to pay the fee.

**FAILURE TO NAME A PROPER RESPONDENT**

Review of the Petition reveals that Petitioner has failed to name a proper respondent. On federal habeas, a state prisoner must name the state officer having custody of him as the respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll. § 2254).

1 Federal courts lack personal jurisdiction when a habeas petition fails to name a proper respondent. *See*  
2 *id.*

3 The warden is the typical respondent. However, “the rules following section 2254 do not specify  
4 the warden.” *Id.* “[T]he ‘state officer having custody’ may be ‘either the warden of the institution in  
5 which the petitioner is incarcerated . . . or the chief officer in charge of state penal institutions.’” *Id.*  
6 (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note). If “a petitioner is in custody due  
7 to the state action he is challenging, ‘[t]he named respondent shall be the state officer who has official  
8 custody of the petitioner (for example, the warden of the prison).’” *Id.* (quoting Rule 2, 28 U.S.C. foll.  
9 § 2254 advisory committee’s note).

10 A long standing rule in the Ninth Circuit holds “that a petitioner may not seek [a writ of] habeas  
11 corpus against the State under . . . [whose] authority . . . the petitioner is in custody. The actual person  
12 who is [the] custodian [of the petitioner] must be the respondent.” *Ashley v. Washington*, 394 F.2d 125,  
13 126 (9th Cir. 1968). This requirement exists because a writ of habeas corpus acts upon the custodian  
14 of the state prisoner, the person who will produce “the body” if directed to do so by the Court. “Both  
15 the warden of a California prison and the Secretary of the Department of Corrections and Rehabilitation  
16 for California have the power to produce the prisoner.” *Ortiz-Sandoval*, 81 F.3d at 895.

17 Here, Petitioner has incorrectly named the “California Board of Prison Terms” as Respondent.  
18 In order for this Court to entertain the Petition filed in this action, Petitioner must name the warden in  
19 charge of the state correctional facility in which Petitioner is presently confined or the Director of the  
20 California Department of Corrections. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992)  
21 (per curiam).

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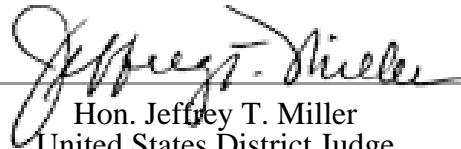
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**CONCLUSION**

For the foregoing reasons, the Petition is **DISMISSED** without prejudice and with leave to amend. In order to have this case reopened, Petitioner must (1) satisfy the filing fee requirement and (2) file a First Amended Petition that corrects the pleading deficiency discussed above, **no later than August 21, 2007**. *For Petitioner's convenience, the Clerk of Court shall attach a blank request to proceed forma pauperis form and a blank First Amended Petition form, to this order.*

**IT IS SO ORDERED.**

DATED: July 2, 2007

  
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Hon. Jeffrey T. Miller  
United States District Judge

cc: All Parties