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

WILLIAM EDWARD MITCHELL,  
Petitioner,  
v.  
SUPERIOR COURT OF SAN DIEGO,  
Respondent.

Case No. 18cv0396 WQH (NLS)

**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 and paid the 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 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 advisory

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

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

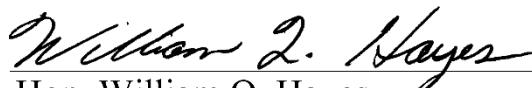
13 Here, Petitioner has incorrectly named the "Superior Court of San Diego" as  
14 Respondent. In order for this Court to entertain the Petition filed in this action, Petitioner  
15 must name the warden in charge of the state correctional facility in which Petitioner is  
16 presently confined or the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

### 19 CONCLUSION

20 Accordingly, the Court **DISMISSES** the Petition without prejudice due to  
21 Petitioner's failure to name a proper respondent. To have this case reopened, Petitioner  
22 must file a First Amended Petition in conformance with this Order, **no later than April**  
23 **30, 2018**. *For Petitioner's convenience, the Clerk of Court shall attach to this Order a*  
24 *blank petition form.*

25 **IT IS SO ORDERED.**

26 Dated: March 5, 2018

27   
28 Hon. William Q. Hayes  
United States District Court