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

HOMER SHANNON CARSON,
Petitioner,
v.
STATE OF CALIFORNIA,
Respondent.

Civil No. 14-1447 AJB (JMA)

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

Petitioner Homer Shannon Carson (“Petitioner”), a state prisoner proceeding pro se, has paid the \$5.00 filing fee and has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.)

I. FAILURE TO NAME PROPER RESPONDENT

Review of the Petition reveals that Petitioner has failed to name a proper respondent. In a federal habeas petition, a state prisoner must name as a respondent the state officer having custody of him. *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. *Id.*

The warden is the typical respondent. *Stanley v. Cal. Sup. Ct.*, 21 F.3d 359, 360 (9th Cir.1994) (per curiam). 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

1 advisory committee’s note). If “a petitioner is in custody due to the state action he is
2 challenging, ‘[t]he named respondent shall be the state officer who has official
3 custody of the petitioner (for example, the warden of the prison).’” *Id.* (quoting Rule
4 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
6 [a writ of] habeas corpus against the State under . . . [whose] authority . . . the
7 petitioner is in custody. The actual person who is [the] custodian [of the petitioner]
8 must be the respondent.” *Ashley v. Washington*, 394 F.2d 125, 126 (9th Cir. 1968).
9 This requirement exists because a writ of habeas corpus acts upon the custodian of the
10 state prisoner, the person who will produce “the body” if directed to do so by the
11 Court. “Both the warden of a California prison and the Director of Corrections for
12 California have the power to produce the prisoner.” *Ortiz-Sandoval*, 81 F.3d at 895.

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

18 **II. FAILURE TO ALLEGE EXHAUSTION OF STATE JUDICIAL**
19 **REMEDIES**

20 Further, habeas petitioners who wish to challenge either their state court
21 conviction or the length of their confinement in state prison, must first exhaust state
22 judicial remedies. 28 U.S.C. § 2254(b), (c); *Granberry v. Greer*, 481 U.S. 129,
23 133–34 (1987). Ordinarily, to satisfy the exhaustion requirement, a petitioner must “
24 ‘fairly present[]’ his federal claim to the highest state court with jurisdiction to
25 consider it, or . . . demonstrate[] that no state remedy remains available.” *Johnson v.*
26 *Zenon*, 88 F.3d 828, 829 (9th Cir. 1996) (citations omitted). Moreover, to properly
27 exhaust state court remedies a petitioner must allege, *in state court*, how one or more
28 of his or her federal rights have been violated. For example, “[i]f a habeas petitioner
wishes to claim that an evidentiary ruling at a state court trial denied him [or her] the

1 *due process of law guaranteed by the Fourteenth Amendment*, he [or she] must say so,
2 not only in federal court, but in state court.” *See Duncan v. Henry*, 513 U.S. 364,
3 365–66 (1995) (emphasis added).

4 Nowhere in the Petition does Petitioner allege that he raised his claims in the
5 California Supreme Court. If Petitioner has raised his claims in the California
6 Supreme Court he must so specify.

7 Further, the Court cautions Petitioner that under the Antiterrorism and Effective
8 Death Penalty Act of 1996 (“AEDPA”) a one-year period of limitation shall apply to a
9 petition for a writ of habeas corpus by a person in custody pursuant to the judgment of
10 a State court. The limitation period shall run from the latest of:

11 (A) the date on which the judgment became final by the conclusion
12 of direct review or the expiration of the time for seeking such review;

13 (B) the date on which the impediment to filing an application
14 created by State action in violation of the Constitution or laws of the
15 United States is removed, if the applicant was prevented from filing by
16 such State action;

17 (C) the date on which the constitutional right asserted was initially
18 recognized by the Supreme Court, if the right has been newly recognized
19 by the Supreme Court and made retroactively applicable to cases on
20 collateral review; or

21 (D) the date on which the factual predicate of the claim or claims
22 presented could have been discovered through the exercise of due
23 diligence.

24 28 U.S.C. § 2244(d)(1)(A)-(D) (West Supp. 2002).

25 The statute of limitations does not run while a properly filed *state* habeas
26 corpus petition is pending. 28 U.S.C. § 2244(d)(2); *see Nino v. Galaza*, 183 F.3d
27 1003, 1006 (9th Cir. 1999). *But see Artuz v. Bennett*, 531 U.S. 4, 8 (2000) (holding
28 that “an application is ‘properly filed’ when its delivery and acceptance [by the
appropriate court officer for placement into the record] are in compliance with the
applicable laws and rules governing filings.”). However, absent some other basis for
tolling, the statute of limitations does run while a *federal* habeas petition is pending.
Duncan v. Walker, 533 U.S. 167, 181–82 (2001).

Rule 4 of the Rules Governing Section 2254 cases, provides for summary

1 dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and
2 any exhibits annexed to it that the petitioner is not entitled to relief in the district
3 court . . .” Rule 4, 28 U.S.C. foll. § 2254. Here, it appears plain from the Petition that
4 Petitioner is not presently entitled to federal habeas relief because he has not alleged
5 exhaustion of state court remedies.

6 **III. FAILURE TO STATE A COGNIZABLE FEDERAL CLAIM**

7 Additionally, in accordance with Rule 4 of the rules governing § 2254 cases,
8 Petitioner has failed to allege that his state court conviction or sentence violates the
9 United States Constitution.

10 28 U.S.C. § 2254(a), sets forth the following scope of review for federal habeas
11 corpus claims:

12 The Supreme Court, a Justice thereof, a circuit judge, or a district court
13 shall entertain an application for a writ of habeas corpus in behalf of a
14 person in custody pursuant to the judgment of a State court only on the
ground that he is in custody in *violation of the Constitution or laws or
treaties of the United States.*

15 28 U.S.C. § 2254(a) (emphasis added). *See Hernandez v. Ylst*, 930 F.2d 714, 719 (9th
16 Cir. 1991); *Mannhalt v. Reed*, 847 F.2d 576, 579 (9th Cir. 1988); *Kealohapauole v.*
17 *Shimoda*, 800 F.2d 1463, 1464–65 (9th Cir. 1986). Thus, to present a cognizable
18 federal habeas corpus claim under Section 2254, a state prisoner must allege both that
19 he is in custody pursuant to a “judgment of a State court,” *and* that he is in custody in
20 “violation of the Constitution or laws or treaties of the United States.” *See* 28 U.S.C.
21 § 2254(a).

22 Here, Petitioner asks the Court to compel California to act pursuant to the
23 Interstate Agreement on Detainers. In no way does Petitioner claim he is “in custody
24 in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
25 § 2254.

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CONCLUSION

As set forth above, the Court **DISMISSES** the Petition without prejudice and with leave to amend. To reopen the case, Petitioner must file an amended Petition no later than August 11, 2014. *The Clerk of Court is directed to mail Petitioner a blank First Amended Petition form with a copy of this Order.*

IT IS SO ORDERED.

DATED: June 23, 2014



Hon. Anthony J. Battaglia
U.S. District Judge