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

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11 MIGUEL U. CAMUNAS,
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MIGUEL U. CAMUNAS, Petitioner, v. PEOPLE, Warden, Respondent.	Case No.: 16cv2866 AJB (AGS) ORDER: (1) GRANTING MOTION TO PROCEED IN FORMA PAUPERIS; and (2) DISMISSING CASE WITHOUT PREJUDICE AND WITH LEAVE TO AMEND
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Case No.: 16cv2866 AJB (AGS)

ORDER:
**(1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS;
and
(2) DISMISSING CASE WITHOUT
PREJUDICE AND WITH LEAVE TO
AMEND**

Petitioner, proceeding pro se, has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.

MOTION TO PROCEED IN FORMA PAUPERIS

Petitioner cannot afford the \$5.00 filing fee. Thus, the Court **GRANTS** Petitioner's application to proceed in forma pauperis, and allows Petitioner to prosecute the above-referenced action without being required to prepay fees or costs and without being required to post security. The Clerk of the Court shall file the Petition for Writ of Habeas Corpus without prepayment of the filing fee.

FAILURE TO ALLEGE EXHAUSTION OF STATE JUDICIAL REMEDIES

Upon review of the Petition, it is not clear Petitioner has exhausted his state judicial remedies. Habeas petitioners who wish to challenge either their state court

1 conviction or the length of their confinement in state prison, must first exhaust state
2 judicial remedies. 28 U.S.C. § 2254(b), (c); *Granberry v. Greer*, 481 U.S. 129, 133-34
3 (1987). Ordinarily, to satisfy the exhaustion requirement, a petitioner must “fairly
4 present[]’ his federal claim to the highest state court with jurisdiction to consider it, or . . .
5 demonstrate[] that no state remedy remains available.” *Johnson v. Zenon*, 88 F.3d 828,
6 829 (9th Cir. 1996) (citations omitted). Moreover, to properly exhaust state court
7 remedies a petitioner must allege, in state court, how one or more of his or her federal
8 rights have been violated. For example, “[i]f a habeas petitioner wishes to claim that an
9 evidentiary ruling at a state court trial denied him [or her] the due process of law
10 guaranteed by the Fourteenth Amendment, he [or she] must say so, not only in federal
11 court, but in state court.” *See Duncan v. Henry*, 513 U.S. 364, 365-66 (1995)(emphasis
12 added).

13 It is not clear from the Petition that Petitioner as raised his claims in the California
14 Supreme Court. If Petitioner has raised his claims in the California Supreme Court he
15 must so specify.

16 Further, the Court cautions Petitioner that under the Antiterrorism and Effective
17 Death Penalty Act of 1996 (AEDPA) a one-year period of limitation applies to a petition
18 for a writ of habeas corpus by a person in custody pursuant to the judgment of a State
19 court. The limitation period runs from the latest of:

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

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

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

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1 (D) the date on which the factual predicate of the claim or claims
2 presented could have been discovered through the exercise of due
3 diligence.

4 28 U.S.C.A. § 2244(d)(1)(A)-(D) (West Supp. 2002).

5 The statute of limitations does not run while a properly filed state habeas corpus
6 petition is pending. 28 U.S.C. § 2244(d)(2); *see Nino v. Galaza*, 183 F.3d 1003, 1006
7 (9th Cir. 1999). *But see Artuz v. Bennett*, 531 U.S. 4, 8 (2000) (holding that “an
8 application is ‘properly filed’ when its delivery and acceptance [by the appropriate court
9 officer for placement into the record] are in compliance with the applicable laws and
10 rules governing filings.”). However, absent some other basis for tolling, the statute of
11 limitations does run while a federal habeas petition is pending. *Duncan v. Walker*, 533
12 U.S. 167, 181-82 (2001).

13 Rule 4 of the Rules Governing Section 2254 Cases provides for summary dismissal
14 of a habeas petition “[i]f it plainly appears from the face of the petition and any exhibits
15 annexed to it that the petitioner is not entitled to relief in the district court . . .” Rule 4, 28
16 U.S.C. foll. § 2254. Here, it appears plain from the Petition that Petitioner is not
17 presently entitled to federal habeas relief because he has not alleged exhaustion of state
18 court remedies.

19 **FAILURE TO NAME PROPER RESPONDENT**

20 Further Petitioner has failed to name a proper respondent. On federal habeas, a
21 state prisoner must name the state officer having custody of him as the respondent. *Ortiz-*
22 *Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll.
23 § 2254). Federal courts lack personal jurisdiction when a habeas petition fails to name a
24 proper respondent. *See id.*

25 A long standing rule in the Ninth Circuit holds “that a petitioner may not seek [a
26 writ of] habeas corpus against the State under . . . [whose] authority . . . the petitioner is
27 in custody. The actual person who is [the] custodian [of the petitioner] must be the
28 respondent.” *Ashley v. Washington*, 394 F.2d 125, 126 (9th Cir. 1968). This requirement

1 exists because a writ of habeas corpus acts upon the custodian of the state prisoner, the
2 person who will produce “the body” if directed to do so by the Court.

3 The warden is the typical respondent. However, “the rules following section 2254
4 do not specify the warden.” *Id.* “[T]he ‘state officer having custody’ may be ‘either the
5 warden of the institution in which the petitioner is incarcerated . . . or the chief officer in
6 charge of state penal institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254
7 advisory committee’s note). If “a petitioner is in custody due to the state action he is
8 challenging, ‘[t]he named respondent shall be the state officer who has official custody of
9 the petitioner (for example, the warden of the prison).’” *Id.* (quoting Rule 2, 28 U.S.C.
10 foll. § 2254 advisory committee’s note). If a “petitioner is on probation or parole, he may
11 name his probation or parole officer ‘and the official in charge of the parole or probation
12 agency, or the state correctional agency, as appropriate.’” *Id.* (quoting Rule 2, 28 U.S.C.
13 foll. § 2254 advisory committee’s note). In some cases, a petitioner may name the state
14 attorney general. *Id.*

15 Here, Petitioner has incorrectly named “People,” as Respondent. In order for this
16 Court to entertain a Petition for Writ of Habeas Corpus, Petitioner must name the person
17 who will produce “the body” if directed to do so by the Court. Because Petitioner is on
18 probation, the proper respondents are his probation officer and the official in charge of
19 the probation agency. *See Ortiz-Sandoval*, 81 F.3d at 894.

20 CONCLUSION

21 Accordingly, the Court **GRANTS** Petitioner’s motion to proceed in forma pauperis
22 and **DISMISSES** the Petition without prejudice and with leave to amend. To have this
23 case reopened, Petitioner must file a First Amended Petition **no later than March 7,**

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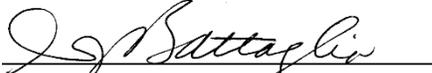
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1 **2017. The Clerk of Court is directed to mail Petitioner a blank First Amended Petition**
2 ***form together with a copy of this Order.***

3 **IT IS SO ORDERED.**

4 Dated: January 4, 2017

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6 Hon. Anthony J. Battaglia
7 United States District Judge

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