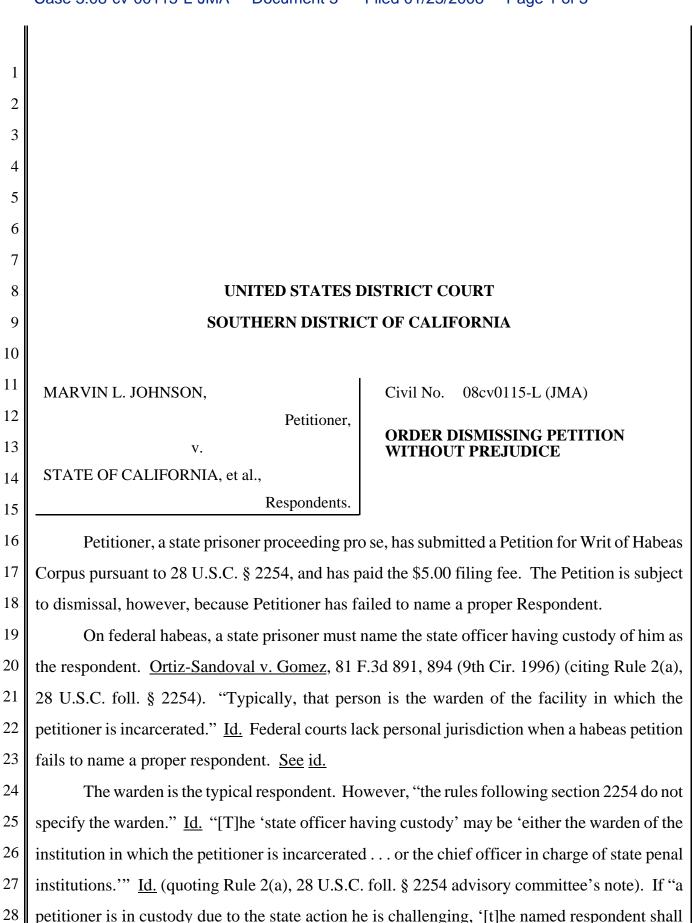
Johnson v. State of California et al



08cv0115

Doc. 3

be the state officer who has official custody of the petitioner (for example, the warden of the
 prison)." <u>Id.</u> (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee's note).

3 Here, Petitioner has incorrectly named "State of California," "Gov. Schwarzenegger" and "Bill Lockyer, Attorney General of the State of California" as Respondents. A long standing 4 5 rule in the Ninth Circuit holds "that a petitioner may not seek [a writ of] habeas corpus against the State under ... [whose] authority ... the petitioner is in custody. The actual person who is 6 7 [the] custodian [of the petitioner] must be the respondent." Ashley v. Washington, 394 F.2d 125, 8 126 (9th Cir. 1968). This requirement exists because a writ of habeas corpus acts upon the custodian of the state prisoner, the person who will produce "the body" if directed to do so by 9 the Court. "Both the warden of a California prison and the Director of Corrections for California 10 have the power to produce the prisoner." Ortiz-Sandoval, 81 F.3d at 895. Thus, the State of 11 12 California and the Governor of California are not proper Respondents to this action.

13 Additionally, Bill Lockyer, the Attorney General of the State of California, is not a proper respondent in this action. Rule 2 of the Rules following § 2254 provides that the state officer 14 having custody of the petitioner shall be named as respondent. Rule 2(a), 28 U.S.C. foll. § 2254. 15 However, "[i]f the petitioner is not yet in custody – but may be subject to future custody – under 16 17 the state-court judgment being contested, the petition must name as respondents both the officer who has current custody and the attorney general of the state where the judgement was entered." 18 19 Rule 2 (b), 28 U.S.C. foll. § 2254. Here, there is no basis for Petitioner to have named the 20 Attorney General as a respondent in this action.

In order for this Court to entertain the Petition filed in this action, Petitioner must name
the warden in charge of the state correctional facility in which Petitioner is presently confined
or the Secretary of the California Department of Corrections and Rehabilitation. <u>Brittingham</u>
<u>v. United States</u>, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam).

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1	Accordingly, the Court DISMISSES the Petition without prejudice due to Petitioner's
2	failure to name a proper respondent. To have this case reopened, Petitioner must file a First
3	Amended Petition no later than March 24, 2008 in conformance with this Order. The Clerk of
4	Court shall send Petitioner a blank Southern District of California habeas petition form along
5	with a copy of this Order.
6	IT IS SO ORDERED.
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8	DATED: January 25, 2008
9	M James Jourg
10	United States District Court Judge
11	Copies to: ALL PARTIES
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