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

DOREL ARGUILEZ,  
Petitioner,  
v.  
THOMAS CARPENTER,  
Respondent.

Civil No. 10cv0291 WQH (PCL)

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

On February 4, 2010, Petitioner, a state prisoner proceeding pro se, submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, and paid the filing fee. In its March 4, 2010 Order, the Court dismissed this case without prejudice because Petitioner failed to name a proper respondent. Petitioner was instructed that to have this case reopened he had to file a First Amended Petition no later than April 26, 2010.


On April 23, 2010 Petitioner filed a First Amended Petition pursuant to this Court’s Order. Review of the First Amended Petition, however, reveals that Petitioner has again 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). “The ‘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).

1 Here, Petitioner has incorrectly named “Thomas Carpenter,” as Respondent. Petitioner  
2 is confined at Pleasant Valley State Prison. In order for this Court to entertain the Petition filed  
3 in this action, Petitioner must name the warden in charge of the state correctional facility in  
4 which Petitioner is presently confined or the Secretary of the California Department of  
5 Corrections and Rehabilitation. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992)  
6 (per curiam) (emphasis added).

7 Accordingly, the Court **DISMISSES** the First Amended Petition without prejudice due  
8 to Petitioner’s failure to name a proper respondent. To have this case reopened, Petitioner must  
9 file a Second Amended Petition no later than **June 29, 2010** in conformance with this Order.  
10 *For Petitioner’s convenience, the Clerk of Court shall attach to this Order a blank Second*  
11 *Amended Petition form.*

12 **IT IS SO ORDERED.**

13 DATED: May 11, 2010

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15 **WILLIAM Q. HAYES**  
16 United States District Judge  
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