



1 be ‘in custody’ under the conviction or sentence under attack.” *Maleng v. Cook*, 490 U.S.  
2 488, 490-91 (1989) (citing 28 U.S.C. §§ 2241(c)(3) & 2254(a)); *see Carafas v. LaVallee*,  
3 391 U.S. 234, 238 (1968)).

4 Rule 4 of the Rules Governing § 2254 Cases provides for summary dismissal of a  
5 habeas petition “[i]f it plainly appears from the face of the petition and any exhibits  
6 annexed to it that the petitioner is not entitled to relief in the district court. . . .” Rule 4, 28  
7 U.S.C. foll. § 2254. Here, it is plain from the Petition that Petitioner is not presently entitled  
8 to federal habeas relief because he was not in the custody of the State of California when  
9 he filed his § 2254 Petition in this Court.

10 **B. Motion to Proceed in Forma Pauperis**

11 If, however, Petitioner is in actual or constructive custody, the request to proceed in  
12 forma pauperis must be **DENIED** because Petitioner has not provided the Court with  
13 sufficient information to determine Petitioner’s financial status. A request to proceed in  
14 forma pauperis made by a state prisoner must include a certificate from the warden or other  
15 appropriate officer showing the amount of money or securities Petitioner has on account in  
16 the institution. Rule 3(a)(2), 28 U.S.C. foll. § 2254; Local Rule 3.2. Petitioner has failed  
17 to provide the Court with the required Prison Certificate.

18 **C. Failure to State a Cognizable Federal Claim**

19 Additionally, in accordance with Rule 4 of the rules governing § 2254 cases,  
20 Petitioner has failed to allege that his state court conviction or sentence violates the  
21 Constitution of the United States.

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

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

27 ///

28 ///

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). *See Hernandez v. Ylst*, 930 F.2d 714, 719 (9th Cir.  
4 1991); *Mannhalt v. Reed*, 847 F.2d 576, 579 (9th Cir. 1988); *Kealohapauole v. Shimoda*,  
5 800 F.2d 1463, 1464-65 (9th Cir. 1986). Thus, to present a cognizable federal habeas  
6 corpus claim under § 2254, a state prisoner must allege both that he is in custody pursuant  
7 to a “judgment of a State court,” and that he is in custody in “violation of the Constitution  
8 or laws or treaties of the United States.” *See* 28 U.S.C. § 2254(a).

9 Here, Petitioner makes various claims that are difficult to decipher. He asks to  
10 “repair, transfer, repeal, replace all entitlements on behalf of 45<sup>th</sup> Trump’s Ryan’s Browns  
11 Tea Party, A-Teams, D.O.D. (U.S. master beneficiary and handyman) F.B.I. for laws and  
12 equity!” (Pet. at 4.) He also asks “to protect all legal citizen C.E.Os and to please grant  
13 me relief. A job/work with mental gifted for this transition, wills, trusts, estates, shared to  
14 make ours #1 economy to by Ambassador.” (*Id.* at 5.) In no way does Petitioner claim he  
15 is “in custody in violation of the Constitution or laws or treaties of the United States.” 28  
16 U.S.C. § 2254.

17 Further, the Court notes that Petitioner cannot simply amend his Petition to state a  
18 federal habeas claim and then refile the amended petition in this case. He must exhaust  
19 state judicial remedies before bringing his claims via federal habeas. Habeas petitioners  
20 who wish to challenge either their state court conviction or the length of their confinement  
21 in state prison, must first exhaust state judicial remedies by giving a state the opportunity  
22 to correct violations of the federal constitution. 28 U.S.C. § 2254(b), (c); *Baldwin v. Reese*,  
23 541 U.S. 27, 29 (2004). “To provide the State with the necessary ‘opportunity,’ the  
24 prisoner must ‘fairly present’ his claim in each appropriate state court (including a state  
25 supreme court with powers of discretionary review), thereby alerting that court to the  
26 federal nature of the claim.” *Baldwin*, 541 U.S. at 29 (citing *Duncan v. Henry*, 513 U.S.  
27 364, 365 (1995) (per curium).

