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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

COREY BERTRAND,  
  
Petitioner,  
  
v.  
  
UNKNOWN,  
  
Respondent.

Case No.: 21cv0771 GPC (RBM)

**ORDER DISMISSING CASE  
WITHOUT PREJUDICE**

Petitioner, proceeding pro se, submitted a Petition for a Writ of Habeas Corpus and paid the \$5.00 filing fee. (ECF No. 1.) The Court **DISMISSES** the case without prejudice.

**FAILURE TO STATE A COGNIZABLE CLAIM**

The Petition must be dismissed under Rules 2(c) and 4 of the Rules Governing Section 2254 Cases because Petitioner has failed to articulate any grounds for relief and has failed to allege that he is in custody pursuant to a state court conviction or sentence which violates the Constitution of the United States.

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). 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 Petitioner fails to state a cognizable claim because he has not alleged a constitutional  
10 violation. A review of the Petition reveals that it fails to articulate any grounds for relief.  
11 (See ECF No. 1 at 6-9.) The only attachment to the Petition appears to be Petitioner’s birth  
12 certificate, which Petitioner has included without any accompanying statement of  
13 explanation. (Id. at 12.) Rule 2(c) of the Rules Governing Section 2254 Cases requires in  
14 relevant part that “[t]he petition: (1) must specify all grounds for relief available to the  
15 petitioner [and] (2) state the facts supporting each ground.” Rule 2(c)(1)-(2), 28 U.S.C.  
16 foll. § 2254. See also Boehme v. Maxwell, 423 F.2d 1056, 1058 (9th Cir. 1970) (trial  
17 court’s dismissal of federal habeas proceeding affirmed where petitioner made conclusory  
18 allegations instead of factual allegations showing that he was entitled to relief). Here,  
19 Petitioner has violated Rule 2(c). Petitioner not only fails to state any grounds for relief in  
20 the Petition, but he also fails to state any factual allegations.

21 Rule 4 of the Rules Governing Section 2254 Cases provides for summary dismissal  
22 of a habeas petition “[i]f it plainly appears from the face of the petition and any attached  
23 exhibits that the petitioner is not entitled to relief in the district court . . .” Rule 4, 28 U.S.C.  
24 foll. § 2254. Here, it is plain from the Petition and attached exhibit Petitioner is not  
25 presently entitled to federal habeas relief because he does not state any grounds for relief  
26 and therefore in no way does Petitioner claim he is “in custody in violation of the  
27 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254.

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1 Further, the Court notes that Petitioner may not be able to simply amend his Petition  
2 to state a federal habeas claim and then refile the amended petition in this case. He must  
3 exhaust state judicial remedies before bringing his claims in a federal habeas action.  
4 Habeas petitioners who wish to challenge either their state court conviction or the length  
5 of their confinement in state prison, must first exhaust state judicial remedies. 28 U.S.C.  
6 § 2254(b), (c); Granberry v. Greer, 481 U.S. 129, 133-34 (1987). To exhaust state judicial  
7 remedies, a California state prisoner must present the California Supreme Court with a fair  
8 opportunity to rule on the merits of every issue raised in his or her federal habeas petition.  
9 28 U.S.C. § 2254(b), (c); Granberry, 481 U.S. at 133-34. Ordinarily, to satisfy the  
10 exhaustion requirement, a petitioner ““must fairly present[]’ his federal claim to the highest  
11 state court with jurisdiction to consider it, or . . . demonstrate[] that no state remedy remains  
12 available. Johnson v. Zenon, 88 F.3d 828, 829 (9th Cir. 1996) (citations omitted).  
13 Moreover, to properly exhaust state court remedies a petitioner must allege, in state court,  
14 how one or more of his or her federal rights have been violated. For example, “[i]f a habeas  
15 petitioner wishes to claim that an evidentiary ruling at a state court trial denied him [or her]  
16 the due process of law guaranteed by the Fourteenth Amendment, he [or she] must say so,  
17 not only in federal court, but in state court.” Duncan v. Henry, 513 U.S. 364, 365-66 (1995)  
18 (emphasis added).

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

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

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

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

6 28 U.S.C. § 2244(d)(1)(A)-(D).

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

14 **FAILURE TO NAME A PROPER RESPONDENT/CUSTODY**

15 Review of the Petition also reveals that Petitioner has failed to name a proper  
16 respondent. On federal habeas, a state prisoner must name the state officer having custody  
17 of him as the respondent. Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996).  
18 Federal courts lack personal jurisdiction when a habeas petition fails to name a proper  
19 respondent. See id.

