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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 LOREN JAMES CROUSE,
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Petitioner,

v.

MATTHEW CATE, Secretary,

Respondent.

Civil No. 08-0166 MMA (LSP)

**ORDER SUA SPONTE SUBSTITUTING
RESPONDENT**

On January 28, 2008, Petitioner filed a petition pursuant to 28 U.S.C. § 2254 in this Court. At the time of filing, Petitioner was housed at California Men's Colony and thus named John Marshall, Warden, as Respondent.

On January 13, 2009, Petitioner filed with this Court a notice of change of address which indicates he has been released from prison on parole. (*See* doc. no. 22.) The proper respondent if a petitioner is on probation or parole is his probation or parole officer, the official in charge of the parole or probation agency, or the head of the state correctional agency. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee's note).

A writ of habeas corpus acts upon the custodian of the state prisoner. *See* 28 U.S.C. § 2242; Rule 2(a), 28 U.S.C. foll. § 2254. Because Petitioner has been paroled, his custodian has changed. Accordingly, in order to conform with the requirements of Rule 2(a) of the Rules Governing § 2254 Cases and to avoid changing the Respondent again, the Court hereby sua sponte **ORDERS** the substitution of Matthew Cate, Secretary of the California Department of Corrections and Rehabilitation,

1 as Respondent in place of “John Marshall.” *See Ortiz-Sandoval*, 81 F.3d at 894 (stating that the
2 respondent in § 2254 proceedings may be the chief officer in charge of state penal institutions).

3 The Clerk of the Court shall modify the docket to reflect “Matthew Cate, Secretary” as
4 respondent in place of “John Marshall.”

5 **IT IS SO ORDERED.**

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7 DATED: January 15, 2009

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11 Hon. Leo S. Papas
12 U.S. Magistrate Judge
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