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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 MIGUEL V. CAMUNAS,

11 Petitioner,

12 v.

13 PEOPLE, Warden,

14 Respondent.

Case No.: 16cv2866-AJB (AGS)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

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16 On November 22, 2016, Petitioner, a state probationer proceeding pro se, filed a
17 Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, along with a motion to
18 proceed in forma pauperis. (ECF Nos. 1-2.) On January 4, 2017, the Court granted
19 Petitioner leave to proceed in forma pauperis but dismissed the Petition with leave to
20 amend because Petitioner had failed to allege exhaustion of his state court remedies and
21 had failed to name a proper Respondent. (ECF No. 3.) Petitioner has now filed a First
22 Amended Petition. (ECF No. 4.) The First Amended Petition is subject to dismissal
23 because, although Petitioner has now alleged exhaustion of his state court remedies, he has
24 once again failed to name a proper Respondent.

25 As Petitioner was notified in this Court's January 4, 2017 Order of dismissal, he
26 must name the state officer having custody of him as Respondent. Ortiz-Sandoval v.
27 Gomez, 81 F.3d 891, 894 (9th Cir. 1996), citing Rule 2(a), 28 U.S.C. foll. § 2254. Federal
28 courts lack personal jurisdiction when a habeas petition fails to name a proper respondent.

1 Id. In his original Petition, Petitioner named “People” as Respondent, and he was informed
2 in this Court’s previous Order of dismissal that “People” was an improper respondent
3 because to the extent he refers to the People of the State of California he was instructed
4 that a long standing rule in the Ninth Circuit holds “that a petitioner may not seek [a writ
5 of] habeas corpus against the State under . . . [whose] authority . . . the petitioner is in
6 custody. The actual person who is [the] custodian [of the petitioner] must be the
7 respondent.” Ashley v. Washington, 394 F.2d 125, 126 (9th Cir. 1968). This requirement
8 exists because a writ of habeas corpus acts upon the custodian of the state prisoner, the
9 person who will produce “the body” if directed to do so by the Court.


10 Petitioner was instructed that if a “petitioner is on probation or parole, he may name
11 his probation or parole officer ‘and the official in charge of the parole or probation agency,
12 or the state correctional agency, as appropriate.’” Id., quoting Rule 2, 28 U.S.C. foll.
13 § 2254 advisory committee’s note. In some cases, a petitioner may name the state attorney
14 general. Id.

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

20 The Court **DISMISSES** the case without prejudice due to Petitioner’s failure to
21 name a proper Respondent. If Petitioner wishes to proceed with this case, he must submit,
22 **no later than May 15, 2017**, a Second Amended Petition which names a proper
23 Respondent. The Clerk of Court shall send a blank Southern District of California amended
24 petition form to Petitioner along with a copy of this Order.

25 **IT IS SO ORDERED.**

26 Dated: March 8, 2017

27 
28 Hon. Anthony J. Battaglia
United States District Judge