20 Here, Petitioner has not named any respondent. Based on this Court’s review of the  
21 Petition, it is unclear whether Petitioner could not name a proper Respondent because he  
22 was not in actual or constructive custody at the time the Petition was filed. Petitioner does  
23 not include a prison number on his petition form and lists his current address as “2110  
24 Basswood Ave., Carlsbad, CA 92008.” (ECF No. 1 at 1.) Moreover, while Petitioner  
25 states his arrest date was January 29, 2021, sentencing date was April 1 and he was  
26 sentenced to a term of 3 years, 8 months, with respect to sentence start date and projected  
27 release date, Petitioner indicates: “Jan 29, 2021. I was released from custody on April 12  
28 + am in a program.” (Id. at 1-2.)

1           “Subject matter jurisdiction under the federal habeas corpus statute, 28 U.S.C.  
2 § 2254(a), is limited to those persons ‘in custody pursuant to the judgment of a State.’”  
3 Brock v. Weston, 31 F.3d 887, 889 (9th Cir. 1994); see also 28 U.S.C. § 2241(c)(3). It is a  
4 jurisdictional requirement that, at the time a habeas petition is filed, “the habeas petitioner  
5 be ‘in custody’ under the conviction or sentence under attack.” Maleng v. Cook, 490 U.S.  
6 488, 490-91 (1989) (citing 28 U.S.C. §§ 2241(c)(3) & 2254(a)); see Carafas v. LaVallee,  
7 391 U.S. 234, 238 (1968)). Current imprisonment is not required, however, to satisfy the  
8 custody requirement; a petitioner can meet this requirement if he suffers from substantial  
9 restraints not shared by the public generally as a result of the conviction he is challenging.  
10 See e.g., Hensley v. Municipal Court, 411 U.S. 345, 351 (1973) (release on own  
11 recognizance); Jones v. Cunningham, 371 U.S. 236, 243 (1963) (parole); United States v.  
12 Span, 75 F.3d 1383, 1386 n.5 (9th Cir. 1996) (probation); Benson v. California, 328 F.2d  
13 159, 162 (9th Cir. 1964) (probation).

14           If a “petitioner is on probation or parole, he may name his probation or parole officer  
15 ‘and the official in charge of the parole or probation agency, or the state correctional  
16 agency, as appropriate.’” Ortiz-Sandoval, 81 F.3d at 894 (quoting Rule 2, 28 foll. U.S.C.  
17 § 2254 advisory committee’s note). A long standing rule in the Ninth Circuit holds “that  
18 a petitioner may not seek [a writ of] habeas corpus against the State under . . . [whose]  
19 authority . . . the petitioner is in custody. The actual person who is [the] custodian [of the  
20 petitioner] must be the respondent.” Ashley v. Washington, 394 F.2d 125, 126 (9th Cir.  
21 1968). This requirement exists because a writ of habeas corpus acts upon the custodian of  
22 the state prisoner, the person who will produce “the body” if directed to do so by the Court.  
23 Ortiz-Sandoval, 81 F.3d at 895.

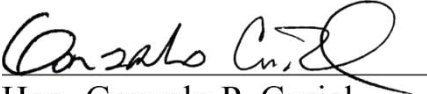
24           Here, Petitioner has not named any Respondent and simply states he is in a  
25 “program.” (See ECF No. 1 at 1-2.) In the event Petitioner is in the custody of a probation,  
26 parole, or correctional agency, and in order for this Court to entertain a Petition for Writ of  
27 Habeas Corpus, Petitioner must indicate he is in custody and must name the official in  
28 charge of the agency. See Ortiz-Sandoval, 81 F.3d at 894.

1 **CONCLUSION AND ORDER**

2 For the reasons discussed above, the Court **DISMISSES** this case without prejudice.  
3 In order to proceed with this habeas action, Petitioner must, on or before **June 24, 2021**,  
4 file a First Amended Petition that raises a cognizable federal claim, alleges exhaustion of  
5 state judicial remedies, demonstrates he was in actual or constructive custody (i.e.,  
6 probation or parole) at the time he filed the Petition in this case, and names a proper  
7 Respondent. The Clerk of Court shall send a blank Southern District of California amended  
8 §2254 habeas petition form to Petitioner along with a copy of this Order.

9 **IT IS SO ORDERED.**

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11 Dated: April 26, 2021

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13 Hon. Gonzalo P. Curiel  
14 United States District Judge  
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