

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

ISAIAH RASHAD TAYLOR.

Petitioner.

Civil No. 11cv1165-BTM (BLM)

vs.

MARTIN HOSHINO, Acting Secretary.

ORDER SUA SPONTE SUBSTITUTING RESPONDENTS

Respondent.

On May 26, 2011, Petitioner, a state prisoner proceeding pro se, filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, naming as Respondents Mike McDonald, the Warden of Calipatria State Prison, where Petitioner was confined, and Kamala Harris, the California Attorney General. Petitioner has now submitted a Notice of change of address indicating that he has been transferred to Centinela State Prison. (ECF No. 26.) Because Petitioner's custodian has changed, the Warden of the institution where Petitioner was previously housed is no longer a proper Respondent.

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. 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 of Martin Hoshino, Acting Secretary of the California Department of Corrections

1 and Rehabilitation, as Respondent in place of Mike McDonald. See Ortiz-Sandoval v. Gomez,
2 81 F.3d 891, 894 (9th Cir. 1996) (stating that the respondent in § 2254 proceedings may be the
3 chief officer in charge of state penal institutions).

4 In addition, the Attorney General of the State of California is not a proper respondent in
5 this action. As set forth above, Rule 2 of the Rules following § 2254 provides that the state
6 officer having custody of the petitioner shall be named as respondent. Rule 2(a), 28 U.S.C. foll.
7 § 2254. However, “[i]f the petitioner is not yet in custody – but may be subject to future custody
8 – under the state-court judgment being contested, the petition must name as respondents both
9 the officer who has current custody and the attorney general of the state where the judgement
10 was entered.” Rule 2 (b), 28 U.S.C. foll. § 2254. Here, there is no basis for Petitioner to have
11 named the Attorney General as a respondent in this action.

12 The Clerk of the Court shall modify the docket to reflect “Martin Hoshino, Acting
13 Secretary” as Respondent in place of “Mike McDonald” and “Kamala Harris.”

14 **IT IS SO ORDERED.**

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16 DATED: December 28, 2012

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19 BARBARA L. MAJOR
20 United States Magistrate Judge
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22 CC: ALL PARTIES
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