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

ALEX RAY CHARFAUROS,
Petitioner,
v.
UNKNOWN,
Respondent.

Case No. 17-cv-00266-BAS-KSC

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has submitted a document this Court liberally construes as a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, and has paid the requisite 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

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

7 Here, Petitioner has failed to name a Respondent. In order for this Court to entertain
8 the Petition filed in this action, Petitioner must name the warden in charge of the state
9 correctional facility in which Petitioner is presently confined or the Secretary of the
10 California Department of Corrections and Rehabilitation. *Brittingham v. United States*,
11 982 F.2d 378, 379 (9th Cir. 1992) (per curiam).

12 **FAILURE TO STATE GROUNDS FOR RELIEF IN PETITION**

13 In addition, Rule 2(c) of the Rules Governing Section 2254 Cases states that the
14 petition “shall set forth in summary form the facts supporting each of the grounds . . .
15 specified [in the petition].” Rule 2(c), 28 U.S.C. foll. § 2254. *See also Boehme v. Maxwell*,
16 423 F.2d 1056, 1058 (9th Cir. 1970) (trial court’s dismissal of federal habeas proceeding
17 affirmed where petitioner made conclusory allegations instead of factual allegations
18 showing that he was entitled to relief). Here, Petitioner has violated Rule 2(c). He fails to
19 state constitutional grounds for relief and also fails to provide specific factual allegations
20 in support of such grounds.

21 While courts should liberally interpret pro se pleadings with leniency and
22 understanding, this should not place on the reviewing court the entire onus of ferreting out
23 grounds for relief. *Cf. Burkey v. Deeds*, 824 F. Supp. 190, 193 (D. Nev. 1993) (finding that
24 courts do not have entire onus of creating federal claim for petitioner). The Court finds
25 that the Petition contains conclusory allegations without any specific facts in support of
26 relief. A federal court may not entertain a petition that contains allegations which are
27 conclusory.

1 In order to satisfy Rule 2(c), Petitioner must point to a “real possibility of
2 constitutional error.” *Cf. Blackledge v. Allison*, 431 U.S. 63, 75 n.7 (1977) (internal
3 quotation marks omitted). Facts must be stated, in the petition, with sufficient detail to
4 enable the Court to determine, from the face of the petition, whether further habeas corpus
5 review is warranted. *Adams v. Armontrout*, 897 F.2d 332, 334 (8th Cir. 1990). Moreover,
6 the allegations should be sufficiently specific to permit the respondent to assert appropriate
7 objections and defenses. *Harris v. Allen*, 739 F. Supp. 564, 565 (W.D. Okla. 1989). Here,
8 the lack of grounds for relief in the Petition prevents the Respondent from being able to
9 assert appropriate objections and defenses.

10 **FAILURE TO ALLEGE EXHAUSTION OF STATE JUDICIAL REMEDIES**

11 Further, habeas petitioners who wish to challenge either their state court conviction
12 or the length of their confinement in state prison, must first exhaust state judicial remedies.
13 28 U.S.C. §§ 2254(b), (c); *Granberry v. Greer*, 481 U.S. 129, 133-34 (1987). To exhaust
14 state judicial remedies, a California state prisoner must present the California Supreme
15 Court with a fair opportunity to rule on the merits of every issue raised in his or her federal
16 habeas petition. 28 U.S.C. §§ 2254(b), (c); *Granberry*, 481 U.S. at 133-34. Moreover, to
17 properly exhaust state court remedies a petitioner must allege, in state court, how one or
18 more of his or her federal rights have been violated. The Supreme Court in *Duncan v.*
19 *Henry*, 513 U.S. 364 (1995) reasoned: “If state courts are to be given the opportunity to
20 correct alleged violations of prisoners’ federal rights, they must surely be alerted to the fact
21 that the prisoners are asserting claims under the United States Constitution.” *Id.* at 365–
22 66 (emphasis added). For example, “[i]f a habeas petitioner wishes to claim that an
23 evidentiary ruling at a state court trial denied him [or her] the due process of law guaranteed
24 by the Fourteenth Amendment, he [or she] must say so, not only in federal court, but in
25 state court.” *Id.* at 366.

26 If Petitioner has raised his claims in the California Supreme Court he must so
27 specify. “The burden of proving that a claim has been exhausted lies with the petitioner.”
28 *Matthews v. Evatt*, 105 F.3d 907, 911 (4th Cir. 1997); *see Breard v. Pruett*, 134 F.3d 615,

1 619 (4th Cir. 1998); *Lambert v. Blackwell*, 134 F.3d 506, 513 (3d Cir. 1997); *Oyler v.*
2 *Allenbrand*, 23 F.3d 292, 300 (10th Cir. 1994); *Rust v. Zent*, 17 F.3d 155, 160 (6th Cir.
3 1994).

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

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

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

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

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

22 28 U.S.C. § 2244(d)(1)(A)-(D) (West 2006).

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

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

7 **CONCLUSION**

8 For the reasons discussed above, the Court **DISMISSES** the Petition without
9 prejudice. In order to have this case reopened, Petitioner must, no later than April 15, 2017,
10 file a First Amended Petition which cures the pleading deficiencies outlined above. For
11 Petitioner’s convenience, the Clerk of Court shall attach to this Order a blank First
12 Amended Petition form.

13 **IT IS SO ORDERED.**

14 **DATED: February 16, 2017**

15 
16 **Hon. Cynthia Bashant**
17 **United States District Judge**