1 Further, the Court cautions Petitioner that under the Antiterrorism and Effective  
2 Death Penalty Act of 1996 (AEDPA) a one-year period of limitation applies to a petition  
3 for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.

4 The limitation period runs from the latest of:

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

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

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

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

15 28 U.S.C.A. § 2244(d)(1)(A)-(D) (West Supp. 2002).

16 The statute of limitations does not run while a properly filed state habeas corpus  
17 petition is pending. 28 U.S.C. § 2244(d)(2); *but see Artuz v. Bennett*, 531 U.S. 4, 8 (2000)  
18 (holding that “an application is ‘properly filed’ when its delivery and acceptance [by the  
19 appropriate court officer for placement into the record] are in compliance with the  
20 applicable laws and rules governing filings.”). However, absent some other basis for  
21 tolling, the statute of limitations does run while a federal habeas petition is pending.  
22 *Duncan v. Walker*, 533 U.S. 167, 181-82 (2001).

#### 23 **D. Failure to Name a Proper Respondent**

24 Review of the also Petition reveals that Petitioner has failed to name a proper  
25 respondent. On federal habeas, a state prisoner must name the state officer having custody  
26 of him as the respondent. *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004); *Ortiz-Sandoval*  
27 *v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll.  
28

1 § 2254). Federal courts lack personal jurisdiction when a habeas petition fails to name a  
2 proper respondent. *See Ortiz-Sandoval*, 81 F.3d at 894.

3 “In challenges to present physical confinement, . . . the immediate custodian . . . is  
4 the proper respondent.” *Padilla*, 542 U.S. at 439. This requirement exists because a writ  
5 of habeas corpus acts upon the custodian of the state prisoner, the person who will produce  
6 “the body” if directed to do so by the Court. The warden is the typical respondent.  
7 However, “the rules following section 2254 do not specify the warden.” *Ortiz-Sandoval*,  
8 81 F.3d at 894. “[T]he ‘state officer having custody’ may be ‘either the warden of the  
9 institution in which the petitioner is incarcerated . . . or the chief officer in charge of state  
10 penal institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s  
11 note). “Both the warden of a California prison and the Director of Corrections for  
12 California have the power to produce the prisoner.” *Ortiz-Sandoval*, 81 F.3d at 895.

13 Here, Petitioner has named “Sally Bruner and A.J. Tabbutt” as Respondents. If  
14 Petitioner is in actual or constructive custody, Petitioner must name either the warden in  
15 charge of the state correctional facility in which Petitioner is presently confined, his parole  
16 officer, or the Director of the California Department of Corrections. *Brittingham v. United*  
17 *States*, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam); *Ortiz-Sandoval*, 81 F.3d at 894. If  
18 he is on probation, he must name the individual in charge of the probation authority which  
19 administers his probation.

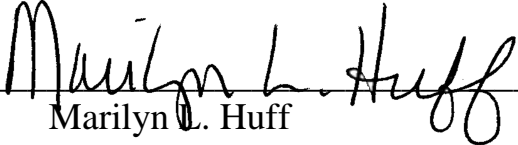
## 20 21 **CONCLUSION**

22 For the foregoing reasons, the Court **DENIES** Petitioner’s motion to proceed in  
23 forma pauperis and **DISMISSES** the Petition without prejudice and with leave to amend  
24 due to Petitioner’s failure to name a proper respondent. To have this case reopened,  
25 Petitioner must, no later than June 25, 2018: (1) pay the \$5.00 filing fee or submit adequate  
26 proof of his inability to pay the fee; and (2) file a First Amended Petition that cures the  
27 pleading deficiencies outlined in this Order. *The Clerk of Court will mail Petitioner a*  
28

1 *blank motion to proceed in forma pauperis form and a blank First Amended Petition*  
2 *form together with a copy of this Order.*

3 **IT IS SO ORDERED.**

4 DATED: April 23, 2018

  
Marilyn L. Huff  
United States District Court

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28