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

ESTER BURNETT,  
  
Petitioner,  
  
v.  
  
MICHAEL A. SMELOSKY, Warden,  
  
Respondent.

Civil No. 08-1739 DMS (JMA)

**ORDER SUA SPONTE  
SUBSTITUTING RESPONDENT**

Petitioner, a state prisoner proceeding pro se, has filed an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. At the time the Petition was filed, Petitioner was apparently housed in California State Prison, Centinela and thus named Michael A. Smelosky, Warden, as Respondent. Petitioner has now filed a change of address indicating he is now housed at High Desert State Prison in Susanville, California.

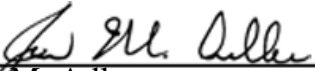
A writ of habeas corpus acts upon the custodian of the state prisoner. See 28 U.S.C. § 2242; Rule 2(a), 28 U.S.C. foll. § 2254. Because Petitioner’s place of custody has changed, so has his custodian. Accordingly, in order to conform with the requirements of Rule 2(a) of the Rules Governing § 2254 Cases and to avoid changing the Respondent again if Petitioner is transferred to another prison or paroled, the Court hereby sua sponte **ORDERS** the substitution

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1 of Matthew Cate, Secretary of the California Department of Corrections, as Respondent in place  
2 of “Michael A. Smelosky” *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996)  
3 (stating that the respondent in § 2254 proceedings may be the chief officer in charge of state  
4 penal institutions).

5 **IT IS SO ORDERED.**

6 DATED: July 2, 2010

7   
8 Jan M. Adler  
9 U.S. Magistrate Judge

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