

1
2
3
4
5
6
7
8
9
10
11
12
13
14

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MIGUEL ALEJANDRO
MARTINEZ,

 Petitioner,

vs.

JAMES GREG COX,

 Respondent.

3:12-cv-00485-LRH-WGC
ORDER

Petitioner, a Nevada prisoner, has filed a motion for leave to proceed *in forma pauperis* (ECF #1) and a petition for writ of habeas corpus (ECF #1-1). Petitioner’s application to proceed *in forma pauperis* is incomplete, as it does not contain a financial certificate completed by an authorized prison officer. The application must therefore be denied. Petitioner will be granted thirty (30) days to either pay the \$5.00 filing fee or submit a new, fully completed application to proceed *in forma pauperis*.

Further, petitioner has named James Greg Cox, Director of the Nevada Department of Corrections, and the Attorney General of the State of Nevada as respondents on the face of his petition. A petitioner must name the state officer who has custody of him or her as the respondent in a federal habeas petition. Rule 2(a), Rules Governing Section 2254 Proceedings; *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir.1994). This person typically is the warden of the facility in which the petitioner is incarcerated. “Failure to name the petitioner’s custodian as a respondent deprives federal courts of personal jurisdiction.” *Stanley*, 21 F.3d at 360. If petitioner fails to name the proper respondent in his petition, the court may allow petitioner to amend his petition to name the correct respondent. *See id.* As such, petitioner will be granted thirty days to file an amended caption page,

1 naming the proper respondent, who is the state officer who currently has custody over petitioner.

2 **IT IS THEREFORE ORDERED** that petitioner's motion for leave to proceed *in forma*
3 *pauperis* (ECF #1) is **DENIED**.

4 **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** from the date this
5 order is entered to either (1) pay the \$5.00 filing fee or (2) submit a fully completed application to
6 proceed *in forma pauperis*, including a financial certificate signed by an authorized prison officer
7 showing the status of petitioner's prison account. Failure to take one of these actions within the time
8 allowed may result in dismissal of this action.

9 **IT IS FURTHER ORDERED** that the Clerk shall **SEND** to petitioner the approved form for
10 an application to proceed *in forma pauperis*.

11 **IT IS FURTHER ORDERED** that the Clerk shall **SEND** to petitioner two copies of this order.
12 If petitioner wishes to pay the five dollar (\$5) filing fee (the first option, above), petitioner must make
13 the necessary arrangements to have one copy of this order, along with a check in the amount of the full
14 \$5 filing fee, sent to the court, by sending a copy of the order with a "brass slip" to Inmate Services for
15 issuance of the check.

16 **IT IS FURTHER ORDERED** that petitioner has **thirty (30) days from the date of entry of**
17 **this order to file an amended caption page that names the proper respondent.** Petitioner is
18 expressly cautioned that failure to do so may result in the dismissal of the petition.

19 **IT IS FURTHER ORDERED** that the Clerk shall retain the petition for a writ of habeas corpus
20 but shall not file it at this time.

21

22 DATED this 16th day of October, 2012.

23

24

25

26

27

28



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE