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

CHRISTOPHER A. THOMAS,
Petitioner,
v.
UNNAMED,
Respondent.

Civil No. 14-0772 GPC (MDD)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se,¹ has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 and paid the filing fee.

FAILURE TO NAME A PROPER RESPONDENT

Review of the Petition 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

¹ Although not entirely clear from the face of the petition, it appears Petitioner is in custody at California Substance Abuse Treatment Facility and State Prison, Corcoran.

1 institutions.” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note). If “a
2 petitioner is in custody due to the state action he is challenging, “[t]he named respondent shall
3 be the state officer who has official custody of the petitioner (for example, the warden of the
4 prison).” *Id.* (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee’s note)

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

13 Here, Petitioner has failed to name a Respondent. In order for this Court to entertain the
14 Petition filed in this action, Petitioner must name the warden in charge of the state correctional
15 facility in which Petitioner is presently confined or the Secretary of the California Department
16 of Corrections and Rehabilitation. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir.
17 1992) (per curiam). Accordingly, the Court **DISMISSES** the Petition without prejudice due to
18 Petitioner’s failure to name a proper respondent. To have this case reopened, Petitioner must
19 file a First Amended Petition no later than **June 9, 2014** in conformance with this Order. (A
20 blank petition form is included with this Order for Petitioner’s convenience.)

21 **IT IS SO ORDERED.**

22
23 DATED: April 9, 2014

24 
25 HON. GONZALO P. CURIEL
26 United States District Judge
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