

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DOREL ARGUILEZ,

Petitioner,

v.

THE PEOPLE OF CALIFORNIA,

Respondent.

Civil No. 10cv0291 WQH (PCL)
**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, and paid the filing fee. Review of the Petition, however, 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). Federal courts lack personal jurisdiction when a habeas petition fails to name a proper respondent. *See id.*

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

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

9 Here, Petitioner has incorrectly named “The People of California,” as Respondent. In
10 order for this Court to entertain the Petition filed in this action, Petitioner must name the warden
11 in charge of the state correctional facility in which Petitioner is presently confined or the
12 Secretary of the California Department of Corrections and Rehabilitation. *Brittingham v. United*
13 *States*, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam).

14 Accordingly, the Court **DISMISSES** the Petition without prejudice due to Petitioner’s
15 failure to name a proper respondent. To have this case reopened, Petitioner must file a First
16 Amended Petition no later than April 26, 2010 in conformance with this Order. *For Petitioner’s*
17 *convenience, the Clerk of Court shall attach to this Order a blank First Amended Petition form.*

18 **IT IS SO ORDERED.**

19 DATED: March 4, 2010

20 

21 **WILLIAM Q. HAYES**
22 United States District Judge