

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANDREW JOEY DELGADO,

Petitioner,

v.

No. 17-CV-01004-KG-KRS

STATE OF NEW MEXICO,

Respondent.

**ORDER GRANTING MOTION TO PROCEED
IN FORMA PAUPERIS AND TO ANSWER**

This matter is before the Court on Petitioner Andrew Joey Delgado's Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody [Doc. 1] and Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 [Doc. 2]. Based on the financial information provided by Petitioner, the Court finds that he is unable to prepay the filing fee pursuant to 28 U.S.C. § 1915 and, therefore, the Court will grant Petitioner's motion to proceed *in forma pauperis*. The Court has reviewed the Petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The Petition names the State of New Mexico as the Respondent, but the proper respondent in a § 2254 proceeding is the "warden of the facility where the prisoner is being held." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004); *see also* Rule 2(a) of the Rules Governing Section 2254 Cases In the United States District Courts ("If the petitioner is currently in custody under a state-court judgment, the petition must name as respondent the state officer who has custody."). Petitioner currently is incarcerated at the Lea County Correctional Facility and, therefore, the Court will substitute Raymond Smith, the Warden at Lea County Correctional Facility, as the sole named Respondent. Because the Petition

is not otherwise subject to summary dismissal, the Court will order Respondent to file an answer to the Petition.

IT IS, THEREFORE, ORDERED that Petitioner's Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 [Doc. 2] is **GRANTED** and Petitioner may proceed without prepayment of costs or other fees or the necessity of giving security therefor;

IT IS FURTHER ORDERED that Clerk of the Court is directed to substitute Raymond Smith as the sole named Respondent and to forward copies of this Order and the Petition [Doc. 1] to Respondent and the New Mexico Attorney General;

IT IS FURTHER ORDERED that Respondent answer the Petition within thirty (30) days from entry of this Order. Respondent's answer shall advise, without limitation, whether Petitioner has exhausted his state-court remedies as to the issues raised in the federal petition. Respondent shall attach to his answer copies of any pleading or paper pertinent to the issue of exhaustion which was filed by Petitioner in the sentencing court, the state district court, the state court of appeals and the state supreme court, together with copies of all memoranda filed by both parties in support of or in response to those pleadings. Respondent shall also attach to the answer copies of all state court findings and conclusions, docketing statements, and opinions issued in Petitioner's state court post-conviction or appellate proceedings. In the event Respondent denies exhaustion, he shall identify the State procedures currently available to Petitioner given the nature of Petitioner's claims and their procedural history.



KEVIN R. SWEAZE
UNITED STATES MAGISTRATE JUDGE