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

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11 STEVEN WAYNE BONILLA,
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14 v.
15 RON DAVIS, Warden,
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Petitioner,
Respondent.

Case No.: 17cv1789 AJB (AGS)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

FAILURE TO SATISFY FILING FEE REQUIREMENT

Petitioner has failed to pay the \$5.00 filing fee and has failed to move to proceed in forma pauperis. This Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or qualified to proceed in forma pauperis. See Rule 3(a), 28 U.S.C. foll. § 2254.

FAILURE TO STATE GROUNDS FOR RELIEF IN PETITION

Title 28, United States Code, § 2254(a), sets forth the following scope of review for federal habeas corpus claims:

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he

1 is in custody in violation of the Constitution or laws or treaties of the United
2 States.

3 28 U.S.C. § 2254(a) (emphasis added).

4 Thus, to present a cognizable federal habeas corpus claim under § 2254, a state
5 prisoner must allege both that he is in custody pursuant to a “judgment of a State court,”
6 and that he is in custody in “violation of the Constitution or laws or treaties of the United
7 States.” See 28 U.S.C. § 2254(a). In addition, Rule 2(c) of the Rules Governing Section
8 2254 Cases states that the petition “shall set forth in summary form the facts supporting
9 each of the grounds . . . specified [in the petition].” Rule 2(c), 28 U.S.C. foll. § 2254; *see*
10 *also Boehme v. Maxwell*, 423 F.2d 1056, 1058 (9th Cir. 1970) (trial court’s dismissal of
11 federal habeas proceeding affirmed where petitioner made conclusory allegations instead
12 of factual allegations showing that he was entitled to relief). Here, Petitioner has violated
13 Rule 2(c). Although Petitioner does not fail to state factual allegations in the Petition, he
14 does fail to state any grounds for relief in the Petition.

15 While courts should liberally interpret pro se pleadings with leniency and
16 understanding, this should not place on the reviewing court the entire onus of ferreting
17 out grounds for relief. *See Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001). The
18 Court finds that the Petition contains conclusory allegations without any grounds for
19 relief. A federal court may not entertain a petition that contains allegations which are
20 conclusory.

21 This Court would have to engage in a tenuous analysis in order to attempt to
22 identify and make sense of the Petition. In order to satisfy Rule 2(c), Petitioner must
23 point to a “real possibility of constitutional error.” *Cf. Blackledge v. Allison*, 431 U.S. 63,
24 75 n.7 (1977) (internal quotation marks omitted). The allegations should be sufficiently
25 specific to permit the respondent to assert appropriate objections and defenses. Here, the
26 lack of grounds for relief in the Petition prevents the Respondent from being able to
27 assert appropriate objections and defenses.

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

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

15 Nowhere on the Petition does Petitioner allege that he raised his claims in the
16 California Supreme Court. In fact, he specifically indicates he did not seek review in the
17 California Supreme Court. (See Pet. at 5.) If Petitioner has raised his claims in the
18 California Supreme Court he must so specify.

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

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

25 (B) the date on which the impediment to filing an application created
26 by State action in violation of the Constitution or laws of the United States is
27 removed, if the applicant was prevented from filing by such State action;
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1 (C) the date on which the constitutional right asserted was initially
2 recognized by the Supreme Court, if the right has been newly recognized by
3 the Supreme Court and made retroactively applicable to cases on collateral
4 review; or

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

7 28 U.S.C.A. § 2244(d)(1)(A)-(D) (West Supp. 2002).

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

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

22 **FAILURE TO NAME PROPER RESPONDENT**

23 Review of the Petition reveals that Petitioner has failed to name a proper
24 respondent. On federal habeas, a state prisoner must name the state officer having
25 custody of him as the respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir.
26 1996) (citing Rule 2(a), 28 U.S.C. foll. § 2254). Federal courts lack personal jurisdiction
27 when a habeas petition fails to name a proper respondent. *See id.*

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

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

15 Here, Petitioner has not named a Respondent. In order for this Court to entertain
16 the Petition filed in this action, Petitioner must name the warden in charge of the state
17 correctional facility in which Petitioner is presently confined or the Director of the
18 California Department of Corrections. *Brittingham v. United States*, 982 F.2d 378, 379
19 (9th Cir. 1992) (per curiam).

20 **JURISDICTION/VENUE**

21 A petition for writ of habeas corpus may be filed in the United States District Court
22 of either the judicial district in which the petitioner is presently confined or the judicial
23 district in which he was convicted and sentenced. *See* 28 U.S.C. § 2241(d); *Braden v.*
24 *30th Judicial Circuit Court*, 410 U.S. 484, 497 (1973). Petitioner is presently confined at
25 San Quentin State Prison, located in Marin County, which is within the jurisdictional
26 boundaries of the United States District Court for the Northern District of California. *See*
27 28 U.S.C. § 84(a). Petitioner appears to be challenging a state court conviction which
28 occurred in Alameda County, which is also located within the jurisdictional boundaries of

1 the United States District Court for the Northern District of California. See 28 U.S.C.
2 § 84(a). If this is correct, this Court does not have jurisdiction over Petitioner's petition.
3 Petitioner is advised that if he seeks to challenge a state court conviction which occurred
4 in Alameda County, she should file a petition for writ of habeas corpus in the United
5 States District Court for the Northern District of California.

6 **CONCLUSION**

7 For the foregoing reasons, the Court **DISMISSES** the Petition without prejudice
8 and with leave to amend. If Petitioner wishes to proceed with this case, he must, **no later**
9 **than November 21, 2017**: (1) pay the \$5.00 filing fee or submit adequate proof of his
10 inability to pay the fee; and (2) file a First Amended Petition that cures the pleading
11 deficiencies outlined in this Order.

12 **IT IS SO ORDERED.**

13 Dated: September 18, 2017

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15 Hon. Anthony J. Battaglia
16 United States District Judge
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